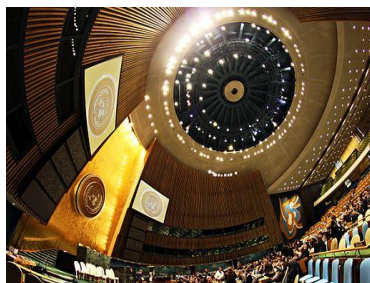**October 8, 2015**   **Volume 4, Issue 7**

Image by Basil D Soufi (cc)

Israel and the United Nations

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I was recently invited to deliver a public lecture as a visiting chair at the Hebrew University in Jerusalem. When I told friends and colleagues in Canada, especially Jewish friends and colleagues, that I had chosen to talk about Israel and the United Nations, the most common response was an awkward chuckle. One friend, a specialist on the politics of the Middle East, looked at me strangely and said, "are you sure that you want to do that?" Surprisingly little has been written in recent years about Israel's relationship to the United Nations system, aside from populist screeds complaining about the unfair treatment of Israel. It seems that the subject is too touchy. But in the early days of the UN, the interconnection between the fate of the UN and the fate of Israel was strong. That connection has re-emerged at different points over the last sixty years. The connection is important again today.

Although it is often suggested that the UN "created" Israel through General Assembly resolution 181 of 1947, it is more accurate to say that Israelis did that for themselves in the War of Independence. Nonetheless, Israel's early existence as a state was buttressed by the legitimacy granted by resolution 181, with its partition of the British Mandate territory into two entities, one Jewish and one Arab.From the earliest days, the relationship between Israel and the UN was tense. Many educated Israelis can recount a put-down uttered by David Ben-Gurion, rebuking then Prime Minister Moshe Sharĕtt, who argued in a cabinet meeting that resolution 181 "allowed" the founding of Israel. Sharĕtt's diary contains the following account of Ben-Gurion's angry retort: "No, no, no! [He shouted]. Only the daring of the Jews created the state, and not any *Oom-Shmoom* resolution."[2]

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[1] A revised and shortened version of a public lecture delivered under the auspices of the Bullock Chair of Canadian Studies at Hebrew University. I want to thank the Halbert Center for the warm welcome to Jerusalem, and Chelsea Rubin (MGA 2016) for excellent research assistance. The views expressed are, of course, mine alone.

[2] Moshe Sharett, *Yoman ishi* ["Personal Diary"] (vol 3, Sifriyat Ma'ariv 1978), 874, translated from the Hebrew in Neil Caplan, 'Oom Shmoom Revisited: Sharett and Ben-Gurion' (unpublished 2010), 2 <http://sharett-old.migvan.co.il/downloads/pdf/OomShmoom.pdf> accessed 3 July 2015.

Not without cause, therefore, we typically remember the testy and pragmatic Ben-Gurion as an implacable opponent of the UN, but it is useful to recall his own words:

> Not just Jewish morality but the basic Jewish interest necessitates that we support the UN. We must be loyal to the institutions of the UN, that is at once a moral and a political incumbency. We need the UN, as the State of Israel, as part of humanity; we are interested in and desire the strengthening of its authority (…). The UN, as it exists today, lacks all authority and power; it hasn't the ability, the tools or the means to impose its will on sovereign nations.[3]

I will return to the second, questioning, part of this quote later, but it is worth remembering that at Israel's founding even Ben-Gurion could see value in the UN, at least presumptive value.

Yet the tension between Israel and the UN has continued almost unabated to this day. The influential Israeli diplomat and international law scholar, Shabtai Rosenne argued that by the 1970s "the UN [had] finally become marginal (…) its debates often bordering on the farcical, its agenda repetitive and vituperative" especially in relation to Israel.[4] And only a few years ago, standing at the podium of the UN General Assembly, Prime Minister Netanyahu called the UN "a place of darkness for my country."[5]

Rosenne's thoughtful socio-historical explanation for the fraught but complex relationship is enlightening: the Basel Programme of the World Zionists focussed on the rule of law as a foundational element of any Jewish state, in its famous demand for "a home in Palestine [for the Jewish people] secured by public law."[6] This "legalistic" approach formed part of a dualistic frame for the relationship between Israel and the UN because legalism also shaped the attitudes of the United Nations to Israel. Then-Secretary General, Dag Hammarskjold, insisted that Israel comply with its commitments in the Armistice Agreements and the demands of Security Council resolutions even when the Arab states refused to recognize the very existence of Israel.

