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Litigating Palestine

Holding Israel Accountable in the Courtroom

BADIL takes a rights-based approach to the Palestinian refugee issue through research, advocacy, and support of community participation in the search for durable solutions.

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Holding Israel Accountable - Yes We Can

Over 300 people participated in the Israel Review Conference, Geneva, April 2009 (©BADIL)

For more on the Israel Review Conference visit:
<http://www.israelreview.bdsmovement.net>



For many civil society actors involved in struggles against racial discrimination, the 2001 World Conference against Racism in Durban, South Africa seemed to be a turning point. Blacks, Dalits, Indigenous nations of the Americas, Roma, Palestinians, and other racialized communities carried each others' banners and took up each others' cries for a world without racism and apartheid. There was ample reason to hope that global civil society had achieved a victory in the quest for redress after centuries of racist oppression.

The civil society consensus emerging from Durban crystallized around a set of clear demands: vapid verbal condemnations of racism were not sufficient; perpetrators and benefactor states of racism and colonialism needed to make structural changes and pay reparations for their actions in accordance with international law.

But the states implicated were not interested in taking any meaningful responsibility. They responded with a Zionist-led offensive that used the groundswell of support for the Palestinian cause to smear the conference as an "anti-Semitic hate-fest." This phrase was picked up and disseminated by Western states and their corporate media machines, attempting to turn Durban into a four-letter word. Two days after the conference, the 9/11 attacks in the United States took place, and the world's attention shifted to the "war on terror." Any attempt to challenge the powerful myth-making about the Durban Conference became futile.

In addition to increasing U.S. and Israeli impunity, the years that followed the Durban Conference were marked by growing international solidarity with the Palestinian struggle. This globalization of this solidarity with the Palestinian cause developed increasingly sophisticated networks and strategies, within the framework of the 2005 Palestinian civil society call for boycotts, divestment and sanctions (BDS) on Israel until it complies with international law. A prominent feature of the BDS campaign is its role in connecting local community struggles against oppression in different parts of the world with the movement against Israel's apartheid regime.

Many activists hoped that another World Conference Against Racism scheduled to take place in Geneva in April 2009 – the Durban Review Conference (DRC) - would provide the forum for organizing and advancing upon the work done during and since the first conference. But Israel and its Western allies responded by working diplomatically to mobilize a state-level boycott of the DRC, which was eventually heeded by ten states including the U.S. and Canada. The opening speech by the Iranian president was the excuse for most of the remaining E.U. states to stage a noisy walkout as soon as he said the word “Israel.” UN organizers banned side events pertaining to the Palestinian struggle. References to any specific victims of racism in the discussions and outcome documents were also removed. The result was a conference against racism in which racism was discussed as an abstract concept, one that exists outside of time and space, beyond the realm of perpetrator, victim, law and accountability.

In an attempt to partially counteract this predictable outcome, the Palestinian BDS National Committee, together with several international allies, organized the Israel Review Conference in the lead-up to the DRC. Also convened in Geneva, it brought together over three hundred people from five continents, including human rights activists and experts from South Africa, Malaysia and several European and Middle Eastern countries. The first day of the conference included two expert panels that explored the applicability of the crime of apartheid to the state of Israel, and explained legal mechanisms and strategies for making Israel and other parties accountable to their obligations under international law.

Participants developed practical recommendations on the second day in workshops. These covered the joint struggle of victims of racism for justice and equality; a global campaign against the Jewish National Fund (JNF) – a major agency of Israel’s racial discrimination and colonization; popular initiatives for promoting prosecution of war crimes and crimes against humanity; and the growing global movement for BDS against Israel until it complies with international law. Among the successes of the Israel Review Conference was that it brought together lawyers, legal experts and community-based activists in an attempt to bridge the gap between law and politics in the struggle to hold Israel accountable for its crimes.

Israel has largely succeeded in evading accountability for its violations. This, however, has not stopped attempts to use the courtroom as a means of attaining justice for Palestinians. It is important to learn from the experiences of the past and coordinate action for the future in order to increase chances for success.

This issue of *al-Majdal* draws on the research and experience of the participants in the Israel Review Conference, and the topics on which they focused to provide an overview of routes, challenges, and recommendations for “Litigating Palestine.” They evaluate past attempts at taking Israel and its abettors to court, assess the role of law in attaining justice for victims and retribution from perpetrators, and – perhaps of particular interest to non-lawyers – the role of civil society in supporting legal battles to attain justice for Palestinians.

As this issue goes to print, news is circulating about the change in Spanish universal jurisdiction laws as a direct attempt to protect Israeli war crime suspects from prosecution. Meanwhile, there is an ongoing legal challenge to Heidelberg Cement for its plunder of quarries in the occupied West Bank, and a German-EU challenge to European imports from Ma’ale Adumim’s Soda-Club. The UK has announced a partial arms embargo on Israel that coincides with a lawsuit challenging the U.K. government for its failure to fulfill its obligations under international law with respect to Israel’s activities in the Occupied Palestinian Territory.

All these efforts and many more attest to how the courtroom is one of many fronts in the struggle for justice for Palestine. We can only hope that the articles and analysis shared in this issue contribute to the struggle to hold the perpetrators of racism accountable for their crimes.

In Search of a Courtroom: Who Will Try Israeli Perpetrators?

by Reem Mazawi and Hazem Jamjoum

*Al-Daraj Massacre, a one-tonne bomb that hit Salah Shehadeh's house, 18 killed and 150 injured.
(©MaanImages)*

"Justice cannot wait for peace to be secured. Rather, no credible, lasting peace can be built upon impunity and injustice"

- UN fact finding mission to Beit Hanoun, 2008



As the clock approached midnight on 22 July 2002, an Israeli plane dropped a one-tonne bomb on the al-Daraj neighborhood of Gaza City, one of the most densely-populated residential areas in the world. The military target was Salah Shehadeh, a Hamas military leader who was in his home with his family. Shehadeh and 14 civilians were killed, most of them children and infants, and 150 persons were injured. Many of the surrounding houses were destroyed, and those that were not, were severely damaged. This was not the first time that Israeli military units have committed such a crime, nor would it be the last. One of the Israeli shelling of Beit Hanoun on 8 November 2006 during the Autumn Clouds incursion resulted in the immediate death or mortal wounding of 19 civilians, the majority of whom were women and children. All but one of the victims were from the Ahamna family. At least 50 others were wounded during the shelling.¹ More recently, Israel pounded the Gaza Strip for twenty-three days in what it called *Operation Cast Lead*, starting on 27 December 2009, killing 1,417 Palestinians including at least 900 civilians, injuring over 5,300, and displacing over 100,000 at the peak of the assault. The question is not whether Israel will commit such crimes again, rather whether it will be held accountable for them, and if so, when and where?

Israel's Courts

Based on the findings of a secret internal military investigation, Israel decided that no legal actions are to be taken against any military officials regarding the 2006 Beit Hanoun shelling.² Nevertheless, the high-level UN fact-finding mission investigating that incident, found evidence of "disproportionate and reckless disregard for Palestinian civilian life, contrary to international humanitarian law and raising legitimate concerns about the possibility of a war crime having been committed".³ Israel has adopted responses similar to its conclusion about Beit Hanoun in cases of other serious and gross violations international human rights and humanitarian law by its military, with similar results. For instance, despite concerns raised by UN officials over the commission of war crimes and crimes against humanity regarding Israel's actions during Operation Cast Lead, Israel's military investigations concluded that the military operated in accordance with international law throughout the fighting in Gaza.

Many UN human rights mechanisms have called upon Israel to establish mechanisms providing for law-based, independent, transparent and accessible investigations of alleged breaches of international human rights and humanitarian law. Such accountability mechanisms are urged on Israel in order to bring about a change in its use of force, and to ensure compliance with international law.⁴ However, Israel's position remains that it has no obligation to open criminal investigations for actions taken against the Palestinians during armed conflict. Israeli investigations are the rare exception, not the rule: between October 2000 and December 2007, Israeli security forces killed at least 2000 Palestinians who did not participate in hostilities, while only 270 criminal investigations were carried out, leading to a mere 31 indictments.⁵ Israel applies the same policy when the violations amount to war crimes and crimes against humanity. Thus, holding individuals and other political actors criminally responsible at the Israeli national level appears unlikely.

The Universal Jurisdiction Avenue: Other National Courts

One avenue with some prospect of developing towards imposing accountability on Israeli perpetrators is the exercise of universal jurisdiction. Through universal jurisdiction, national courts, as opposed to an international judicial body, can exercise the jurisdiction to prosecute and punish a person suspected of a serious international crime – such as genocide, war crimes and crimes against humanity – even if neither the perpetrator nor the victim is a national of the country where the court is based, and the crime took place outside the country.⁶ The goal of universal jurisdiction is to “prevent impunity whereby human rights violators may evade accountability for their conduct.”⁷ Universal jurisdiction is usually authorized, or even required, by an international convention to which the state is party, such as the grave breaches provisions the Geneva Conventions of 1949.

Many countries recognize that they can and should exercise universal jurisdiction over international crimes by authorizing the prosecution of such crimes in their legislation.⁸ But does this mean that as a practical matter, universal jurisdiction is implemented? To answer, we examine and assess the performance of courts in which prosecutions of alleged Israeli war criminals have been attempted. One such attempt has been to bring those individuals who were the decision-makers behind the Shehadeh assassination to trial in Spanish courts.

Spain's Universal Jurisdiction Laws

Until recently, Spain was one of the most important actors in the efforts to secure accountability for international crimes due to its universal jurisdiction legislation. A specific feature of criminal procedure in Spain is that “victims themselves can initiate an investigation and directly submit their complaints to the court – thus avoiding the political obstacles that usually exist when the national prosecutor or police determine what cases are to be investigated.”⁹ Furthermore, Spanish law does not require the presence of the foreign defendants for the commencement of the judicial investigation. A few days after the assassination of Salah Shehadeh in 2002, Spanish Judge Fernando Andreu Merelles decided to open a criminal investigation against seven Israelis who held high military and political ranks at the time.¹⁰

Immediately after the initiation of the investigation in Spain, Israeli officials tried to prove that they were in the process of investigating the incident themselves in order to nullify the Spanish court's ability to exercise jurisdiction. After five years of stalling, the Israeli high court finally examined the case, and instead of deciding on whether or not it constituted a war crime, the court recommended that an independent body examine the incident. On 23 January 2008, following the request of the court, then Israeli Prime Minister Ehud Olmert appointed two former generals and one former head of the Israeli secret service (GSS), tasking them with providing non-binding recommendations directly to the military, a task it has yet to complete. In an effort to completely close the case once and for all, the Israeli court decision was delivered to the Spanish court. Palestinian civil society advocates submitted evidence that the Israeli proceedings were a smokescreen, proving conclusively that no real criminal investigation had been undertaken.¹¹ On 4 May 2009, the Spanish court forcefully rejected the request to decline competence over the case, accepting most of the Palestinian claimants' arguments. The decision was immediately appealed, and the case continues.

Commentary

One of the most interesting aspects of this case is what has happened outside of the courtroom. The same day as Judge Merelles issued his decision rejecting the Israeli proceedings as a legitimate reason to dismiss the case, Israeli Minister of Defense Ehud Barak was quoted stating his intention to “appeal to the Spanish Foreign Minister, the Spanish Defense Minister and, if need be, the Spanish Prime Minister, who is a colleague of mine, in the Socialist International, to override the decision.”¹² The Spanish Foreign Minister followed through on his promise to “amend the authority of the Spanish courts to prevent such probes from being launched in the future.”¹³ On 19 May 2009, the majority parties in the Spanish Chamber of Deputies used the cover of an otherwise inconsequential debate on the “Process of amendment to the Law of Reform to the Legislative Process for the Implantation of Judicial Office” to modify Article 23.4 of the Organic Law of Judicial Power, thereby changing the applicability of universal jurisdiction in Spanish law to potentially shield war crimes suspects from prosecution.¹⁴

As with the attempted prosecution of then-Prime Minister Ariel Sharon for his responsibility in the Sabra and Shatila massacres, political pressure by Israel and its allies had succeeded in preventing Palestinian access to a legal remedy.¹⁵

International Accountability Mechanisms

Another avenue, and perhaps the most efficient for enforcing accountability of Israeli perpetrators, would be UN Security Council (UNSC) action to establish an ad hoc criminal tribunal for the Occupied Palestinian Territory, as it did in the 1990s in the Former Yugoslavia and Rwanda. Less clear is whether the UN General Assembly could establish such a tribunal by invoking its authority to establish such subsidiary organs as it deems necessary for the performance of its functions. Whether such an initiative is within the authority of the UNGA is as yet unresolved.¹⁶

Israel has refused to sign the Rome Statute, and thus the International Criminal Court (ICC) does not have jurisdiction on its territory. The UN Security Council, acting under Chapter VII of the Charter of the UN, can refer any situation in the Israeli-Palestinian conflict to the Court for further action, as it has done in the case of Sudan. Yet, such a move is unlikely to take place because it will be vetoed by the USA. Following the recent attacks on Gaza, a Palestinian request was brought before the prosecutor of the ICC for an investigation into whether international crimes have been committed on Palestinian territory. Although it also presents barriers, this might be the only avenue to offer any prospects for prosecution of Israeli perpetrators.

One of the obstacles to this approach is whether Palestine is a “state.” The Rome Statute, under which the ICC was established, allows a state not party to the statute to declare that it accepts the ICC’s jurisdiction for international crimes committed within its territory. Palestine made such a declaration which should allow the ICC to exercise jurisdiction over crimes committed on its territory. The Rome Statute, however, does not define a state, leaving it to the ICC itself to make such a determination. It has been well-argued by former UN Special Rapporteur Professor John Dugard that Palestine should be considered a state for the purpose of the Rome Statute, especially since the Palestinian entity has been recognized by over 100 states. It is a member of the Arab League, and the Palestinian National Authority has diplomatic relations with many states and observer status at the UN. As confirmed by Dugard, Palestine possesses sufficient state-like characteristics for the purpose of the exercise of the ICC’s jurisdiction. Such an expansive legal approach is consistent with the purpose of the Rome Statute: to punish those who commit international crimes and to prevent impunity.¹⁷ This is not to say that the ghettos and reserves that make up the Palestinian Authority areas of the West Bank and Gaza Strip should be politically equated with a sovereign state,

Looking Ahead

In comparing its policies and practices with its obligations under international law, it is clear that Israel has much to answer for. While evidence and legal argumentation abound, victims of Israel’s crimes over the past 61 years have been consistently unable to find courts willing to hear their cases, let alone issue verdicts effectively restoring their rights.



Palestinian rescue workers carry a wounded prisoner past a fire, as another lays under the rubble in the central security headquarters and prison, known as the Saraya, after it was hit in an Israeli missile strike on Gaza City, Sunday, Dec. 28, 2008. (©AP Photo/Majed Hamdan)

A recurring theme in this issue of *al-Majdal* is the consistent interference of executive and legislative branches of government to shield Israel and its agents from prosecution, a story in which the alteration of Spanish legislation is but the latest chapter. Susan Akram and Yasmine Gado's article on civil tort claims in US courts shows how the US government has consistently interfered to ensure that courts dismiss Palestinian cases on procedural and jurisdictional grounds, a history that has led them to the conclusion that victims of Israeli actions should avoid US courts, and "leave such claims to countries with stronger universal jurisdiction laws and more independent judicial systems than the US" (page 21). Bill Bowring's article on European courts makes clear that Palestinians "do not have the possibility of addressing complaints" to the European Court of Human Rights and the European Court of Justice (page 11). Contributions in this issue also explore possibilities for legal action that can potentially overcome – or at least bypass – some of these limitations by targeting third parties. Bowring discusses such possibilities in the context of the aforementioned European courts, while John Reynolds discusses the ongoing case targeting the government of the UK. Deborah Guterman examines the case against Canadian corporations involved in the construction of Israeli colonies in the West Bank, and the Quebec court is scheduled to issue its decision on whether or not it has the jurisdiction to adjudicate the case in the coming months. Karen Pennington and Joseph Schechla revisit US courts in an examination of whether recent precedents targeting Islamic charities may reopen the door to challenging the Jewish National Fund and other Zionist para-state organizations status as charitable organizations in that country.

Given the prominent role of political branches of government in blocking legal action aiming to hold Israel accountable for its violations, there is a clear need for political action. Civil society activists, voters and taxpayers must ensure that all necessary measures are taken by governments to guarantee respect of the most fundamental pillars of international law. Unless civil society, national authorities, and international bodies such as the ICC work together to ensure that all appropriate means for bringing perpetrators to justice are used, Israel will continue to enjoy the impunity that allows it to continually and systematically violate the most basic human rights guaranteed by international law.¹⁸ Only by ending this impunity will justice be brought to the victims of al-Daraj, Beit Hanoun, Tal el-Hawa, Jenin, Shatila, Kufr Qasim, Deir Yasin and the millions of others still suffering as part of Palestine's ongoing Nakba.

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Endnotes: See online version at <http://www.badil.org/al-majdal/al-majdal.htm>

Legal Mechanisms of the Council of Europe and the EU

by Bill Bowring

European Court of Human Rights
(©ECtHR).



This paper is based on the talk I gave on Saturday 18 April 2009 at the Israel Review Conference and BDS Follow-up Meetings, “United Against Apartheid, Colonialism and Occupation: Dignity & Justice for the Palestinian People,” Geneva.

I was invited to speak first because of my experience since 1992 in taking cases against Turkey and then Russia at the European Court of Human Rights (ECtHR); and because I was recently in the West Bank as part of a UK delegation examining the Israeli Military Courts in the Occupied Palestinian Territories.

There are two themes which I wish to emphasize in what follows. The first is *complicity*, while the second is *accountability*. I am a citizen of a country, Britain, which has a high level of complicity in the tragedy of the Palestinian people. From the Balfour Declaration of 1917 to Britain’s dereliction of its duty to the Palestinian inhabitants of the Mandate territories, standing by while the Nakba was perpetrated in 1948, to the recent assault on the Gaza Strip, this is a heavy responsibility. Indeed, Britain’s role amounts to complicity.

There is a further irony, all too apparent when our Mission visited the Israeli Military Courts in April 2009. The operative law in those Courts is that contained in the British Emergency Defense Regulations of 1945. These were initially designed for use against Zionist terrorists, and were promptly adopted by those same terrorists when they came to power.

The question put to me for the purpose of today’s contribution is as follows: what use can be made by the Palestinians of the mechanisms provided by the European Court of Human Rights (ECtHR) and the European Court of Justice (ECJ)?

I am afraid that my answer is negative – Palestinians do not have the possibility of addressing complaints to these courts - subject to some clarifications.

First, I must distinguish between these two judicial instances.

The ECtHR, based in Strasbourg, was created as an organ of the Council of Europe (CoE), which now has 47 member states, with a total population of 850 million people. Israel is not one of those states, and there is no prospect that it will be.

The ECJ, based in Luxembourg, is the judicial organ of the European Union, which, since enlargement, now has 27 member states, all of which are also members of the Council of Europe. The CoE and the EU are both legally based, that is treaty-based, organizations, unlike the Organization for Security and Cooperation in Europe (OSCE) which is purely political. But there the resemblance between the ECtHR and the ECJ ends.

It is very important to understand the crucial differences between the ECtHR and the ECJ, and the organization of which they are part. Unfortunately, even the “quality” newspapers in Britain often report that the ECtHR is yet another interfering mechanism of the EU, which is thoroughly unpopular in Britain. Thus, the Human Rights Act 1998, which incorporates parts of the ECHR into English law, is also most commonly seen as an imposition by the EU. The great majority of British citizens have never heard of the Council of Europe.

Another key difference is as follows.

The Council of Europe, founded in 1949 as part of Western European solidarity in the Cold War, has three pillars: the rule of law, multi-party democracy, and protection of individual human rights – and has more than 200 treaties covering a wide range of subject matters.

The predecessor of the EU, the European Coal and Steel Community, began in 1950. The six founders were Belgium, France, Germany, Italy, Luxembourg and the Netherlands. In 1957, the Treaty of Rome created the European Economic Community (EEC), or ‘Common Market.’ The EU is primarily concerned with economic integration, creating a serious competitor to the USA. The EU now has a - non-enforceable – Charter of Fundamental Rights, and seeks to develop its own form of citizenship, but its greatest achievement so far is the “Euro-zone.”

There is much rich experience in the ECtHR. But there might be the following objection. Even if Palestinians could appeal to the ECtHR in Strasbourg, surely that court does not adjudicate on the most important demand of the Palestinians, their right as a people to self-determination?

But such an objection would be not quite accurate.

From the start, the ECtHR has been obliged to adjudicate issues arising from self-determination struggles. Thus, one of the first cases before the court was the inter-state complaint (in fact, two of them) brought by Greece against the UK (1957-9), several years before the UK permitted individual complaints, in 1966. Greece did not complain about violations suffered by its own citizens, but rather about the grave violations of human rights it alleged that the UK had committed in the British Army’s bloody suppression of the EOKA movement for union of Cyprus and Greece. The complaint was withdrawn when the status of Cyprus was resolved by a treaty between Greece and the UK.

