

## The United Nations and Human Rights in the Israel Occupied Territories†

The Middle-East and the Israel-Arab conflict have, for many years, been under constant consideration in the United Nations and on the agenda of its various organs. Since the 1967 war and the Israeli occupation of certain territories of Syria, Jordan and Egypt, the United Nations has also been concerned with the question of human rights of the indigenous population in the occupied territories. In this article, the author will attempt to describe the actions of the United Nations with regard to human rights in the area, and analyze the performance of the various United Nations bodies involved in the quest for human rights in the Middle East.

The article will deal mainly with the procedural and institutional deficiencies which, as will be seen, have permeated almost every action taken by the United Nations with regard to human rights in the occupied territories. The author will attempt to show that the United Nations has missed a unique opportunity to contribute to the development of the international law of human rights, and especially to the evolution of machinery for the implementation of the substantive norms of human rights.

Human Rights is a comparatively new chapter in international law, and has been developing rapidly since the adoption of the Charter of the United Nations. This development has been devoted almost exclusively to the formulation of substantive norms, which mirrored the expectations of the international community. While substantive norms are now an accepted part of international law, and are continuing to be recognized as such, the development of procedures and machinery to ensure actual compliance with the substantive norms has been slow. It is in this context that one should appraise and evaluate the performance of the United Nations with regard to alleged violations of human rights in the Middle East—especially

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†This article and the following one by Dr. Meguid should be read together.

so because this was one of the first attempts by the world organization to investigate such purported violations.<sup>1</sup>

## I

Immediately following the Israeli victory in the 1967 war, the Security Council passed a resolution which recommended to the governments involved "the scrupulous respect of humanitarian principles governing the treatment of prisoners of war and the protection of civilian persons in time of war, contained in the Geneva Conventions of 12 August 1949."<sup>2</sup> The resolution asked the Secretary General "to follow the effective implementation of this resolution and to report to the Security Council."

The first step taken by the Secretary General was to ask the Commissioner General of UNRWA to report to him on the situation. However, the Secretary General came to the conclusion that he should rely on other machinery<sup>3</sup> and on July 6, 1967, he appointed Mr. Nils Gussing to be his special representative on this matter and sent Mr. Gussing to the Middle East. Mr. Gussing travelled in the area, met with responsible officials of the governments involved and submitted a report to the Secretary General, who later published a report based on Mr. Gussing's findings.<sup>4</sup>

During the Gussing tour, Israel raised the question of ill-treatment of Jews in the Arab countries, and since then Israel has repeatedly demanded that any investigation of alleged violations of human rights in the area should also encompass the treatment of Jews in these countries. The Arab countries objected to such an inquiry and the United Nations did not make any attempt to pursue the issue. Israel has made this a pre-condition for its cooperation with any investigatory body designed to inquire into alleged violations of human rights in the occupied territories.<sup>5</sup> The Secretary General tried to send another representative to the area but Israel refused to cooperate, giving the above reason. The Secretary General did not pursue the matter further.

The next attempt by a United Nations organ to investigate violations of human rights in the Middle East came during the 23rd session of the General Assembly. On December 19, 1968, the General Assembly

<sup>1</sup>For other instances of investigations by the United Nations, of alleged violations of human rights see J. CAREY, *U.N. PROTECTION OF CIVIL AND POLITICAL RIGHTS*, chapters IX and X (1970) [hereinafter cited as CAREY]. See also Ermacora, *International Enquiry Commissions in the Field of Human Rights*, 1 HUMAN RIGHTS J. 180 (1968).

<sup>2</sup>Res. 237 (1967).

<sup>3</sup>For the reasons see U.N. Doc. S/8021, at 3.

<sup>4</sup>U.N. Doc. S/8158.

<sup>5</sup>For a detailed description of developments regarding the Israeli demand and legal analysis of its merits see Rodley, *The United Nations and Human Rights in the Middle East*, 38 SOCIAL RESEARCH 217, 223 *et seq.* (1971) [hereinafter cited as Rodley].

adopted a resolution establishing a "Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories" (hereinafter referred to as the Special Committee).<sup>6</sup> The same resolution took note of a previous resolution by the International Conference on Human Rights held in Teheran in April-May, 1968, and cited the Teheran resolution, including, *inter alia*, the passage of the Teheran resolution which "express[ed] grave concern at the violation of human rights in Arab territories occupied by Israel."

