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Symposium: Nation-Building in the Middle East

Foreword

The Middle East Legal Studies Seminar: A Brief History

Celia Whitaker

I. INTRODUCTION

Back in the fall of 1997, when the first meeting of the Middle East Legal Studies Seminar took place in New Haven, Connecticut, the second Palestinian intifada was still three years away. The now infamous Camp David summit at which Yasir Arafat and Ehud Barak would fail to reach a final territorial settlement lay in the distant future. Hafiz al-Assad still ruled Syria. The five-year interim period announced by the Oslo Peace Accord was three years old. In 1995, Shimon Peres, Yitzhak Rabin, and Arafat had shared the Nobel Peace Prize; that same year, Israel and Jordan, then still ruled by King Hussein, had signed a peace treaty that marked the Arab state's historic recognition of its Jewish neighbor. In other words, optimism was in the air.

Hope was stirring below the diplomatic and executive levels as well. Kenneth Mann, an adjunct professor at Tel Aviv University Faculty of Law (and formerly Israel's first Chief Public Defender), had been having conversations with a small group of Israeli, Jordanian, and Palestinian legal scholars. These individuals were beginning to enjoy a fruitful exchange of ideas on the role of law in their vastly different societies. This type of conversation had been virtually unheard of in a region of warring states, opposing religions, differing political systems, and mutual distrust. Mann and the others also knew these conversations could progress no further without outside assistance. Travel restrictions and security concerns made any sort of formal, institutionalized gathering of regional scholars impossible. If Arabs could not travel to Israel and Israelis could not travel to the Arab states, and if some Muslims or Jews were afraid to engage openly, how could a meeting ever take place? Who would attend? Where would it be held?

In answer to these questions, the Middle East Legal Studies Seminar was born.

II. THE CREATION

In June of 1996, Professor Mann was visiting his long-time friend, Professor Owen Fiss of the Yale Law School, in New Haven. After dinner on a Friday night, he began to tell Fiss about the conversations he had been having in Jordan. As Professor Mann describes it, he was compelled to raise this topic with Professor Fiss because he felt strongly that the peace process was creating “a new openness, or at least a curiosity on the part of people across borders who had not met before” and who “had not been able to travel in each other’s countries.” Frustrated by the political and security barriers to further conversations in the region, he came to his friend across the ocean to see what more could be done.

Professor Fiss was no stranger to cross-cultural academic exchanges. Since the late 1980s, he has coordinated two programs that bring Yale Law students and faculty together with their counterparts from schools in Argentina, Chile, and (since 2002) Brazil in an annual exchange program and academic conference. Mann was “envious” of the model for these programs and envisioned a similar exchange taking place among Israeli, Jordanian, Palestinian, and U.S. legal scholars. Fiss, of course, was intrigued by the idea, and the two of them began discussing its prospects excitedly. In fact, they became so worked up as the night wore on that Fiss decided to propose the concept to Anthony Kronman, then dean of Yale Law School.

The next day was Saturday. Professor Mann called Dean Kronman and they met that same afternoon. The two men gathered in the dean’s spacious, elegant office on the ground floor of the law school. Mann described the conversations that he had been having with his Palestinian and Jordanian counterparts, and his frustrations at his inability to carry the interaction further given the political and security confines. Could the Yale Law School, he asked, serve as the “benign third party” facilitator for these exchanges?

“Of course!” Kronman replied. As he remembers it now, he leapt at the idea.

Now Fiss, Mann, and Kronman had to transform their vision into reality. To start off with, they faced four daunting questions. First, who would be interested in participating? Second, of those who were interested, who was sufficiently fluent in English? Third, who among the Arabs would speak to Israelis? There was tremendous pressure at the time in countries such as Egypt and Saudi Arabia to speak out against normalization of relations with Israel; in Lebanon, it was unlawful for a citizen even to meet with an Israeli. Given these pressures, who would be willing to take the risk of such an encounter? Finally, how were the planners to balance sensitive power politics in choosing the participants? As Professor Kronman now puts it, they would have to engage in a “complicated seven-dimensional search” for willing, able, and politically viable participants.

