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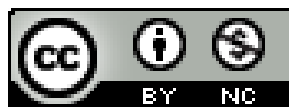
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## **Views: Out of Reach, Out of Touch? Human Rights, the UN, and the Arab Region**

Noha Aboueldahab

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**Keywords:** Human Rights; United Nations; UDHR, Arab Region; Arab Diaspora

In the seventy-five years since the adoption of the Universal Declaration of Human Rights (UDHR), the protection of human rights around the world and in the Arab region leaves much to be desired. This article offers brief reflections on the interconnected role of two factors that can influence the protection of human rights in the Arab region: the United Nations General Assembly (UNGA)'s existing administrative, legal and political powers, and the growing Arab diasporic communities that engage with such institutions. A cursory review of the major challenges facing people throughout the Arab region paints a perpetually grim picture: violent crackdowns on freedom of expression and assembly, corruption, power grabs, arbitrary detentions, torture, transnational surveillance, and increasingly dire economic conditions. An ongoing (re)assessment of existing and new avenues for change is vital in light of these historical and emerging challenges in human rights and security in the Arab region.

This article considers these avenues in two ways. First, it revisits the usefulness of the UNGA's role, particularly in the promotion and protection of human rights within the current climate of social, political, and economic upheavals in the Arab region. Secondly, it discusses the increasing role of diasporic actors and the challenges and opportunities they present in influencing foreign policies and the actions of international institutions to better address human rights practices in the Arab region. But first, a caveat is in order about how the so-called protection of 'human rights' is understood, experienced and advanced in ways that are far from 'universal' as declared in the UDHR seventy-five years ago.

It is beyond the scope of this article to critically examine universality claims in international law and human rights, a subject which is and continues to be extensively covered in the literature.<sup>1</sup> Instead, it is sufficient here to do two things. First, this article acknowledges that human rights are far from universally and consistently understood, defined, theorised, experienced, negotiated and practised.

Secondly, this article is aligned with Georges Abi-Saab's emphasis on the important role that Third World actors<sup>2</sup> – be they intellectuals or practitioners – play in both confronting and participating in international legal praxis, including human rights. It is worthwhile to briefly consider his approach here.

In his keynote address at the Third World Approaches to International Law (TWAAIL) conference in Cairo in 2015, Abi-Saab powerfully discussed the role of the Third World intellectual in praxis and in navigating the decidedly unequal application of international law through 'confrontation, participation, and operation behind enemy lines'.<sup>3</sup> The legal, political, and human rights context would determine which of these three approaches, or what combination thereof, would be suitable to generate the most desired outcomes. Such praxis, Abi-Saab argues, would all be with a view to 'constructive criticism' rather than 'destructive criticism'.<sup>4</sup> Importantly, Abi-Saab advances a praxis that is 'productive, proactive, and courageous' in its strategy rather than 'that of the empty chair, or refusal to engage, invoking doctrinal purity from fear of being accused of collusion with enemy; the soft option of staying away from the battle field in comfort, doing nothing about it other than crying injustice from afar or throwing stones at windows, while leaving the decision to the opposite party and undergoing its consequences'.<sup>5</sup>

This article thus recognises that international law in general, and the international human rights system in particular, can and often have been intentional in their unjust application and enforcement. It also, however, advances the value of critical engagement, or 'critical practice' in the international legal system as a worthwhile approach to confront mass human rights violations in the Arab region. This engagement will be discussed with a view to examining the potential impact of the UNGA and the growing Arab diaspora, the members of which are playing a human rights role in increasingly impactful ways, though not always without violent consequences. Transnational repression has meant, for example, that many of their family members at home are targeted, harassed, imprisoned, and even tortured, as a way to punish diaspora activists for their human rights work.<sup>6</sup>

### **A More Vocal and Active UN General Assembly**

Article 13(1)(b) of the United Nations Charter makes explicit that one of the UNGA's primary responsibilities is the promotion and protection of human rights. The UNGA also has the power to engage in matters concerning international peace and security, especially when the United Nations Security Council (UNSC) fails to fulfil that role. In other words, the UNSC is not exclusively responsible for addressing international peace and security issues, and the UNGA can – and in important instances already has – served a critical role in international legal and political issues when the UNSC either was unwilling or unable due to disagreements among its permanent members.<sup>7</sup>

