

THE UNITED NATIONS, PAN-ARABISM AND ISRAEL: CRYSTALLIZATION TO CATASTROPHE

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Political unity within the Arab world crystallized after the creation of Israel, as the necessity for unity among the Arabs arose only with the threat of a common enemy. Israel's perpetual aggression towards the Arabs and the Western world's appeasement of it has fueled the phenomenon of Pan-Arabism. It is the instinct of self preservation that compels the Arabs to present a united front. The sentiment of PA feeds, to a large extent, on its sensationalization by the mass media and the West seems readily disposed to perceive the Arabs in religious-orientalist categories. But while Islam is a major component of Arab culture and identity,¹ it is a political motive that truly binds them together. Today this phenomenon is exploited by any Arab state that wants to strengthen its bargaining power,² in disputes with Israel and particularly with respect to the UN.

THE BEGINNING OF UN INVOLVEMENT IN THE MIDDLE EAST

The UN involvement in the Arab-Israeli dispute has been one of its most unsuccessful operations. The British Government handed over the question of Palestine to the UN in 1947 after their attempts at establishing a Jewish state led to a civil war between the Arabs and the Jews.³ In a special session the GA set up the United Nations Special Commission in Palestine (UNSCOP). However, it is ironic that the UNSCOP was not even allowed to enter Palestine.⁴ It recommended a Partition Plan which was accepted by the GA in spite of opposition from the Arab front.⁵ Even though the SC refused to take any action on the plan, the plan did have some impact on the consequent history of the region. It provided the Jews with a legitimate claim for a separate state and it liquidated the British mandate. The entire struggle of the Jews was now defined under a legal framework within which the Yishuv⁶ could rally under one programme. This placed the Arabs in the position

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1 S.E. Ibrahim, *The Gulf Crisis and the Inter Arab Security Dilemma*, W. Bartels (Ed.), *Dynamics of Self Determination*, p. 59.

2 According to the Syrian daily *Al Thawra*, Syria tried to mobilise the Arabs into united action in order to confront Israeli extremism. <http://www.cnn.com/WORLD/9606/07/syria.summit>.

3 A. Oz, *Slopes of Lebanon* 58 (1991).

4 I.B. Sohn (Ed.), *Cases on United Nations Law* 457 (1956).

5 Resolution 181 GAOR II, *Ibid*.

6 The Yishuv was the loose organisation of the Jewish armed forces during the Civil War N. Safran, *Israel - The Embattled Alley* 32 (1978).

of aggressors and enabled the Yishuv to obtain material and diplomatic support from overseas.⁷

The Partition Plan was never implemented due to US opposition. But in January 1949, the UN had mediated truce and armistice agreements, and though there were several violations, the bulk of the conflict ended. The GA also formed a Conciliation Commission to ensure that the armistice agreements ended in final settlement.⁸

In 1956 the UN faced a challenging situation when Israel, France and the UK invaded Egypt. France and the UK, as permanent members of the SC obstructed a draft resolution that called for a cease fire and withdrawal of Israeli forces.⁹ At this point the GA invoked its “Uniting For Peace” Resolution¹⁰ which authorized the GA to call for collective action, and even to use armed force in situations like this where the veto of a permanent member prevented the SC from acting.¹¹ With the consent of the states concerned the GA established the UN Emergency Force. This incident is a significant break from the general trend through the UN’s long involvement in the Arab-Israel conflict. Unfortunately, the efficacy of the SC has often been impaired by the interests of its permanent members.

In 1967 what came to be known as the Six Day War was triggered off when Israel launched air raids against the combined Arab armies of Syria, Jordan, Iraq and Egypt. The UN condemned this as an act of aggression even though Israel claimed that she was acting in self-defense as she pre-empted an imminent Arab attack. However, “since an armed attack had not actually occurred Israel could not seek the defense of Art. 51 of the UN Charter. In a resolution¹² the SC emphasized the inadmissibility of the acquisition of territory by force and it called for the withdrawal of Israeli forces from the territories occupied in the conflict. This marked the beginning of a series of resolutions that were flouted with impunity. Twenty-six years later the 1993 Accord between the PLO and Israel was a step towards implementing this resolution, but according to Edward Said it was a lopsided peace that celebrated only the victors.¹³

7 *Ibid.*

8 *Supra* n. 4, at 458.