The other side of the dualism was what Israeli politician Michael Oren called, in his scholarly days, a moralist reaction to legalism.[7] Ben-Gurion and subsequent Israeli leaders argued that the UN Charter contains the basic moral premise that independent states are to be respected and that they should not be subjected to the use of force. Given that from the first days of its founding, Israel had been threatened and attacked

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[3] Michael B Oren, 'Ambivalent Adversaries: David Ben-Gurion and Israel vs. the United Nations and Dag Hammarskjold, 1956-57' (1992) 27 Journal of Contemporary History 89, 91.

[4] Shabtai Rosenne, 'Israel and the United Nations: Changed Perspectives (1945-1976)' in Morris Fine and Milton Himmelfarb (eds), *The American Jewish Year Book* (American Jewish Commitee 1978), 8.

[5] Benjamin Netanyahu, 'Remarks by PM Benjamin Netanyahu to the U.N. General Assembly' (Press Room, Israel Ministry of Foreign Affairs, 23 September 2011). <http://mfa.gov.il/MFA/PressRoom/2011/Pages/Remarks_PM_Netanyahu_UN_General%20_Assembly_23-Sep-2011.aspx> accessed 3 July 2015.

[6] Rosenne (n 4) 4.

[7] Oren (n 3) 120.

by its Arab neighbours, who refused to recognize the legitimacy of its existence, Ben-Gurion and his successors insisted that the legal details of the Armistice agreements and UN resolutions could not be invoked against Israel. The essential *quid pro quo* to Israeli compliance, Arab recognition, was missing. The UN's retort – insistence on Israel's need to adhere to detailed legal requirements – prompted Ben-Gurion's continuing verbal battles with Hammarskjold.

The "moralist" set of questions that rises again and again in Israeli reactions to UN debates and actions may be rooted in the countervailing force to legalism that Rosenne described in early Zionism, the idea that the Jewish people are apart and without friends; a people that "dwells alone," as the Book of Numbers describes the Israelites.[8]

No doubt the Arab rejectionist stance fed an Israeli sense of isolation and threat. The rejectionist view was manifest in the launching of war upon the declaration of partition. It continued with the refusal of Arab states to meet directly with Israel in the Palestine Conciliation Commission, which led ultimately to the Commission's collapse. In the early 1950s Arab irregulars were supported by Egypt in attacks upon Israeli villages, while Syria bombarded northern Israel from the Golan Heights. When launching the new Egyptian Constitution in 1956, President Nasser pledged to re-conquer Palestine. In the lead up to the Six Day War in 1967, Syria declared that only the elimination of Israel could solve the Palestinian situation.

In 1968, the PLO's National Council's Covenant called for the destruction of Israel. This call was only withdrawn in the 1990s, as a result of the Oslo accord process, but it is not clear that the required redrafting of the Covenant was ever completed.

The Arab rejectionist attitude was fuelled in part by the Cold War. Although the USSR and its allies had voted for partition in 1947, in their desire to influence the developing world and especially the Arab world, the USSR later became a stern foe of Israel, particularly within the United Nations. One result was the odious, and now-repudiated UN General Assembly Resolution 3379 determining that "zionism is a form of racism and racial discrimination."[9] When the resolution was finally repealed in 1991, the Soviet Foreign Minister called the resolution "obnoxious" and a "legacy of the Ice Age."[10] But lasting damage had been done. In a 1998 address in Jerusalem, Secretary-General Kofi