The UNGA's legal and political powers are thus enforced in several ways, including through the establishment of subsidiary bodies such as investigative mechanisms, as well as through requests for advisory opinions from the International Court of Justice (ICJ), requests and

considerations of UNSC reports, and through the power to discuss and make recommendations on matters of international concern.<sup>8</sup> However, the UNGA's power to engage in international peace and security issues is, as some argue, 'under-utilised'.<sup>9</sup>

The UNGA has an important role in promoting the protection of human rights *as* a security issue. Violations of socio-economic, civil, and political rights – especially when they are systematic and widespread over space and time – constitute a threat to security in obvious ways. They increase the likelihood of mass unrest, as experienced with the Arab uprisings, for instance.<sup>10</sup> They drive mass internal displacement as well as refugee and humanitarian crises. They create local, regional and international security challenges that often lead to a vicious cycle whereby states classify efforts to protect human rights as *themselves* threats to security. Mass human rights violations in the Arab region (or anywhere) are not simply a matter of domestic concern that would prevent international bodies from acting due to sovereignty claims. Human rights matters are often an international concern, thanks to customary international law norms, and because of their very real consequences for geopolitical and international security. Empirical and scholarly material on this is well-established and has been for many years.

Yet, the UNGA can still advance more impactful messages that such systematic human rights violations – including and perhaps especially those pertaining to structural and socio-economic crimes - constitute threats to international peace and security that require action, not simply condemnation. This is increasingly necessary not least given the UNSC's abysmal track record on issues concerning mass human rights violations, especially in the Arab region. The existing administrative, legal, and political powers that the UNGA holds to determine that certain situations constitute a threat to international peace and security, especially when the UNSC fails to make such a determination, are thus significant.

UNGA calls to action in the past have included sanctions, ICJ advisory opinions, the establishment and strengthening of peacekeeping operation mandates; the establishment of commissions of inquiry, fact finding missions, investigative commissions, and calling for foreign troops' withdrawal, arms embargoes, and many others.<sup>11</sup> The establishment in 2016 of the International, Independent, and Impartial Mechanism (IIIM) to assist in the investigation and prosecution of individuals responsible for crimes committed in Syria was a significant step that was made possible via a UNGA resolution.<sup>12</sup> While it is difficult if not impossible to ascertain the direct impact of these calls to action in each instance, it is sensible to assume that they, at the very least, did not exacerbate injustices and likely even helped ease them in different parts of the world. The practice of the UNGA in acting on issues concerning international peace and security where the UNSC has lacked unanimity is, then, well established. Though non-binding, UNGA resolutions carry political weight that other international bodies and governments have used to advance the same objectives – whether they pertain to accountability, the cessation of conflict, or the marginalisation of oppressive governments.<sup>13</sup>

But the UNGA could also – and certainly should – turn its attention to the UN's complicity in the violation of human rights by, for example, establishing a reparations and compensation fund for victims of its deadly policies. The devastating impact of the US and UK-led economic sanctions

against Iraq throughout the 1990s, which the UNSC endorsed and oversaw through Resolution 661, constituted economic warfare against millions of Iraqis and led to inter-generational trauma that continues to haunt Iraqis today.<sup>14</sup> Half a million Iraqi children died as a result of the sanctions, and basic social services including sanitation, health, and education were destroyed.<sup>15</sup> The thirteen years of devastating sanctions not only crippled Iraqi society; they also bolstered Saddam Hussein's dictatorial hold on power while crushing any possibility for Iraqi-led resistance against him. They also helped pave the way for the illegal US and UK-led invasion and occupation of Iraq in 2003, ensuring that any post-Saddam Iraq would not be decided by Iraqis.<sup>16</sup> It should surprise no one, then, that little faith exists in the UDHR and its purported universal values of human freedom and dignity when millions are strangled by the policies of the same institution that claims to save humanity from the scourge of war.<sup>17</sup>

If the UNGA has powers to identify and respond to situations that are threats to international peace, security, and human rights, then it must also find ways to establish reparatory and compensatory bodies through, for instance, its existing powers under Article 22 of the UN Charter. Such reparatory bodies could assist victims and serve as a form of acknowledgement of the institution's responsibility for the violation of their human rights. Importantly, the UNGA could be a vehicle through which to hold the UNSC itself accountable for its actions that have caused mass death and destruction in certain parts of the world, including the Arab region. Without this form of institutional accountability, the UN will risk weakening its legitimacy further before those it claims to protect.