The General Assembly itself did not appoint the members of the Special Committee, but requested the President of the Assembly to appoint three member States to serve on that body. The President, Dr. Emilio Arenales of Guatemala, made efforts to find States who would agree to serve on the Special Committee but to no avail. Before completing his task Dr. Arenales died. A meeting of the Vice-Presidents of the 23rd session of the General Assembly decided to delegate the power of appointment to one of their number, Dr. Luis Alvarado, of Peru.<sup>7</sup>

Dr. Alvarado approached member States who had taken a neutral position in the Israel-Arab conflict, and who had not voted for the resolution establishing the Special Committee, but who had abstained. He could not find any such State which would agree to serve on the Committee. Having such limited choice, he appointed on September 12, 1969, Ceylon, Somalia and Yugoslavia to be members of the Special Committee. As will be noted hereunder, these countries were totally biased, and had preconceived notions regarding right and wrong in the Middle East conflict.

During the period between the General Assembly resolution establishing the Special Committee, and the actual appointment of its members, another United Nations organ initiated an investigation into alleged violations of human rights in the occupied territories. On March 6, 1969, the Human Rights Commission decided to establish a Special Working Group of Experts (hereinafter referred to as the Group of Experts), to "investigate allegations concerning Israel's violations of the Geneva Convention regarding the Protection of Civilian Persons in Time of War."<sup>8</sup> The resolution in a preceding paragraph deplored "Israel's continued violations of

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<sup>6</sup>Res. 2443 (XXIII).

<sup>7</sup>Israel cast serious doubts as to the propriety of this procedure by which one of the Vice-Presidents was entrusted with the task of appointing the members of the Special Committee. For the developments involving this issue see REPORT OF THE SPECIAL COMMITTEE TO INVESTIGATE ISRAELI PRACTICES AFFECTING THE HUMAN RIGHTS OF THE POPULATION OF THE OCCUPIED TERRITORIES, U.N. Doc. A/8089, at 9 *et seq.* For legal assessment of the Israeli objection to the procedure see Rodley, *supra* note 5, at 231-32, and Bender, *Ad Hoc Committees and Human Rights Investigations: A Comparative Case Study in the Middle East*, 38 SOCIAL RESEARCH 241, 247-48 (1971) [hereinafter cited as Bender].

<sup>8</sup>Res. 6 (XXV).

human rights in the occupied territories. . . ."<sup>9</sup> The appointments to this body were based, not on states but on individuals, and the people serving as the Group of Experts came from the following six countries: Senegal, Austria, Peru, India, Tanzania and Yugoslavia.<sup>10</sup> Some were the representatives of their governments on the Human Rights Commission.

The two investigatory bodies travelled extensively in Arab countries, seeking evidence regarding the alleged violations. Israel refused to cooperate with both groups and advanced two reasons for its policy of non-cooperation: First, the unwillingness of the United Nations to investigate the situation of the Jewish communities in the Arab countries; second, the apparent bias of the two bodies, and the fact that the two organs establishing them have pre-judged the outcome of the investigations.<sup>11</sup>

The two bodies published reports highly critical of Israel, accusing it of numerous violations of human rights, ranging from mass deportations to illegal internment, and from demolition of thousands of dwellings and whole villages to ill-treatment and torture of prisoners.<sup>12</sup> On the basis of these findings, the Human Rights Commission reached a new peak when it adopted a resolution on March 22, 1972, accusing Israel of committing war crimes.<sup>13</sup>

## II

The most desirable feature in an investigatory body, like the Special Committee and the Group of Experts, is impartiality and lack of tenden-

<sup>9</sup>It is interesting to note the voting on the resolution establishing the Group of Experts. Only 13 votes were cast for the resolution (less than a majority), one was against and 16 abstained. More illuminating is the list of States which voted for the resolution: all Arab countries, members of the Soviet bloc or ardent supporters of the Arab cause: Mauritania, Morocco, Nigeria, Pakistan, Poland, Ukrania, Soviet Union, United Arab Republic (Egypt), Tanzania, Yugoslavia, India, Iran and Lebanon. U.N. Doc. E/CN.4/SR. 1014 at 23.