Dean Kronman and Professors Fiss and Mann decided to split recruitment responsibilities among themselves. Professor Fiss would travel to Israel the following January, and from there he would continue to Jordan with Professor Mann and then on to Gaza. Mann, of course, had already gotten the ball rolling with his conversations with Jordanians and Palestinians. The three

men had also used their contacts in the United States to help them locate forward-looking thinkers who would be interested in and able to join the group. For example, Professor David Powers of Cornell's Near Eastern Studies Department told Professor Fiss about a Jordanian woman named Nissreen Haram, who held a doctorate from McGill University and was married to Salaheddin Al-Bashir, a Jordanian lawyer. Al-Bashir participated in the seminar from the beginning, but in recent years he was too busy in his position as justice minister of Jordan to take part. Instead, Ms. Haram, who ran Al-Bashir's law offices during his government service, took his place at the table.

Jordan has been crucial to the seminar from the beginning. It was Professor Mann's conversations with Jordanian lawyers and academics that first got him thinking about the idea of putting together a more formal cooperative endeavor. Looking back today, he finds it interesting that Jordan has played a role in the seminar akin to its role in many areas of international life, as a facilitator and a convenor of disparate peoples. There is a "thin layer," as Mann explains, of forward-looking Jordanian intellectuals, academics, and political figures who were educated abroad and who are interested in this type of endeavor. "Enticed" by the prospect of interacting with them, Mann and Fiss found in the Jordanians they encountered a willing and receptive audience.

Yet from the time of their earliest conversations, the Jordanians had been encouraging Professor Mann to look across the Jordanian border to the Palestinian Territories. Thus, although Mann's primary focus was on Jordan, he and Professor Fiss decided that their recruitment trip should include a visit to Gaza. As an Israeli, Mann could not travel there, so Fiss went on his own at the tail end of their trip to Jordan. He had arranged to meet with the U.S. cultural attaché who showed him around. It was the month of Ramadan, so a post-sunset dinner meeting had been arranged. At the dinner Fiss met with a group of Palestinian lawyers, all of whom spoke English. Among the group was Sharhabeel Al Zaeem, a leading Gazan lawyer (who was recently on the short list to become justice minister in the government of Prime Minister Ahmed Qurei). Fiss was extremely impressed with Al Zaeem, and after dinner the two men stood in the parking lot continuing to talk. They discussed culture and democracy and the rule of law, and "there was something in Sharhabeel" that struck Fiss. He later invited Al Zaeem to join the first meeting of the seminar, and Al Zaeem has been a regular participant ever since. To this day, Palestinians and Jordanians have been among the most highly represented nationalities at the seminar.

Dean Kronman, as it turns out, would have the harder recruiting assignment. He traveled to Egypt during the law school's March 1997 spring break, two months after his colleagues' trip to Jordan and Gaza. In Egypt, Kronman had to make the first raps on what he now calls "a tough nut to crack." He quickly learned what he was up against when, after a speech at the University of Cairo on his first day, an Egyptian audience member requested to meet the dean at his hotel. The two men met and, walking out into the garden where they were beyond earshot, Kronman's companion began to

interrogate the dean. What were his true intentions? Who was really behind his visit? Had the government put him up to it? The night after this somewhat startling encounter, Kronman was invited to a lavish dinner party in his honor at the home of a distinguished law professor. Government officials and high-level administrators were in attendance. He was asked to describe the idea for the seminar, which he did. His host then offered "our reaction," asserting forcefully that "as long as Zionism and the Zionists are in the Middle East, nothing like this could ever happen." A tough nut, indeed. As it turns out, however, the Middle East Legal Studies Seminar has boasted Egyptian participants every year since the first meeting in 1997. The list has expanded beyond the original academics to include the famous democracy activist Saad Eddin Ibrahim (who spent the 2003 conference in jail on charges of defaming Egypt and illegally accepting money from foreign sources, all of which were subsequently dropped) and Adel Omar Sherif of Egypt's Supreme Constitutional Court.

III. GROWTH AND EXPANSION

The first meeting of the Middle East Legal Studies Seminar occurred in September 1997 in New Haven. The fruits of the previous spring's recruitment efforts were evident: Egyptians, Israelis, Jordanians, Palestinians, and two professors from the United Arab Emirates comprised nearly half of the twenty-two participants, with the rest coming from North America. The planners faced the daunting but exciting task of laying the groundwork for what they hoped would become an ongoing, permanent discussion among the members of a growing community. The term "community" came up frequently over the course of interviews conducted in preparing this piece; all the participants appear to view the seminar in this light, as a group of friends and intellectual interlocutors who challenge and respect each other, expecting to be challenged and respected in return. Indeed, there is an assumption that once someone joins the community, he or she will return in subsequent years. To some extent, this expectation is borne out, as there is a remarkable continuity of names on the conference rosters from year to year. Yet the coherent, consistent, growing "community" has also seen some departures. Notably, the early participants from the United Arab Emirates dropped out after two years, as did several significant Egyptian participants, including the dean of Alexandria University. Professor Fiss attributes the losses largely to politics. On the one hand, some participants were frustrated that the seminar did not take a more active role in the Middle East peace process, a role that the organizers refused to allow. On the other hand, some became nervous that they would experience retribution if it was discovered that they had been meeting with Israelis at these conferences.