It is important not to overstate the power and impact of the UNGA. Its resolutions are, unlike those of the UNSC, non-binding. While it can make recommendations, the UNGA cannot decide which enforcement actions must be taken on an issue concerning the maintenance of international peace and security. It has no power to overturn vetoes made by UNSC members. Attempts, however, to instil some form (however limited) of accountability and dialogue about the use of the veto include a UNGA resolution that was adopted in 2022 and that allows for a convening of the organisation's 193 members to debate the casting of a veto by one or more permanent members of the UNSC. The same resolution invites the UNSC to submit a report to the UNGA to explain the casting of the veto.<sup>18</sup> While it is too early to assess the impact of this veto initiative, its use and developments are certainly worth following.<sup>19</sup>

At the same time, it is important to remember that Global South actors played a significant role in the development of international law through the UNGA. They did so, for instance, by mobilising support for the Declaration on the Granting of Independence to Colonial Countries and Peoples (1960), the Declaration on Permanent Sovereignty over Natural Resources (1962), and in the development of the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (1970), among others.<sup>20</sup> In 2012, Palestine was admitted by a majority vote of 138 to 9, with 41 abstentions, as a non-member observer state at the United Nations.<sup>21</sup> This allowed it to accede to international treaties including the Rome Statute. An International Criminal Court (ICC)

investigation into crimes committed on Occupied Palestinian territories has since launched and is ongoing.<sup>22</sup>

### **Arab Diasporic Engagement**

The literature on the role of the Global South in international law is rich and expanding; however, an in-depth analysis of this literature has not been the purpose of this article. Rather, I wish to conclude by emphasising the need for rigorous research into the evolving and growing role of Arab diasporic actors in promoting and protecting human rights and in international law more generally. Arab diasporic actors play an important role not only in drawing attention to foreign policies that bolster harmful human rights practices in their home states, but also in mobilising public opinion in other parts of the world, and in devising strategies and policies to support the protection of human rights in the Arab region. Many have already been doing so especially in the context of Syria and Yemen.<sup>23</sup> More research is needed to examine whether and how diasporic actors from across the region can support their fellow nationals in pushing for more just societies.

As legal and political measures continue to strangle the ability of civil society organisations to operate from within many Arab states, several have either continued their work by relocating their physical offices to the diaspora, or by shifting their operations to entirely digital spaces. As a result, international policymakers, especially in Europe and North America, have valuable access to fairly new diasporic communities whose ties and engagement with their home states are, perhaps, not as distant as the more established and historical Arab diasporas.

Civil society actors, journalists, policy analysts, artists, lawyers, and academics from across the Arab region have been using their access to policymakers and international institutions, including the UNGA, in several ways. These include efforts to mobilise public opinion, influence Western foreign policies towards their countries, and to navigate and explore new and innovative ways to use international legal tools and institutions to generate change – whether symbolic or material – in their home states. In short, Arab diasporic actors are key sources of experience *and* expertise for Western and international policymakers with a genuine desire to promote and protect human rights in the region.<sup>24</sup>

On an intellectual level, these Arab diasporic communities as well as their fellow nationals in their home states should also figure more prominently in the production of knowledge about legal and political advocacy strategies that seek to secure more peaceful and just societies in the Arab region. In other words, publication outlets – particularly ‘mainstream’ and Western-based publishers – should much more actively seek out and include scholarly analysis and policy recommendations from diasporic and domestic Arab practitioners, activists, writers, and lawyers with expertise on the critical questions that affect human rights experiences in the region. They often serve as sources of data – as interview subjects – rather than as the *producers* of knowledge, which is strongly needed for at least two fundamental reasons. First, such knowledge would help clarify how the current international human rights profession falls short, marginalises, and wrongly relegates the protection of human rights in the Arab region to issues ‘outside’ of its control. Second,

it would open up more spaces for the ‘constructive criticism’ that Abi-Saab refers to – one that identifies problems and potential solutions through the proposal of legal and political strategies that are grounded in the diverse realities of the Arab region rather than being wedded to the limited parameters of the current international human rights system.