Many of the cases brought against the UK during the 1970s until the Good Friday Agreement in 1997 concerned the conflict in Northern Ireland, notably the inter-state case brought by the Republic of Ireland (1971-1978), where the UK was convicted by the (then) Commission on Human Rights of the use of torture. The ECtHR found that the UK was guilty of “inhuman and

Palestine in the Courtroom

degrading treatment”. In any event, the UK had violated Article 3 of the ECHR. The constant background to these cases was the demand by Irish republicans for recognition by the UK of “the right to self-determination of the people of the Island of Ireland.” By the way, many republican homes in Northern Ireland display a Palestinian flag as a mark of solidarity, and Israeli flags are to be seen in Unionist districts.

I helped to take many cases against Turkey from 1992 onwards, on behalf of Turkish Kurds who suffered gross violations of their rights arising from the conflict in South-East Turkey. Turkey razed hundreds of Kurdish villages to the ground as part of its campaign against the PKK, and some 3.5 million Kurdish people were uprooted and displaced to become refugees in their own country. It goes without saying that the chief Kurdish demand is self-determination.

Finally, in 2003 I founded the European Human Rights Advocacy Centre (EHRAC), which has represented more than 50 Chechens in their complaints against the Russian Federation, in the Second Chechen War from 1999 onwards. Although all these complaints – of unlawful killing, disappearances, torture, and destruction of property – are individual complaints, the judgments against Russia have significance for the Chechen people as a whole. Their struggle against Russian colonization for centuries, the genocide perpetrated against them when they were deported as a people in 1944, and the massacres of the First Chechen War (1994 to 1997), all have the same content - the struggle for self-determination.

So even if the Palestinians cannot bring complaints to the Strasbourg Court, they have much to learn from the experience of the Cypriots, Irish, Kurds and Chechens, and the means by which Britain, Turkey and Russia were held accountable.

I now turn to the ECJ.

Israel as a state cannot be brought before the ECJ, nor can Israeli leaders. But there are possibilities for arraigning before this court those EU member states which are guilty of complicity with Israeli violations. The EU can do nothing without the active participation and consent of its member states, especially its largest states including the UK.

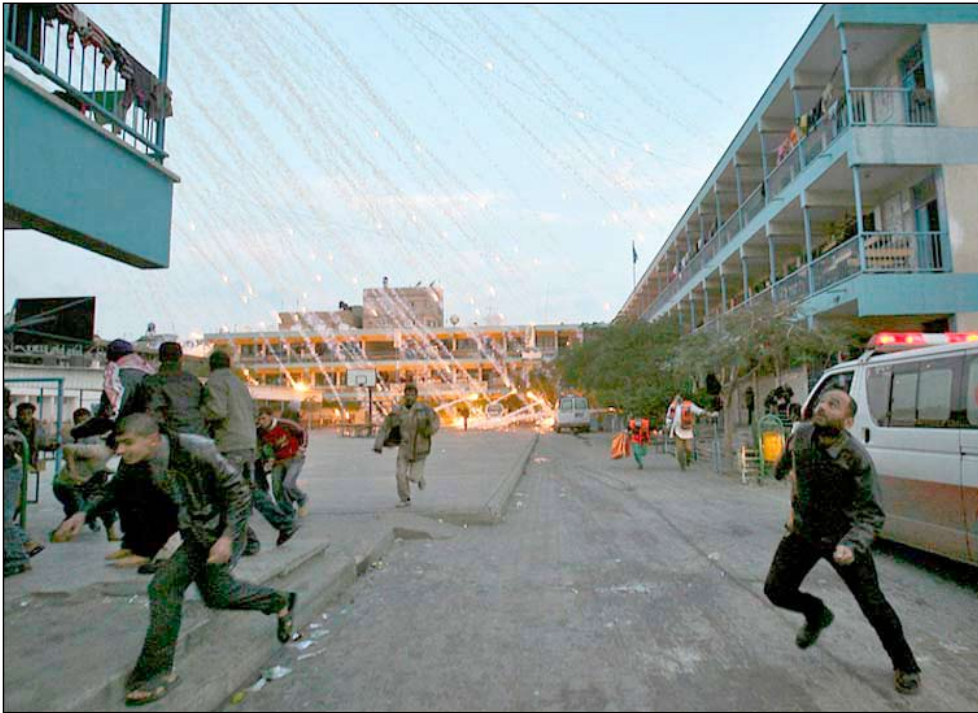
In this context it is important to remember the close ties between the EU and Israel, promoted by these same EU member states. Thus, the first Association Agreement between the EU and Israel was concluded on 20 November 1995, and came into force on 1 June 2000. Article 2 of this Agreement is supposed to require Israel to promote and protect the human rights of all under its control. On 10 April 2004 the European Parliament, a more democratic body but one without executive power, voted to suspend the Agreement in the face of Israel’s gross violations of this provision. However, the relationship has continued, with the EU as Israel’s major trading partner. On 16 June 2008, the EU Association Council decided to upgrade the EU-Israel Association Agreement.

What does this mean in practice? The clearest answer is given by looking at EU arms sales to Israel. In 2007 these totaled €200 million. It is instructive to note that the most active exporter of arms to Israel was France, with sales totaling €126 million. Germany was far behind, with €28 million, followed by Romania, with sales of €17 million. By way of contrast, Sweden, with a large weapons industry, made no sales to Israel at all. Britain is not among the leaders, but has significant weapons sales to Israel; and perhaps more importantly, purchases weapons and weapons systems from Israel. The EU has had a Code of Conduct on weapons sales since 1998, but this is overseen at member state level, not by the European Commission in Brussels.

Britain’s continuing complicity was demonstrated by the fact that not only does it purchase unmanned aircraft (drones) from Israel, but provides key components for them. These very weapons were used to particularly devastating effect in Israel’s recent assault on the Gaza Strip.

In the case of the UK, weapons sales are only possible if an export license is granted by the government. To date, only 28 such licenses have been refused. But legal action has been taken in the UK courts. The possibility of doing so was demonstrated

Palestine in the Courtroom



Israel bombards UNRWA school in Beit Lahia, Gaza Strip with white phosphorus munitions on 17 January 2009 as part of Operation Cast Lead. This school operated as an emergency shelter for displaced Palestinians during Israel's 23-day assault. Two Palestinian boys, aged five and seven, were killed in this attack on January 17. Fifty-three UNRWA installations were targeted by Israeli during the operation, thirty-seven of them were schools that were being used as emergency shelters, health centers and warehouses.
(©UNRWA)

in the High Court case *R (Hassan) v the Secretary of State for Trade and Industry* [2007] EWHC 2630 (Admin). Cases are also being prepared in which individual member states, such as the UK, are challenged at the ECJ for violation of the EU's own rules.

These cases are supported by the IADL's regional association, the European Lawyers for Democracy and World Human Rights (ELDH), of which I am the President. The IADL has published a White Paper on Israel's violations in Gaza, and is focusing its attention on lobbying the UN General Assembly to take action.

I conclude with the thought that even if Palestinians cannot take cases directly to the ECtHR or the ECJ, there is a great deal they can learn from the former, and actions that their supporters can take in the latter. This is what I mean by accountability.

**Bill Bowring is Professor of Law at Birkbeck College, University of London. He first visited the West Bank and Gaza in 1987 in the context of the First Intifada, as a member of a two-person mission sent by the Arab Lawyers Union and the International Association of Democratic Lawyers (IADL) and since then has taken part in a number of human rights missions to Israel and the OPT, most recently in a mission organized by the Bar of England and Wales and Lawyers for Palestinian Human Rights from 29 March to 3 April 2009, investigating the system of Israeli Military Courts in the Occupied Palestinian Territories.*

Seeking to Uphold Third State Responsibility: The case of Al-Haq v. UK

by John Reynolds

UK Trade and Investment Minister
Lord Mervyn Davies speaking
with Amnon Dotan (right) and
Gad Propper (left) at a dinner
with Israeli business leaders at
the official residence of British
Ambassador to Israel, Tom
Phillips, in Ramat Gan on 19 May
2009. (Photo by Mati Milstein /
British Embassy Tel Aviv)



Introduction: The ‘Legalisation’ of the Discourse on War

Israel’s most recent large-scale offensive against the Gaza Strip, *Operation Cast Lead*, initiated on 27 December 2008 and continuing until 18 January 2009, generated an unprecedented level of debate in the media and public domain over questions normally confined to the obsessions of lawyers and legal scholars. Commentary—ranging from the well-versed to the uninformed—on issues such as grave breaches of the Geneva Conventions, the doctrine of proportionality, and the legality of the use of force under the UN Charter, pervaded newspaper and website coverage on a daily basis, and continues to do so.¹ This is broadly reflective of the fact that opposition to war in the 21st century, be it in the context of the invasion of Iraq, South Ossetia or Lebanon, has increasingly been framed in legal terms. In contrast to World War II or Vietnam, the strategy of opponents of such conflicts has been to denounce the initiation and conduct of hostilities less on the basis of their immorality, and more on the basis of their *illegality*. At the same time, the military establishments of the States involved are acutely aware of the ‘legalisation’ of the vocabulary through which war is analysed, and the consequent need to find ways to justify their actions as compliant with international law.

Such developments are nowhere more evident than in the context of the Israeli-Palestinian conflict. Actors who endeavour to defend the rights of those subject to military attack—in this case primarily the Palestinians of the Occupied Palestinian Territory (OPT)—are doing so more and more using international legal arguments and mechanisms. The use of the oppressor’s own legal system to advocate the rights of the subjugated people is commonplace throughout modern history, from colonial Kenya to Mandate Palestine² to apartheid South Africa. It invariably presents dilemmas, however, for human rights lawyers

and NGOs, particularly in a system such as Israel's where the judiciary effectively functions to legitimise and 'legalize' the unlawful actions of the military and executive, rather than as an independent branch of government.³ Thus, with domestic remedies very often unavailable, human rights organisations and lawyers have been compelled to look elsewhere for impartial legal adjudication of alleged violations of international humanitarian and human rights law in the OPT. Such application to external jurisdictions for independent judgment according to the objective rules of international law has come to be construed by defenders of Israeli military policies as a form of 'lawfare.'

'Lawfare' is described as "a strategy of using or misusing law as a substitute for traditional military means to achieve military objectives."⁴ In recent years, the term has generally been used in disparagement of human rights-based litigation strategies as disingenuous: public relations stunts that manipulate international law and are "usually factually or legally meritless."⁵ In the context of the OPT, critics argue that human rights lawyers and organisations seeking to defend Palestinian human rights have co-opted international law to "further their political campaign against Israel."⁶ Such criticisms belie the facts that (i) the majority of cases prepared by NGOs and human rights lawyers are meticulously researched and verified on the factual side, and cogently argued on the legal side; and (ii) the very *raison d'être* of using legal mechanisms is to allow the claims of alleged victims to be heard in an independent forum that is detached from the eternally obstinate politics of the conflict.

Themselves fully understanding "the role of law as a currency of political legitimacy,"⁷ the Israeli authorities have heavily engaged in their own form of 'lawfare' by, for example, issuing position papers that present legal arguments to justify the use of force against Palestinians in the OPT.⁸ Those same authorities, however, see fit to vilify lawyers, and even judges, who expound contrary legal arguments. Thus, the decision of a Spanish judge to initiate war crimes investigations against Israeli officials described as "ludicrous" and "outrageous"⁹ the decision of a Spanish judge to initiate war crimes investigations against Israeli officials, and the battle lines regarding universal jurisdiction have been clearly drawn. Legal strategies, both pre and post *Operation Cast Lead*, have focused primarily on invoking individual criminal responsibility for alleged war crimes under the principle of universal jurisdiction. There are also, however, other established bodies of law under which violations of international law against the Palestinians can be brought before foreign judges. One such avenue under public international law is the invocation of state responsibility against third States for failure to uphold their own legal obligations in respect of Israel's breaches of international law in the OPT.

State Responsibility and the Background to the Case Against the UK

Contemporary public international law has progressed from a purely bilateral conception of State responsibility to accommodate categories of general public interest.¹⁰ Principally codified in the International Law Commission's 2001 Draft Articles on Responsibility of States for Internationally Wrongful Acts (the ILC Articles), this branch of law governs the attribution of conduct to the State, the responsibility of a State if its conduct is in breach of international law, the responsibility of third States in relation to breaches of international law by another State, and the remedies to be provided in case of such breaches.

Under Articles 40 and 41 of the ILC Articles, all States have legal obligations not to recognise, aid or assist unlawful situations arising out of serious breaches of international law, and to take action to bring such breaches to an end. Article 16 further provides that any State that knowingly aids or assists another State in the commission of a breach of international law is itself complicit in and responsible for the commission of the breach.

These obligations apply to all States as customary international law. In the context of Israel's actions in the OPT, the International Court of Justice (ICJ) has explicitly affirmed that such obligations fall on third States in relation to Israel's breaches of the prohibition of acquisition of territory by force, infringement of the Palestinian right to self-determination and violations of the Fourth Geneva Convention.¹¹

Taking into account the UK's apparent failure to fulfil such obligations, and the distinct lack of any change in its policy

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following the explicit pronouncements of the ICJ *Wall* advisory opinion, the idea of legally challenging the UK had been simmering for some time in discussions between Al-Haq and its UK solicitor, pioneering public interest lawyer Phil Shiner. Israel's actions in the context of *Operation Cast Lead* triggered a shift in public opinion worldwide and a heightened realisation of the injustices being perpetrated against Palestinian civilians. Accordingly, despite a slight discomfort at the fact that the first 'post-Gaza' litigation to be filed in a foreign jurisdiction would not be against those directly responsible for the commission of war crimes, but rather against a third party, it was decided that one must strike while the iron—or, in this instance, the lead—is still hot.

The Claim

On 3 February 2009, Public Interest Lawyers (PIL), on behalf of Al-Haq, sent a pre-action letter to the UK Secretaries of State for Foreign & Commonwealth Affairs, for Defence and for Business, Enterprise and Regulatory Reform. Al-Haq called on the Secretaries of State to set out in clear terms what evidence or actions they point to if their position is that the UK has complied with its legal obligations vis-à-vis Israel's breaches of international law in the OPT, both before and after *Operation Cast Lead*. On 20 February 2009, a one and a half page response was sent on behalf of the Secretaries of State claiming that they are under no obligation to provide evidence of the UK government's compliance with the relevant international legal obligations, and that the issues raised relate to matters concerning the government's foreign policy that are beyond the jurisdiction of the courts.

Following this, PIL and al-Haq filed a claim for judicial review of the UK's actions in respect of its international legal obligations before the High Court of England and Wales on 24 February 2009.¹² The claim is clear in showing that it "concerns the *legality* of the UK's ongoing failures to comply with its obligations in the face of Operation Cast Lead, not the merits or expediency of the UK's foreign policy,"¹³ and draws on the ILC Articles, the jurisprudence of the ICJ, as well as the provisions of the Fourth Geneva Convention, for its legal argumentation. It demonstrates the UK government's failure to fulfil its legal obligations, principally in relation to the following serious breaches by Israel of international law:

- denial of the Palestinian right to self-determination;
- *de facto* acquisition of territory by force; and
- persistent violations of "intransgressible" principles of international humanitarian law

The arguments in respect of each can be summarised as follows:

Denial of Self-Determination

Over its 42 year occupation of the West Bank, including East Jerusalem, and the Gaza Strip, Israel's denial of the Palestinian right to self-determination has been comprehensive. Through its prolonged military occupation and violation of the territorial integrity of the OPT, its illegal settlement policy, obstruction of Palestinian permanent sovereignty over natural resources and restrictions on Palestinian cultural expression, Israel has prevented the population of the OPT from freely determining its political status and freely pursuing its economic, social and cultural development. The right to self-determination is established in international law as giving rise to obligations *erga omnes*, whereby all States, including the UK, are bound to ensure its realisation.

Acquisition of Territory by Force

The UK is vested with the legal duty, confirmed by the ICJ in the *Wall* advisory opinion, not to recognise or assist the illegal situation created by Israel's purported annexation of occupied East Jerusalem and construction of the Wall in the West Bank, a measure described by the ICJ as potentially "tantamount to *de facto* annexation".¹⁴ The prohibition on the acquisition of

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Anti-apartheid demonstration
in central London, June 2008.
(source: www.nakba60.org.uk)



territory through the threat or use of force is one of the pillars upon which contemporary public international law is built, and is universally binding on States.

Persistent Violations of International Humanitarian Law

Al-Haq's claim is further based on the obligations arising from Israel's persistent violations of fundamental principles of international humanitarian law. *Prima facie* evidence of war crimes amounting to grave breaches of the Geneva Conventions during Operation Cast Lead is cited to demonstrate the most recent examples of such violations. As a High Contracting Party to the Geneva Conventions, the UK has clear international obligations "to ensure compliance by Israel with international humanitarian law as embodied in that Convention."¹⁵ Article 146 of the Fourth Geneva Convention further obliges High Contracting Parties to search for and prosecute perpetrators of grave breaches of the Convention.

In light of these breaches by Israel, all States, including the UK, are legally obliged:

- (a) To denounce and not to recognise as lawful the situations created by Israel's actions;
- (b) Not to render aid or assistance or be otherwise complicit in maintaining the unlawful situations created;
- (c) To cooperate with other States using all lawful means to bring Israel's breaches to an end;
- (d) To take all possible steps to ensure that Israel respects its obligations under the Geneva Conventions.

The claim argues that despite repeated interventions by Al-Haq advising the UK of these obligations and urging it to take concrete action regarding Israel's actions in the OPT in general, and during the military attacks on Gaza during *Operation Cast Lead* in particular, the UK has failed to take any meaningful steps towards fulfilment of its obligations.

Based on the above, Al-Haq has requested the High Court to order the defendants to take action to meet their obligations until Israel's breaches of international law cease; in particular, to:

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- A) Publicly denounce Israel's unlawful actions in the Gaza Strip and its continuing construction of illegal settlements and the Wall in the West Bank.
- B) Suspend with immediate effect the UK's arms-related export licensing approval system to preclude UK companies from exporting arms or arms-related products to Israel.¹⁶
- C) Suspend all UK government financial, military or ministerial assistance either directly to Israel or to UK companies exporting military technology or goods to Israel.
- D) Request that the EU suspend its preferential trade agreement with Israel.
- E) Call for the High Contracting Parties to the Geneva Conventions to convene with a view to ensuring Israel's respect for the Conventions.

Epilogue: The Role of Law, and the Impact of the Claim Three Months after Filing

Although recent years have been marked by the examination of the Palestinian-Israeli conflict through an increasingly legal lens, while at the same time legal principles have developed and fora become available to those seeking to make the law heard, such efforts have been denigrated as part of "a one-sided, ideologically-driven campaign to delegitimize and weaken Israel."¹⁷ For a long time kept in the shadows by the overpowering influence of politics, legal work now even finds itself subject to attack on political grounds. Such attacks, however, cannot compromise the integrity of law as an impartial mechanism for the realisation of justice and accountability. Yes, Palestinians commit violations of the law; and yes, Israel is entitled to protect its population through the administration of justice in conformity with established international standards. If Israel instead decides to resort to force in a manner that is impermissible by law, it should not be exempt from judgment itself.

Nor, in the global community of our time, should third States be absolved of their own legal obligations to protect civilian populations that are systematically denied their rights. Feeble calls for peace are insufficient; not least from a country whose colonial policies and legacy had a significant impact on the origin of the conflict. The UK is legally obliged to unequivocally condemn and refuse to recognise the illegal situations Israel has created in the OPT, to cease rendering aid and assistance to Israel in the forms of arms-related exports, financial assistance and preferential trade, to bring perpetrators of international crimes to account, and to take meaningful positive actions towards the implementation of the Palestinian right to self-determination.

Before Al-Haq filed its case, the UK government refused to accept that it should be made to answer to those obligations before its courts. The State did submit its response to the claim, however, and preliminary hearings on issues of jurisdiction and standing took place in the Queen's Bench Divisional Court in June 2009. A decision on those preliminary issues is expected by September 2009. It is worth taking note of related developments that have come about in the UK in the short period since the claim was filed. In March 2009, the British Foreign Office informed its Israeli counterpart that, contrary to previous diplomatic assurances, it will not change UK legislation that allows arrest prosecution of alleged war criminals.¹⁸ In April 2009 David Miliband announced that the UK is to review all of its military exports to Israel.¹⁹ Small steps, perhaps, but steps in the right direction.

The case continues.