At the same time, however, the community has grown in several ways: in sheer size, in diversity, and in intellectual production. First, the numbers. After hovering in the low- to mid-twenties for the first two years, the number of conference participants jumped to thirty-four in 1999, crossed the forty-person mark in 2004, and in 2005 reached fifty in total. Little wonder that the 2005 conference had an operating budget of about \$80,000. Thanks to the

seminar's growth as an intellectual endeavor, this year's conference was the first iteration of the seminar to be fully funded from outside the Yale Law School. Donations came from Alvin Deutsch, Jr., the Stella and Charles Guttman Foundation, the Milton and Miriam Handler Foundation, and the John D. and Catherine T. MacArthur Foundation.

The second area of growth has been in diversity. Beneath the seminar's growth in numbers lies an expansion across geographical barriers, age groups, gender, and religions. Expanding from the core group of countries represented at the beginning (Israel, Palestine, Jordan, Egypt, the United Arab Emirates, and the United States), the seminar has attracted participation from Lebanon, Morocco, Saudi Arabia, Syria, Turkey, and Yemen, as well as Canada, England, France, and Italy. The 2004 conference in Rome was the most diverse, with participants hailing from fourteen different states. Such diversity is one of the aspects of the seminar that makes it truly unique: how often do a Saudi and an Israeli, or a Shiite and a Sunni, or a Jew and an Arab get to sit down in a truly neutral, truly friendly environment for an open, provocative dialogue? How often do all these people get to do so all at once?

This geographic expansion, which crosses sensitive political, social, and legal divides, has not been without its problems. As Ken Mann notes, he and the other Israelis were uncertain how to act once the group began to expand to include Syrians and Saudis. The Jordanian and Palestinian participants were already well accustomed to dealing with Israelis, thanks to the complex, tightly meshed network that binds Jordan, Israel, and the Palestinian Territories. Yet it was a different story for an Israeli to sit down at the table with a Syrian. Would they shake hands? Would they be able to talk face to face? Would they be able to regard each other as individuals and intellectuals, not just as walking nationalities? As it turns out, no one need have worried. There have certainly been moments of high tension—as is only natural when a conference gathers individuals from the region to discuss such topics as the rule of law in the Middle East (1998), basic rights and remedies (2001), or law and violence (2004). But from the beginning, the seminar's co-organizers—Dean Kronman and Professor Fiss—intended the seminar to be a non-political, disengaged forum where one could speak one's mind free from the political constraints that are part of life in the Middle East. Continuity of membership has helped serve this purpose, as it has built trust among participants.

At the same time as the seminar's membership has expanded across countries, it has also grown to include more young people and women as well. This year, the conference participants included eight current Yale Law students and five former law students who had themselves helped plan the event during their law school careers. And whereas in the early years the female participants hailed primarily—indeed, the first year exclusively—from the United States, a growing number of women from the Middle East are taking part.

Finally, the seminar has grown in leaps and bounds as an intellectual endeavor. The first conferences were not intended to produce legal scholarship. Rather, the aim was simply to establish a community built on

trust and collaboration, whose members would be willing to engage in challenging, even painful dialogue on visceral topics relating to law, culture, religion, society, family, gender, rights, and identity in the Middle East. In addition, unlike the Latin American exchange programs that Fiss coordinates, the seminar did not evolve as a formal exchange with a university in the region. The Yale Law School provided administrative and financial support, but the seminar was really an institution without a home. Lacking the academic thrust that would come from formal institutional ties, it also lacked academic fervor during the early years.