9 G. Rosner, *The UN Emergency Force* 21 (1963).

10 Resolution 377 GAOR V.

11 The International Court of Justice has held that the General Assembly is authorised to do this as Art. 14 of the UN Charter empowers it to “recommend measures for the peaceful adjustment of any situation,” in spite of the fact that under Art. 12 the General Assembly is subordinate to the Security Council in disputes and situations. *1519 ICJ Reports* (1962) in *Encyclopedia of Public International Law* 163 (1962).

12 Resolution 242 (1967), 1967 Yearbook.

13 E.W. Said, *Peace and its Discontents* 84 (1995).

In 1973 the SC recognized¹⁴ that Israel had violated the UN Charter, the 1949 UN supervised armistice agreements, the Security Council's 1967 resolution calling for a cease fire as well as codes of international civil aviation when the Israeli airforce hijacked a Lebanese civil airliner. In spite of this the Israel was let off with nothing more than a warning. This soft stand has been characteristic of the UN ever since and it is evident in the recent Hizbullah bombings.¹⁵

Such incidents lower the credibility of the UN in the eyes of the entire Arab world which sees the UN as an organization that is vulnerable to the politics between nations and catering to the interest of the West. As the West seems to indulge in a policy of appeasement towards Israel, the Arabs begin to identify Israel with the West and they feel alienated from the SC. It was due to the disillusionment of the Arabs with the UN and it's Emergency Force that they created the Arab League.¹⁶

THE DIVERGENT PATHS OF THE GENERAL ASSEMBLY AND THE SECURITY COUNCIL

In the course of events in this region the gulf between the GA and the SC slowly became evident. While the SC was clearly an instrument of the Big Five, the GA came to represent the increasingly vocal Afro-Asian bloc that constituted its numerical majority. This trend was marked by the "Uniting for Peace" Resolution¹⁷ but the GA was not always that effective in implementing its different opinion.

On the other hand the SC displays a distinctly anti-Arab bias when it condemns terrorism and violence all around without understanding that the terrorism is directly linked to the unjust conditions that Israel has created for Palestine, and the terrorism is a substitute for war among people who see no alternatives and have no resources.¹⁸ The Camp David Accord recognized the legitimate rights of the Palestinian people but the SC has refused to endorse even this Accord.¹⁹

The SC today is clearly identified with US interests. Previously the Arabs had the protection of the USSR²⁰ but in the post-Cold War world order it is the US vote that is decisive and distinctly anti-Arab. Whatever resolutions the SC has passed against Israel have been extremely mild and toothless.²¹

14 Resolution 337 (1973), 1973 Yearbook, Vol. 27.

15 *Infra* p.4.

16 A. Cox, *Prospects For Peacekeeping* 71 (1967).

17 *Supra* n. 10.

18 *Supra* n. 13, at 149.

19 T. Friedman, *Fron Beirut to Jerusalem* 226 (1990).

20 *Supra* n. 16, at 39.

21 Resolution 1054 (1996), <http://www.un.org/plweb-...950101%3cdate%3c19970101>.

The Security Council has also been extremely selective in implementing its resolutions - it has failed to implement any of its resolutions against Israel and Israel has violated them with impunity. In 1978 the Security Council condemned Israel's incursions into Beirut in violation of cease-fire agreements and Council resolutions, and it established the United Nations Interim Force in Lebanon (UNIFIL) to confirm the withdrawal of Israeli forces, to help the Lebanese government reestablish its authority in that area and to restore international peace.²² But Israel has always violated such resolutions and continues to do so even today. What is worse is that this weakness that the Security Council displays when dealing with Israel cannot be blamed on its structural weaknesses as it was extremely effective in implementing its sanctions against Iraq. Within hours of the Iraqi invasion of Kuwait the Security Council had adopted a resolution condemning the invasion and demanding that Iraq immediately and unconditionally withdraw its forces.²³ Four days later mandatory sanctions were imposed on Iraq²⁴ due to Iraq's failure to comply with the call for troop withdrawal. Though Israel has violated many similar resolutions the Security Council has never imposed mandatory sanctions on her.

