Why 1949 armistice line could serve all three countries well
Chibli Mallat puts the argument for switching emphasis from 1923 or 1967

From the Draft Treaty between Syria and Israel, first disclosed in January 2000, and subsequent accounts of the Israeli-Syrian process towards peace, the gap over time between the two parties has narrowed considerably.

While points of difference remain, including access to water and water allocation, early monitoring systems, depth of demilitarization, deployment and composition of international troops, and timing of withdrawals and recognition, the most crucial dispute over the final borders is a matter of meters, mostly located on the Eastern Shore of Lake Tiberias, and the concomitant right over the water sources.

In Article One of the Draft Treaty, Syria proposes to base the boundary "on the June 4, 1967, line." That line, first advocated by the late Syrian president in August 1993, has strong grounds in international law, and is embedded in Resolution 242 as "the inadmissibility of the acquisition of territory by war," a resolution upon which the Madrid invitation of 1991 was initially based.

The bottom line for successive Israeli governments is also entrenched in law. It is based on the 1923 map set by France and Britain over Syria and Palestine, and known as the Paulet-Newcombe Line. The Israelis have traditionally vindicated Paulet-Newcombe as the "international boundary" between the two former mandatory powers on the basis of the sanctity of colonial borders. They also rest their case on the argument that Israel is the Successor State to Palestine.

While both positions are well entrenched, each carries its own legal uncertainties.

In law, the problem with the Israeli position is dual. First, the authority of mandatory powers to fix separate sovereignties in areas without boundaries and with open access over centuries, is open to question, especially since no consultation of local populations, or ratification by free legislatures, have ever accompanied such grave acts as the delimitation of frontiers. The question is over the standing of that exchange of letters between Paulet and Newcombe and how much it is binding in international law.

Secondly, these arrangements are the more questionable since the configuration of 1923 keeps the waterways fully within the Palestine-Israel limits, against the normal practice of respecting natural geographical frontiers and the usual thalweg median line (the line down the deepest part of a river that serves as a border) adopted in watercourses.

Mostly, the 1923 Franco-British agreement introduced what proved, three-quarters of a century later, the sorest point between Syria and Israel, for it specified that "the frontier follows a line on the shore parallel to and at 10 meters from the edge of Lake Tiberias." By just looking at the 1923 map, one realizes how "anti-naturally" the Paulet-Newcombe Line was drawn. The odd configuration expresses the British experience with the Nile River disputes at the turn of the century, and the French negotiators' disinterest in the well-being of its colonies.

But even British insistence had to yield on points which retain their relevance to date because they were time-honored basic rights belonging to the local inhabitants. A closer look at the 1923 text reveals a number of exceptions and discrepancies which the British had to acknowledge, such as the fact that "any existing rights over the use of the waters of the Jordan by the inhabitants of Syria shall be maintained unimpaired;" that the railway station at Semakh (south of Tiberias, west of the 1923 line) is "for the joint use of the two countries." In addition, "the Government of Syria shall have the right to erect a new pier at Semakh on Lake Tiberias," a further

indication of clear Syrian rights over Semakh and the southern shore of Tiberias. As for water, while keeping police powers with "the Government of Palestine," it was further specified that "the inhabitants of Syria and the Lebanon shall have the same fishing and navigation rights on Lake Huleh and Tiberias and on the river Jordan between the said Lakes as the inhabitants of Palestine."

On the Syrian side, the denial of the 1923 line is also legally problematic. The Syria-Palestine "international boundary" may have been arbitrarily imposed, but it still offers a clear map, complete with border points and tangible details of the agreed demarcation. Many countries in the Third World, and indeed in the rest of the planet, have arbitrary boundaries, witness Africa to date, or the number of enclaves on the Swiss-German borders, or indeed Syria's own borders elsewhere, with Lebanon, Iraq or Turkey.

Thus the general legal framework for the current deadlock between the two countries. The lines of 1923 and of 1967 are only part of the story, a matter complicated by the well known fact that there is no authoritative map for the 4 June 1967 line, and it may be that this constructive ambiguity will prove useful one day.