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Endnotes: See online version at <http://www.badil.org/al-majdal/al-majdal.htm>

Note: On 29 July 2009, the Divisional Court in the High Court of Justice of England and Wales rejecting Al-Haq's application for permission to seek judicial review of the UK Government's actions in light of breaches of international law by Israel in the Occupied Palestinian Territory (OPT). See the Al-Haq statement at <http://www.alhaq.org/etemplate.php?id=468>

Legal Strategies towards Accountability under International Law: Civil Tort Claims and Related Mechanisms in US Courts

by Susan M. Akram and Yasmine Gado

In recent years, human rights lawyers and activists have significantly increased their efforts to hold perpetrators of egregious human rights abuses accountable in domestic courts around the world. Principally, lawyers have focused their efforts on laws incorporating concepts of universal jurisdiction to criminally prosecute perpetrators of such wrongs.¹ In the United States, universal jurisdiction principles have a very thin foundation under domestic law, and have proved nonexistent in their application to Israeli human rights abusers. As alternatives, US lawyers have attempted to hold Israeli perpetrators accountable through the use of civil tort laws, or indirectly through manufacturers' liability lawsuits. Despite the weakness of domestic laws on universal jurisdiction, as well as numerous barriers to successful recovery under civil statutes, US human rights lawyers have increased their efforts to litigate Palestinian and Arab victims' claims for redress for egregious human rights violations. These actions have been unsuccessful thus far in producing any tangible outcome; primarily due to the significant role the political branches of the US government play in the outcome of such cases. Whatever positive impact these cases can have in the worldwide search for accountability for Palestinian victims remains to be seen; however, there is no doubt that these cases are a large drain on the legal resources available for such victims.

For reasons briefly summarized below, lawyers have viewed litigation for Palestinian victims in domestic courts as having strategic value in filling the Palestinian "protection gap," and in seeking to equalize a grossly distorted imbalance of power between Israel and its allies on the one hand, and the Palestinians on the other. US legal cases have been viewed as strategically similar to those brought in other states' domestic courts on behalf of Palestinian refugees. Lawyers have assumed that such cases would contribute to reducing what is often referred to as the "protection gap" that unique and complex confluence of factors resulting in a denial of effective international protection of Palestinian refugees as a global population. The protection gap, understood as a lack of enforceable legal rights and remedies for Palestinians worldwide, along with lack of international political will, explains why normal avenues of redress for human rights victims have been starkly absent for Palestinians. Palestinians as vulnerable victims—as refugees, stateless

*Solidarity action in Los Angeles -
January 16, 2009.
(Courtesy: indymedia ireland).*



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and displaced persons—represent the largest and longest-standing displaced population in the world. Yet, minimum treaty or customary provisions that bind states in their actions towards such vulnerable populations have been interpreted as essentially excluding Palestinians from their reach. To a great degree, this is also true vis-à-vis the UN and its specialized bodies with mandates over refugees and other vulnerable victims. For example, minimum international guarantees towards refugees and stateless persons such as the right to return to place of origin, to restitution of property, or to compensation for losses, have not even been recognized as ‘rights’ for Palestinians, much less implemented at any level.

What makes implementation of these rights so critical for Palestinians is not only that they comprise the largest global population of the displaced and the stateless, but that they have *no* recognized national government to intercede on their behalf at the international level, nor a recognized state territory where their rights can be protected. Hence, no government can implement those rights normally protected at the national level: the right to return and repossess property, the right of redress for crimes or wrongs through domestic courts, or the implementation of ordinary civil rights through domestic administrative processes. Since there is no Palestinian state, only Israel has actual jurisdiction to implement such claims, and no such claims are available or viable through Israeli judicial or administrative mechanisms for Palestinian refugees or stateless persons; such claims have proved overwhelmingly unsuccessful even for Palestinian citizens of the Israeli state.²

Aside from the lack of national protection for Palestinians, most host states where the majority of Palestinian refugees reside do not recognize or do not apply the full panoply of basic rights afforded to them as refugees under relevant international and regional instruments. This absence of refugee recognition relates to the prevalent interpretation of key provisions in the international treaties that were drafted to provide international protection to Palestinians as refugees and stateless persons; through misinterpretation and misapplication, these provisions have utterly failed to guarantee minimum rights. Hence, no international agency is currently recognized by the international community as having an explicit mandate to systematically work for the realization of the basic human rights of Palestinian refugees and to search for and implement durable solutions consistent with international law. Practically, this anomaly means that most of the over five million Palestinian refugees - nearly one third of the world’s total refugee population - do not have meaningful access to international protection that is legally required or available to other refugee populations.

Thus, the work of lawyers and activists in using US domestic tort and corporate liability laws to demand redress for egregious rights violations on behalf of Palestinian victims, is aimed at playing a critical strategic role in the global civil society movement to redress the Palestinian protection gap. So far, however, US cases do not appear to be furthering this strategic role. These



Right: An Israeli soldier uses a handcuffed and blind-folded Palestinian boy, Fadi Ahmed Sharha, 16 years old, as a 'human shield.' West Bank town of Dura near al-Khalil (Hebron), 17 May 2005. (Photo: Nayef Hashlamoun)

Left: 13 year-old Mohammad Badwan was tied by the arm to an Israeli military jeep in Biddo/Ramallah, 15 April 2004. by hisoka3008

cases have established only negative precedents, and perhaps US law is not sufficiently robust or claimant-neutral to protect Palestinians in the full panoply of rights to which they are entitled. In reviewing the history of these cases to date, the appropriate conclusion may be to leave such claims to countries with stronger universal jurisdiction laws and more independent judicial systems than the US.

I. Background to Universal Jurisdiction Under US Law.

Although the United States has promoted the concept and implementation of universal jurisdiction in its international relations and has ratified a number of treaties that incorporate universal jurisdiction over prosecution of certain crimes, its record of domestic application of universal jurisdiction to prosecute gross human rights violators is uneven at best. Since 1955, the US has been a party to the 1949 Geneva Conventions, which require states to seek out and prosecute persons who are suspected of committing grave breaches such as torture, murder, and cruel or degrading treatment during times of war.³ The Four Geneva Conventions' universal jurisdiction provisions have been incorporated into the US' uniform code of military justice, and—at least until 11 September 2001—were a relatively uncontroversial feature of US obligations in times of international conflict.⁴

Aside from the context of international humanitarian law, the US has ratified the *International Convention against the Taking of Hostages*, the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons*, the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, and the *Convention for the Suppression of Unlawful Seizure of Aircraft*—all of which require a state party to exercise jurisdiction over an alleged offender found on the state's territory regardless of the offender's nationality.⁵ US courts have affirmed or exercised universal jurisdiction against alleged offenders under these Conventions. In *United States v. Yunis*, the federal district court and the District of Columbia Court of Appeals upheld the exercise of jurisdiction over Fawaz Yunis for hijacking and destroying a foreign airplane in Lebanon. Both courts gave strongly-worded opinions that universal jurisdiction was warranted in US prosecutions against particularly egregious international crimes.⁶ However, cases brought under these Conventions have been overwhelmingly against Palestinians, or other Arab or Muslim defendants.⁷ No Israeli has ever been prosecuted under these treaties in US courts.

One of the most important recent developments for expanding universal jurisdiction in the US has been its ratification of the *Convention Against Torture* (CAT), which requires a state party to extradite torturers or to prosecute them when found on US soil.⁸ When the US codified the CAT in domestic law, it incorporated the universal jurisdiction provisions of the treaty. Under the law, the US has criminal jurisdiction if the violator is a US national or if the violator is on US territory-- no matter what the nationality of either the violator or victim, and no matter where the torture took place.⁹ When the US ratified the CAT, the State Department strongly supported the universal jurisdiction provisions in it.¹⁰ In a 2002 study on the issue, Amnesty International pointed out that at that time no prosecutions had been made against torturers under the CAT, claiming that political considerations and excessively conservative Justice Department interpretations of the jurisdictional provisions were to blame.¹¹ The first case in which the US has actually prosecuted an alleged torturer under the CAT occurred only recently, against Chuckie Taylor of Liberia.¹²

Criminal prosecutions are not the only means through which victims of egregious human rights abuses can seek remedies in US courts, however. Since 1980, courts in the US have allowed foreign victims to sue for civil redress against foreign defendants. There are two statutes that permit such lawsuits directly against perpetrators, and in most cases when Israel or Israeli defendants are sued, plaintiffs bring their claims under the Alien Tort Claims Act (ATCA) and the Torture Victim Protection Act (TVPA).¹³

The ATCA, enacted in 1789, allows aliens (plaintiffs who are not US citizens) to sue in US federal courts for damages for violations of international law or a US treaty. The law does not require that the defendant's actions take place in the US, or that the defendant be a US citizen. The 1980 landmark case of *Filartiga v. Pena-Irala*¹⁴ was the first successful use of the ATCA to enable victims of international human rights violations to sue in US courts.

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Since that decision, US federal courts have applied the ATCA in dozens of cases involving claims for genocide, extrajudicial execution, torture, war crimes and crimes against humanity. In 2004, the Supreme Court affirmed the use of the ATCA for this purpose in the case *Sosa v. Alvarez-Machain*,¹⁵ holding that the ATCA provides US federal courts with jurisdiction over claims based on international law norms that are clearly defined, widely accepted and obligatory. Plaintiffs have brought ATCA claims against direct perpetrators and commanding officers, government officials and private actors, individuals and corporations.¹⁶

The Torture Victim Protection Act (TVPA) of 1992 grants both aliens and US citizens the right to sue individuals for damages for acts of torture and extrajudicial execution committed anywhere in the world “under actual or apparent authority, or color of law, of any foreign nation.”

The law essentially provides a private cause of action for damages against foreign government officials, and the TVPA legislative history specifies that such officials are not entitled to immunity against TVPA claims (although the Foreign Sovereign Immunities Act undermines this exception, as discussed further below). Courts have applied the TVPA to direct perpetrators, persons who ordered, abetted or assisted in the violation, and higher-ups who authorized, tolerated or knowingly ignored violations.¹⁷

Some of the most important differences between the TVPA and ATCA include the TVPA requirement that plaintiffs first exhaust any (adequate) remedies available under the domestic law of the nation where the alleged violations occurred, and the fact that the TVPA authorizes a much narrower set of potential claims than the ATCA. For this reason, TVPA claims are typically brought in conjunction with claims under the much broader ATCA. As discussed further below, although the TVPA and ATCA have provided robust mechanisms for holding gross human rights violators accountable under civil tort law, they have not resulted in a single successful claim for Palestinian or Arab plaintiffs against Israeli defendants. This is also true for related indirect claims against US corporations for liability for facilitating Israeli war crimes or gross human rights violations.

II. Summary of US Litigation Against Israeli Defendants

A. Brief Summary of the Cases

The most recent efforts to challenge the impunity of Israeli violations are a series of cases brought by the New York Center for Constitutional Rights (CCR) and cooperating counsel. In 2005, CCR filed two cases in close succession. In *Matar et al v. Dichter*, the victims of the Israeli bombing of a residential building in Gaza City in 2002 brought a class action against Avraham Dichter for his role in the bombing, seeking damages for the deaths of their loved ones, and injuries.¹⁸ The Israeli air force dropped a one-ton bomb in the crowded al-Daraj neighborhood of Gaza in what it termed a “targeted assassination” of Salah Shehadeh. Shehadeh was killed along with 17 other Palestinians, including his family members, and over 150 Palestinian civilians were injured. Dichter, director of the Israeli General Security Service (“GSS”), gave final approval for the attack knowing Shehadeh’s wife was with him and at least ten other civilians would be killed, and that many other civilians were present in the densely populated neighborhood.

Plaintiffs sued Dichter under the ATCA, the TVPA and US domestic law, but their suit was dismissed on the grounds of sovereign immunity.

In the second case brought by CCR in 2005, *Belhas v. Ya’alon*, the victims and family members of the 1996 massacre of over 100 civilians in a UN compound in Qana, Lebanon brought a class action against retired IDF General Moshe Ya’alon for his role in the attack.¹⁹ The victims sought damages for injuries and the deaths of their families. At the time of the attack, Ya’alon was the Head of Army Intelligence. There was evidence the IDF knew, before and during the attack that civilians were in the compound. They continued to shell the compound even after being notified by UNIFIL that they were shelling a UN position in which hundreds of civilians were taking shelter. A UN review of the incident concluded it was unlikely the shelling of the compound was accidental. Israel paid compensation to the UN for damage and injuries to UN facilities and personnel, but no compensation was paid to the victims.

The Murder of Rachel Corrie



1. Picture taken between 3:00-4:00PM, 16 March 2003, Rafah, Occupied Gaza. Rachel Corrie (L) and Nick (R) oppose the potential destruction of this home (to the west of the Doctor's home where Rachel was killed). In the instance pictured, the bulldozer did not stop and Rachel was pinned between the scooped earth and the fence behind her. On this occasion, the driver stopped before seriously injuring her. (Photo: Joseph Smith, ISM Handout).
2. Picture taken between 3:00-4:00PM on 16 March 2003, Rafah, Occupied Gaza. A clearly marked Rachel Corrie, holding a megaphone, confronts the driver of one of two Israeli bulldozers in the area that were attempting to demolish Palestinian homes. She was confronting the bulldozer in order to disrupt its work, and prevent it from threatening any homes. (Photo: Joseph Smith, ISM Handout).
3. Picture taken at 4:45PM on 16 March 2003, Rafah, Occupied Gaza. Other peace activists tend to Rachel after she was fatally injured by the driver of the Israeli bulldozer (in background). This photo was taken seconds after the bulldozer driver dragged his blade over her for the second time while reversing back over her body. He lifted the blade as seen in the photo only after he had dragged it back over Rachel's body. This image clearly shows that had he lifted his blade at any time he may have avoided killing her, as the bottom section of the bulldozer is raised off the ground. (Photo: Joseph Smith, ISM Handout).
4. Picture taken at 4:47PM on 16 March 2003, Rafah, Occupied Gaza. Rachel Corrie lies on the ground fatally injured by the Israeli bulldozer driver. Rachel's fellow activists have dug her a little out of the sand and are trying to keep her neck straight due to spinal injury. (Photo: Joseph Smith, ISM Handout).
5. Rachel in Najjar hospital, Rafah, Occupied Gaza. Rachel arrived in the emergency room at 5:05PM and doctors scrambled to save her. By 5:20PM, she was gone. Dr. Ali Musa, a doctor at Al-Najjar, stated that the cause of death was "skull and chest fractures". (Photo: Mohammad Al-Moghair)

Plaintiffs sued Ya'alon under the ATCA and TVPA, but their claims were dismissed on the grounds of sovereign immunity.

A third case brought by CCR at about the same time was *Corrie et al v. Caterpillar, Inc.*²⁰ This case was not a civil tort action against the direct perpetrators of the wrongs alleged, but a manufacturers' liability claim. Rachel Corrie, a 24-year old activist from Olympia, Washington, was deliberately crushed to death by an IDF officer using a US-manufactured Caterpillar bulldozer when she was attempting to prevent the army's demolition of a Palestinian home in the Gaza Strip. The Corrie family and a number of Palestinians living in the Gaza Strip and the West Bank sued the US corporation Caterpillar Inc., seeking damages for death, injury, and property damage resulting from illegal demolitions by the IDF using Caterpillar bulldozers, and an injunction on future sales until the IDF ceased its illegal practices. Plaintiffs alleged that Caterpillar sold the bulldozers directly to Israel and the IDF knowing they would be used for illegal purposes (such as depopulating areas for settlements and bypass roads, collective punishment, and clearing paths for attacks on civilian neighborhoods), adapted them for military use and provided technical assistance and training.

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Plaintiffs sued Caterpillar under the ATCA, TVPA and domestic US law, but their claims were dismissed on political question grounds.

In an unrelated case brought by private lawyers, *Doe v. Israel*,²¹ Palestinians living in Israel, the West Bank and the US sued the State of Israel, high-ranking US and Israeli officials, American defense contractors and certain Israeli settlers, seeking damages for personal and financial injury and emotional distress from the settlement and occupation of the West Bank. Plaintiffs alleged that US officials and defense contractors aided and abetted the Israeli officials in implementing the illegal occupation, and that the Israeli settlers had solicited funds from US donors to aid that effort.

Plaintiffs sued under the ATCA, TVPA and domestic US law, but their claims were dismissed on sovereign immunity and political question grounds.²²

In a much earlier case brought during the first Intifada in the 1980's, *Abu-Zeineh v. Federal Laboratories, Inc. and Transtechnology Corporation*,²³ Palestinians sued US manufacturers of CS gas, a chemical agent, seeking damages for the deaths of their relatives exposed to the gas by IDF attacks in the occupied Palestinian territory and around Jerusalem. Six of the nine Palestinians plaintiffs were citizens of Jordan.

Plaintiffs sued the US manufacturers, alleging they manufactured defective CS gas and negligently sold the gas to the Israeli government. The court dismissed the case on the grounds that it did not have jurisdiction over the case because the plaintiffs were not citizens of any state, and hence could not satisfy the diversity jurisdiction requirement, as described further below.

B. Main Legal Obstacles to Recovery Against Israeli Defendants

As the outcome of each of these cases makes clear, there are some major obstacles plaintiffs face in suing Israeli defendants and their aiders and abettors. These issues, discussed below, appear to be insurmountable in cases against Israeli defendants, although they have not precluded recovery *against* Palestinian or Arab defendants in similar cases.

1. Sovereign Immunity

The most difficult hurdle plaintiffs face in suing an Israeli official is that of sovereign immunity. The *Dichter* and *Ya'alon* cases, and certain claims in *Doe v. Israel* all were dismissed because the defendant was held to be immune from the lawsuit.

US federal courts have jurisdiction over civil actions against a foreign state provided the foreign state is not entitled to immunity under the *Foreign Sovereign Immunities Act* (FSIA).²⁴ A foreign state is immune from suit unless one of the exceptions to immunity enumerated in the FSIA apply.²⁵ The FSIA defines “foreign state” to include a state’s “agencies and instrumentalities.” Some, but not all US courts, consider individuals “agencies or instrumentalities” when they act in their official capacities.

The courts in the *Dichter* and *Ya'alon* cases followed this principle. The court in *Dichter* also held that *former* officials, sued after they retired, are entitled to sovereign immunity, relying not on the FSIA (which is silent on the issue), but on principles of common law (or case law) that pre-dated, and in the court’s view, survived enactment of the FSIA.

Plaintiffs in these cases also failed in their arguments that FSIA immunity is implicitly waived in circumstances involving violations of *jus cogens* international law principles, and by enactment of the TVPA which imposes liability on foreign officials acting within the scope of their authority. Both courts held there can be no implied waiver of sovereign immunity under the FSIA; the only exceptions to immunity are those contained in the language of the FSIA.

In 1996, the FSIA was amended to allow lawsuits against foreign states for acts of torture, extrajudicial killing, hostage taking and aircraft sabotage, as long as certain conditions were met. These conditions are that the plaintiff or victim must be a national of the US; the foreign state must be designated a “state sponsor of terrorism” under US law; and the foreign state must have the opportunity to investigate or prosecute the wrong if it took place on its territory.²⁶ The US has designated Iraq, Iran, Syria, Libya, Cuba, North Korea and Sudan as the only state sponsors of terror.²⁷ In 2000, the US passed the *Anti-Terrorism Act* (ATA), which permits civil suits or prosecutions on behalf of US nationals who are victims of international terrorism. The ATA permits suits against non-state entities, which includes the PLO and the PA. The combination of the ATA and the amended FSIA preclude successfully suing Israeli defendants or Israel for war crimes or gross violations because of the application of US immunity principles. At the same time, numerous lawsuits have been successful against other defendants under the ‘state-sponsored terrorism’ exception of the FSIA, resulting in substantial damage awards.²⁸

2. Political Question Doctrine

Another difficult hurdle is the political question doctrine. Claims in the *Caterpillar* and *Doe v. Israel* cases were dismissed as presenting a “non-justiciable” political question. Stated generally, a political question is one that is not appropriate for a court to decide, but rather should be decided by the political branches of government - the executive or legislature.²⁹ Because decisions by the executive and certainly by the US Congress almost always favor Israel, application of this doctrine – *i.e.* deferring to the other branches – will favor defendants in these cases.

In *Caterpillar*, the court first made a factual finding that the US government pays for every bulldozer the IDF purchases from Caterpillar, and then dismissed the case on the grounds that it could not impose liability on Caterpillar without interfering with the foreign policy decision of the executive to pay for the bulldozers. The plaintiffs were not given the opportunity to investigate whether the US has indeed paid for every single Caterpillar bulldozer Israel has purchased.

In *Doe v. Israel*, the court found the case presented a political question because the case involved questions of foreign policy. The court determined that disputes over ownership of land between Israel and the Palestinians; determinations whether settlement activities are illegal; whether US support for Israel is illegal under US law; or whether Israeli actions are genocide or self-defense, are all political questions for the executive and legislature to answer, not the courts. In this court’s view, the Israeli-Palestinian conflict is “quintessentially political in nature.”³⁰

Thus, it appears that because the executive branch is heavily involved in mediating the Israeli-Palestinian conflict, because Congress appropriates billions in arms sales to Israel, and because Israel is considered a staunch ally, defendants will prevail in the argument that these cases interfere in foreign policy decisions already made by the political branches.