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[8] Numbers 23:9, Rosenne (n 4) 4. But compare the words of Prime Minister Rabin, from a more optimistic era, in Caplan (n 2) 1:

> The train that travels towards peace has stopped this year at many stations that daily refute the time-worn canard -- *"the whole world is against us."* The United States has improved its relations with us (…). In Europe, our dialogue with the European Community has been improved and deepened. We have been inundated by visiting heads of state -- and we have responded to them with friendship and with economic and other links. We are no longer *"a people that dwelled alone."*

[9] UN GA res 3379 (XXX), 10 November 1975 (the lower case z in "zionism" is in the original).

[10] Norman Kempster and Michael Parks, 'Soviets Join U.S. on U.N. Zionism Issue: Policy: Moscow reverses longstanding resolution condemning Israel as a racist state' *Los Angeles Times* (Los Angeles, 25 September 1991) <http://articles.latimes.com/1991-09-25/news/mn-2540_1_soviet-foreign-policy> accessed 2 May 2015.

Annan called the "Zionism is Racism" resolution the "low-point" in Israel-UN relations, and added: "its negative resonance even today is difficult to overestimate."[11]

After the Cold War the locus of Arab rejectionist activity was firmly placed in the Group of 77 non-aligned states. Already in the mid-1970s, after the Yom Kippur War, initiatives taken by Arab and other non-aligned states within the UN were hostile to Israel. By the later 1970s, intense US-led diplomatic activity resulted in the Camp David Accords, and the Israel-Egypt Peace Treaty of 1979. Yet Arab rejection continued, with subsequent calls for the expulsion of Israel from the UN.

Meanwhile, within the UN system, and with a reliable majority provided by the non-aligned movement, Arab states have been successful in passing a long series of resolutions, especially in the General Assembly and the Human Rights Commission, later Council, condemning Israel. Recently, in the 2013-14 session of the UN General Assembly, 21 separate resolutions singled out Israel for criticism; only four dealt with other countries. The same was true in 2014-15, when 20 resolutions were passed specifically singling out Israel for condemnation.

Within the Human Rights Council the imbalance in attention is even more pronounced because Israel is the only country that is subject to a targeted discussion every year under Agenda Item 7 ("the human rights situation in Palestine and other occupied Arab territories"). Human rights issues involving all other states in the world are discussed together under Agenda Item 4 ("human rights situations that require the Council's attention"). Examples of unbalanced resolutions are legion. In recent times, the failure of the Council to acknowledge Hamas rocket attacks against Israel while condemning Israeli reprisals has been especially noteworthy.

One common Israeli response to the continuing condemnation of Israel in the UN is to say that the fundamental problem is one of "communication": if only the world understood Israel better, balance would be achieved, and Israel would be more respected internationally. In Israel, one often hears of the need for more effective "*hasbara*," or public diplomacy.

Of course, that assumes that Israel's story is not well known internationally. That assumption is not accurate. Because of its close relationships with some key Western states, notably the United States, but also Canada, Germany, the United Kingdom, and Australia, Israeli governmental views are very well known in the global press. Governmental spokespersons are fluent in European languages, and sophisticated in their communications.

The "*hasbara*" explanation also assumes that widespread global criticisms of Israeli government policy are without foundation. That is also untrue. I have already briefly

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[11] Kofi Annan, 'Israel and the United Nations' (United Nations, Press Release SG/SM/6504/Rev.1, 25 March 1998)
<http://unispal.un.org/unispal.nsf/2ee9468747556b2d85256cf60060d2a6/b0f4c3f48dba5aa3052565d400 50a9a7?OpenDocument> accessed 13 August 2015.

traced out the history of Arab rejectionist attitudes, of Cold War attacks on Israel and of the unbalanced anti-Israel sentiment continually expressed in some UN organs. But there is an important parallel story – a story of Israeli government policies and actions over many years that have antagonized even friendly governments and alienated global public opinion.