Recently, however, the situation has changed. Three seminar papers were published in 2004.¹ That same year, seminar members included two of the three recipients of the 2004 Erasmus Prize, which is awarded annually by the Prince of the Netherlands to a person or institution that has made an exceptionally important contribution to European culture, society, or social science. The subject in 2004 was religion and modernity, about which both Sadik Jalal Al Azm of Damascus University (MELSS 2003 & 2004) and Abdulkarim Soroush (MELSS 2001), who has visited at Harvard, Yale, and Princeton Universities, had written extensively.²

This Symposium in the *Yale Journal of International Law*, however, represents the culmination of the seminar's evolution as a source of high-quality scholarship. To Dean Kronman, this year's collection of papers, and the publication of this Symposium, represent the future of the Middle East Legal Studies Seminar. While many participants resisted the idea of publication due to security concerns in the early years, those fears have now abated due both to changes in the region and to growing trust among seminar members. Thus, over the past several years Professor Fiss and Dean Kronman have tried to "raise expectations" about the quality of the papers, in Kronman's words, and the participants have "responded wonderfully." The plan now is to produce valuable legal scholarship each year that advances the field. As Kronman says, "the principal way of spreading the fruits of the seminar is through publication."

IV. A COMMUNITY IS FORMED

The seminar's remarkable growth in size and sophistication has not prevented the formation of the hoped-for sense of community and belonging. Quite the contrary, a sense of trust, common endeavor, and shared experience has developed among a set of individuals who otherwise might well have

1. Abdulaziz H. Al-Fahad, *From Exclusivism to Accommodation: Doctrinal and Legal Evolution of Wahhabism*, 79 N.Y.U. LAW REV. 485 (2004); Noah Feldman, *AFTER JIHAD: AMERICA AND THE STRUGGLE FOR ISLAMIC DEMOCRACY* (2004); Kenneth Mann, *Judicial Review of Israeli Administrative Actions Against Terrorism: Transfer of Palestinians from the West Bank to Gaza*, 8 MIDDLE EAST REV. INT'L AFF. 1 (2004).

2. See, e.g., Sadik Jalal Al Azm, *The View From Damascus*, N.Y. REV. BOOKS, June 15, 2000, Aug. 10, 2000; Sadik Jalal Al Azm, *Is Islam Secularizable?*, in *JAHRBUCH FÜR PHILOSOPHIE DES FORSCHUNGSINSTITUTS FÜR PHILOSOPHIE HANNOVER 15* (P. Koslowski & P. Schenk eds., 1996); ABULKARIM SOROUSH, *REASON, FREEDOM, AND DEMOCRACY IN ISLAM: ESSENTIAL WRITINGS OF ABDULKARIM SOROUSH* (Mahmoud Sadri & Ahmad Sadri trans. & eds., 2000).

remained on opposite sides of a set of iron-wrought political, geographic, cultural, and religious fences.

Amazingly enough, this sense of trust and community has developed even as the participants have challenged and provoked each other in a series of annual meetings on some of the most contentious issues in the Middle East today. There is a strange irony in the fact that Professor Fiss and Dean Kronman set out to choose the most neutral, non-incendiary topics for discussion in the early years, hoping gradually to produce sufficient trust and openness to tackle more potentially flammable subjects later on. Instead, however, they discovered that law and economy (1998), the rule of law (1999), and the challenge of pluralism (2000) were every bit as inflammatory as such later topics as law and violence (2004) and the challenge of nation-building (2005). Professor Fiss remembers “stormy” early meetings in which participants pushed each other out of their respective comfort zones and into difficult modes of honest introspection.

The participants have truly risen to the challenge and some may, in fact, welcome the opportunity for such close interaction. Yale Law student Elora Mukherjee notes that the annual format of the seminar helps cement the sense of shared community: people know that every January, they will get together and be forced to reexamine their ideas about their own countries and those of others, and will have a chance to renew and strengthen bonds formed in previous years.

Ken Mann focuses not on the annual repetition of the event but on the seminar’s intimate setting (even at its peak of fifty conferees in 2005, the seminar remains relatively small by the standards of most academic conferences). One of the most powerful lessons he has learned is that the dynamics of social interaction are powerfully affected by the numbers represented. The smaller the exchange, the less political posturing and political correctness. Thus, an Israeli may be strongly identified with his country when considered as one of thousands of Jewish and Arab Israeli citizens, in a region of hundreds of thousands of citizens of other countries. When that same person is just one individual in a room full of forty or fifty other individuals, nationality and other group identities sink below the surface of interpersonal interaction. These individuals are able to move beyond rhetoric and politicking to discover each other as human beings.

