

INTERNATIONAL JOURNAL OF ALTERNATIVE DISPUTE RESOLUTION

ABRAHAM ACCORDS THROUGH THE LENS OF ALTERNATIVE DISPUTE RESOLUTION.

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Abstract:

Arbitration, mediation and negotiation are few of the tools of Alternative Dispute Resolution (hereinafter ADR), conventionally ADR is a term more exclusively used in a legal sense or for a corporate dispute. ADR is a diverse and a vast field capable of incorporating a wide stream of issues; Issues that may appear to have no end if solved through the conventional mode of litigation or other such methods of its ilk. This article shall specifically focus on the pertinent role of such ADR tools when used to solve conflicts, disputes, heresy at a global stage, with special emphasis on the current tide of recognition and legitimization of Israel by its Arab counterparts. The compromise, quid pro quos, trade-offs, cultural clashes and/or mending it takes to solve a dispute or a conflict at a global scale, are some of the themes that this article is grounded on. A deep acknowledgement of the historical aspects is extremely crucial to understand the prevailing mood and state within which this deal/agreement was conceived. The authors will also shed some light on the role of power balance or more specifically the imbalance one can find while studying international conflicts and how inevitably the world order is always dictated by countries with the most leverage. And how the tools of ADR have a tremendous potential if further explored and evolved in this arena.

Introduction:

The Israel-UAE-Bahrain normalization agreement, officially known, Abraham Accords Peace Agreement: Treaty of Peace, Diplomatic Relations and Full Normalization Between the UAE and Bahrain with the State of Israel¹, mediated by the US marks another new beginning for both-Arab world's relationship with Israel and the Middle East overall. This deal was brokered in a similar manner of negotiation and mediation as previously seen in Camp David Accords (Israel-Egypt) peace treaty back in 1979, under the US administration led by President Jimmy Carter and, Oslo Accords (Israel-Jordan) peace treaty in 1994, under the Presidency of Bill Clinton.

The situations, circumstances and, world order back in 1979 and 1994 are antipodal to the collective world events that subsequently led us to the landmark event on 15th September 2020. There is a tide tolerance, acceptance and progression in the Middle East seen never before, Israel or the persistent Israeli-Palestinian conflict is no longer viewed as the *cul-de-sac* for advancement of peace in that region by its Arab neighbors. Hope and expectations out of the two new peace agreements are very high and so is the anticipation of a few more Arab countries in that region to take the same path of normalizing and establishing complete diplomatic ties and much beyond with the Jewish state. Non-Arab Muslim states too are keen on fostering ties with Israel realizing that a country like that is best kept as an ally than having it as a nemesis for no legitimate reason at all. Israel's peace agreements with Egypt and Jordan have often been termed as being cold and tumultuous for a combination of reasons.

Israel's peace deal with Egypt and Jordan, reached an agreement only after extensive meetings, negotiations and involved significant political adjustments on both sides to reach a *modus vivendi*, all of this could only be done 'behind-closed-doors' considering the enormous political shockwaves that it could permeate had it happened grandly. Shock was caused anyway, major fractions of Egypt and Jordan's populous disapproved of its country's new ally, some of whom continue to disapprove to this day. But overall, the response was of buoyancy, all of sudden other country in conflict, dispute or by whatever name called, became hopeful that when peace in a region as socially far gone as the Middle East was possible then it could become a reality in any and eventually every part of the otherwise conflict-prone world. Around this time ADR began gaining some official currency against the conventional route of perennial and futile discussions' and resolutions passing at the UN Security Council.

It is vital to understand the background and circumstances governing the multiple Arab-Israel conflicts in most of the 20th century that also surprisingly yet ironically gave Israel its first two Arab allies; But has mostly faded out in the early 21st century instead directing attention to a new

¹US Department of State, state.gov, <https://www.state.gov/wp-content/uploads/2020/10/Abraham-Accords-signed-FINAL-15-Sept-2020-508-1.pdf>.

breed of conflict in the region that views Israel as a potential ally to combat the elements of radicalism that many Arab kingdoms are wanting to purge in order to reform the overall perception surrounding the Middle East.

How it all started versus how it ended up being:

May 15, 1948, Israel² declared independence following the British forces' withdrawal after the termination of its Mandate in Palestine. Less than a day later, armed forces from neighboring Egypt, Jordan, Iraq, Syria, Lebanon and, almost every other Arab country declared war on the brand-new Jewish state. Israel was outnumbered, overwhelmed and conquered to say the least. Her Arab neighbors deemed its annihilation as the only way forward to a stable and a prosperous Middle East, ergo concluding that the only successful way to achieve that was to destroy it right at its inception. Nonetheless, Israel ambushed every effort to destroy it from establishing itself and did so with the most limited and obsolete weaponry, it was truly a David and Goliath instance of victory in the history of wars.