<sup>10</sup>Actually the Human Rights Commission decided that the Working Group was to be composed of the same people who had previously served on the inquiring body, which had previously investigated the allegations of violations of human rights in South Africa.

<sup>11</sup>See, e.g., the Israel response to the report of the Special Committee, U.N. Doc. A/8164. See also the remarks by the Attorney General of Israel, Mr. M. Shamgar, in the International Symposium on Human Rights held in Tel-Aviv. University on July 1971, 1 ISRAEL YEARBOOK ON HUMAN RIGHTS 382 (1971).

<sup>12</sup>The report of the Group of Experts is U.N. Doc. E/CN.4/1016. The Special Committee published its first report in October 1970, U.N. Doc. A/8089. The General Assembly, in its 25th session, asked the Special Committee "to report to the Secretary General as soon as possible and whenever the need arises" (Resolution 2727 (XXV)). In pursuance of this resolution, the Special Committee submitted a second report in September 1971 (U.N. Doc. A/8389 and Corr. 1).

<sup>13</sup>New York Times, March 24, 1972, at 70. Again the vote was by less than a majority of the 32-member Commission; 15 members voted for, 4 against and 11 abstained. Quite typically the sponsors of the resolution were two Arab countries (Egypt and Lebanon), and a country which has always supported the Arabs in the Middle East conflict (Tanzania). The Jerusalem Post, March 24, 1972, at 2.

tiousness. It is not surprising that the Secretary General remarked when speaking on human rights in armed conflicts, that

an absolute prerequisite for the establishment and success of such an agency [to ensure and supervise the observance of human rights] would be that its character would be exclusively and strictly humanitarian; it would have to be scrupulously non-political and it should strive to offer all guarantees of impartiality, efficiency and rectitude.<sup>14</sup>

The importance of impartiality is twofold, and is captured in the saying that justice should not only be done but should also be seen to be done. First, impartiality ensures that the investigator will not be influenced by extraneous consideration in his quest for the truth and the ascertainment of the actual facts. Second, impartiality is a pre-condition for the efficacy of the judgment reached by the investigator. This is especially true with regard to international investigations concerning violations of human rights.

It is clear that in the present state of international law and international relations, there is little chance that an investigation into alleged violations of human rights, such as the two conducted into Israeli occupation, will lead to enforcement measures and sanctions against the offending State. The conclusions and recommendations of the investigatory body will be complied with by the government involved, at least partially, only if enough pressure is exerted by world opinion. Such a pressure may be of two kinds: (1) by governments which have normal relations with the offending State, and (2) by the mass media.<sup>15</sup>

Suppose, for the sake of argument, that Israel has violated the human rights of the population in the occupied territories. In such a case, countries like Britain or the United States can exert political pressure on Israel to desist from such violations. Poland, for example, which does not have diplomatic relations with Israel, and which supports the Arabs wholeheartedly, would have little influence over, or credibility with, the Israeli Government. The same goes to the mass media in the Western world. It can exert some pressure on Israel. If, however, the investigatory body is completely one-sided and biased, there is no chance that those having the capacity to influence the decision-making process in Israel will take any action in that direction.

The performance of the United Nations concerning the issue of human rights in the occupied territories, has been blemished with so many irregularities that it is no wonder, and completely understandable, that Israel has refused to cooperate with the two investigations, and also refused to

<sup>14</sup>REPORT OF THE SECRETARY GENERAL, RESPECT FOR HUMAN RIGHTS IN ARMED CONFLICTS, U.N. Doc. A/8052, at 77. The General Assembly stressed the importance of impartiality in fact-finding. Res. 2329 (XXII).

<sup>15</sup>Pressure by mass media would be particularly effective in countries having democratic régimes. This is, of course, the case of Israel.

take their reports seriously. Israel's ability to ignore the conclusions of the United Nations investigations was supported by an understandable lack of world public opinion on behalf of their findings.