3. Act of State Doctrine

In all of these cases except *Abu-Zeineh*, defendants argued that dismissal was required by the act of state doctrine, by which courts refrain from judging the actions of a foreign state in its own territory. The requirements of this doctrine are (a) an official public act of a state (b) in its territory (c) where barring adjudication of the case would be appropriate.³¹

This may be the weakest argument presented by defendants in these cases because the challenged actions occurred outside Israel’s sovereign territory (in the occupied Palestinian territories and Lebanon) and violations of international law cannot be official acts of state. Other factors also weigh in favor of plaintiffs, such as the high degree of consensus among nations concerning the international norms the State of Israel violates, and the fact that the US government sometimes condemns acts by Israel (like the Shehadeh assassination) so there is no risk of interference with the executive’s conduct of foreign relations.

Ultimately, none of the cases were decided on the basis of this doctrine.

Reviews

4. Lack of Jurisdiction Due to Palestinian Statelessness

The *Abu-Zeineh* case did not involve a claim under the ATCA (which allows aliens to sue for international law violations) and Palestinians' refugee status precluded their access to US courts to enforce domestic US law.

A US federal court has jurisdiction over a civil case if, among other things, the case is between citizens of a US State and "citizens or subjects of a foreign state." The foreign state must be recognized – *de jure* or *de facto* - by the Executive Branch of the US government at the time the complaint is filed. In this case, the claims by Palestinian plaintiffs were dismissed because there is no *de jure* recognition of Palestine as a state, and according to the State Department, no *de facto* recognition either.

Claims brought by six West Bank residents who argued they were both Palestinian and Jordanian citizens also were dismissed on the basis of defendant's expert witness testimony (because the State Department did not offer an opinion on this question) that statements by Jordanian government officials immediately after Jordan severed its ties with the West Bank proved that the West Bank plaintiffs were not Jordanian citizens. The court did not find persuasive the Jordanian Ambassador's statement that West Bank residents are given two-year Jordanian passports, or his request that the court give them the same access to US courts as citizens of any foreign state.

5. Admissibility of Evidence Outside the Pleadings (Political Influence)

The views of the US State Department influenced decisions in these cases either at the court's invitation (*Dichter*, *Abu-Zeineh*), or by filing an amicus brief³² (*Caterpillar*). In *Ya'alon*, the court relied on a letter from the Israeli Ambassador in its determination that *Ya'alon* was immune. The courts in *Dichter*, *Ya'alon* and *Caterpillar* all justified the admission of materials outside the complaint on the grounds that they were deciding whether the court had jurisdiction – *i.e.* authority to hear the case. While courts are certainly authorized (by US Supreme Court case precedent) to seek the views of the executive branch in some instances, the fact is that by doing so they invite the influence of those powerful political forces which so heavily impact decisions by the political branches of the US government in favor of Israel.

III. Conclusion

The use of US laws to hold Israeli defendants accountable for war crimes and other serious violations of international criminal or human rights law has not proved successful in a single case to date. The imbalance in US policy that weighs heavily in Israel's favor also plays a decisive role in legal claims for Palestinian victims against Israelis in US courts. The policy bias clearly plays out in the lack of any prosecutions against Israeli defendants under the Geneva Conventions, the Convention on Hostage-Taking, the CAT, and similar treaties with universal jurisdiction provisions. The legislative bias apparent in such laws as the ATA and the amendments to the ATCA narrows the availability of civil lawsuits in US courts to only those state and non-state actors disfavored by the US government. Perhaps most remarkable is that even when these clear law-based barriers might be overcome, the courts themselves have elevated discretionary judicial doctrine above statutory authorization to preclude suit against Israelis. The courts have applied a number of jurisprudential considerations to defeat application of legal provisions that might otherwise permit redress for Palestinian claimants, such as discretionary immunity grounds; finding that stateless status defeats diversity jurisdiction; political question doctrine; and even giving weight to government submissions outside the record. These barriers have been uniquely problematic in Palestinian, and Arab, cases against Israeli defendants. Activists and lawyers for Palestinians might well question whether the expenditure of so much time, energy and resources in bringing these cases in US courts has furthered the goals of obtaining global redress for these victims. The precedents of these cases suggest that perhaps US-based strategies should focus on grassroots activism rather than litigation on behalf of Palestinian claimants, at least for the near future.

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Endnotes: See online version at <http://www.badil.org/al-majdal/al-majdal.htm>

Israel's Para-state Institutions Operating in the United States

by Karen Pennington and Joseph Schechla



"HaHamisha Forest" a JNF forest built on the lands of the Palestinian villages Abu Ghosh and Qatanah (@Badil).

The Jewish National Fund (JNF), a.k.a. *Keren Keyemeth le Israel, Inc.* (KKL), has a long and obscure legal existence in the United States that occasionally has come to light in open court. This article addresses the history of selective U.S. legal and diplomatic action concerning the JNF. The JNF's U.S. arm defines itself as a charitable organization, thus claiming and enjoying tax exemption with its associated para-state organizations, only once effectively challenged since 1926. The context and arguments of domestic U.S. jurisprudence now may suggest a new direction for U.S. federal courts to reconcile some of the related legal contradictions that also having grave consequences for US foreign policy towards the Middle East, but primarily for the direct victims of Israel's para-state institutions.

The JNF, as an authorized agent of the State of Israel—like sister para-state organizations, the World Zionist Organization/Jewish Agency (WZO/JA)—historically have sought *public law* status since their initial registration in England, as those organizations formed the Jewish colony's shadow government in the British Mandate period in Palestine preceding the proclamation of the State of Israel. The JNF is organically linked with the State, as affirmed in Israeli legislation, and shares with it deeper antecedents of Zionist ideology based on racist criteria enshrined in the JNF's Memorandum of Association (charter).

The first beneficiary of Palestinian lands, homes and properties appropriated from the 1947–48 ethnic cleansing, the JNF today claims to possess 13% of the lands of Israel, which it claims to have “redeemed” and to hold “in perpetuity” for people “of Jewish race or descendancy.” Uncharacteristic of a bona fide charitable institution, the JNF's and WZO/JA's unlawful, self-acclaimed tenure and discretion over the disposition of Palestinian assets form the principal engine of the cruel, violent and costly conflict over Palestine, with regional and global consequences. The para-state organizations' continued illicit possession of those stolen properties perpetuates the dispossession of the indigenous people of the country, while those institutions remain Israel's principal development agencies delivering material benefits exclusively to “Jewish nationals,” who hold that superior status in rights and privileges over other (non-Jewish) citizens of Israel.

Palestine in the Courtroom



In order to protect itself from public campaigns and lawsuits, the arms of the JNF in different countries have attempted to distance themselves from JNF-Israel, for example by distinguishing their logos from one another. (Above, the logos of JNF Israel, US, and the UK)

The New York Secretary of State website lists the organization “Jewish National Fund (*Keren Keyemeth le Israel*), Inc.,” founded on 3 February 1926, prior to the proclamation of Israel, as a domestic U.S. nonprofit organization. Until 2003, no other legal entity was registered as the JNF in the U.S. separate from the JNF/ KKL. The KKL in Israel succeeds the entity originally charted in the United States.

Recently, disputes have arisen between the Jerusalem-based KKL and its international branches. In light of encroaching legal and popular scrutiny of their operations, the U.S. and UK affiliates have sought at least a *rhetorical* hedge against exposure of an association with the KKL that would cause them to lose nonprofit status in their host countries. The U.S. entity finally registered itself in New York State as a separate entity in 2003. The New York Secretary of State website lists “KKL-USA, INC,” founded 15 May 2003, as a nonprofit association. Information resurfacing shows that the U.S. affiliate is actually not separate from the KKL-Israel, as indeed it never has been. Donations to the U.S. arm of the JNF have historically formed the largest source of cash contributions to the KKL-Israel.

JNF, an Unregistered Foreign Agent of the Government and State of Israel?

While the JNF came into existence in the U.S. well prior to the Proclamation of the State of Israel, it played a well-known and crucial role in the pre-state period of Israel in the planning and implementation of the ethnic cleansing of Palestine.¹

After Israel’s War of Conquest, the JNF then became formalized as part of the State of Israel with the 1953 *KKL Status Law*. Despite its formal para-state status under the KKL Law, the U.S. bureaus mostly continued the recognition of the JNF’s putative nonprofit status as unchallenged before and after the establishment of Israel.

Tax exemption for its institutions and donors has long served as a valuable asset for Israel and its Zionist project of colonizing Palestine, however, that status is vulnerable to challenge in the United States. In 1956, Israel refused to abide by President Dwight D. Eisenhower’s ultimatum to withdraw from the Sinai and, only when President Eisenhower threatened to end tax exemption on the donations that Israel receives from the United States, did Israeli Prime Minister David Ben-Gurion agree to withdraw his forces.²

Recent research has revived dormant arguments and legal analysis such as that of the late U.S. attorney and legal scholar W. Thomas Mallison.³ Petitioning on behalf of the American Council for Judaism (ACJ) in 1968, Prof. Mallison successfully advocated in a D.C. Superior Court to normalize the status of the JNF’s parent organizations WZO/JA in the United States as foreign agents. He prevailed in his argument that: “It must be doubted that the same fund-raising institutions can be public and governmental in Israel and private and philanthropic in the United States.”⁴

Given that the State of Israel has incorporated this racist WZO/JA and JNF-authored notion of “Jewish nationality” and elevated it to a materially superior status over mere “citizens” of Israel. These para-state institutions serve the State’s Jewish-only development on Palestinian land and property in historic Palestine, but also serve to mobilize Jews in the colonialist transfer of persons and money from some 50 other countries. There, they carry out those functions that would constitute grave diplomatic breaches were official Israeli diplomatic missions to do so formally and overtly in other States’ sovereign jurisdiction. This functional distinction between official/nonofficial roles in the colonial project remains ambiguous, even moot, especially considering that JNF and WZO/JA officials also carry Israeli diplomatic passports and enjoy diplomatic immunity while carrying out their activities abroad.

As early as 1964, the ACJ also obtained a U.S. State Department ruling that rejected a fundamental claim and ideological premise grounding the three main Zionist para-state institutions and their operations in the U.S., and elsewhere. In that year,

U.S. State Department Legal Advisor Phillips Talbot affirmed that the United States does not recognize “Jewish nationality” as a concept of international law.⁵ This remains significant, given that the WZO/JA and JNF launched the concept and formal status of “Jewish nationality” as an expression of neocolonial notions of a separate Jewish “race” that are enshrined in the JNF charter (Article 3, para. 3). Moreover, what concerned the U.S. Government directly was that the para-state institutions continue to apply this separate “nationality” status to people of Jewish faith who are citizens of other countries, including the US, recruiting those citizens to colonize Palestine and/or collecting their tax-exempt monetary contributions dedicated (wittingly or unwittingly) for the Zionist population-transfer effort.

Since reregistering in the United States after a claimed “restructuring” following the staggering blow of its 1968 DC courtroom defeat, the WZO/JA and its sister JNF still enjoy U.S. federal recognition as nonprofit, tax-exempt entities in the United States. In addition to being regarded as charitable organizations, the WZO/JA and JNF benefit from a unique U.S. law that grants tax-exemption on donations from U.S. citizens to any Israeli institution already exempted from taxes within Israel. This would serve as an alternate tax-exempt channel for funding Israel’s Zionist project, including the WZO/JA and JNF, in the event that their U.S. operations were found not to be properly entitled to nonprofit status under U.S. law, since they operate as agents of the Government of Israel. That obscure law also allows the Zionist organizations to conceal the tax exempt funding from the United States for affiliates of the JNF inside Israel, including Hemanutah, which carry out settlement building on Palestinian lands with funding from the United States in violation of U.S. and public international law.

Political science professor David Newman at Ben Gurion University has revealed further how Israel has used private U.S. donations, secured under the tax-exempt status of its key para-state organizations, to develop settler colonies in the occupied Palestinian territories.⁶ The record shows that, through a variety of methods, including “government subsidies, shadowy land deals, loopholes in military spending, and an unaudited bait-and-switch in which U.S. aid was used to free up billions of dollars for spending on the settlements formally opposed by the U.S.,”⁷ the current network of colonies that house approximately 500,000 Jewish settlers is primarily funded by U.S. charitable contributions also in violation of U.S. and international law.

No significant challenge of the federal tax exempt status of the JNF and its affiliated para-state entities has taken place in the United States since the 1985 dismissal of a 1983 lawsuit challenging the tax exempt status of six Zionist organizations in the Federal District Court in Washington DC. In *Kareem Khalaf, et al v. Donald Regan, et al.*,⁸ ten Palestinians, five U.S. citizens and one Israeli brought a suit against six Zionist organizations in the U.S. Federal Court in Washington DC. The petitioners called on the Secretary of the U.S. Department of Treasury and the Commissioner of Internal Revenue to revoke the tax-exempt status of the WZO (American Section), the Jewish Agency (American Section), the United Israel Appeal, the Jewish National Fund and Americans for a Safe Israel. The tax exempt status is an indispensable incentive for American Zionists to donate millions of dollars yearly to those organizations, and without which tax exemption would substantially curtail donations. These six organizations alone account for at least \$750 million sent yearly to Israel from private U.S. donors.

The Palestinian plaintiffs in *Khalaf v. Regan*, including five elected mayors whom Israeli authorities had recently deposed, claimed that they had lost their lands and crucial water sources as a result of actions by the Israeli occupying forces in the occupied territories. Those actions, in turn, were enabled by substantial funding from the tax-exempt Israeli para-state organizations.

In addition to the violations that the Arab defendants endured, the suit also details accounts by the U.S. citizens, including one who served as the executive director of the Washington Regional Office of the JNF, about the misuse of funds collected in U.S. donations. Pursuant to *26 US Code Section 501(c)(3)*, which strictly confines the actions of “charities” to those pursuing religious, charitable or educational purposes, the claimants asserted that these organizations are merely conduits through which tax-exempt funds intended for charitable purposes flow from the U.S. directly to “components of the State of Israel.” Further, the claimants argued that the function of these organizations “...supports, financially and politically, the confiscation of land on the West Bank owned by Palestinian Arabs [converting it] for the establishment of exclusively Jewish settlements...[which] contravene the state foreign policy of the United States... [and] the public policy...in that the settlements are discriminatory on the basis of race and national origin.”

Palestine in the Courtroom

Despite weighty evidence offered by the plaintiffs, particularly the former executive director of the JNF's regional office, government lawyers convinced the judge to dismiss the case on procedural grounds, unwilling even to hear the substantive arguments, finding that the plaintiffs had no standing under U.S. law to challenge the Israeli State agencies' tax-exempt status.

In a 1999 municipal court case in New York, a JNF affiliate was denied nonprofit registration. In that case, the JNF had submitted an application to the municipal court in Nassau County for tax-exemption of its affiliate office in Long Island. The JNF claimed that its affiliate was eligible for exemption, because it was an organization whose purposes are religious, charitable and welfare related. The Nassau district attorney objected to the claim, saying that "the JNF was a political, discriminatory and racist arm of the state of Israel, and was in no way an organization whose purposes were religious, charitable or welfare related."

That frank decision provides some basis for a renewed challenge to the unlawful federal recognition of nonprofit status of the JNF, WZO/JA and their affiliates. Furthermore, a recent UN refusal to recognize the JNF-US as a nongovernmental organization eligible for consultative status with the UN through the Economic and Social Council (ECOSOC).

Despite its disqualifying features, the JNF-US sought consultative status with ECOSOC in 2007 that arguably would legitimize the JNF internationally as (1) a nongovernmental organization (2) upholding the UN Charter. On both counts, and despite a facile and highly ideological letter of support from Sen. Hillary Clinton and other members of Congress, the JNF failed in its bid, following a close vote of ECOSOC's NGO Committee.

Subsequently, rumors abounded in Geneva diplomatic circles that the U.S. delegation was planning to table a resolution at the summer 2007 ECOSOC session to recognize the JNF as an NGO in consultative status, thereby over-riding the NGO Committee's rejection. (The U.S. delegation had taken similar action earlier to restore consultative status of the conservative organization Freedom House, overturning Cuba and China's successful suasion in the NGO Committee.) Apparently realizing that an ensuing ECOSOC debate on the merits only would lead to more harm than good for the JNF's standing, the U.S. delegation demurred. After a three-year hiatus, the JNF will be eligible to reapply in 2010.

Ironically, the strongest basis for challenging the JNF's nonprofit status in the United States may come from the recent court decisions terminating the nonprofit status of numerous Muslim charities in the United States. For example, in a case from

During the olive harvest season in October 2002, the uprooting of olive trees by Occupation Forces was met with great resistance by the people of Jayyus. Here people from Jayyus village confront Occupation soldiers and bulldozers in defense of their land and trees. By October 31, 2002, after just the first month of destruction related to building the Wall, Occupation Forces had already uprooted 750 olive trees in Jayyus. October 2002. (Photo source: "PENGON/Anti-Apartheid Wall Campaign")



Palestine in the Courtroom

the U.S. District Court in Massachusetts, *United States v. Mubayyid and Muntasser*,⁹ the court denied a motion to dismiss an indictment against the founders of Care International alleged as having fraudulently obtained a charitable exemption under IRS section 501(c)(3). In seeking dismissal of the indictment, the defendants argued that they were being treated differently from non-Muslim organizations, including the Jewish National Fund. The court said:

To establish discriminatory effect, defendants must prove that similarly situated individuals of a different religion could have been prosecuted, but were not.¹⁰ A similarly situated person is “one who engaged in the same type of conduct, which means that the comparator committed the same basic crime in substantially the same manner as the defendant.”¹¹

In their motion to dismiss, the defendants contended that non-Muslim charities engaged in (and continue to engage in) activities similar to those conducted by Care. As an example, the defendants pointed to the Jewish National Fund which, they contended, has promoted information on its website about Israel’s military successes and promoted the interests of Israeli soldiers. Defendants also suggested that certain Jewish charities have conducted emergency appeals to provide aid to the victims of the conflict between Israel and Lebanon. Defendants also pointed to the activities of Catholic and Protestant groups in Ireland.

The court determined, however, that the defendants failed to show that those other religiously affiliated organizations had committed acts in substantially the same way as the defendants. They had not proved that any of these groups fraudulently obtained tax exemptions by making materially false statements, or by concealing information regarding their activities or relationships with other groups, including foreign governments. Nor had defendants demonstrated that these non-Muslim charities filed fraudulent tax returns or conspired to defraud the United States. Absent such evidence, the defendants could not establish discriminatory effect.

After having been granted tax exempt status in 1993, Care subsequently lost that status and the court found them fraudulent in 2007.

This illustrative decision by a U.S. federal district court indicates that no court has determined one way or the other the issues of whether the JNF’s charitable organization status in the United States was fraudulently obtained, but the case demonstrates that the simple granting of charitable status by the Internal Revenue Service (IRS) to JNF and WZO/JA does not establish that the grant was proper, absent court determination of the issue.



Left: On Wednesday, 6 May 2008, an ancient olive tree, estimated to be over 500 years old, was moved from an Israeli Army naval base that is undergoing extensive renovations to the Precipice Mountain site. The KKL-JNF replanted the olive tree in the “Reconciliation Forest” near Nazareth (Photo: Gadi Bar Tzion)

Center and Right: Israeli settlers set fire to 25 dunums of land from Burqa village west of Nablus on Wednesday, destroying tens of olive trees. 15 July 2009 (Photos: ActiveStills)

Political and Ideological Interference with the Law

As in many countries, political and ideological pronouncements influence the court's perceptions in the United States. In 2007, the JNF-US also obtained Pennsylvania Senator Bob Casey and Arizona Senator Jon Kyl's assistance to petition the United Nations to recognize the JNF-US as a "global environmental leader." The senators' communication to the ECOSOC NGO Committee cited the JNF's standard self-description as dedicated to six major development areas in Israel: ecology and forestation; water; community development within the 4 June 1967 boundaries; research and development; tourism and recreation; and education.¹²

The senators did not distinguish these seemingly innocuous functions from their actual purpose. More informed readers would appreciate that these JNF-US functions are consistent with the organization's illegitimate geographical scope of its activities or the inherent colonial and population transfer objectives, not benign development functions. In their present phase, the JNF and JNF-USA appear to seek bona fide—this time, under *private* law—as mere environmental service providers, serving also in third countries (other than United States and Israel/Palestine). Nonetheless, the WZO/JA and JNF core purpose remains illegal, no matter by which direct or indirect ways they pursue it.

While WZO and Jewish Agency operate and report more discretely for the Jewish community, the arguments remain the same for them as for the JNF. The JNF, for various practical and ideological reasons, is the relatively more visible organization, with its little blue collection boxes in every functionally Zionist household in the 50 or so countries of its operation. That distinction may explain the more public posture of JNF over its parent institutions. The debate over the JNF, as vital as it is to Israeli and Zionist colonial interests, also serves as a bell-weather for Zionist ideologues and strategists in order for them to gauge the level of opposition to formerly unchallenged Zionist organizations' off-shore operations.

Recent research on the subject provides substantial evidence on the roles of the JNF and WZO/JA's in acts of ethnic cleansing in violation of U.S. and international law, purposely concealed its associations with its affiliates engaged in illegal colonizing activity, has illegally redirected U.S. charitable contributions to the construction of prohibited settler colonies in violation of express domestic law and stated foreign policy, and has otherwise engaged in conduct sufficient for the defendants in the *Mubayyid* case to demonstrate discriminatory effect under the Court's analysis above.