In 1956, just as UN Secretary-General Hammarskjold began mediating the conflict between Israel and Egypt, seeking to reinforce the proscription of "warlike or hostile acts" in the General Armistice Agreement, Israeli forces overran an Egyptian position at al-Sabhah, killing 200 Egyptian soldiers. Hammarskjold was furious. The next year, in response to Egyptian shelling that caused few casualties, the Israel Defence Force bombarded the Gaza market, killing 66 people – this only three days before Hammarskjold was to arrive in Israel.[12]

In 1967, the famous Security Council Resolution 242 guaranteed the "territorial inviolability and political independence of every State in the area," a boon to Israel given Arab rejectionist attitudes. But it also required Israeli forces to withdraw from "territories occupied in the recent conflict," the *quid pro quo* being a commitment to mutual recognition by all the states in the area and acknowledgement of "their right to live in peace."

Despite peace treaties with Egypt and Jordan that meet the conditions of Resolution 242, occupation of the West Bank continues. It is true that other Arab states have not met the conditions of Resolution 242, and the Palestinian leadership, especially Hamas, has not demonstrated a reliable commitment to peace. However, for many people and governments around the world the failure to make any progress in withdrawal from the West Bank is an issue of sincere concern, not posturing.

Two Israeli invasions of Southern Lebanon also prompted international opprobrium, even from close allies. This was especially true in 1982, after the slaughter by Lebanese militiamen allied with Israel at the Sabra and Shatila refugee camps. The Israeli-government-created Kahan Commission found that Israel was indirectly responsible for the atrocity and that Israeli Defence Minister Ariel Sharon was personally responsible "for ignoring the danger of bloodshed and revenge" and "not taking appropriate measures to prevent bloodshed."[13]

In 1985, Israeli forces attacked the PLO headquarters in Tunis, prompting condemnatory Security Council Resolution 573, where the US chose to abstain rather than exercising its veto. All 14 of the other Council members voted to censure Israel. In 1996, the Israeli government opened a new exit to the politically sensitive Western Wall tunnel, triggering a wave of Palestinian violence and yet another Security Council

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[12] Oren (n 3) 94 and 96.
[13] Kahan Commission, *Report of the Commission of Inquiry into the Events at the Refugee Camps in Beirut* (Israel Ministry of Foreign Affairs, Israel's Foreign Relations, vol 8, no 104, 8 February 1983) <http://www.mfa.gov.il/mfa/foreignpolicy/mfadocuments/yearbook6/pages/104%20report%20of%20the%20commission%20of%20inquiry%20into%20the%20e.aspx> accessed 2 May 2015.

resolution condemning Israel, passed by 14 of 15 members with the US again choosing to abstain.

Of course, the most provocative of the Israeli governmental policies is the expansion of settlements in the occupied West Bank. Tensions in the UN concerning settlements were already high in 1979, when the Security Council adopted Resolution 446, stating that:

> [T]he policy and practices of Israel in establishing settlements in the Palestinian and other Arab territories occupied since 1967 have no legal validity and constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East.

The US abstained, allowing the resolution to pass.

Although the Gaza settlements were forcibly abandoned in 2005, and this action took great political courage within Israel, settlement activity on the West Bank has expanded from the 1980s to the present day, with only brief pauses. As recently as May 2015, the UN Secretary-General, Ban Ki-moon, expressed grave concern about Israeli government proposals to further expand settlement in East Jerusalem.[14]

Former Secretary General Kofi Annan had been exquisitely clear in a speech in Jerusalem:

> The great mass of world opinion, including many countries that are sympathetic to Israel and to the Israeli dilemma, genuinely feels that Israel is doing a great disservice to its cause and its standing by persisting with these [settlement] practices.[15]

Lest one conclude that Kofi Annan was not "balanced" in his criticism, note that three years later he spoke in Amman before the Arab League and argued that Arab criticisms of Israeli government policy would ring truer 'if many Israelis did not believe that their very existence is under threat. Israel has a right (…) to exist in safety within internationally recognized borders.'[16]

