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Band 131

**Language as a Medium
of Legal Norms**

**Implications of
the Use of Arabic as a Language
in the United Nations System**

By

Lutz Edzard



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Dem Andenken von Martin Zupančič

Preface

This study emanates from research carried out by the author in his capacity as a research associate at the Department of International Law at Munich University in 1994/95 and half of 1996. During twelve months of this time frame, the author was also a visiting scholar at the Translation and Editorial Division of the United Nations, New York. The research was undertaken in the framework of the project "Linguistische Konfliktprävention"/"Arabische Vertragssprache" at the Department of International Law at Munich University. This project, under the direction of Professor *Bruno Simma*, was funded by the Deutsche Forschungsgemeinschaft (German Research Council). The collection of data took place at the United Nations headquarters in New York, assisted by staff members in the Treaty Section, Office of Legal Affairs, and in the Translation and Editorial Division, Office of Conference Services, and by Arab diplomats accredited at the United Nations. The goal was to verify hypotheses on the role of language as a medium of legal norms in interviews with Arab and non-Arab staff members and diplomats, the topic being the use of Arabic in international legal documents. The author is greatly indebted to Professor *Bruno Simma*, University of Munich, and Professor *Stefan Wild*, University of Bonn, both of whom read earlier drafts of parts of this book, and also wishes to thank the following persons for their help and advice with the project: Professor *Michael Carter*, then at New York University, Professor *Ann Mayer*, University of Pennsylvania, *Reinhard Schlagintweit*, Dr. *Hubert Lang*, Dr. *Aref Hajjaj* and *Wolfgang Dik*, Auswärtiges Amt (German Foreign Office), Professor *Hilmar Krüger*, University of Cologne and Bundesstelle für Außenhandelsinformation (Federal Office of Foreign Trade Information), *Federico Riesco*, United Nations, Office of Conference Services, *Mahmud Suqi*, *Samir Khouri*, and *Ali Shadi*, United Nations, Arabic Translation Service, *Elisabeth Warburton*, United Nations, English Translation Service, *Marc Labelle*, United Nations, Office of Legal Affairs, Treaty Section, *Rima Bordcosh*, United Nations, Department of Public Information, and H.E. Ambassador *Adnan Abu Odeh*, then at the Permanent Mission of Jordan to the United Nations. Special thanks are due to *Orin Gensler* for valuable comments on content and style of this study.

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Bonn, March 1998

Lutz Edzard

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Abbreviations

Bgbl. II	Bundesgesetzblatt, Teil II
CAT	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	(International) Convention on the Elimination of All Forms of Racial Discrimination
CRC	Convention on the Rights of the Child
CSPCA	International Convention on the Suppression and Punishment of the Crime of Apartheid
FAO	Food and Agriculture Organization of the United Nations
GAOR	General Assembly Official Records
GCC	Gulf Co-operation Council
IAEA	International Atomic Energy Agency
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
IHR	International Human Rights
ILO	International Labour Organization
LNTS	League of Nations -- Treaty Series (Société des Nations -- Recueil des Traités)
MINURSO	Mission des Nations Unies pour le référendum en Sahara Occidental
NGO	Non-governmental organization
OAU	Organization of African Unity
OIC	Organization of the Islamic Conference
PICJ	Permanent International Court of Justice
PLO	Palestine Liberation Organization
UDHR	Universal Declaration of Human Rights
UIDHR	Universal Islamic Declaration of Human Rights
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNIKOM	United Nations Iraq-Kuwait Observation Mission
UNSCOM	United Nations Special Commission
UNTS	United Nations -- Treaty Series
WHO	World Health Organization

Notes on language use and transcription

UN documents are usually quoted in their English or French original. In the case of Arabic originals, the Arabic text is given when available, in addition to the official English translation (in the few instances where this is not the case, a translation by the present author is provided). It is always indicated whether a text in a given language represents the original, an authentic/official version among several authentic/official versions, or merely an official translation. The same holds for occasional quotations from Hebrew, Amharic, and other languages. Those parts of the quotations that are especially relevant for the further argumentation are printed in italics. While transcriptions from Arabic and other languages are in alignment with accepted scholarly standards, as are transcriptions of names of Arab leaders (e.g., Ḥusayn, not *Hussein), names of Arab diplomats and officials at the United Nations are quoted according to these persons' own transcriptions of their names (e.g., Ali Mohamed Osman Yassin, not *Ali Muḥammad ʿUtmān Yāsīn) (see documents ST/SG/SER.A/273 ("Permanent Missions to the United Nations") and ST/OGS/SER.E/73 ("Telephone Directory" of the United Nations)). At the end of the appendix (analytical catalogue of data and sources), Arabic quotations that appear transcribed in this study are provided in their original script, i.e., untranscribed. References in European languages are consistently cited according to the format <<author>> <<year of publication[+index]>>: <<page number>>, e.g., *Lewis* 1993a: 99. Finally, a citation such as Qurʾān 9: 5 or *sūra* 9: 5 refers to *sūra* 9, *ʾāya* 5 of the Qurʾān.