On the other hand the General Assembly has displayed a distinctly pro-Arab policy; while this has not neutralized the Security Council's pro-Israel stance it has alienated Israel from the General Assembly. The General Assembly's tendency to criticize almost all Israeli actions against Arab resistance has resulted in a failure to take note of those actions that have recognized legal standards in the treatment of resisters. The General Assembly has also failed to understand the dilemma that Israel faces or that its rights under the law of occupations are real. Consequently the General Assembly resolutions bearing on the treatment of Palestinian resistance have had diminished impact and they are easy for Israel to dismiss.²⁵

Another characteristic of the General Assembly has been the solidarity of the Arab nations within it. Whatever their other differences might be, in the General Assembly the Arab nations function as a bloc. When the repeal of the resolution that declared Zionism was a form of racism²⁶ was in question the Arabs not only voted together but voiced their position through a common representative for the entire Arab group. The representative, Makkawi said that the resolution would set a dangerous precedent that would render other UN resolutions no longer politically or morally binding. He also warned that the revocation would fuel the passions of the Arabs who believed that the entire peace process was a farce.²⁷

Such an attitude of the Arabs is perhaps aggravated by the fact that the US and Israel consistently vote against any General Assembly resolutions that could

22 Reported in UN Department of Public Information, *Basic Facts about the United Nations* (1992).

23 Resolution 660 (1990) Agwani, *The Aftermath*, 12 *World Focus* 4 (1991).

24 Resolution 661 (1991), *Ibid*.

25 A. Roberts, *Prolonged Military Occupation*, 84 *AJIL* 100 (1990).

26 Resolution 3379 (XXX).

27 *Zionism no longer Equated with Racism*, *UN Chronicle*, Vol XXIX, No. 1, March 1992, p. 67.

benefit the Arabs. They were the only two nations that opposed a resolution to facilitate cooperation between the UN and the League of Arab States.²⁸

In spite of the weakness of both the General Assembly and the Security Council the UN may have been a balanced organization if one organ could counter-balance the other. But this has not been possible because the General Assembly lacks teeth. Under Article 24 of the UN Charter the Security Council has primary responsibility for the maintenance of international peace and security and the specific powers granted to it under Chapters VI, VII, VIII and XII are not available to the General Assembly. The net effect of this is that the policy of the UN tilts in favour of Israel and against the Arabs.

THE HIZBULLAH BOMBINGS: THE UN'S DOUBLE STANDARDS ILLUSTRATED

In April, 1996 Israel launched operation "Grapes of Wrath" - ostensibly a surgical strike against the Hizbullah militia in Lebanon. But in actuality it created mass destruction amongst civilians. The most shocking target was a UN refugee camp at Qana where an estimated hundred civilians were killed and many more were injured.²⁹ Israel claims that it had no knowledge of civilians living in that area but even UN officials find that unbelievable considering Israel's reputed intelligence agency had information regarding every radio transmitter in Beirut.³⁰

However, what is more shocking than the carnage itself is that the Security Council failed to condemn the violence on civilians. In its April 18, 1996 resolution³¹ merely expressed "grave concern at all attacks on civilian targets including residential areas, and the loss of life and suffering among civilians." This was in spite of the fact that in the same resolution it acknowledged that Israel had violated international humanitarian law with regard to the protection of civilians.³²

Israel justifies its attack on the ground that it was exercising its legitimate right of self-defense against the Hizbullah attacks.³³ Initially the US ambassador to the Security Council endorsed Israel's stand and the Clinton administration made it clear that it would not squelch the operations, but after the bombing of Qana Clinton declared that the parties had to agree to a cease-fire.³⁴

28 Resolution 47/12 (1995) gopher://gopher.un.org.70/00/ga/recs/50/16. Also GA 36/120A (1981) 35 *UN Yearbook* 272(1981).