Following its establishment, Israel was either forced or in some instances willingly engaged in many such wars of that region. The latter happened during the Suez crisis in 1956³, in this Israel had joined hands with its former colonizer and with France, which at the time had several colonies scattered all across Africa. The Suez crisis emerged after Egypt's populist President Gamal Abdel Nasser nationalized the Suez Canal, majority of the Canal's stakes were owned and controlled by the British. Egypt gaining control over the canal also meant it would be restricting and completely forbidding Israel's access to the Straits of Tiran (at the mouth of the Gulf of Aqaba). Israel confronted Egyptian forces in the Sinai Peninsula and went on to occupy Sinai for much longer, this caught the Egyptian forces completely off guard, sensing a big war about to break on its soil, Egypt's forces were prepared to battle them all almost immediately. However, Egypt fought back against the tripartite causing heavy casualties within its civilian populous but in the end, Egypt did emerge triumphantly. As a result, the war ended in an absolute defeat for Israel, France, Britain, followed by international humiliation and condemnation specifically

² David Ben-Gurion, Knesset.gov.il, https://www.knesset.gov.il/docs/eng/megilat_eng.htm, (dated 14 May, 1948).

³ Suez Crisis, <https://www.history.com/topics/cold-war/suez-crisis>,

targeted at the latter two. Israel not only managed to escape this humiliation but it also ironically once again went on to demonstrate itself as a country fully capable of executing sophisticated military manoeuvres, be it small or large scale, that too without any foreign military aid or assistance.

Anwar Sadat who is famously regarded for his role as the first leader, that too an Arab one at that, to acknowledge Israel's right to exist but also prognosticated the inevitable moment at some point in time for leaders all across the Middle East to not only accept Israel's right to self-determination but also view it as an integral ally and element of the Middle East. Oddly enough, Sadat also happened to be Nasser's closest confidant and Egypt's No.2 man in the chain of command during the Suez crisis.

So, has that moment finally arrived? And has the equilibrium for unanimous peace in the Middle East finally been achieved? Well not entirely, however, it is fair to say that Israel has finally found itself in the right bunch and the most stable it has ever been since its formation. Today, Saudi Arabia, Oman, Morocco and Sudan openly and unabashedly do some amount of business with Israel, with Sudan expecting to formally breach the primeval status-quo by establishing ties with Israel.

Previously, Israel's peace agreements with Egypt supervised under the leadership of Anwar Sadat-Menachem Begin and, with its immediate neighbor Jordan, the two deals also arbitrated by the US, have historically been deemed as *cold ties*. Egypt has never successfully gained anything intrinsic with or out of its ties with Israel due to its periodic episodes of domestic volatility and, the socio-political influence that the Muslim Brotherhood wields over Egypt's society. Israel's immediate neighbor Jordan that has over 60% of its population identifying as Palestinians⁴, shares the same cold and tumultuous ties. Israel's peace agreements with Egypt and Jordan was viewed with much skepticism and received major blowbacks from an overwhelming Arab populous, unfortunately, the latter also led to the assassination of President Anwar Sadat who spearheaded the first wave of peace movement in the Middle East. Successive events in that region have had the power to not only revolutionize demographics in the Middle East but also

⁴ Roi Kais, Ynetnews.com, "Is Jordan hiding how many Palestinians are in the country?" <https://www.ynetnews.com/articles/0,7340,L4751617,00.html#:~:text=The%202015%20census%20in%20the,up%20half%20of%20Jordan's%20population>, (accessed 8 October, 2020)

transform the world order in some way or another. Israel waited 26 years for its third Arab ally to establish peaceful ties with and 29 days for its fourth Arab ally. This dramatic break from the old pan-Arab consensus shows just how dramatically priorities in the Persian Gulf have changed or in some cases even evolving.