Chapter One

Introduction

This study aims at investigating the important role that language plays as a medium of legal norms and cultural values as surfacing in documents in the United Nations system.¹ In this sense, this study is concerned with the interface of language and legal system with respect to the way of discussing the topics "war and peace" and "human rights".² More specifically, the focus will lie on diplomatic documents (bi- and multilateral treaties and correspondence) that simultaneously have official status ("authenticity") both in Arabic and in other languages, in order to determine to what extent textual differences are due to different legal and cultural concepts as opposed to mere linguistic factors.³ In other words, the goal will be to investigate the role of language as a medium of cultural values, legal norms and concepts, and political motives. An especially important realm of application will be the vast field of human rights. For those Arab states which submit their periodic reports to human rights treaty bodies in Arabic, this boils down to the question as to whether certain statements that are comprehensible in the light of the history of Arabic Islamic legal and/or religious thought would be possible, or would make clear sense

¹ Some of the material adduced in this study has already been referred to in Edzard 1996 ("Stylistic elements in the use of Arabic as language in diplomacy: Recent developments in United Nations context", *Die Welt des Islams* 36/1 (1996), pp. 25ff) and Edzard 1997 ("Language as medium of legal norm: The topics "war and peace" and "human rights" in bi- and multilateral treaties with Arab states and organizations", in: Edzard, L./Szyska, C. (eds.) 1997. *Encounters of Words and Texts. Intercultural Studies in Honor of Stefan Wild on the Occasion of His 60th Birthday, March 2, 1997, Presented by His Pupils in Bonn.* Hildesheim, pp. 69ff).

² Cf., for instance, Lewis 1988 and Mayer 1991a/b. Extensive references will be given below in the relevant chapters.

³ Relevant sources are: *LNTS*, *UNTS*, documents of the General Assembly (A/...) and the Security Council (S/...) of the United Nations, Bowman/Harris 1984, *Bundesgesetzblatt II*, Davies 1947, Hurewitz 1956, Hurewitz 1975/1979, Mansoor 1965, and Rohn 1984.

as such in English or French.⁴ Not only is there a fundamental religious anchoring observable in documents originating in Arab or other Islamic countries; there is likewise a sense of history unparalleled in United Nations documents originating in other parts of the world. The investigation of the role of language as a window onto culture and religious background is especially relevant in the case of Arabic due to the interference of religion with law in most Islamic societies.⁵

This study aims at evaluating the question as to whether there is, synchronically speaking, substantial reference to the Islamic *šariʿa* in the realm of war and peace, or, put in another way, the question as to whether there is a contemporary "particular" Islamic Law of Nations.⁶ In this context, both the Palestine conflict ("Middle East conflict") and the Iraq-Kuwait conflict will be investigated.

This study aims further at investigating and systematizing problems of interpretation that arise under circumstances of conflicting norms between human rights standards in international law and in the Islamic *šariʿa*. More specifically, problems will be pinpointed in the realms of personal statute law, the legal status of women, the laws of marriage, divorce, inheritance, freedom of opinion and religion, and penal law, where serious disparities can surface between the "Muslim" and the "Western" approach to international law. These problems arise in the periodic reports of states parties on the implementation of international human rights conventions, whether or not they have entered any formal reservations pointing to the Islamic *šariʿa*. Arguments that refer to the Islamic *šariʿa* can further be found in meetings with the committees (treaty bodies) in charge of the respective international human rights conventions, who scrutinize the reports and discuss them with representatives of the states parties.

Another research goal will be the investigation of what constitutes ethnic, linguistic and religious minorities in North Africa and the Middle East. This question is virulent, for instance, when it comes to

⁴ For the history of Arabic as a language in diplomacy, cf. *Landau*, J. "Muʿāhada", *The Encyclopaedia of Islam* (new edition), vol. 7: 250ff, *Ostrower* 1965, vol. 1: 240ff, *Bozeman* 1971: 50ff, as well as *Tabory* 1980: 11ff, 41ff, and 80ff.

⁵ The present study will occasionally refer as well to the other two Semitic languages represented in the modern treaty collections, i.e., Hebrew and Amharic, when parallel texts in these languages are attested. However, English and Arabic are the two main languages of reference in this study. Looking at the Afroasiatic language family as a whole, Somali is represented as a Cushitic language in *UNTS*. No Berber, Chadic, or Omotic treaty texts or other diplomatic documents are officially available.

⁶ This question is answered negatively, for instance, by *Fastenrath* (1991: 133n).

the ethnic and linguistic definition of the Berber/Amazigh population in North African countries and the remnants of Aramaic-speaking populations in the Eastern part of the Arab world, and plays a particular role in the respective diplomatic documents. In this context, special attention will be paid to terminological devices used to deny features of ethnic, linguistic and religious identity.

At the heart of this study is an application of Speech Act Theory to the analysis of the nature and consequences of textual differences between versions of one and the same document in several languages. Beyond that, Speech Act Theory will also be applied to intercultural misunderstanding as a result of the differing connotations that certain legal, political, and religious terms can bear, irrespective of the language used in the given context. The research will thus be conducive to a new lexicographical analysis of terms that have posed notorious problems in diplomatic documents.

Current misunderstandings regarding terminology associated with Islam make such a terminological analysis highly desirable. Prominent examples of problematic discourse-related issues include discussions on such concepts as Islamic fundamentalism and terms like *jihād*, *fatwā*, and others. It should be clear that neither a demonizing nor a downplaying of such problematic concepts is called for here.

Another important goal of this study will be to address the current problems associated with legal and cultural relativism in the wake of the "political correctness" debate.⁷ While instances of legal and cultural "convergence" will be noted, this study will deliberately make no attempt to "synthesize" differing norms in international law on the one hand and in Islamic law (*šarī'a*) on the other. Rather, the author will adhere to strict universalism in the realms of "war and peace" and "human rights". Even though the picture of a monolithic *homo islamicus* does not make sense, it will be seen throughout this study that there is indeed such a thing as a "typical" Islamic perspective, at least in official diplomacy, and, moreover, a "clash of civilizations"⁸ between the Western and the Islamic conceptualization of legal issues,

⁷ For an analytical overview of related problems, cf. notably *Donoho* 1991.

⁸ For the use of this term, cf. *Lewis* 1990b, *Huntington* 1993, *Tibi* 1995, and *Huntington* 1996. However, *Huntington's* (1996: 254ff) concept of "the bloody borders of Islam" will not be adopted here.