Since the adoption of the UDHR seventy-five years ago, the international legal arena saw an impressive development of human rights-related instruments as well as the establishment of international judicial bodies aiming to ensure accountability for human rights and humanitarian crimes. Their use and enforcement, however, remain either out of reach, out of touch, or both, with the political realities of many parts of the world, including the Arab region. That said, the administrative, legal, and political powers of the UNGA compel us to reconsider the value of a ‘back to basics’ approach that takes seriously these powers that the Assembly possesses, and their potential impact on the promotion and protection of human rights in the Arab region. A more active and regionally-informed UNGA engagement on issues concerning the Arab region, especially in the form of resolutions and the establishment of subsidiary bodies, could serve to foreground the region’s human rights issues in more globally visible ways. The role of the growing Arab diaspora with access to such institutions is also important because of its potential impact on decision-making at the UNGA, consequent actions and, where the UNGA is restricted in its enforcement powers, *calls* to action directed at decision-makers.

This is important not least for strengthening the credibility and legitimacy of the UN as an institution that purports to represent the world. Furthermore, Arab diasporic actors with access to Western and other powerful policymakers, the UNGA, and other bodies that closely engage with it, play an important role in bringing neglected issues to the spotlight and mobilising public opinion, while also calling for concrete actions.<sup>25</sup> Importantly, they serve a much-needed role in challenging the ways we think about and the ways we practise international law and human rights.

### **About the Author**

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<sup>1</sup> See, for eg, Sharma, Sarbani (2022) ‘Epistememes of Human Rights in Kashmir: Paradoxes of Universality and Particularity’, *Journal of Human Rights* 21(2), pp. 158-173; Brown, Chris (1997) ‘Universal Human Rights: A Critique’, *International Journal of Human Rights* 1(2), Summer, pp.41-65; Mutua, Makau (2002) *Human Rights: A political and cultural critique* (University of Pennsylvania Press).

<sup>2</sup> While there is intellectual diversity among scholars of Third World Approaches to International Law (TWAIL), there is a general consensus that the term ‘Third World’ remains a useful analytic category for ‘groups of states and populations that have tended to *self-identify* as such’ because of their shared historical and contemporary experiences

of colonisation and subordination. See Okafor, Obiora (2005) 'Newness, Imperialism, and International Legal Reform in Our Time: A TWAIL Perspective', *Osgoode Hall Law Journal* 43 (1/2) 171-191.

<sup>3</sup> 'Enemy' can be any range of actors that aim to subordinate, enforce inequality, injustice and discrimination, be they colonial actors, post-colonial authoritarian actors, or institutions.

<sup>4</sup> Abi-Saab, Georges (2016) 'The Third World Intellectual in Praxis: Confrontation, Participation, or Operation Behind Enemy Lines?' *Third World Quarterly* 37 (11), pp. 1958.

<sup>5</sup> *Ibid*, p.1964.

<sup>6</sup> See Magdi, Amr (2023) 'Exile or Prison: Egypt's Offer to Critics Abroad', *Human Rights Watch*, 28 March, <https://www.hrw.org/news/2023/03/28/exile-or-prison-egypts-offer-critics-abroad>; The Arabic Network for Human Rights Information (2020) 'Your Family is in our Custody...About Detaining Relatives and Family Members of Dissidents and Critics in Egypt', 26 November, <https://www.anhri.info/?p=20178&lang=en>; Holleis, Jennifer (2023) 'Egypt Targets Activists in Presidential Election Run-up', DW, 1 September, <https://www.dw.com/en/egypt-increased-crackdown-against-activists-and-their-families-in-presidential-election-run-up/a-66689882?maca=en-Twitter-sharing>.

<sup>7</sup> Barber, Rebecca (2021) 'The Powers of the UN General Assembly to Prevent and Respond to Atrocity Crimes: A Guidance Document', *Asia Pacific Centre for the Responsibility to Protect*, April, p. 9.