Socio-Legal Dimension:

Optimism, obligations, opportunities, among other things, is reciprocal in the new deal, unlike the old ones. Historically considering, both Bahrain and the UAE have never had any direct physical confrontation with Israel or even engage in any land battle with her. The revelation of normalization agreement on 13th August, between the UAE and Israel, immediately led to foreign ministers of both states rush to open phone lines, unblock internet access, companies from each country signing up new deals, a UAE based football club signing up an Israeli athlete, and all of this much before even a formal and a final piece of agreement paper was signed. Both the UAE and Israel seem genuinely keen to finally be able to take its ties above board, Israel's intentions for broadening its ties with her Arab counterparts are fairly obvious, until its two new peace deals Israel not only could do very limited business in the very region she existed, but it was viewed as a taboo that could result in economic and social boycotts if any of its Arab neighbors wanted to trade with Israel. This act was by virtue of the now irrelevant and irreverent strategy of Arab League Boycott of Israel by the Arab League, today active members of this subscription include the usual suspects- Syria, Lebanon and, Iran which is not a member of the Arab League but a member of Organization of Islamic Cooperation.

Dubai is a major business hub and a cultural melting pot which is unique because the Middle East is a region that has historically been very socially homogenous and insular. The UAE which is a federation of seven emirates is a very young nation, independent since 1971 only. It has since then been engaging, accepting and susceptible to a Western presence on its land, especially of the US as it views that as the only path at establishing itself as a country that is not just rich in oil but has much more to offer. Establishing relations with a country that repeatedly evokes comparison to Silicon Valley with its cutting-edge technologies in software, communications, life science, among innumerable creations and inventions, for a country as already so highly

developed as the UAE a deal with a country so close by is a massive opportunity to hone its already existing assets and eventually even collaborate in a few of them.

Bahrain shares a similar history of independence as the UAE. Oil and natural gas are the main source of revenue in the Bahrain economy despite the kingdom's repeated efforts to diversify the economy. When compared against its oil-rich Persian Gulf neighbors, Bahrain is relatively poor. Investment in science, technology, education and research is very low instead, this money is diverted into the banking and tourism sectors.

So, what has this deal got for Bahrain? Back in 2005, Bahrain had abandoned its Boycott of Israel in exchange for United States-Bahrain Free Trade Agreement (USBFTA). The King of Bahrain in 2017 castigated the boycott movement targeted against Israel further adding that its kingdom's citizens were entitled to visit Israel if they wished to, despite the absence of any official diplomatic relations. Over the years prior to the official normalization, claims of covert collaborations between the two countries have surfaced. The official normalization opens up several avenues for the Kingdom of Bahrain as well as the United Arab Emirates, more than anything it also widens the prospects of more Arab and Muslim majority nations to recognize and establish ties with Israel.

As to the legal obligations binding on this deal or more precisely the countries in this deal, the Abraham Accords⁵ in its Clause 7-9 states the following:

Strategic Agenda for the Middle East: Further to the Abraham Accords, the Parties stand ready to join with the United States to develop and launch a "Strategic Agenda for the Middle East" in order to expand regional diplomatic, trade, stability and other cooperation. They are committed to work together, and with the United States and others, as appropriate, in order to advance the cause of peace, stability and prosperity in the relations between them and for the Middle East as a whole, including by seeking to advance regional security and stability; pursue regional economic opportunities; promote a culture of peace across the region; And consider joint aid and development programs.

⁵ US Department of State, whitehouse.gov, <https://www.whitehouse.gov/wpcontent/uploads/2020/09/ABRAHAM-ACCORDS-PEACE-AGREEMENT.pdf>,

Other Rights and Obligations: This Treaty does not affect and shall not be interpreted as affecting, in any way, the rights and obligations of the Parties under the Charter of the United Nations. The Parties shall take all necessary measures for the application in their bilateral relations of the provisions of the multilateral conventions of which they are both parties, including the submission of appropriate notification to the depositaries of such conventions.

Respect for Obligations: The Parties undertake to fulfil in good faith their obligations under this Treaty, without regard to action or inaction of any other party and independently of any instrument inconsistent with this Treaty. For the purposes of this paragraph, each Party represents to the other that in its opinion and interpretation there is no inconsistency between their existing treaty obligations and this Treaty. The Parties undertake not to enter into any obligation in conflict with this Treaty. Subject to Article 103 of the Charter of the United Nations, in the event of a conflict between the obligations of the Parties under the present Treaty and any of their other obligations, the obligations under this Treaty shall be binding and implemented. The Parties further undertake to adopt any legislation or other internal legal procedure necessary in order to implement this Treaty and to repeal any national legislation or official publications inconsistent with this Treaty.