The context and arguments of domestic U.S. jurisprudence may suggest a possible new legal correction in which U.S. federal courts could and should review the self-acclaimed nonprofit, tax-exempt status of such organizations that constitutionally violate the law. Such organizations subject to such a review would include those promoting or using violence and/or, in this case, pursuing racially oriented colonial-settler operations that also carry out population transfer while programmatically seeking to influence and undermine U.S. foreign policy. Exceptionally among bona fide charities, the JNF and WZO/JA not only engage in such activities that contradict their charitable status claims, but also the JNF-USA functions as an organ of KKL-Israel, qualifying it as the agent of a foreign state.

This legal past may be prologue.

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Endnotes: See online version at <http://www.badil.org/al-majdal/al-majdal.htm>

Canadian Corporations Cash-In on Occupation: The Case of Bil'in v. Green Mount/Green Park International

by Deborah Guterman



Demonstration against land confiscation, settlement construction and Israel's Wall in the Palestinian village of Bil'in (Photo: Hindi Mesleh).

The village of Bil'in will face-off this summer against two Canadian corporations accused of aiding and abetting the colonization of the Occupied Palestinian Territory. Bil'in has charged Green Park International and Green Mount International with illegally constructing residential buildings and other settlement infrastructure on village land, and marketing such structures to the civilian population of the State of Israel in contravention of International and Canadian Law. Under the stewardship of Ahmed Issa Abdallah Yassin, the Bil'in Village Council will attempt to hold the multinationals accountable for violations of Palestinian human rights. Perhaps more importantly, the lawsuit will, if obliquely, attack the legality of the Israeli settlement project.

The lawsuit is a testament to the ability of both the Palestinian resistance movement and the international solidarity movement to use international courts as a means to dismantle the legal structures of racial apartheid and settler colonialism that define the Israeli presence in the occupied West Bank.

The Great White Hope

Bil'in is located four kilometers east of the Green Line and is adjacent to Modi'in Illit, a large settlement bloc that sits on territory confiscated from Bil'in and the neighboring Palestinian villages of Ni'lin, Kharbata, Deir Qadis and Saffa. Since 2005, the residents of this agricultural community have led a struggle against the construction of Israel's Wall on village land. Ostensibly built to protect the existing residents of the settlement bloc, the route of the Wall was drawn to incorporate the future construction of the settlement neighborhood Matityahu East, located just east of Modi'in Illit. The Wall appropriates an additional 450 acres, which accounts for sixty percent of Bil'in's land.

Palestine in the Courtroom

In 2007, the Israeli Supreme Court deemed the route of the Wall illegal. Whereas the judicial authority ordered the Wall to be moved closer to the edge of the existing settlement boundary, it also approved plans for the construction of a part of Matityahu East, to be located just west of the reconstructed barrier. However, the military has yet to implement the Supreme Court's decision and relocate the Wall. Green Park International and Green Mount International were, along with two Israeli developers, awarded the contract to construct condominiums in Matityahu East. The suit against the Green Park companies, filed by Canadian attorney Mark Arnold in 2008, accuses Israel of "severing" village land from Palestinian control, and transferring territorial control to Israeli planning councils. The rights to develop the territory, explains Emily Schaeffer, Israeli attorney for the village, were then sold to the Green Park companies.

Legally, the Bil'in case appears sound. The two Canadian corporations stand in violation of not only international law, but Canadian Federal Law and Quebec Provincial Law as well. The Fourth Geneva Convention prohibits an occupying power from relocating part of its civilian population to the territory it has occupied. A violation of this principle is defined as a crime of war under the Rome Statute of the International Criminal Court. Insofar as Green Park International and Green Mount International constructed the buildings meant to house Israelis within the occupied West Bank, the corporations are considered complicit in the commission of this war crime.

According to Ms. Schaeffer both the articles of the Geneva Convention and the Rome Statute have been incorporated into Canadian Federal Law under the *Canadian Crimes Against Humanity and War Crimes Act of 2000*. This means that not only did Canada ratify these two important international conventions, but also endowed its national courts with the ability to prosecute Canadian citizens and corporations for war crimes, as defined under international law. Canadian courts are thus able to not only comply in the letter of the law with its international obligations, but actively enforce international norms in its own courts.

The existence of this piece of Canadian legislation is noteworthy. Canada was the first nation to transform the dictums of the Rome Statute into national law. Countries like New Zealand, Australia, Belgium, South Africa and the United Kingdom have followed suit. However, both the United States and Israel have suspended their signatures on the Statute. As a result, neither country is bound by an obligation to the convention. Green Park International and Green Mount International, however, are registered in Quebec. The two companies are thus directly subject to Quebec and Canadian law, including the War Crimes Act.



Demonstrations against the continued construction and expansion of Israeli settlements are always met by Israeli military brutality. (Photo: Hindi Mesleh)

A Court of Last Resort?

The Bil'in case is one of a growing number of civil and criminal motions filed abroad that attempt to hold Israel and its corporate agents responsible for breaches of International Humanitarian Law in the Occupied Palestinian Territory. In November 2008, the French solidarity group Association France Palestine Solidarité (AFPS) and the Palestine Liberation Organization (PLO) brought suit against Veolia Transport in France, accusing the French company of signing on to build a tramway that would link West Jerusalem to illegal colonies in the West Bank. Earlier, in 2005, the family of American activist Rachel Corrie, killed using a Caterpillar bulldozer in 2003, filed suit against Caterpillar Inc., accusing the corporation of providing bulldozers to the Israeli military knowing that they would be used to commit war crimes. These cases thus indicate an interesting new channel by which Palestinian and solidarity groups alike can challenge offences committed by the Israeli state and indict its corporate partners.

According to Ms. Schaeffer, this increased tendency reveals the failure of the Israeli court system to protect Palestinian rights. The question of the legality of the settlements has been brought to the Israeli Supreme Court on multiple occasions. However, the courts have repeatedly refused to rule on this issue. Instead, the courts deem this concern political in nature and thus outside the jurisdiction of the justice system. Palestine and its advocates have no choice, then, but to take their lawsuits abroad.

However, Green Park International and Green Mount International have motioned to dismiss the suit. They claim that Canada is not the appropriate forum in which to try the case. Instead, the defendants contend that the suit should be heard in Israel as it is the country where the activity in question has taken place. Attorneys for Bil'in are holding fast; producing documents and affidavits from experts on the Israeli legal system to show that the legality of the settlement project are not *justiciable*—cannot come to justice—in Israeli courts.

The Canadian Scene

In the run-up to the preliminary hearings, Mohammed Khatib of the Bil'in Popular Committee Against the Wall and Schaeffer toured 11 Canadian cities in order to mobilize support for the embattled village. Complementing the lawsuit, the speaking tour was the product of the efforts of various Canadian civil society groups, national unions and Palestinian solidarity activists. The tour indicates the ability of transnational activists to raise Bil'in's profile on the international scene: to give voice and platform to actors marginalized half a world away. To do so, tour organizers attempted to reach mainstream and independent media outlets, educating the broader Canadian population about the lawsuit and living conditions in the occupied West Bank.

It is most important that conscientious citizens come out in support of the lawsuit. Ms. Schaeffer has emphasized the ability of civil society groups to put pressure on the courts to judge fairly and impartially. In a suit attacking issues so political and contentious in nature, it is crucial, Schaeffer has said, for actors to make the judge feel as though he will be supported if he makes a decision that might very well influence Canadian-Israeli relations. The outcome of the lawsuit might depend on the political will of the presiding judge.

Bil'in is seeking a permanent injunction against the Canadian corporations. If successful, the Green Park companies will be ordered to destroy the buildings they have already constructed and pay two million dollars each in punitive damages to the village. However, it is doubtful that such orders will ever be implemented by Israeli authorities. In order for the ruling to be enforced, the defendants will have to petition the Israeli Supreme Court to accept the Canadian decision. Despite the final outcome, one thing is certain, the villagers of Bil'in will continue to resist the Israeli occupation with the determination, perseverance and intelligence that have characterized their people's struggle for over sixty years.

Deborah Guterman is a community organizer and activist based in Montreal, Quebec. To find out more about the court case and how to support it, visit: <http://bilinmtl.blogspot.com/>

Writing the Disappearance of Palestine

By Jonathan Cook

The Palestinian city of Nazareth, home of author Jonathan Cook. (Photo courtesy of palestineremembered.com)



Disappearing Palestine was my third book in three years, and the one that was least planned. Trained more as a journalist than as an academic, I prefer to work “on the hoof” – and against deadline – covering the latest developments in the region. But at the same time I think a worthwhile book must take account of the bigger picture, connecting the dots for readers, and offer a deeper analysis than that provided by our media – and, sadly, by many of our academics too. Also, writing a useful book about Israel demands that one set aside fears of potential slurs on one’s character.

In each book I have sought to marry the academic and journalistic approaches, respecting the need for sourcing, intellectual rigor, and the concentration on significant and enduring themes while trying not to sacrifice topicality. It is always a difficult balance. But things are moving so fast on the ground here that a meaningful analysis requires familiarity with day-to-day events and developments, the *modus operandi* of most journalists rather than academics.

Certainly, *Disappearing Palestine* was written quickly, as all my books have been. This one was completed in about six months. But in fact it was drafted even faster than that: during the period of writing I became a father for the first time and abandoned the work for several weeks. You can only write a book that quickly if you already have a firm grasp of the material and are prepared to put aside all other work. Few journalists are in that position, both because their posting to the region usually lasts only a year or two and because they have to stay on the treadmill of producing regular reports.

Effectively, I took a short sabbatical, concentrating almost exclusively on the book-writing. In fact, that is the way I have worked on all three books. Paradoxically my move to writing books rather than reporting was largely a result of the ever greater difficulties I faced getting my articles into print.

I intended to write my first book, *Blood and Religion*, during what was supposed to be a year's break from my job at the *Observer* newspaper in London. But almost as soon as I arrived in Nazareth in 2001, I got sidetracked into journalism. In the end it took four years before I found the time to start work on the book – a delay that I hope made the analysis in that book much stronger.

During those years, two things happened that made the writing of the three books an increasingly appealing prospect.

The first was that I accumulated a vast amount of factual information about what was happening to the Palestinians in both the occupied territories and inside Israel. I also became increasingly conscious of the parallels in the Palestinian experience on both sides of the Green Line and of the overarching objectives of Israeli policy that few people seemed to be discussing. It was as if I had over-eaten so badly that the only way to feel normal again was by vomiting all this stuff out. The writing process, for me, was a kind of therapy.

The second was that the longer I spent in Israel-Palestine, the harder it had become to find publications prepared to print my articles. Newspapers in London and other Western media that had previously published my work became increasingly wary of me. They were uncomfortable with the issues I presented, especially on developments inside Israel. Most Western media consider the Israel-Palestine conflict to have started with the 1967 occupation. Try to discuss issues relating to 1948 or to the current discriminatory policies affecting the Palestinians living as Israeli citizens and editors recoil. Also, the Arab media in English, which have shown a greater interest in my work, started to find themselves in financial trouble. They either stopped paying or cut wages to the point where it cost me more in expenses to write the story than I earned from it. In these circumstances – when I was barely making a living as a journalist – taking long periods off to write books became increasingly attractive.

The circumstances in which I came to write *Disappearing Palestine*, however, were slightly different from the other two books. In *Blood and Religion*, I set out to explain what Israel was hoping to achieve through its current unilateral separation policies towards the Palestinians. The book was unique, I think, in the way it placed the Palestinian citizens of Israel and their perceived “demographic threat” to Israel's Jewishness at the centre of the analysis. The second book, *Israel and the Clash of Civilizations*, sought both to examine Israeli policy in the wider Middle East by relating it to Israel's historic treatment of the Palestinians and to puncture a disabling and misleading debate on the left about who controls US foreign policy. I had thought about the key issues in both books for some time. They were largely complementary works.

Disappearing Palestine, on the other hand, could almost be called an accidental book. A publisher had proposed that I edit a volume of my journalistic writings. I was slightly unsure about the idea but decided it might be useful if the material was preceded by a substantial introduction connecting and developing the ideas in the selected essays. I had already decided on the title: *Disappearing Palestine*. I liked the double implication that Palestine was vanishing and that it was being made to vanish, as in a conjuring trick, by Israel. The title heavily determined which essays I selected and the planned themes of the introduction.

The main task in writing the introduction was to explain both how this conjuring trick had been maintained over many decades and why none of our media, human rights organizations or Israel's own left-wing critics had been successful in exposing the deception. I wanted to show that making the Palestinians disappear had been the goal of the Zionists since before Israel's creation, then explain the mechanics of how this disappearing act was concealed, and finally expose the obfuscations offered by too many of Israel's mainstream critics. It was far too tall an order for an introduction, and the section ballooned into a small book of its own. As a consequence, the collected essays shrunk – though they did not entirely “disappear”. The result is a fairly long book, divided into two parts.

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"Haifa" - Second place winner of BADIL's 2008-2009 al-Awda Award for the Best Nakba Picture by a photographer under 18. Firas Akawi, Nazareth, 15 years old. (©BADIL)

In the end, I tried to achieve two goals in the book's main, first section – formerly the introduction. First, I wanted to offer a kind of beginner's guide to the conflict but one that did not fall into the trap of simplifying the material or of insulting the reader's intelligence. I covered all the main events of the region's recent history but, by using the theme of Palestine's disappearance, I was able to keep the focus on the core issue of the conflict. I hope there is a depth as well as a breadth to the analysis.

Second, I used the research for the book as a way to answer my own questions about how this trick worked, particularly in relation to the theft of Palestinian land. There is a complex web of legal fictions devised by Israel to maintain its image as a legitimate, democratic state despite its oppression of the Palestinians under occupation and inside Israel itself. I knew a lot about the practical effects of this deception but wanted to demolish the "legal façade". I hope that is the book's main achievement.

As far as feedback is concerned, it is still early days, though the reviews – and blogs – so far have been enthusiastic. Books like this one tend to reach a fairly specialist and engaged audience. They are certain to be overlooked by mainstream publications. But unfortunately I fear there is also a danger that, because I am identified as a journalist, my books may fail to win an audience among some in the academic community too. When I studied Middle East politics for a master's degree at the School of Oriental and African

Studies in London a decade ago, I was surprised by the stultifying atmosphere surrounding the study of Israel. I would like to think that books such as *Disappearing Palestine* can reinvigorate the debate a little in our universities.

Meanwhile, I have two more books I am keen to write that would develop *Disappearing Palestine's* ideas further. For the time being they will have to simmer on the backburner. Since the book's publication, I am working once again as a journalist, for an Arab newspaper.

Jonathan Cook is a British journalist and writer based in Nazareth. His books are *Blood and Religion: The Unmasking of the Jewish and Democratic State* (Pluto, 2006), *Israel and the Clash of Civilisations: Iraq, Iran and the Plan to Remake the Middle East* (Pluto, 2008) and *Disappearing Palestine: Israel's Experiments in Human Despair* (Zed, 2008). His website is www.jkcook.net

Jonathan Cook's *Disappearing Palestine: Israel's Experiments in Human Despair*

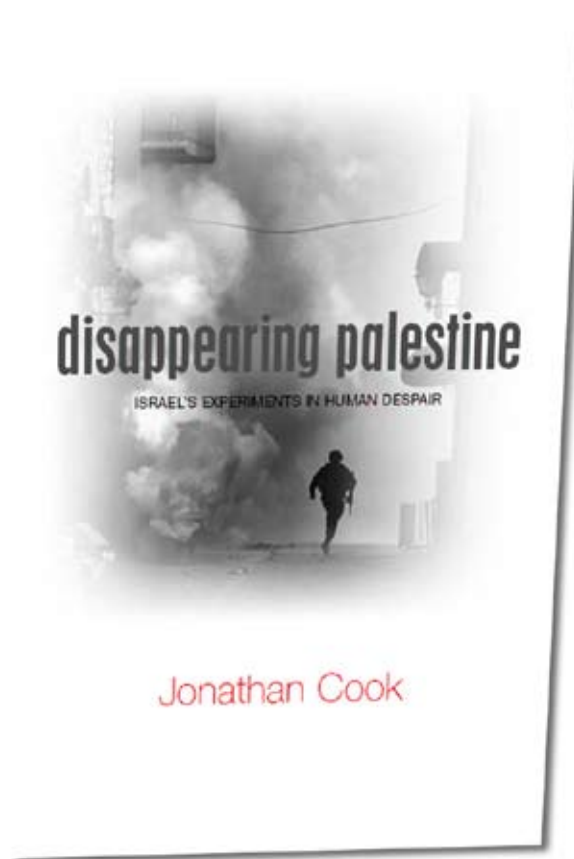
Reviewed by Marcy Newman

Towards the end of Emile Habiby's novel *The Secret Life of Sa'eed*, the pessoptimistic protagonist looks out the window of the police vehicle disappearing him to prison. Sa'eed notices that they are driving through the plain of Ibn Amir, which he tells the Israeli police. "'No, it's the Yizrael plain!'" corrects the policeman. This is just one of many scenes in Habiby's absurdist novel that illustrates the disappearance of people and places in 1948 Palestine. Elia Suleiman's 1996 film *Chronicles of a Disappearance*, in a style similar to Habiby's also makes use of this theme of Palestinian disappearance. It makes sense that one of Palestine's leading novelists and one of its leading filmmakers would illustrate the absurdity of disappearance as an existential crisis for Palestinians since the Nakba given the reality disappearance plays in daily life.

Palestinian life is plagued by various methods of disappearance at the hands of Zionist colonists: Palestinian refugees, villages wiped off the map, Palestinians disappeared to Israeli jails, Palestinians exiled and assassinated, Palestinian homes demolished. Still other things disappear; information and evidence get covered up, United Nations resolutions are passed but forgotten, and the world remains silent acquiescing to that disappearance. Resistance also disappears as Palestinian and Arab leaders normalize relations with the Zionists occupying Palestinian land.

Perhaps, then, it comes as no surprise that Jonathan Cook's most recent book illustrates some of the more egregious and recent disappearances using a similar trope. Cook's latest publication is one of the most important books on Palestine to come out in recent years. While most of the articles published in the volume appeared previously in places like *Electronic Intifada* or *Al-Ahram Weekly*, reading them as one cohesive text brings together his journalistic insight with academic analysis that makes it essential reading.

Perhaps one of the reasons that Cook's writing is so significant is due to his physical location in Nazareth. Living in 1948 Palestine enables Cook to view the ongoing ethnic cleansing in all of Palestine, not just in the West Bank and Gaza Strip. The book opens with two chapters, "The Road to Disappearance" and "Greater Israel's Lure," which lay out the context for those who are unfamiliar with Palestinian history to get a sense of the continuity between pre-state Zionist ethnic cleansing operations and those carried out after the establishment of the state on both sides of the "Green Line." While it is impossible to catalogue all the ground that Cook covers in his book, there are several key aspects of the colonial project in Palestine that Cook highlights including, but not limited to: the creation of internal refugees, a policy of divide and rule, the "demographic time bomb," the abuse of charges of anti-Semitism, the limitations on human rights workers, and the impossibility of a two-state solution.



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All of the various threads of *Disappearing Palestine* are grounded in historical context in ways that help elucidate the fact that Zionist policies have continued unabated for over sixty-one years. For instance, early on he historicizes the legal maneuvers to Judaize the land through instruments such as the *Absentee Property Law* of 1950 and the Palestinians it affected most, namely those internally displaced Palestinians who remain refugees near their land. While this law is a basic fact of Zionist history, Cook connects it to an ongoing process that also includes the practice of creating “unrecognized villages,” something that has especially affected Palestinian Bedouins who the state “deprives of all public services, from electricity to water, demolishes their homes and sprays their crops with herbicides. Governments regularly refer to the Negev’s Bedouin as ‘criminals,’ ‘squatters’ and trespassers” (37). Cook later explains that “[t]he Bedouin in the Negev are being reclassified as trespassers on state land so that they can be treated as guest workers rather than citizens” (158). This Orwellian language, of course, is part of a legal regime designed to expel Palestinian Bedouin.