29 B. MeIan, *Israel's Grave Error*, 147 *Time* 22 (1996).

30 *Ibid.*

31 Resolution 1054, *Supra* n. 22.

32 [http://www.un.org/plweb/...950101%3\(date%3ct19970101\)](http://www.un.org/plweb/...950101%3(date%3ct19970101))

33 K. Fedarko, *Grapes of Wrath*, 147 *Time* 44 (1996).

34 M. Albright in *Text: Albright SC remarks on Israel, Lebanon*, <http://www.usis.-israel.org.il/publish/press/unations/archive/april/un/-4-17.htm>

However the Security Council still did not impose any sanctions against Israel even though she had committed gross violations of international law. Such an attitude would obviously place the Arabs in an extremely vulnerable position in the Middle East as Israel's rampage can proceed unchecked. Thus the only real hope for security for the Arabs lies in unity.

A SEARCH FOR ANSWERS

Looking at the history of the UN one can conclude that the Security Council has been ineffective in its Arab-Israel involvement not because it is rendered helpless by its inherent weaknesses, but because it chooses to be ineffective. The Big Five of the Security Council misuse it to serve their narrow ends and therefore the UN fails to achieve its larger objective. Though the UN has had its share of successes around the globe, whenever the permanent members have a vested interest they manipulate the organs of the UN to serve their purposes; and the absence of a balance of power within the Security Council today allows US dominance to proceed unchecked.

A superficial look at this scenario would lead one to advocate an amendment that would make the Security Council accountable to the General Assembly. But even building a case for reform is futile because an amendment to the UN Charter has to be ratified³⁵ by all five of the permanent members and obviously they would not endorse an amendment that would make them accountable to the General Assembly. However, for these shortcomings one cannot blame the five permanent members of the Security Council because the fault lies not in these particular members but in the fact that a global security system has its limitations as selfish interests will always prevail.

35 Art. 108 of the UN Charter.

NOTES AND COMMENTS

A CAGE WENT IN SEARCH OF A BIRD: POSITIVE LAW AND FRANZ KAFKA

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After wading through contracts property law and the CPC one begins to believe in positive law. The notion of law as a neutral system of rules, begins to become a part of you, and you begin to be a part of the law.

It is at this crucial juncture that Franz Kafka has a role to play.¹ Kafka struggles with our lawyers' minds as he attempts to bring us down to material reality, to change abstract rules into flesh and blood and to show us, what the world thinks of the law and lawyers.

It is not easy reading for a lawyer to be, to see law from the perspective of the victim. We are used to law from the perspective of the imperial law. Our law is sanitized. This article will deal with the dominant tradition in legal thinking as praxis, and will then look at Kafka's concept of law.

THE POSITIVE TRADITION

Hans Kelsen in 1934 wrote "Jurisprudence in a wholly uncritical fashion was mixed up with psychology and biology, with ethics and theology. There is today hardly a single social science into whose province jurisprudence feels itself unfitted to enter, even thinking indeed to enhance its scientific status by such conjunction with other disciplines. The real science of law is of course lost in the process."²

Kelsen continues by noting that "the pure theory of law separates the concept of the legal completely from that of the moral norm and establishes the law in a specific system independent of the moral law."³ Thus positivism as embodied in

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1 Franz Kafka (1883-1924) was a Czech novelist, who has written perspectively about the insane structures an individual has to confront in the 20th century, namely the laws, state of bureaucracy. His best known works are "The Trial", "The Castle" and a short story "The Judgment".

2 Hans Kelsen, *The Pure Theory of Law*, cited in M.D.A. Freeman, *Lloyd's Introduction to Jurisprudence* 291 (1994).

3 *Id.*