While the response from other countries in the Middle East has been lukewarm, Saudi Arabia the region's powerhouse has been very cautious regarding its approach towards this deal; Riyadh has informed the Trump administration that it is willing and eager to achieve a fair solution for the Palestine issue and, although it has not been very clear in its words with what it would like to see in the prospective "solution." The Saudis undeniably see an ally in Israel and not just for reasons of all that Israel can offer, in terms of technology, intelligence, energy, health care, education, etc. But also, the common threat of Iran and its dangerous ambitions and efforts to popularize the breed of political Islam by waging relentless proxy wars within the region and also overseas, all of which Riyadh's kingdom staunchly opposes.

So how does mediation work anyway?

Mediation⁶ is a flexible and consensual technique in which a neutral facility helps the parties reach a negotiated settlement of their dispute. The parties have control over the decision to settle and the terms of any agreement. Settlements are contractually binding and widely enforceable. The mediation process is designed to give parties a better understanding of each other's business needs. As such, each can look for a win-win solution that upholds their respective interests. The result always remains in the parties' hands, which reduces potential risks that are so often associated with other forms of dispute resolution. Insights of mediation are not only seen in a domestic realm but can also be observed in international relations. The Abraham Accords is the latest example of international mediation, the United States has yet again brokered another Middle East peace deal, which can be seen in the light of a contingency plan to avoid any further escalations in a region like the Middle East.

What is Transformative Mediation and what makes it so popular?

A contemporary approach to the traditional meaning and application of mediation is transformative mediation. This approach was primarily proposed by Folger and Bush and is based on the idea that mediation has "the potential to generate transformative effects and these effects are highly valuable for the parties and the society." In transformative mediation, the primary goal of the mediators is to attempt at making one party view the situation from the other party's perspective (widely known as recognition) and to make them believe that they are empowered to make their own choices. Folger and Bush believe that recognition and empowerment are implemented on each side and, the "party experiences a greater sense of self-worth, scrutiny, self-determination and autonomy." Mediation of this kind can be done in either a formal or informal fashion and there is no specific number of mediators pre-decided for this type of process. An example of transformative mediation can be seen in former US president Jimmy Carter's initial approach at mediating between Israel and Egypt. He stated, "My aim was to have

⁶ Brenda Daly, Noelle Higgins and Sarah Bolger, International Peace Mediators and Codes of Conduct: An Analysis, <https://sites.tufts.edu/jha/archives/756>,

Israelis and Egyptians understand and accept the compatibility of many of their goals and the advantages to both nations in resolving their differences.”

Due to US’s repeated application of transformative, it has reduced the chances of many unanticipated incidences of terror in the foreseeable future, leaving a much safer and non- violent environment for the region as well as the world at large.

Who benefits the most out of this deal and where does this leave the future of international mediation?

The obvious frontrunners are UAE, Israel, Bahrain and also the US, even though it will not reap anything directly out of this deal, the strategic timing tremendously benefits Donald Trump’s chances at the upcoming elections. This deal is a rare triumph in the Middle East, it also goes on to show that the path to peace need not be in ways as held appropriate by the foreign policy establishment.

As for the Palestinian cause, it seems more hopeless than ever before. No longer is the collective Arab leadership willing to put up with the Palestinian authorities’ repeated custom of rejecting any peace deal involving the Israelis, as was reflected in the Arab League’s refusal of a demand by the Palestinian Authority to condemn the UAE-Israel peace deal⁷. On a bright note, this is good news for the Palestinian people who have been miserably failed by their leadership for decades now. With the prospect of more Arab and Muslim states forming ties with Israel, it will become inexorable for Palestine’s leadership to escape the negotiation table.

Ultimately, absolute peace between the Israelis and Palestinians is only possible when both sides are willing to put everything reasonable on the negotiation table and most importantly the Palestinians have to reform their idea of what constitutes as peace and make full commitment to not engage and breed any more radical militias or intolerant views. The events succeeding the official signing of the Abraham Accords is a tour de force for a region that has fought and seen innumerable intraregional conflicts. The current tide of reformation seen in the Middle East is a big relief for the world at large. Yet again, the Abraham Accord proves the case for how

⁷ Al-Monitor Staff, Al-Monitor The Pulse of Middle East, <https://www.almonitor.com/pulse/originals/2020/09/arab-league-palestinian-uae-israel-normalization-condemn.html>, (accessed 9 September 2020).

beneficial negotiation and mediation can prove to be. It is fair to conclude that ADR's several tools offer methods of unorthodox solutions to reconstruct the world at large that the conventional methods just can't; Whether it is the level of mutual-understanding and keen interest at reaching a settlement or the forthright approach to an issue associated with the use of ADR, is up for what suits each sides of the dispute or a conflict the best.