It is important to highlight how Zionist policies affect Palestinians throughout historic Palestine partially because, as Cook details, all of these practices originated before 1967 and were only applied to the West Bank and Gaza Strip afterwards. The practice of disappearing Palestinians and their land in the West Bank, which one witnesses on a daily basis today, had a long history in Palestine pre-1967. Indeed, unlike other writers (read: Jimmy Carter) who go great lengths to distinguish dispossession on one side of the Green Line from the other, Cook unequivocally does not. After detailing features the “benevolent apartheid system” created in 1948 Palestine, he articulates how it has become magnified:

But even these partial equalities are being rapidly eroded as the 1 million Palestinian citizens become as assertive of their rights as their ethnic kin in the occupied territories. The first two cases of “Israeli Arabs” having their citizenship revoked signals a dangerous precedent, and newly passed laws have stripped Arab politicians of the right to criticize either the ethnic character of the state or government policies towards the Palestinians. Several of the Arab parties are at risk of being banned before the next election. This new climate is producing a much harsher apartheid system, one much less benevolent. (150-151)

That apartheid system, whether it affects Palestinians in the Naqab or in the Jordan Valley, has centered upon a few ideological tenets of Zionist colonialism. Cook traces one main facet known as the “demographic time bomb.” Cook highlights how in 2003, and propelled by the racism of Zionist ideology, the state altered legislation like the 1952 *Nationality Law* to render it illegal for Palestinian citizens of Israel to marry Palestinians in the West Bank or Gaza. Such laws were enacted in order to prevent the disappearance of a Jewish state:

These racist views have been encouraged by leading journalists, academics, and politicians of all persuasions, who regularly refer to the Palestinian minority as a “demographic time bomb” that, if not urgently defused, will destroy the state’s Jewishness one day. Many advocate drastic action. One favored measure is a policy of “transfer”--or ethnic cleansing--of the Palestinian minority. (43)

Cook makes it clear that this fear of demography and of maintaining an ethnocracy are by no means new; nor are the various strategies for maintaining Jewish supremacy in Palestine. He maps out the post-1967 plans for colonizing the West Bank and Gaza Strip in ways that ensured demographic superiority. Both of these blueprints--those of Moshe Dayan and Yigal Allon--embraced some elements of colonization and expulsion. Cook details the ways in which various governments over the last forty-two years have implemented different strains of their strategies. But the one that we see most clearly on a daily basis over that time period comes from Dayan because, as he predicted, this plan would keep international intervention at bay:

The solution, in Defense Minister Dayan’s view, was “creeping annexation.” If it was carried out with enough stealth, the illegality of Israel’s actions under international law would go unnoticed and the army would also have the time and room to “thin out” the Palestinian population. (59)

One of Dayan’s other primary objectives was to make sure that Palestinian communities--where ever they lie--would be separated from each other as islands “so that the inhabitants would never be in a position to unite and demand independence” (58). This was one of the many colonial methods of divide and rule implemented by successive Israeli regimes. Indeed,



Julien Bousac's "East Palestine Archipelago"

throughout the book Cook reveals how all of historic Palestine--not just the West Bank as in the recent archipelago by Julien Bousac that uses water to illustrate Palestinian areas that have been disappeared--has become tiny islands of dissected Palestinian communities. From the beginning the Zionist entity sought to divide Palestinians along various axes, "between Muslims, Christians and Druze; between internal refugees and non-refugees; between the cities and the villages; between those serving in the army and those not; between recognized and unrecognized communities and so on" (109). Thus, Cook shows how through demographic and spatial means Zionists divided and conquered Palestinians.

Throughout *Disappearing Palestine*, Cook makes it clear that one strategy for dividing Palestinians politically--from before the Nakba until the present--was to ensure there were no leaders that would unite Palestinians. Any such leader would disappear, especially after 1967, "Israel concentrated on intimidating, imprisoning and expelling anyone it identified as an independent leader" (109). Leaders who were allowed to emerge became what Cook calls "Israel's security contractor:"

[Yasser] Arafat's task as leader of the Palestinian Authority would soon become clear: to enforce Israel's security in the West Bank and Gaza, just as dozens of other Arab rulers had done before in their own territories on behalf of Western colonial powers. (111)

As the most recent chapter in the manifestation of colonial rule over Palestine, Cook illustrates the ways in which the leadership of the Palestinian Authority became complicit in carrying out colonial policies in the occupied territories. In this way, the Palestinian Authority became a mechanism for the Zionist entity "to crack down on Palestinian dissent, not respond to Israel's many military provocations [let alone] fight the occupation" (188)

These divide and rule tactics, which Cook details historically and contemporaneously at length, perhaps best elucidate the reasons why he can cogently culminate his insightful book with the brilliant analysis in a chapter entitled "Two-state Dreamers." Although it could just as easily appear in a Kafkaesque scene out of a Suleiman film or a Habiby novel, Cook explains precisely why it is those who are vying for a two-state solution who are woefully naive: "It requires only that Israel and the Palestinians appear to divide the land, while in truth the occupation continues and Jewish sovereignty over all historic Palestine is not only maintained but rubber-stamped by the international community" (247). Carrying out this trope of dreaming, Cook imagines what would happen if a so-called two-state solution were carried out to its logical conclusion. He highlights three significant problems with this model, the first dealing with water, if the Zionist entity pulled back to the 1967 borders:

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*Palestinian families in the Jordan Valley no longer have access to water and are forced to purchase it, often from the nearby Israeli colonies. This woman from Jiftlik explains how her family have been forced to spend one-third of their combined income on water since Israel cut off their access to the water network.
(Photo: Anne Paq ©Badil)*



Israel inside its recognized, shrunken borders would face an immediate and very serious water shortage. That is because, in returning the West Bank to the Palestinians, Israel would lose control of the large mountain aquifers that currently supply most of its water, not only to Israel proper but also to the Jewish settlers living illegally in the occupied territories. Israel would no longer be able to steal the water, but would be expected to negotiate for it on the open market. (247)

While perhaps a seemingly innocuous issue, it would become compounded by what he predicts would be a massive drive to fight the “demographic time bomb” by campaigning for Jews around the world to colonize 1948 Palestine. He argues that this would exert further pressures on the water shortage, which would in turn lead Jews to return to their countries of origin. Second, Cook identifies the labor surplus problem that would arise as a result of the dismantling of the occupation. Third, given that currently one in five Israeli citizens are Palestinian and that the birthrate for Palestinians is higher, the “demographic time bomb” would ultimately result in a large scale campaign by Palestinians inside historic Palestine for equal rights, which would include the right of return just as Jews have the Law of Return.

Ultimately Cook concludes with the only possible key to a just solution:

...if we stopped distracting ourselves with the Holy Grail of the two-state solution, we might channel our energies into something more useful: discrediting Israel as Jewish state, and the ideology of Zionism that upholds it. Eventually the respectable facade of Zionism might crumble. And without Zionism, the obstacle to creating either one or two states will finally be removed.(251)

In the end, Cook’s writing skillfully illustrates not only the history of Zionist colonialism in Palestine, but pinpoints with alacrity the obstacles and solutions to achieving a just solution for Palestinians. By including throughout his book a context that includes all Palestinians residing on what was once historic Palestine, he offers readers a perspective that is sorely lacking from those who forget Palestinians in 1948 Palestine. For these reasons and so many more Cook’s book is an indispensable tool for scholars and activists alike.

Marcy Newman is a scholar, teacher, and activist invested in human rights, and especially committed to al awda, or the Right of Return for Palestinian refugees. Specializing in resistance literature, Professor Newman has taught at Boise State University (USA) and al-Najah University (Palestine). She is a founding member of the US Campaign for the Academic & Cultural Boycott of Israel. You can visit her blog at: <http://bodyontheline.wordpress.com>

Waltz With Bashir: A Case Study on the Complicity of the Israeli Cultural Industry with Israeli Apartheid

by Ryvka Bar Zohar



One of the thousands of victims of the 1982 Sabra and Shatila Massacre (Photo from Bayan Nuwayhed al-Hout's Sabra and Shatila: September 1982)

As Israeli jets began the aerial bombardment of the already besieged Gaza Strip last December, the Israeli film *Waltz With Bashir*, directed by Ari Folman, opened across North America. The film is an animated story of the filmmaker himself who, years after the Israeli invasion of Lebanon in 1982, is compelled to look into his past when an old friend tells him that he suffers from nightmares about his army service, making Ari realize that he remembers almost nothing about that time in his life. He sets about contacting soldiers from his unit to piece together snippets of memory of their participation in the invasion. The film depicts the invasion of Lebanon in graphic animated detail, culminating in Ari's belated recollection of his unit's participation in the Sabra and Shatila massacre. The images of the massacre in the film were all too similar to those we saw on the news of the horrors inflicted on the people of Gaza, and reviews were quick to point out the timely release of the film.

Many reviewers wrote that the film was a courageous and nuanced commentary on Israel's historical and ongoing war on Palestinians. Critics were impressed by the film artistically and politically, and took it as an example of the openness and reflective nature of Israeli society, and particularly the art world, some musing that it speaks to the power of art as a form of social commentary even (or especially) in a time of war. For some attentive to the growing awareness and activism around the Palestinian call for an academic and cultural boycott of Israel, the film presented a challenge to the boycott, as it seemed to prove that in the Israeli military state, the arts may be the one beacon of hope in the midst of a right wing consensus. Some are concerned by the boycott, feeling that films like this one intervene in important ways, and that in the absence of films like these, there would be no critique of Israel available.

Clearly there is a point to be made in general about the history and potential of artistic communities to voice critique and opposition to repressive regimes and injustice. This is, in fact, the platform of the call for cultural boycott, which came from

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artists specifically speaking *as* artists to appeal to legacies of artistic participation in movements for justice. There are countless examples worldwide and throughout history of this possibility, a particularly important one being artist activism against South African apartheid, a highlight of which was the Sun City boycott in which diverse artists committed to refusing to perform and exhibit for segregated audiences in South Africa. These artists used their production as a way to publicize the wrongs of Apartheid and demonstrate the power of united voices against the South African regime. It is crucial to note that these activities were also intended to highlight the role that the arts play in broader politics. They pointed out that *not* participating in the boycott was also taking a stance: to make one's art available to

repressive regimes, which, as we saw with apartheid South Africa, rely on the arts as a public relations tool to appeal to the world and demonstrate the "democracy" of the regime, is to be complicit in the regime's whitewashing of its dirty deeds.

In the past few years, Israel has explicitly undertaken a campaign to boost its international reputation through the arts to take attention away from its inherently racist foundations and the manifestations of these foundational principles. North America has been an especially important part of this campaign, and Toronto has been chosen as the test city for the "Brand Israel" program, which aims to counter-act negative (real) portrayals of Israel as a militaristic and racist society. Film and popular culture in general is an important site for this, and the Israeli government has poured money into these new public relations campaigns. As the Israeli government is putting so much energy into these "culture as ambassador" efforts, it is important for us to examine and expose the many ways in which cultural production in Israel is related to its structure of apartheid.

Let us for a moment put aside the question of whether or not the film *Waltz With Bashir* indeed does produce a real critique of Israel, and clarify the terms of the cultural boycott. The boycott of Israel was called for by artists around the world, and its terms were clarified in the establishment of the Palestinian Campaign for Academic and Cultural Boycott of Israel (PACBI) in 2004. The campaign calls for a comprehensive boycott of Israeli academic and cultural institutions (not individuals) in the following ways:

- Refrain from participation in any form of academic and cultural cooperation, collaboration, or joint projects with Israeli institutions;
- Advocate a comprehensive boycott of Israeli institutions at the national and international levels, including suspension of all forms of funding and subsidies to these institutions;
- Promote divestment and disinvestment from Israel by international academic institutions;
- Work toward the condemnation of Israeli policies by pressing for resolutions to be adopted by academic, professional and cultural associations and organizations;
- Support Palestinian academic and cultural institutions directly without requiring them to partner with Israeli counterparts as an explicit or implicit condition for such support.

The call is based in the understanding that throughout the history of the state of Israel, academic and cultural institutions have actively participated in and perpetuated Israeli apartheid at the expense of Palestinians through research for military and demographic purposes, through the promotion of a whitewashed image of Israel, and through the active suppression of Palestinian arts. This suppression of Palestinian arts, in turn, is a part of the generalized oppression of Palestinians, who live under occupation, or as second-class citizens within the state of Israel, or as refugees denied their right to return.

The film *Waltz With Bashir* provides a useful case study to understand the context for the call to boycott and the reasons why it is so important. Through analyzing the film's text and context, we can begin to understand the role that Israeli cultural

production often plays in the maintenance of Israeli apartheid. It is important to look at this film in relation to the call for boycott precisely because the film enables this system of repression by casting doubt on the necessity of the boycott. Now that we have clarified the call for boycott, let us examine the film and consider what work films like *Waltz With Bashir* can do and what kind of critique they can offer. Furthermore, we might wonder, if we were operating in the context of a widespread support for a boycott of Israeli cultural institutions, what different critique might be amplified and what kind of alternative networks and processes of production might be made possible by the boycott?

To begin with, *Waltz With Bashir* was made with the support of the Israeli Film Fund and the New Foundation for Cinema and Television, an organization established by the Israeli Ministry of Education, Culture & Sport, with the assistance of The Israel Film Council. The website of the Film Council announces that part of its mission is “to assist Israeli filmmakers in presenting authentic Israeli stories to audiences in Israel and world-wide, thus creating an archive for the future,” and the Israeli Film Fund boasts that Israeli films have gained popularity abroad, telling audiences around the world stories of Israelis.

In its narcissism, *Waltz With Bashir* is pointedly an authentic Israeli story, operating through a dive into the psyche of a soldier. The viewer is drawn in not only to the superficial perspective of Ari, but also deep into his nightmares, his guilt, his moral complexes, and his relationship with other Israelis who share these traumatic memories. While the film may be in some ways about the Sabra and Shatila massacre, the take-away message from the film is not about the massacre at all, but rather that Israeli citizen/soldiers are deeply traumatized and conflicted about their participation in the military. It is, in this sense, a uniquely Israeli story presented to the world to empathize with. Unlike in some more direct Israeli propaganda, Palestinians in this film are not depicted as guilty and responsible for their own oppression, but rather as story-less, screaming victims. They are only background to the true victims in this Israeli story, the innocent and confused young Israelis who would rather be listening to music and playing football than waging a war on a civilian population.

This is the imprint that this film leaves on the “archive of the future,” and it works to close the historical debates on responsibility for the massacre. It is certainly not the first film made about Sabra and Shatila, so it will be added to the archive of the documents on that massacre. Its unique Israeli contribution to this archive is the perspective of the perpetrator. It presents the larger context of war as complicated and messy, and its focus on the individual stories of the feelings of Israeli soldiers obscures the bigger story that is presented in other films and documents. The bigger story is that as a part



Residents of Shatila refugee camp commemorate the 26th Anniversary of the massacre (photo: Marcy Newman)

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of Israel's invasion of Lebanon, the military armed and trained Lebanese Phalangist militias, prepared for their incursion into the camps, shot flares into the air and watched as they massacred Palestinians. This is not to mention the even larger context of the existence of Palestinian refugees in the first place (another "mishap" for which Israeli state and most of its citizenry refuse to take responsibility for), and the Israeli campaign against the PLO in Lebanon and beyond. Zooming in on the individual Israeli soldiers erases this context, giving the impression that somehow it was incidental that this occurred and that Israelis had no responsibility to speak of in what happened. If an army and a state is a collection of individuals, none of whom have the power to comprehend or act, then there is no way to address responsibility. This is the same style of argument made by Adolf Eichmann in his trial in Israel—that he was simply a bureaucrat concerned about his own career, not really focused on the larger Nazi project. For the Israeli government, then, this film "set the record straight" about who could be held responsible for this massacre, and it clears the name of Israelis by showing their complicated humanity. Certainly Ariel Sharon is implicated, but it is easy to unload responsibility onto a single high-ranking character who is no longer a political player. It is a way to effectively close the books on the massacre, as something orchestrated by a now brain-dead Israeli politician and Phalangist mobs.

This individualism comes through clearly in Folman's attitude toward the film and his work in general. In interviews about the film, Folman is explicit that he does not believe that art can make change in society and that the film was for him a tool to work through his demons. He sees himself (and perhaps the artist in general) as outside of politics. He was surprised by the support he received from the Israeli government, but shrugged it off without further comment, and toured around the world collecting praise and awards as Israeli bomber jets and ground troops crushed the Gaza Strip. Why should he care? His work was done. He had worked through his demons and told his story. His reflections on the filmmaking process are strikingly similar to the way that the soldiers are depicted in his film; neither filmmaker nor soldier have a sense of ownership or responsibility. "Really, we didn't know what we were doing. I believe you never do as filmmakers," he said in an interview. He speaks about the role of the filmmaker in the same way he presents the role of soldiers in war—confused, unknowing, surprised.

And what about Palestinians, the screaming characters in his film? What about their stories? Folman is clear that he cannot tell a Palestinian story ("Who am I to tell their stories?" he says of the Palestinians. "They have to tell their own stories.") Certainly we would not want him to try to tell the stories of Palestinians, but it is not too much to expect that he recognize how his project does not exist within a vacuum and how, in his work, he actively participates in the silencing of Palestinian voices and the further sealing off from Palestinians the space of Israeli culture (the so-called beacon of left hope).

After all, it is not that Palestinian filmmakers are not telling stories too. In 2002, filmmaker Mohammad Bakri, a Palestinian citizen of Israel, made a film *Jenin, Jenin* about the massacre in Jenin committed that year by Israeli soldiers. Bakri's story did not have a place in these Israeli stories. He certainly did not receive funding from the Israeli Film Foundation, and in fact, his film was officially banned by the Israeli Film Board. While eventually the Israeli High Court overturned the ban (with the statement by Justice Dalia Dorner: "The fact that the film includes lies is not enough to justify a ban."), Bakri was shortly afterwards charged with libel by several soldiers who participated in the massacre, and to this day faces huge legal fees and fines.

Not surprisingly, the Israeli government is not interested in just any stories from Israel, but only stories that reiterate the Jewish-Israeli image of the morally complex, strong, sacrificial character, as that is the one that will continue to excuse Israel for its ongoing and structural criminality. We should not be shocked that the Israeli film world is so actively involved in perpetuating the preferred national image. Such is the tradition of Israeli film, which has always reflected and reproduced the racism in Israeli society toward Palestinians, not to mention Arab Jews (as detailed in Ella Shohat's book *Israeli Cinema: East/West and the Politics of Representation*, 1989).

So what could Folman have done differently? Folman's assertion that he cannot tell Palestinian stories is an egregious evasion of responsibility. Did he ever ask Palestinian artists what stories they might tell if they were afforded the possibilities that he



Shatila refugee camp, 2007 (photo: Marcy Newman)

is? Did he wonder when he received state funding to make his film and received praise even from Israeli president Shimon Peres, who is not able to make films, or whose films are suppressed while his is promoted? Does he wonder why Palestinian stories are not heard and supported broadly as is his own? Had he taken the time to listen for Palestinian voices, he may have noticed that they *are* telling stories despite and in resistance to their suppression. Perhaps he would have been able to hear the call of Palestinian artists to boycott Israeli institutions, rather than waiting for their stories to miraculously emerge from the institutions which silence them. A small amount of research shows that the very organization that funded his film was the target of a publicly released letter by Palestinian filmmakers who protested its support from the European Union, while Palestinian film organizations are not even considered eligible. Unlike Folman, a number of Israeli cultural producers supported the letter of protest by Palestinian filmmakers and even wrote their own letter appealing for a response to their Palestinian colleagues' letter.

When we think about the boycott in relation to this film, it becomes all the more clear why the boycott is precisely the strategy that can call attention to the dirty relationship between some cultural production and state propaganda. The call is not to boycott Israeli individual cultural producers, but institutions. In this way, it is fully possible for individual Israeli filmmakers to imagine a different process for making films, to see themselves as a part of a collective of artists who refuse to be complicit in apartheid, and to begin from that platform in their cultural production. For those who worry that films like *Waltz With Bashir* couldn't be possible under the boycott—imagine what films *would* be possible made from a strong grassroots network of artists who refuse to participate in the oppression of Palestinians? The boycott would not be the cutting off of Israelis from cultural production, but a process of redistributing resources and re-imagining the possibilities for what artistic communities operating from principles of solidarity and justice could accomplish.

* Ryyka Bar Zohar is a New York based educator/activist, working with the New York Campaign for the Boycott of Israel and the Palestine Education Project.

Forced Internal Displacement throughout the Occupied Palestinian Territory

Badil's letter to the UN Secretary General's Representative on Internally Displaced Persons

February 18, 2009

Note: A similar document was submitted by Badil to the 10th Session of the UN Human Rights Council

Dear Prof. Walter Kälin,

Re: Forced Internal Displacement throughout the Occupied Palestinian Territory

In light of the UN Human Rights Council Resolution S-9 (2009), we wish to provide you with information pertaining to the nature and the scope of forced internal displacement of the Palestinian populations throughout the Occupied Palestinian Territory (OPT). The current situation in the Gaza Strip should not overshadow the ongoing forcible internal displacement and dispossession induced by the Israeli Occupying Power against the Palestinian population in the West Bank, East Jerusalem and the Gaza Strip since 1967.

I. Displacement due to the recent Israeli military attacks against the Gaza Strip

The recent indiscriminate and disproportionate Israeli military attacks against the Gaza Strip resulted in unprecedented forcible mass displacement. Although the total number of displaced Palestinians remains undetermined, Al Mezan Centre estimates that up to 90,000 were displaced during the hostilities (including up to 50,000 children), out of 1.5 million Gazans, most of whom are 1948 Palestinian refugees.