International concern over expanding settlements was exacerbated with the decision of the Israeli government to respond to the terrorist activity of the second Intifada by building a security wall. In 2004, 13 of 15 Judges on the International Court of Justice concluded that the construction of the Wall was "contrary to international law." Many of these judges were highly distinguished and had no history of anti-Israel bias. The Court

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[14] Ban Ki Moon, 'Statement attributable to the Spokesman for the Secretary-General on Israeli settlements in the occupied West Bank, including East Jerusalem' (United Nations, Statement, 15 May 2015) <http://www.un.org/sg/statements/index.asp?nid=8632> accessed 3 July 2015.

[15] Rebecca Trounson, 'U.N. Chief Exhorts Israeli Leadership to Resume Trading Land for Peace' *Los Angeles Times* (Jerusalem, 26 March 1998) <http://articles.latimes.com/print/1998/mar/26/news/mn-32963> accessed 2 May 2015.

[16] Michael Slackman, 'Annan Raps Israel but Urges Arabs to Accept Jewish State' *Los Angeles Times* (Amman, 28 March 2001) <http://articles.latimes.com/print/2001/mar/28/news/mn-43660> accessed 2 May 2015.

can be criticised, and was by some of its leading members in Separate Opinions, for not providing adequate context to its decision, revealing more about *why* Israel built the wall. But the fact remains that the vast majority of a non-political bench concluded that Israel had violated international law.

The often-negative reputation of Israel internationally is not due only to a failure in "*hasbara.*" Many people and governments around the world actually disagree with Israeli actions and policies on important matters. That should not be a surprise. Israel is a homeland for the Jewish people, but it is also a state and states do not always act wisely or even sensibly. Not Israel, not the United States, not Canada, not France, not Thailand. They are often worthy of criticism. That gets expressed routinely in the United Nations.

For some governments, criticism is rooted in rejectionist attitudes, a desire to see Israel disappear; it is sometimes compounded by overt or thinly veiled anti-Semitism. That is what makes unbalanced criticism of Israel so hard to take, and why it is so corrosive to wider international discourse.

Nonetheless, it is possible to be entirely sympathetic to Israel's security plight, to support its right not only to exist but to thrive and to contribute actively in the global world, and yet to be strongly critical of specific actions and policies of Israel's successive governments.

What does this mean for Israel's relationship with the United Nations? The most important point is that the United Nations is us: "we the peoples of the United Nations" as the Preamble to the UN Charter says. To complain about the politics of the United Nations is actually to complain about global attitudes and global governance. If the UN disappeared tomorrow, political and security pressures on Israel would be no less – in fact, without any framework for debate, and any possibility for moderating influences, Israel's position in the world might well be worse.

There is relatively recent evidence to support this claim. Every now and then, actions are taken and statements made within the UN that are reaffirming of Israel's position. For the first time in 2004, the UN Department of Public Information held a conference on anti-Semitism in New York, a conference opened by the Secretary-General himself. In 2005, the Israeli Ambassador to the UN was appointed to be one of the 21 Vice-Presidents of the General Assembly, the first to be so chosen since Abba Eban in 1953. In 2007, for the first time ever an Israeli official was selected to head up a General Assembly Committee.

In the same period, as part of his UN reform efforts, Secretary-General Annan criticised the old Human Rights Commission explicitly for its "disproportionate focus on violations by Israel."[17] Sadly, the transformation of the Human Rights Commission into the Council

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[17] United Nations Secretary-General, 'Secretary-General Urges Human Rights Activists to "Fill Leadership Vacuum", Hold World Leaders to Account, in Address to International Day Event' (Press Release

has not achieved Annan's ambitions on many fronts, including in promoting a more nuanced attitude towards Israel and its policies. But the fault remains with states themselves and not abstractly with "the UN." More recently, in 2014, after Hamas kidnapped an Israeli soldier, Secretary-General Ban Ki-moon condemned "in the strongest possible terms" ceasefire violations by Hamas and demanded the immediate release of the hostage.[18]

Israel will not be able to attract majority support in the UN General Assembly at any time in the foreseeable future. And the unbalanced criticisms of the Human Rights Council will continue. To be a member in good standing at the United Nations, a state simply must exist *de facto.* Although in theory states must pledge to uphold the principles of the UN Charter, in practice there is no substantive test for UN membership, certainly not democratic governance, or a fundamental commitment to peace or human rights. We may deplore that state of affairs, but it applies universally and the effects are felt by all states.