One important demarcation line to which has had little attention, is one which accompanied the 1949 Armistice Agreement between Syria and Israel, which can be compared with the map produced by the Israeli defense ministry of 1967 indicating the thrust of changes brought about by the Six-Day war.

Several reasons explain why the revival of the 1949 line might be useful.

From a diplomatic point of view, the 1949 Armistice Demarcation Line introduces the prospects of a compromise allowing the respective leaderships to claim before their domestic audiences, that they have reached the deal most in conformity with international law. There is no room here for the more extensive legal argument in support of the 1949 line, but the 1949 Armistice Agreement allows a third way which could satisfy both parties, even if, as in all compromises, it might leave them slightly frustrated.

For Syria, it is clear that the 1949 line would be superior to the 1923 arrangement, and may have firmer legal grounds in law, in addition to being generally more precise and more advantageous than the June 4, 1967 line. For the Israeli government, beyond a first rejection, one could hope that a compromise away from the strictures of the 1923 line would be easier to justify to the Israeli public, in view of the destruction by Israel, between July 1949 and April 1951 of the Demilitarized Zones (DMZ) established by the Armistice, and the deliberate and massive expulsion of civilians on the Syrian side, now in the public record of the most serious Israeli historiography. More convincingly, the support of international law for Syrian access to the Lake alongside its Southern Shore, by virtue of the 1949 Armistice, would open new vistas on the June 4, 1967 option.

From a legal perspective, the same principle which underlies the Syrian position on the June 4 line has a strong pedigree in international law and in the Arab-Israeli conflict in particular. By looking at the texts culminating in the Armistice Agreement, it is clear that their pivotal principle is the inadmissibility of the acquisition of territory by force, including the DMZs established by Ralph Bunche, the UN architect of the Armistice Agreement.

In law, therefore, the revival of the 1949 Map rests on the principled refusal to accept force as the arbitrator of history, and on the vindication of the superiority of international law principles, which apply regardless of the apportionment of the blame. But even if blame were to be apportioned, and that apportionment relevant in law, the systematic and premeditated violation of the DMZ by the Israeli government,

notably in its decision of 30 March 1951, does not leave much doubt on who was responsible for the collapse of the peaceful arrangements accepted by the two parties under UN aegis.
Procedurally, opening up the chance to a compromise can take the shape of a clause in the final treaty fixing the 1923 and 1949 lines as the respective Israeli and Syrian understanding of the minimal-maximal withdrawal limits in the Golan, "with control of, and sovereignty over, any disputed territory in-between to be solved by arbitration" that is if the parties have not solved the issue by a compromise which could be made to look like the elusive, and yet to be publicly defined, June 1967 line. It might be dangerous to leave the matter to arbitration. To avoid a repeat of the DMZ-fate, the arbitration process should be tightened and introduced into the text of the treaty, without prejudice to withdrawals and confidence-building measures agreed by the treaty's other provisions.
Arbitrating the 20 or so most contentious square kilometers standing before the advent of peace, would not prevent the rest of the treaty arrangements, including withdrawals and diplomatic recognition, from being implemented.
The protracted nature of the arbitration process could serve several other purposes, including the search by both parties for arrangements beyond the century-long zero-sum equation. One could even hope that the revival of the 1949 line and principles established in the Armistice Agreement regarding the protection of civilians and rejection of acquisition of territory by war would render arbitration easier, possibly even purely academic if a compromise is reached, and herald the end of the zero-sum logic in the Middle East. After all, the Mixed Armistice Commission created in 1949, full with UN chairmanship and observers on the ready, was never disbanded. Both for the stability of the fragile truce in South Lebanon and for Arab-Israeli peace, a Blue Line on the Syro-Israeli front is more urgent than ever.

Chibli Mallat is an international lawyer and professor of law at the Saint Joseph University. This article is based on a lecture given at the university's school of law on July 13 Original documents and maps, and the full legal argument, omitted here for lack of space, can be found on www.mallat.com