<sup>8</sup> Article 10, UN Charter. For examples of how the UNGA has used these powers, see generally Barber, Rebecca (2021) 'The Powers of the UN General Assembly to Prevent and Respond to Atrocity Crimes: A Guidance Document', *Asia Pacific Centre for the Responsibility to Protect*, April, and Barber, Rebecca (2021) 'A Survey of the General Assembly's Competence in Matters of International Peace and Security: In Law and Practice', *Journal on the Use of Force and International Law* 8(1) pp.115-156.

<sup>9</sup> Barber, Rebecca (2021) 'The Powers of the UN General Assembly to Prevent and Respond to Atrocity Crimes: A Guidance Document', *Asia Pacific Centre for the Responsibility to Protect*, April, p.4.

<sup>10</sup> While the mass uprisings themselves are not, of course, the problem, their aftermath and the states' responses to them created precarious security situations across the region and beyond.

<sup>11</sup> Barber 2021, p. 14.

<sup>12</sup> United Nations General Assembly (2016) Resolution A/RES/71/248. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/462/01/PDF/N1646201.pdf?OpenElement>.

<sup>13</sup> This is not insignificant. As Barber (2021) argues, 'If the UNSC does not itself classify a matter as a threat to international peace and security, the UNGA may do so. The fact that the UNGA is empowered by the UN Charter to consider and make recommendations on matters of international peace and security, and to bring such matters to the UNSC's attention, necessarily implies a competence on the part of the UNGA to decide for itself which matters threaten international peace and security', pp. 16-17.

<sup>14</sup> Gordon, Joy (2020) 'The Enduring Lessons of the Iraq Sanctions', *Middle East Research and Information Project* 294, Spring, <https://merip.org/2020/06/the-enduring-lessons-of-the-iraq-sanctions/>.

<sup>15</sup> UNICEF (1999) 'Iraq Surveys Show 'Humanitarian Emergency'', 12 August, <https://reliefweb.int/report/iraq/iraq-surveys-show-humanitarian-emergency>.

<sup>16</sup> Aboueldahab, Noha (2023) 'Iraqis Deserve Justice in the Form of Reparations', *Democracy in Exile*, 17 March, <https://dawnmena.org/iraqis-deserve-justice-in-the-form-of-reparations/>.

<sup>17</sup> UN Charter, <https://www.un.org/en/about-us/un-charter/preamble> As I have argued elsewhere, the US and UK must also establish a reparations fund to help address the harms their sanctions caused for millions of innocent Iraqis. See Aboueldahab, Noha (2023) 'Iraqis Deserve Justice in the Form of Reparations', *Democracy in Exile*, 17 March, <https://dawnmena.org/iraqis-deserve-justice-in-the-form-of-reparations/>.

<sup>18</sup> United Nations (2022) 'General Assembly Adopts Landmark Resolution Aimed at Holding Five Permanent Security Council Members Accountable for Use of Veto', United Nations press release, 26 April, <https://press.un.org/en/2022/ga12417.doc.htm>.

<sup>19</sup> Rebecca Barber presents an excellent analysis of the veto initiative's impact on its first anniversary: Barber, Rebecca (2023) 'The U.N. General Assembly's Veto Initiative Turns One. Is it Working?' *Just Security*, 26 April, [justsecurity.org/86140/the-u-n-general-assemblys-veto-initiative-turns-one-is-it-working/](https://www.justsecurity.org/86140/the-u-n-general-assemblys-veto-initiative-turns-one-is-it-working/).

<sup>20</sup> Abi-Saab, Georges (2016) 'The Third World Intellectual in Praxis: Confrontation, Participation, or Operation Behind Enemy Lines?' *Third World Quarterly* 37 (11).

<sup>21</sup> United Nations General Assembly (2012) GA/11317, 29 November.

<sup>22</sup> For commentary on the ICC's involvement in Palestine, see the symposium (2020) 'Litigating Palestine Before the International Criminal Court', *Journal of International Criminal Justice* 18 (4).

<sup>23</sup> Aboueldahab, Noha (2022) 'Transitional Justice as Repression and Resistance: Practices in the Arab World', *Journal of International Criminal Justice*.



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<sup>24</sup> Aboueldahab, Noha (2021) 'How Western Policymakers Can Engage the New Arab Diasporas', *Brookings Institution*, 16 July, <https://www.brookings.edu/articles/how-western-policymakers-can-engage-the-new-arab-diasporas/>.

<sup>25</sup> *Ibid.*