### III

The first instance of bias is to be found in the resolutions establishing the Special Committee and the Group of Experts. The General Assembly and the Human Rights Commission denounced Israel in the same resolutions which initiated the investigations.<sup>16</sup> Professor Y. Dinstein of Tel-Aviv Law School described this process thus: "First verdict is pronounced; then the jury weighs the evidence and finally the parties are supposed to present their respective cases."<sup>17, 18</sup>

The second example of lack of impartiality concerns the composition of the two bodies, especially the Special Committee. The members of the Special Committee, Somalia, Yugoslavia and Ceylon do not have diplomatic relations with Israel, and have continuously supported the Arab cause in the International arena. Some facts will substantiate this assertion.

The Foreign Minister of Somalia has declared that his country was in a state of war with Israel and that it was "in the frontline with regard to whatever concerns the Arab cause."<sup>19</sup> President Tito of Yugoslavia did not go so far, but simply stated that "we [the Yugoslavs] are on the side of the Arabs."<sup>20</sup> And the Yugoslav representatives on the Human Rights Commission, after being criticized by Israel for his bias, did not hesitate to respond by saying that Yugoslavia condemns most strongly the Israeli aggression and occupation.<sup>21</sup> Yugoslavia was one of the countries which severed diplomatic relations with Israel upon the outbreak of the 1967 war.<sup>22</sup>

Israel had diplomatic relations with Ceylon even after the war, but in June, 1970, a new régime assumed power in that country, and it decided to

<sup>16</sup>See pp. 3, 5 *supra*. The General Assembly did so only by reference to a previous resolution of the International Conference on Human Rights, while the Human Rights Commission explicitly castigated Israel for violating human rights.

<sup>17</sup>Dinstein, *Israel's Benign Occupation*, The Jerusalem Post, June 2, 1972 (Magazine), at 6. See also Rodley, *supra* note 5, at 230, 235-36; Bender, *supra* note 7, at 245-46, 251, and CAREY, *supra* note 1, at 109.

<sup>18</sup>It should be noted that the same procedure, first judgment and then investigation, characterized the actions of the Human Rights Commission with regard to violations of human rights in South Africa. See CAREY, *supra* note 1, at 99.

<sup>19</sup>A report by the Middle East News Agency of May 3, 1970, cited in a letter from the permanent representative of Israel to the Secretary General, U.N. Doc. A/7984.

<sup>20</sup>Cited in a letter from the permanent representative of Israel to the Secretary General, U.N. Doc. A/7895.

<sup>21</sup>U.N. Doc. E/CN.4/SR.1079, at 102. See also U.N. Doc. E/CN.4/SR.1075, at 52, and U.N. Doc. E/CN.4/SR.1080, at 114.

<sup>22</sup>All the countries belonging to the Soviet bloc which had diplomatic relations with Israel, except Rumania, took the same action.

break diplomatic relations with Israel. In announcing this move, the Ceylon Government stated that diplomatic relations with Israel would be suspended until Israel accepts the resolutions of the Security Council and withdraws from the occupied territories, or until a solution acceptable to the Arabs is reached.<sup>23</sup>

The apparent bias and tendentiousness of the investigations is evidenced, without using any extrinsic evidence, in the reports which they have published. Only one example need be cited: the case of Moayyad Badawi El-Bahsh. This man appeared before the Special Committee, and claimed that a paralysis in his left arm had been caused by ill-treatment in an Israeli prison. He asserted that he had been tortured by electric shocks, and that in one case he had been suspended from a window and that an Israeli soldier jumped on the shackles which had held his legs, thus causing the paralysis.<sup>24</sup>

In a report submitted by Israel to Amnesty International (with whom Israel cooperates), after that organization had asked for Israel's response to the allegations by El-Bahsh, Israeli doctors diagnosed the case of El-Bahsh as that of hysterical paralysis caused by mental disturbance. The Special Committee had before it the Israeli response,<sup>25</sup> but it would not accept a report by Israeli physicians.