As a result, Jordan has become to the Israeli Mann like a “neighbor” in a way it wasn’t before. Even a decade ago, no one in Israel went to Jordan except soldiers on duty. Today, however, Mann and his wife count among their closest friends the Jordanian lawyer Nissreen Al Haram and her husband. The two families have visited each other’s homes and have formed the closest of bonds. The Gazan Sharhabeel Al Zaeem and the Lebanese Chibli Mallat also number among Mann’s friends as a result of the seminar. As Mann puts it, Al Zaeem “speaks from his heart and from his stomach and from his head” about the occupation and Israel’s “oppression” of Palestine, but the two men can discuss these topics together and have a close personal friendship at the same time—a far cry from the days when the Israeli worried whether some of the Arab participants would even shake his hand.

In a different way, the seminar has also changed the U.S. participants' perceptions of each other and their colleagues from the Middle East. Samuel Rascoff, a former Yale Law student and currently an associate at the New York law firm Wachtell, Lipton, Rosen & Katz, declares that he and the other Yale Law students and faculty have gained a more "complicated" and "sophisticated" understanding of politics in the region and of how law is applied abroad. One of the most important lessons for him has been seeing the difference between the role of law in the United States as compared to its role in a monarchical system such as that of Jordan or Saudi Arabia or in more autocratic states in the region. The law in such systems occupies a less prominent place than in the United States. As a result, while all of the U.S. participants are lawyers either in training or by training, the participants from the Middle East hail from law, government, and academia. Chibli Mallat is both a lawyer and a public intellectual; Saad Eddin Ibrahim is a sociologist turned democracy activist; Sadik Jalal Al Azm is a philosopher. These men sit alongside lawyers such as Al Zaem and Mann in a truly interdisciplinary endeavor.

V. THE 2005 CONFERENCE: A GLIMPSE OF THE FUTURE?

This year's meeting of the Middle East Legal Studies Seminar took place on a cold weekend in late January in New Haven, Connecticut. U.S. troops still occupied Iraq and the Coalition Provision Authority governed the country in all but name; Afghanistan was a nation in transition led by what many perceive as a president hand-picked by the U.S. administration; and nation-building was on the lips of people from Syria to Lebanon to Iran.

This year's conference topic, Nation-Building in the Middle East, could not have been more topical—or more controversial. For two-and-a-half days, participants talked, debated, probed, questioned, and truly communicated on a subject about which everyone involved had strong feelings. As Elora Mukherjee remembers it, the timing of the conference to coincide with the Iraqi elections was both poignant and fortuitous. She was deeply moved by the Iraqi Zainab Al-Suwaij's expression of pride that on the last day of the seminar, January 30, 2005, millions of Iraqis risked their lives to vote for a government of their own. Ariel Lavinbuk, another Yale Law student, remarks that this year, for the first time, the subject matter of the conference was broad enough that many people felt they had something to say, yet specific enough to allow practitioners to show their particular expertise and to draw on events on the ground. According to everyone involved, this conference was a turning point in the life of the seminar.

A panel on nation-building in Iraq kicked off the weekend's events. It featured Salem Chalabi, former executive director of the Iraqi Special Tribunal and legal adviser to the Iraqi Governing Council, who focused on the practical difficulties of the nation-building process; Professor Noah Feldman, previously the senior constitutional adviser to the Coalition Provisional Authority, who proposed regionalism as a solution to Iraq's sectarian divisions; and Bernard Haykel, a Middle East scholar at New York University, who discussed the threats posed by sectarian divisions and jihadist

ideology in Iraq. In the days that followed, the conferees heard papers on the ethics of nation-building (Bernard Haykel); case studies on the tactics employed in nation-building (Kenneth Mann); economic development (Yale Law Professors Ian Ayres and Jonathan Macey, and Aboubakr Jamaï of Morocco); the place of justice in the nation-building process (Owen Fiss and Asli Bâli); and constitutionalism (Abdulaziz Al-Fahad, Noah Feldman, and Yale Law Professor Robert Post).

Is this year's successful event an indicator of more good things to come? Looking forward to next year's conference in Amman, Jordan, the conference planners have reason for optimism. Perhaps Professor Kronman's wish for the seminar is about to be fulfilled after all: that "when the history of the twenty-first century is written . . . some industrious young historian, maybe here at the Yale Law School, will discover that the thread that ties together the best scholarship on the Middle East from this era is the Middle East Legal Studies Seminar." Professor Fiss strikes a different tone. To him, the seminar is unique in the "frankness and trust" that have developed among the participants, in the fact that it brings U.S. scholars together with a wide array of individuals from the Middle East, and in its central focus on legal institutions. He makes no predictions, however, about its place in history. Indeed, the seminar is still young and is very much a year-to-year encounter. Eight years after the creation, however, the initial optimism remains.