At the height of hostilities, UNRWA operated 50 emergency-shelters for over 50,000 displaced persons. Thousands of others sought refuge with family members or friends. Many more remained in their damaged homes. As of 2 February, three UNRWA shelters remained open hosting 388 displaced people. Although most people have left the shelters since the cease-fire, thousands remain homeless. The preliminary report of the Shelter/IDP rapid needs assessment indicates that, in surveyed localities (48 out of 61 not including refugee camps in the Gaza Strip), almost 11,000 displaced households, or over 71,000 displaced persons were staying with host families. The total number of internally displaced persons remains undetermined.

The ICRC reported that "a number of areas, [...] looked like the aftermath of a strong earthquake – entire neighborhoods were beyond recognition. Some houses had been completely levelled". According to the rapid Shelter/NFI assessment, in surveyed localities, there are 44,306 damaged housing units, in addition to complete destruction of 4,247 residences.

Israel has committed grave breaches of international humanitarian law that amount to war crimes. This includes the extensive destruction of houses and other civilian property not justified by military necessity and carried out unlawfully and wantonly. The nature and large scope of the destruction of civilian property and displacement are also in violation of the distinction and proportionality rules, especially in area with a high civilian population density such as the Gaza Strip.

Furthermore, the Israeli military attacks resulted in a widespread destruction of hospitals, schools, universities, water/sewer lines, electricity generating stations greenhouses, commercial establishments, infrastructure and roads.

Forced displacement, loss of livelihood and the lack of access to essential necessities, has a significant adverse affect on the enjoyment of the basic rights of the Palestinian civilians in the Gaza Strip. The situation is deteriorating further by the continued blockade imposed by Israel on the Strip, which particularly limits the humanitarian aid and commercial goods required to address the humanitarian, rehabilitation and reconstruction needs.

II. Forced Displacement throughout the OPT

The current situation in the Gaza Strip should not overshadow the ongoing forcible internal displacement and dispossession induced by the Israeli Occupying Power against the Palestinian population throughout the OPT, including the West Bank, East Jerusalem and the Gaza Strip on prohibited grounds of nationality, ethnicity, race and religion since 1967.

Apart from the present displacement in the Gaza Strip, more than 115,000 Palestinians are estimated to have been internally

displaced during the last four decades. Protracted occupation, colonization and systematic racial discrimination are the root causes of the forcible displacement and dispossession of the indigenous Palestinian population in the OPT. Israel's policies and practices in the OPT aim at asserting control over the maximum amount of land with a minimum number of Palestinians.

Neither the security of the population, nor any military reasons justify the forcible displacement of the Palestinian population. Individual and mass population transfer in occupied territories and arbitrary displacement are prohibited regardless of their motives under international humanitarian and human rights law. These acts amount to grave breaches of the Fourth Geneva Convention and customary international law, especially that they are carried out unlawfully and wantonly.

The following methods are used by the Israeli Occupying Power to attain its illegal demographic objectives:

1. Home Demolition – Between 1967 and 2009 Israel has demolished over 24,102 houses in the OPT, including the recent events in the Gaza Strip, the West Bank and East Jerusalem. A noticeable increase in demolitions and displacement in the Jerusalem district was recently reported by OCHA, which increases the pressure on Palestinians residents of Jerusalem to move into the West Bank.
2. Land Confiscation and Colonization – Israel occupies the entire surface of the West Bank (some 5,860 km²) and has confiscated or de facto annexed more than 3,350 km². The confiscated lands owned by Palestinians are allocated to the exclusive use of Jewish settlers and to building and expanding the illegal Jewish-only settlements (colonies). According to the 2008 data from the Israeli Central Bureau of Statistics, approximately 290,000 Jews live in the 120 (official) colonies and dozens of outposts established throughout the occupied West Bank over the past 41 years. The official statistics do not reflect the actual scope and nature of the illegal Israeli settlement activity in the OPT. More than 30 settlements and the extensive construction of buildings and infrastructure have been carried out on lands privately-owned by Palestinians in the West Bank, but are not included in the official Israeli government statistics.
3. The Closure Regime and Separation Wall – There is clear evidence of internal displacement as a result of lack of access to essential services because of the 'closure regime' and the construction of the separation Wall and its associated regime, which is making the situation of Palestinians, especially those in enclaves, untenable. Freedom of movement is systematically denied through an elaborate regime of Israeli military checkpoints and obstacles, by-pass roads and infrastructure dividing the OPT.
4. Violence and Harassment by Jewish Settlers – The Palestinian civilians are subject to acts of (Jewish) community violence, inflicting on them great physical and mental suffering amounting to torture and/or cruel, inhuman and degrading treatment or punishment. The systematic Jewish settler harassment and aggressive actions against the Palestinians and their property, coupled with the absence of an effective response to enforce the rule of law by the relevant Israeli authorities, resulted in additional displacement of Palestinians resident mainly in areas adjacent to Israeli settlements in the West Bank. A total of 523 settler-related incidents were recorded between January 2007 – October 2008.

Under international humanitarian and human rights law Israel has a positive obligation to prevent non-state actors (in this context the Jewish settlers) from displacing the Palestinian population, to carry out proper criminal investigation and to grant effective remedy. Nevertheless, Israel fails to assume its responsibilities. Thus, for instance, 90% of investigations into settler violence are closed without any indictment being filed, failing by this to protect Palestinian residents and enforce the law against the Jewish settlers. The inaction by IDF and Israel law-enforcement officials, which fail to provide adequate protection against the racially motivated attacks against the Palestinian population, is an indicator that these attacks are committed with Israel's consent or acquiescence, and constitute a violation of Article 16 of Convention Against Torture and Other Cruel, Inhuman or degrading Treatment or Punishment.

5. The "Quiet Transfer" Policy – this is an additional method used by the Israel authorities to attain its demographic objectives particularly in occupied East Jerusalem, which was illegally annexed to Israel in 1967. According to this policy, every East Jerusalem Palestinian, living outside the city for a number of years loses their right to live in East Jerusalem, and the Israeli Ministry of Interior orders them to leave their homes contrary to international humanitarian and human rights law. Between 1967 and 2007, the Interior Ministry has revoked the residency status of 8,269 indigenous Palestinians in East Jerusalem.
6. Areas at Risk – Palestinian communities at imminent risk live in occupied East Jerusalem, where the State of Israel segregates and discriminates against Palestinians under the guise of development planning. At imminent risk are also rural areas of the West Bank (Area C), mainly in the closed areas between the Wall and the Green Line, in enclaves east of the Wall, in western Bethlehem, the Jordan Valley and south of Hebron. Also at risk is the centre of the town of Hebron (H2).

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Thus, Israel's protracted military occupation cannot be considered an interim measure that maintains law and order in a territory following armed conflict, but rather an oppressive and racist regime of a colonizing power under the guise of occupation. This regime includes many of the worst features of apartheid, such as: the fragmentation of the OPT to Jewish and Palestinian areas, the construction of the Wall and its associated regime, system of separate roads, closure and permits which restricts freedom of movement on the grounds of nationality, ethnicity, race and religion.

So far, the *ad hoc* and limited international response has failed to address the root causes of displacement or to effectively prevent and respond to the ongoing forcible displacement of Palestinians, while addressing the questions of return, restitution and compensation.

In light of these concerns, we wish to call upon you and your office to address the question of forcible internal displacement throughout the OPT, and respectfully ask you to urge the UN HRC to:

1. Scrutinize Israel's policies and practices of forced displacement and dispossession of Palestinians which render the two-state solution to the protracted conflict unfeasible.
2. Address Israel's regime of institutionalized racial discrimination, which is a root cause of the displacement and dispossession of Palestinians the OPT.
3. Call upon States to undertake effective measures, including boycotts, divestment and sanctions, which can bring Israel into compliance with its obligations under international law to:
 - a. End its military occupation;
 - b. Revoke and annul its discriminatory laws, policies and practices against the Palestinians;
 - c. Ensure just and effective reparation of the Palestinian victims, including return, restitution, compensation and rehabilitation.

Eliminating Racial Discrimination Against Palestinians Means Joining the Movement Against Israel's Apartheid

21 March 2009

Badil Statement on the International Day for the Elimination of Racial Discrimination

March 21 was selected as the International Day for the Elimination of Racial Discrimination because it is the day in 1960 when police forces killed 69 people at a peaceful demonstration against the apartheid "pass law" system in Sharpeville, South Africa.

Today an equal if not more extensive pass law system dominates the Occupied Palestinian Territory. It is briefly described in a February 2009 UN report, which attests to the existence of 626 checkpoints and obstacles to movement throughout the West Bank. Israel additionally disregards the 2004 Advisory Opinion of the International Court of Justice calling for the dismantlement of Israel's illegal wall, which snakes over 700 kilometers through the West Bank, stealing its natural resources and dividing Palestinian communities from one another.

Indeed, Israel's system of racial discrimination is fundamental to the regime it has imposed on the Palestinian people. It denies the return of over seven million Palestinian refugees to the homes and lands from which they were expelled over the past sixty years despite the fact that return is a right enshrined in international law and affirmed by UN General Assembly Resolution 194 (1948) and UN Security Council Resolution 237 (1967). Meanwhile, Israel grants full citizenship to any Jewish individual through its discriminatory 'Law of Return.' This same regime relegates Palestinian citizens of Israel to an inferior status as the 'non Jewish' citizens of 'the Jewish state.' The effects of this discrimination include ongoing forced displacement, land confiscation, and denial of essential services such as health and education.

The UN's Special Rapporteur on contemporary forms of racial discrimination, Mr. Githu Muigai recently noted that "History speaks for itself. Genocide, ethnic cleansing and other war crimes have been traditionally linked to the emergence of exclusionary ideologies based on race or ethnicity." Zionism, the movement to create and maintain a Jewish state on the land of Palestine, is such an ideology, systematically relegating non-Jewish Palestinians to an inferior status. The recent brutality

inflicted upon the Gaza Strip resulting in over 1,400 deaths, 5,000 injuries and 14,000 homes damaged and destroyed, is the latest manifestation of the contempt with which Palestinian life is regarded by Israel.

Perhaps more important than recollecting the extensive evidence incriminating Israel's discrimination and its disastrous affects on the Palestinians is to shed light on the popular mobilizations fighting to counter it.

Governmental inaction towards Israel's crimes is increasingly being met with a determined and growing popular campaign to build an international Boycott, Divest and Sanction (BDS) movement against Israel, based upon a 2005 call by broad sectors of Palestinian civil society. Consciously using the tools of the South African anti-apartheid struggle, this campaign seeks to make important advances at the Israel Review Conference being organized by the BDS National Committee, to be held in Geneva, Switzerland on 18-19 April, two days before the launching of the UN Durban Review Conference (See: <http://israelreview.bdsmovement.net>).

Now is the time for people of conscience to join arms through the struggle of BDS to ensure Israel is held accountable for its violation of Palestinian human rights. This is part of the tradition of the Montgomery Bus Boycott for civil rights in the U.S south, and the dock workers of Denmark and the U.K, who refused to handle South African cargo as an act of protest against Apartheid. From these previous people's victories we gain inspiration knowing that no serious effort to eliminate racial discrimination can take place on a global scale without progress on this front.

As UN Blocks Palestine-Related Side Events at Durban Review Conference Palestinian Civil Society Launches "Israel Review Conference" in Geneva on the Eve of Durban Review

18 April 2009

Representing over 170 Palestinian civil society organizations, the Palestinian Boycott, Divestment and Sanctions National Committee (BNC) launches its Israel Review Conference under the title: "United Against Apartheid, Colonialism and Racism: Justice and Dignity for the Palestinian People." The conference takes place in Geneva between the 17th and 18th of April 2009 on the eve of the United Nation's Durban Review Conference.

At the conference, internationally renowned legal experts, researchers, academics, and activists from five continents will discuss legal strategies to hold Israel accountable for its illegal policies and practices of racial discrimination. Participants at the conference are also scheduled to discuss strategies for linking global struggles against racism, and concrete steps to challenge Israeli apartheid within the framework of the rapidly growing global movement calling for Boycott, Divestment and Sanctions (BDS) against Israel until it complies with international law.

"The Israel Review Conference has received added importance in recent weeks since the UN Office of the High Commissioner for Human Rights (OHCHR) banned side events examining the Israeli regime at the official Durban Review Conference" explains Rania Madi, one of the Israel Review Conference organizers based in Geneva. "Despite the fact that Israel's racism against Palestinians has been one of the most highlighted issues in the lead-up to the Durban Review; the BNC's Israel Review Conference has become the only place where this issue will actually be discussed"

"The only justification for preventing side-events discussing racism faced by Palestinians is that UN officials want to avoid offending Israeli sensibilities and those of its allies, such as the US and Canada," states the Director of the Badil Resource Center for Palestinian Residency and Refugee Rights, a member-organization of the BNC. "This is especially troubling because Palestinians were identified as victims of racism at the original Durban Conference in 2001, and the effects of Israel's racist regime against Palestinian have only worsened since then" says BADIL director.

Despite the OHCHR's complete ban on any mention of Palestine and Palestinians at the Conference and at side-events, those parties who are boycotting the Conference have maintained their boycott. BADIL director commented that "it would seem that by trying to appease Israel and its allies, the UN diluted its message against racism without the added benefit of the presence of those parties."

Israel Review Conference comes to a Close as Durban Review Conference Begins

20 April 2009

Thousands of people have gathered in Geneva from all corners of the globe to attend the Durban Review Conference. Despite official efforts to exclude the voices of the victims, it has brought together many civil society actors struggling against racial discrimination, including those working to end Israel's regime of racism and racial discrimination against the Palestinians. The latter have just completed a two-day Israel Review Conference that was held on 18-19 April 2009.

The Israel Review Conference brought together over three hundred people from five continents, including human rights activists and experts from South Africa, Malaysia and several European and Middle Eastern countries. The first day of the conference included two main panels that dealt with the applicability of the crime of apartheid to the state of Israel, and the development of legal strategies for obtaining the accountability of Israel and other states for their obligations under international law to respect the rights of the Palestinian people.

Practical recommendations were developed on the second day of the conference in workshops about the joint struggle of victimized communities for justice and equality; a global campaign against the Jewish National Fund as a major agency of Israel's racial discrimination; popular initiatives for promoting prosecution of war crimes and crimes against humanity; and the growing global movement for Boycotts, Divestment, and Sanctions (BDS) against Israel pending compliance with international law.

"It has been clear that Israel has worked to ensure that its regime of racial discrimination is not scrutinized at the Durban Review" said Rania Madi, one of the conference organizers. "These efforts are a major reason for the boycott of the conference by many states. The UN has tried to appease the United States, in particular, by sacrificing core issues. Now we are neither here nor there: those states are not attending, and the UN Conference will not address such core issue as Israel's protracted regime of apartheid, colonialism and occupation over the Palestinian people."

"It is important to remind ourselves why efforts such as this Israel Review Conference are important" says Pierre Galland, a former Belgian Senator and President of the European Coordinating Committee on Palestine (ECCP). "We undertake them because we cannot be sure that governments and the UN will do their job. We are here to ensure that they will eventually do so."

The Israel Review Conference was organized by the Palestinian BDS National Committee (BNC) in coordination the European Coordinating Committee on Palestine, the International Jewish Anti-Zionist Network, and the International Coordinating Network on Palestine.

Badil Resource Center Organizes Exchange between South Africa Trade Unionists and Palestinian Civic Leaders

22 April 2009

Bethlehem – South African anti-Apartheid leader and union official Ziko Tamela is in the Israeli occupied West Bank this week to gain insight into the Palestinian reality on the ground and to forge stronger links for solidarity work.

Tamela is the international secretary for the South African Transport and Communications Workers Union, which gained international attention during Israel's recent 22-day war on Gaza by refusing to off-load Israeli cargo. In doing so, it consciously sought to replicate the boycott activity of European dockworkers who refused to handle South African goods during the dark days of the apartheid regime.

Badil Resource Center organized a day's activity for Tamela including a tour of Deheishah refugee camp led by members of

its popular committee; a tour of Aida refugee camp, including the surrounding apartheid wall; an exchange with the children of Laji' cultural center, also in Aida refugee camp; and a visit to the Church of the Nativity.

In the afternoon, Badil hosted a roundtable discussion with Palestinian union leaders, civil society activists and Palestinian Authority officials.

"In South Africa we are familiar with the struggle of the people of Palestine for freedom and self-determination," Tamela noted. "As a previously oppressed people ourselves we forged alliances with freedom fighters around the world."

The gathering with Tamela included representatives from the Palestinian General Federation of Trade Unions (PGFTU), the Palestinian Transport Union, organizers of the Palestinian Prisoners Society, Palestinian Legislative Council member Issa Qaraqa', in addition to journalists and members of BADIL.

Tamela shared aspects of the South African struggle against apartheid highlighting the centrality of maintaining mobilization at the popular base before, during and after negotiations with a movement's adversary. He also called for strengthening the movement's institutional depth, while relaying a clear and united message to solidarity forces internationally, without which they will become disoriented or inattentive to developments. Tamela stressed that there were no short cuts to a "struggle on all fronts," because the oppressed must frame their agenda according to their rights and demands for liberation, and not according to what is deemed palatable.

"Because of our work, the UN declared Apartheid a crime against humanity. Palestinians must do the same, must insist that Zionism is a crime against humanity."

Tamela's visit to the OPT also included a meeting with members of the Boycott, Divestment and Sanctions National steering committee, and an appearance at the Fourth Annual Conference on Non-Violent Resistance, held in the West Bank village of Bil'in between 22 and 24 April, 2009.

Badil Oral Statement to the Durban Review Conference

Geneva, 24 April 2009

Mr. President,

Like many we had hoped that the Durban Review Conference would accomplish its objectives and not only reaffirm the Durban Declaration and Program of Action (DDPA), but also evaluate progress and strengthen its implementation. Today we feel that little of that has been achieved. We recognize the importance of identifying and addressing general cross-cutting themes and universal principles by which racial discrimination can be addressed.

At the same time, we must be aware of the fact that racial discrimination is not an abstract problem, but a practical one, which dramatically affects the lives of millions of real human beings. Therefore, any sincere effort at improving our programs to combat racism and racial discrimination must ensure that none of the DDPA- specified victims of racial discrimination are excluded from the evaluation process and related outcome documents.

The DDPA, which was adopted by consensus and overwhelmingly endorsed by the General Assembly, identified the Palestinian people as one group of victims of racism and racial discrimination, expressed concern about their plight under foreign occupation, and reconfirmed their inalienable right to self-determination, sovereignty and refugee return.

The Palestinian people is not only a victim of "foreign occupation" but also of apartheid and colonialism. Former Special Rapporteur John Dugard noted that Israel's protracted military occupation is not an interim measure that maintains law and order following armed conflict, but rather a regime of a colonizing power under the guise of occupation, which includes features of apartheid, such as: the fragmentation of the OPT, the construction of the Wall, a system of separate roads, closure and permits which restrict freedom of movement on the grounds of nationality, ethnicity and religion. Thus, apartheid and colonialism currently still exist in the present and must be addressed. They cannot be relegated only to the past.

Israel's discriminatory policies and practices are directed not only against the Palestinian population in the OPT, but also towards

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Palestinian citizens of Israel and Palestinian refugees. Israel's assertion of control over the maximum amount of land with a minimum number of Palestinian people, mainly through forcible displacement and dispossession, are rendering a just two-state solution impossible.

It is evident, therefore, that the DDPA and the Durban Review Process have so far failed to halt the institutionalized racial discrimination practiced against the Palestinian people. This is manifest in the recent war crimes and crimes against humanity committed against the 1.5 million Palestinians living in the occupied Gaza Strip.

We call upon the member States to recognize that the goals of the DDPA require the inclusion of the Palestinian people within this process until these goals are achieved (quote): "a just, comprehensive and lasting peace in the region in which all peoples shall co-exist and enjoy equality, justice and internationally recognized human rights, and security."

BADIL announces winners of 2009 Al-Awda Award

Award Ceremony Launches Nakba-61 Commemoration Activities Across the West Bank

4 May 2009,

BADIL is proud to announce the winners of the 2009 Al-Awda Award, the third annual public competition of its kind. The award aims to foster Palestinian talent and creativity and to raise the profile of the Palestinian Nakba and the right of all forcibly displaced Palestinians to return to their homes and lands.

The winners of the 2009 Award come from various parts of historic Palestine as well as Palestinian refugee communities in exile. They were honored on Saturday, 2 May, in two parallel Awda Award Festivals in the West Bank (Ramallah Cultural Palace) and the Gaza Strip (Red Crescent Hall, Tal al-Hawa, Gaza City). The festivals were attended by an enthusiastic combined audience of over 1,500 people from all over Palestine.

The awards were granted by Fawzia (Um Kamel) Al-Kurd, a Palestinian refugee in Jerusalem who has become a symbol of resistance to the ethnic cleansing of the Palestinian capital since her home was expropriated by Jewish-Israeli settlers last year, Husam Khader, member of the Palestinian National Council, Afif Ghatashe, President of Badil's Board of Directors, and Ingrid Jaradat Gassner, Director of Badil.