However, El-Bahsh was also examined in London by two impartial British doctors.<sup>26</sup> One doctor concluded that he suffered from hysterical paralysis and the other diagnosed the case as either hysterical or *feigned* paralysis.<sup>27</sup> Even after such a diagnosis by an objective medical examination, the Special Committee declared that it "[c]annot, however, rule out the possibility that paralysis was due to a mental state that was itself the result of some form of physical ill-treatment or psychological strain while under detention."<sup>28</sup> To justify its previous findings, and unwilling to retract and admit a mistake, the Special Committee advanced a new theory unsubstantiated by any proof (even the story of El-Bahsh himself) of psychological pressure or physical ill-treatment as a cause of a dubious paralysis.

It is clear from the whole process of investigating the alleged violations of human rights in the Israeli occupied territories, from the outset when the

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<sup>23</sup>See letter dated June 18, 1970 from the permanent representative of Israel to the Secretary General, U.N. Doc. A/7986.

<sup>24</sup>U.N. Doc. A/8389 and Corr. 1, at 48-9 and U.N. Doc. A/8389 Add. 1, at 12. A different version of the cause of the paralysis appears in the Special Committee's first report. See U.N. Doc. A/8089, at 37.

<sup>25</sup>Israel, as pointed out earlier, did not cooperate with the investigatory bodies, and the Special Committee received the Israel answer from Amnesty International.

<sup>26</sup>U.N. Doc. A/8389 Add. 1, at 13.

<sup>27</sup>*Id.*

<sup>28</sup>*Id.*

## IV

two bodies were established until their reports were published, that it was highly politicized, and lacked the necessary traits of a quasi-judicial inquiry, of impartiality and objectivity.<sup>29</sup> Even if Israel violated the human rights of the population in the occupied territories (an allegation strongly denied by Israel), the reports of the Special Committee and the Group of Experts did not have any effect on the Israeli policies, neither directly nor indirectly through pressure by world opinion.

The United Nations actions in this matter are an impotent and abortive exercise in political polemics, instead of genuine interest in human rights. An English observer defined the attitude of the United Nations with regard to another issue of human rights in words that are appropriate here. He said:

It is a story of political muddle and dishonesty, and a failure to show real concern for human rights.<sup>30</sup>

If the United Nations is really interested in protecting individuals from human-rights violations (which occur every day throughout the world), it should pay heed to all allegations of such violations. It should not use a double standard by which only certain violations in particular countries attract its attention. The United Nations should refrain from passing judgment before investigating allegations of violations of human rights. It should move from an *ad hoc* approach to the establishment of a permanent body whose function would be to investigate such violations, thus ensuring greater impartiality.<sup>31</sup>

It should include in the investigatory bodies, individuals by virtue of their personal virtues rather than States and their representative.<sup>32</sup> And it should not include in such bodies States or nationals of States which take sides with regard to the country involved.<sup>33</sup> Only by following such a path can the United Nations contribute to the worthy quest for human rights in the world community.

<sup>29</sup>It is interesting to note that the Special Committee remarked that it saw its function as humanitarian and not political, and that it did not involve itself in the political conflict. U.N. Doc. A/8389 and Corr. 1, at 56.

<sup>30</sup>Fawcett, *The Role of the United Nations in the Protection of Human Rights—Is It Misconceived?*, in INTERNATIONAL PROTECTION OF HUMAN RIGHTS 95, 100 (A. Eide & A. Schou ed. 1968).

<sup>31</sup>See REPORT OF THE SECRETARY GENERAL, RESPECT FOR HUMAN RIGHTS IN ARMED CONFLICTS, U.N. Doc. A/8052, at 77. See also Note, *UN Fact-Finding as a Means of Settling Disputes*, 9 VA. J. INT'L L. 154, 175 (1969).

<sup>32</sup>Clearly bodies composed of States will tend to be more politicized. P. DROST, HUMAN RIGHTS AS LEGAL RIGHTS 135 (1951).

<sup>33</sup>In peace-observation operations by the United Nations, the practice was not to include in them nationals of the government which was hostile to one of the parties concerned. D. WAINHOUSE, INTERNATIONAL PEACE OBSERVATION 584 (1966).