And here is an important point to remember: for the most part, Israel has been able to see its reasonable interests protected where it counts most, in the Security Council. This is where Israel should focus its most serious engagement with the UN, and it is here where the controversial policies of the Israeli Government, especially settlement policies, expose Israel to the greatest risk.

Let us consider again Resolution 242 of 1967. The Security Council found a balance that can still fit with Israeli interests and values: contrary to what many anti-Israel polemicists assert, the Council did not demand unilateral withdrawal from the newly won territories. It called for a negotiated settlement of the Israel-Arab conflict based on the premise that land should be exchanged for peace. It is also worth noting that at no time has the Security Council passed a resolution relating to the Arab-Israeli conflict explicitly invoking its Chapter Seven powers. Chapter Seven would allow the Council to authorize mandatory action by UN members. Instead, Council resolutions that involve Israel have been taken under Chapter Six, dealing with the peaceful resolution of disputes. This has protected Israel from any claim that its actions justify the use of force against it.

I return to the assessment offered by Ben-Gurion seventy or so years ago, 'the UN, as it exists today, lacks all authority and power; it hasn't the ability, the tools or the means to impose its will on sovereign nations.'[19] It is still true that in almost all cases the UN cannot "impose its will on sovereign nations." It is only the Security Council, operating under Chapter Seven that has any quasi-legislative power for the world. Israel has always had at least one good friend on the Security Council, one with a veto. At various

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SG/SM/10788-HR/4909-OBV/601, 8 December 2006) <http://www.un.org/press/en/2006/sgsm10788.doc.htm> accessed 2 May 2015.

[18] Yifa Yaakov (and AFP), 'UN Chief Condemns Hamas, Urges Restraint from Both Sides and New Truce' *The Times of Israel* (Israel, 1 August 2014) <http://www.timesofisrael.com/un-chief-condemns-hamas-urges-restraint-from-both-sides-and-new-truce/> accessed 2 May 2015.

[19] Oren (n 3).

points in the past, other friends and allies like the UK and France have also weighed in to ensure some measure of protection for Israeli interests.

But we have seen that there have been times when friendship has been stretched; when the US and others have not been able to condone specific actions of the Israeli government. It is at such times that Israel should genuinely worry about its relationship with the UN, by which I mean its relationship with the states of the world. As one former Israeli Foreign Minister argued not so long ago, "we live in a world where UN decisions have significance" and where Israel must constantly work to enhance its ability to influence UN positions and actions.[20]

Israel, precisely because it is threatened by some states that do not yet accept its right to exist, must find ways to maintain and develop relationships of mutual respect with a range of states, and especially with the United States. Like all states, Israel will articulate its own interests and values, but it does so in a world of constant and deep interaction, epitomised by discussions and decisions in the United Nations. If it is true that a powerful strain of Jewish history speaks of a "people that dwells alone," our contemporary, interconnected world may not be sympathetic to that idea. Israel is a part of the United Nations and of the disunited world. To be alone is to be under constant and increasing threat.

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[20] Tzipi Livni, 'Address by FM Livni to the Model Un in Israel' (Israel Ministry of Foreign Affairs, Press Room, 10 February 2008)
<http://mfa.gov.il/MFA/PressRoom/2008/Pages/Address%20by%20FM%20Livni%20to%20Model%20UN%20in%20Israel%2010-Feb-2008.aspx> accessed 3 July 2015.