Winners were selected by independent juries composed of internationally renowned Palestinian artists, academics, journalists, academics and authors. The stage was also graced by the youthful Lajee Center Popular Arts Troupe from Aida camp, which opened and closed the events with a beautiful performance incorporating color, costume, movement and beauty.

This year's Al-Awda Award launches multiple activities and events across Palestine and the world commemorating the 1948 Nakba in which a majority of Palestinians were expelled from their homeland. These activities and events will point to the ongoing nature of the Nakba, the fact that Palestinian refugees have not been allowed to return to their home despite the international community's consensus on the legitimacy of this right, and the ongoing forced displacement of Palestinians throughout historic Palestine.

Badil has committed to disseminate the works of these Awda Award winners through various media. The winning poster has been adopted by the Nakba Commemoration Committee as the official poster for this year's Nakba commemoration activities. Those interested should continue to check our website as we publish the pieces of written journalism, the children's stories, and research papers through various Badil publications.

We also call on artists, writers, and researchers to prepare themselves for next year's competition, and thank all of those who participated in the one this year, including juries, awards committee, and of course the brilliant Palestinian participants themselves who have proved once again that the spirit of talent and creativity can not be caged by any oppressor.

The 2009 Award Winners are:**Category: Research Papers**

Members of the selection committee: Asad Ghanem, Norma Masriyah, Aziz Haidar, Musleh Kanaaneh, Shawqi Alayasa

	Name	Prize	Place of residence	Age
1	Wafa Yousef Ibrahim Zabadi	First	Tulkarem	36
2	Mutasem Khader Ali Adelah	Second	Jerusalem	36
3	Jihad Suleiman Salem Almasri	Third	Khan Younes/Gaza	45

Category: Children's Stories:

Members of the selection committee: Issa Qaraq'i, Salman Natour, Zakaria Mohammad, Renad Qubbaj, Mahmoud Shuqair, Majdi Shomali

	Name	Prize	Place of residence	Age
1	Amal Ka'wash	Honorable mention	London	28
2	Anas Abu-Rahmeh	Honorable mention	Bil'in/Ramallah	20
3	Shadiyah Zu'bi Kasem	Honorable mention	Nazareth	47
4	Ahmad Abdelhameed Issa	Honorable mention	Gaza	27
5	Jihan Yasser Al-Sedah	Honorable mention	Jet/Qalqilya	13
6	Ahlam Besharat	Honorable mention	Tulkarem	33

Category: Nakba Commemoration Poster

Members of the selection committee: Yusuf Katalo, Suleiman Mansour, Umayya Juha, Makbula Nassar, Sharif Waked, Mohammad Alayan, Omar Assaf, Nassar Ibrahim,

	Name	Prize	Place of residence	Age
1	Rami Hazboun	First	Abu Dhabi/Bethlehem	32
2	Kholoud Khalil Mohammad Al-Ahmad	Second	Ya'bad/ Jenin	36
3	Mohammad Hassan Abdelhadi	Third	Jenin	27
4	Mohammad Abdullah Al-Krunz	Honorable mention	Gaza	32
5	Rania Yousef Mohammad Al-Madhoun	Honorable mention	Gaza/Egypt	33
6	Bilal Al-Hirbawi	Honorable mention	Al-Khalil (Hebron)	24
7	Mohammad Adel Abdelraheem Dawud	Honorable mention	Qalqilya	23
8	Donia Ahmad Humeidan	Honorable mention	Nablus	23
9	Issam Darawsheh	Honorable mention	Nazareth/Italy	15
10	Salem Salah Tawfiq Sghayir	Honorable mention	Khalil (Hebron)	24

Category: Photograph (photographer under 18)

Members of the selection committee: Ibrahim Melhem, Loay Sababa, Ammar Awad, Atef Al-Safadi, Rula Halawani Alaa Badarnah

	Name	Prize	Place of residence	Age
1	Abdelfatah Yahia Abdelaziz Da'ajneh	First	Aida RC/Bethlehem	15
2	Firas Akawi	Second	Akka	15
3	Sana Ahmad Abdelhamid Al-Ayaseh	Third	Beit Jala	14

Category: Written Journalism

Members of the selection committee: Abdelnasser Al-Najar, Qassem Khatib, Shireen Abu Aqleh, Nasser Al-Lahham, Najib Farraj, Khalil Shaheen

	Name	Prize	Place of residence	Age
1	Muntaser Suleiman Hamdan	First	Ramallah	38
2	Hussam Mohammad Ezzedin Hamdan	Second	Ramallah	42
3	Maha Adel Al-Tamimi	Third	Ramallah	54
4	Rana Ali Awaiseh	Honorable mention	Nazareth	25
5	Shaima' Yousef	Honorable mention	Gaza	-
6	Mohammad Ahmad Hassan Othman	Honorable mention	Gaza	22
7	Marwah Awad Hassan Al-hasanat	Honorable mention	Gaza	35
8	Mahmoud Yousef Issa Khalil	Honorable mention	Jordan	23
9	Khader Yousef Mousa Manasreh	Honorable mention	Al-Khalil (Hebron)	46
10	Ra'fat Husni Faris Al-Eis	Honorable mention	Tulkarem	49

Palestinian National Nakba Commemoration Committee Statement on the 61st Year of the Palestinian Nakba

14 May 2009

To our steadfast Palestinian people,

As we live through the effects of sixty-one years of the Nakba, as the Arab-Palestinian people face the cruelest forms of torture and oppression, our struggle for dignity undergoes one of its most difficult moments. Israel persists in its denial of our fundamental and political rights, foremost among them our right to return to the cities, towns and villages from which we have been expelled since 1948. Israel continues to deny our right to self determination, and persists in pursuing its destructive policy of colonial expansion, stealing Palestinian land and displacing Palestinian people throughout historic Palestine. The current period is also witness to an unprecedented acceleration in what Israel calls the policy of 'Judaization' which has targeted the Palestinians in Jerusalem through closures, isolation, displacement, raising taxes, and erasing the Arab-Islamic past of the city by imposing these realities on the ground, and eliminating any chance of a political settlement.

From the outset of the Zionist colonial project in Palestine, murderous gangs have exercised control over Palestinian land, and with the support of Western states succeeded in expelling two thirds of the Palestinian people from their historic homeland, destroying cities, towns and villages in the process imposing the new reality of dispersal, refuge and exile on an entire people and creating one of the harshest humanitarian and political cases the world has known.

The Nakba of 1948 aimed to destroy the very foundations of the Palestinian people, its social fabric, its presence on its historic homeland, and almost erased Palestine off the world's political map upon the declaration of the establishment of Israel on most of the land of Palestine. While many wagered on the disappearance of the Palestinian people who would melt into exile, the reality was the exact opposite. Palestinians driven by their thirst for freedom rose to the defense of an Arab Palestine, crafting through their heroic epics the fundamental pillars of Palestinian national identity, reaffirming the justice of their cause and carving "Palestine" on the maps of political geography. Their refugee camps formed the cauldrons in which the flames of truth and justice kindled the burning will to return to Palestine, and to return Palestine to its people.

Today, and as we relive the memory of the Nakba, the catastrophe that befell our people, we renew our pledge to struggle for a free Arab Palestine, to keep the return to our homeland as the banner under which we struggle through all legitimate means, and particularly our right to defend our national inheritance, our social heritage, our right to a free homeland in which freedom, dignity, and democracy will be maintained, led by institutions that are accountable to the people.

It is in this context that we, the movements and organizations working to defend and struggle for the rights of Palestinian refugees, and who work to entrench a culture rooted in our rights to our historic homeland and to return to it, call upon the Palestinian political leadership to work to end the state of Palestinian division, and to confront the racist government of Israel by adopting practical policies that serve the struggle to implement refugees' right to return to their lands and homes of origin.

On this sixty-first year of the Nakba, the Nakba continues through colonial expansion, closures, segregation, land confiscation, the Judaization of Jerusalem as well as Palestinian division. It is this ongoing Nakba that obliges us to maintain principled policies that serve our national interests in order to face this oppressive Israeli regime and refrain from making any concessions in the face of all threats. The right of return remains a sacred national principle, an individual and collective right that forces us to do all that is in our power to end the state of Palestinian political and geographic division.

The mass mobilizations in our streets and cultural venues are only a reaffirmation of our people's commitment to their sacred right to return to Palestine, all of Palestine as reiterated by UN General Assembly Resolution 194, and which guarantees the right for all Palestinian refugees.

**Long live a free and Arab Palestine
Glory and immortality to our martyrs**

Palestinian National Nakba Commemoration Committee

As Israel Prepares Laws to Deepen its Discrimination, the World Must hold Israeli Racism to Account

4 June 2009

Badil Statement

For decades Israel has practiced discrimination and forced displacement against its Palestinian citizenry with impunity. But now it seeks to impose consent for its crimes upon its Palestinian victims. Three bills currently making rounds in the Israeli Knesset reveal an obscene and dangerous targeting of the individual and collective rights of Palestinian citizens.

One bill seeks to prohibit marking the day Israel declared its independence as a day of mourning. A second prohibits negating the existence of Israel as a Jewish and democratic state. The third requires Israeli citizens to sign oaths of loyalty to the state, its flag and national anthem, and to perform military or civil service. Though still at an early stage, if the bills pass, violators could face harsh sentences including imprisonment and revocation of citizenship.

Palestinian citizens of Israel are part of the indigenous inhabitants of Palestine who were made a minority in their homeland through the expulsion of two thirds of their people in 1948 by Zionist militias during Israel's establishment – events Palestinians commemorate as the Nakba (Arabic for Catastrophe.)

Their leaders have likened the potential approval of the bills to a declaration of war. The bills “require the Arab minority to deny its history and Arab-Palestinian identity on one hand and to identify with Zionist values that negate its national identity on the other,” in the words of Mohammed Zeidan, head of the Higher Arab Follow-Up Committee, an informal collective leadership body of Palestinian citizens.

Attempts to force compliance with the Zionist narrative, character and practice of the state is equivalent to demanding that Palestinians sanction their own historical dispossession while rubber stamping their contemporary second-class citizenship as “non-Jews” in the Jewish state.

Moreover these attempts come in the context of an escalating campaign against this community that seeks to paint it as a “demographic time bomb” and a “fifth column.” Yuval Diskin, Director of the General Security Service has described Palestinian citizens’ demands for equality as constituting “a strategic danger to the state”, that must be thwarted “even if their activity is conducted through democratic means”; Israeli politicians and “peace proposals” speak openly of “population exchanges” between Palestinian citizens and Israeli settlers in the West Bank; and the Hebrew press has even made recent revelations that the Israeli army is engaged in training special units to occupy Palestinian towns and villages inside Israel in the event of a regional war, to prevent protests and access to highways.

A broader campaign of incitement is at play here. These laws aim to polarize the situation between Jewish and Palestinian citizens, while justifying the quashing of legitimate Palestinian demands. Israel also appears intent to extend elements of its military practices against Palestinians in the OPT to those who are its citizens.

Given Israel's historical record of repeatedly dispossessing Palestinians – be it beneath the ‘fog of war’ or through incremental bureaucratic means - the initiation of these laws can only be seen as strengthening Israel's de jure policies of apartheid to compliment its de facto apartheid practices on both sides of the Green Line.

In this context, instead of trying to engage the new Israeli government, it is time for the world to boycott, divest and sanction the Israeli regime until it abandons all racist policies and practices and implements international law.

BDS Campaign Update

January – June 2009

Several States Downgrade Relationship with Israel in Protest over Assault on Gaza

January 2009 – Bolivia and Venezuela cut ties with Israel, shutting down Israeli embassies in their countries. Meanwhile, Qatar and Mauritania froze ties with Israel, and Jordan recalled its ambassador as an act of protest against Israeli assault on the Palestinians of the Gaza Strip.

Mauritius: Workers and Politicians Call for Boycott of Israel

11 January 2009 - The Association of Social Workers of Mauritius issued a statement calling on the public to boycott all Israeli products on the local market. The call was also reiterated by the Lalit Political party, and representatives of all of the country's political parties took part in demonstrations against Israel's assault on the Gaza Strip.

Israeli Tourism Fair Canceled in France

13 January 2009 – As a result of popular pressure from boycott campaign activists in France, the Grand Hotel Intercontinental canceled the Israel Tourism Fair which was supposed to open on 15 January, and was to include fifty Israeli tourism companies. The hotel gave in to pressure from the activists who argued that it would be obscene to advertise tourism to Israel while the Zionist state was engaged in a large scale massacre of a civilian population.

City Councilors in one of Britain's Largest City Call for Boycott Action on Israel

13 January 2009 – After protests in which large numbers of Birmingham population called on authorities to impose sanctions on Israel, the Birmingham City Council heard politicians from all political parties condemn the Israeli attack on Gaza. The cross-party statement recommended that the Council Executive lobby the British government to permit local authorities to exercise moral, ethical and human rights considerations when awarding contracts. Such a development would allow municipal authorities to cancel and refuse to renew contract with companies doing business with Israel.

Greece Obstructs US Arms Shipment to Israel

14 January 2009 – The United States military had to cancel a planned shipment of munitions from a Greek port to the U.S. warehouse in Israel due to objections from Athens. The United States has maintained a weapons stockpile in Israel over the past twenty years that Israel can ask permission to use at any time.

Foreign Press Association Boycotts Israeli Footage

15 January 2009 – The Foreign Press Association urged its members to boycott Israeli army photos and video footage to protest at the shelling of a media building in Gaza City that wounded two cameramen, who worked for Abu Dhabi television. The Association's decision was also a response to the Israeli army's refusal to allow reporters to enter the territory to cover the Israeli assault.

Australian Workers Union Calls for Boycott

27 January 2009 – The Maritime Union of Australia passed a resolution calling on the Australian government "to cut all economic, diplomatic, cultural and political ties with the Israeli state until this aggression and the Israeli siege of Gaza ends." The resolution also stresses the Union's commitment to "participate fully in the Boycott, Divestment and Sanctions (BDS) campaign" and "a position of boycotting all Israeli-registered vessels, and all vessels known to be carrying either goods destined for Israel or goods sourced from Israel."

Basque Political Prisoners Call for Boycott of Israeli Products

29 January 2009 – Basque political prisoners announced that their prison canteen offers Israeli products. The prisoners declared that they will boycott these products as an act of solidarity with the Palestinian struggle.

South African dockworkers announce ban on Israeli ship

1 February 2009 – Following a decision by the Congress of South African Trade Unions to strengthen the campaign in South Africa for boycotts, divestment and sanctions against apartheid Israel, South African dock workers announced their determination not to offload

Massive Successes in the Campaign Against Veolia

The French companies Veolia and Alstom are the two international companies that control one-quarter of the Jerusalem Light Rail project, which aims to connect Jerusalem to the illegal Israeli colonies surrounding the Palestinian capital, discriminating against Palestinian residents of the city and facilitating the expansion of the colonies. A large campaign against these two companies has yielded significant results in recent months:

21 January 2009 – Veolia has operated transportation in Stockholm for the past ten years. The municipality of the Swedish capital awarded the new contract to another company. The city councilors cited commercial reasons for their decision, which came after a fierce debate about Veolia's involvement in Israel's violations of international law raged in Swedish media.

16 April 2009 – Court Victory in France for Veolia Campaign: The Tribunal of Nanterre examining the case against Veolia and Alstom, the two French companies involved in the construction and future management of the illegal Jerusalem Light Rail project, put forward by Association France-Palestine Solidarite (AFPS) rejected the two companies' claim that it had no jurisdiction in the case against them (presented by French NGO AFPS), reaffirmed that Israel is the occupying power in East Jerusalem, not the sovereign, and confirmed the illegality of Israeli colonies built on occupied Palestinian land, including in East Jerusalem. The tribunal, however, rejected on technical grounds a request by the Palestine Liberation Organization to be a co-plaintiff.

20 April 2009 – The city council of Galway (Ireland) passed a resolution with 12 in favor and 2 opposed stating that "Galway City Council follow the example of Stockholm Community Council (who have decided not to renew the contract with Veolia to operate the City's underground system as a result of Veolia's involvement in a controversial tramway project that would connect Israeli-West Jerusalem with illegal Israeli settlements on occupied Palestinian territory) and not renew the Veolia contract for Galway Water Services."

8 June 2009 – Major BDS Campaign Breakthrough: Veolia poised to abandon Jerusalem Light Rail: According to Israeli daily Haaretz, Veolia announced its intention to sell off its shares in the Jerusalem Light Rail (JLR) project which aims to connect Israeli colonies built on occupied Palestinian territory to the city of Jerusalem. The Derail Veolia and Alstom campaign, which involves activists and groups in many countries all working to pressure the two French giants to quit the JLR project, was officially launched at the Bilbao Initiative conference in the Basque city last November. The campaign has reportedly cost Veolia approximately \$7 billion worth of contracts.

25 June 2009 - Victoria State (Australia) Dumps Connex: The government of the Australian state of Victoria announced that it will no longer contract Connex, a subsidiary of Veolia, as Melbourne's train system operator. The Dump Connex campaign had engaged in four months of intensive campaigning, distributing over 100,000 leaflets to Melbourne's commuters alerting them of Connex/Veolia's role in the illegal Jerusalem Light Rail Project. The leaflets included detachable petitions addressed to the minister responsible. For more information visit: www.boycottconnex.org

a ship from Israel that was scheduled to dock in Durban on Sunday, February 8, 2009. The pledge by the South African Transport and Allied Workers Union members in Durban reflects the commitment by South African workers to refuse to support oppression and exploitation across the globe. The workers also organized a week of demonstrations in several South African cities under the slogan "Free Palestine! Isolate Apartheid Israel!"

Israeli Women Activists Launch Database of Companies Operating in 1967 Occupied Palestine

2 February 2009 – After two years of rigorous research and documentation, the Israeli Coalition of Women for Peace launched a database and information center listing companies directly involved in the occupation of the West Bank, East Jerusalem, the Gaza Strip and the Golan Heights. The site, which already lists well over 200 companies, offers a new useful categorization of all corporate interests in the occupation, and exposes ownership links that show in detail how some of Israel's largest corporations are connected to the occupation. Visit the website at: <http://www.whoprofits.org>

BDS Updates

Boycott Campaign Activists in Catalonia disrupt Maccabi Tel Aviv Basketball Game

5 February 2009 - Dozens of BDS activists raised banners and Palestinian flags during a *Euroliga* basketball match between Barcelona and the Maccabi Tel Aviv. In an action organized by the 'Stop the war' coalition, approximately 50 people raised a banner with the slogan "South Africa yesterday, today Palestine, stop apartheid". The protesters were quickly attacked by the police, and many of the protesters continued to carry flags and balloons calling for the boycott of Israel as they were dragged out of the stadium. Watch the video at: <http://www.bdsmovement.net/?q=node/290>

The Student Movement and the Boycott Campaign

In response to Israel's brutal assault on the Gaza Strip, student activists across the United Kingdom and the United States occupied central locations on their campuses demanding that their universities sever ties with Israeli institutions until Israel ends its violations of international law.

11 February 2009 – One thousand students attending the student union meeting of Manchester University in the United Kingdom at which they passed a motion to join the campaign for Boycotts, Divestment and Sanctions against Israel until it complies with international law. The motion called for the Union to divest from Israel, boycotting all companies which support or benefit from the Israeli occupation, and to lobby the University to adopt a similar boycott policy towards Israel. The motion also condemned the University for its lack of progress in divesting from arms companies.

12 February 2009 - Hampshire College in Amherst, MA became the first of any college or university in the U.S. to divest from companies on the grounds of their involvement in the Israeli occupation of Palestine. After a two-year campaign by the group Students for Justice in Palestine, the group pressured the university's board of trustees to withdraw all investments from six companies with a proven connection to Israel's rights violation of Palestinian human rights.

18 February 2009 – Students at New York University stormed and occupied one of the central buildings on their campus delivering a list of demands to their university's administration that included a review of university investments aiming to withdraw any investments in corporations complicit in Israel's commission of human rights violations; annual scholarships be provided for thirteen Palestinian students, and that the university donate all excess supplies and materials in an effort to rebuild the University of Gaza.

27 February 2009 – After a three-day student occupation of Cardiff University's (Wales, UK) main building, the university administration gave in to student demands to withdraw all investments in two major companies supplying weapons to Israel. Cardiff was one of 28 such student occupations calling for an end to complicity in Israeli war crimes across the UK.

Canadian filmmaker Boycotts the Tel Aviv Film Festival

17 March 2009 - John Greyson, a prominent Canadian filmmaker, turned down an offer to premiere his film "Fig Trees" at the Tel Aviv International LGBT Film Festival, in support of BDS. Greyson is a member of Queers Against Israeli Apartheid. He cited what he learned at Israeli Apartheid Week as one of the main reasons for his boycott action.

Land Day – Global BDS Day of Action

30 March 2009 – Over 65 cities across the globe marked Land Day this year by calling for Boycotts, Divestment and Sanctions against Israel until it complies with international law. Events ranged from poetry readings in Delhi (India), to supermarket actions across the United Kingdom, an anti-normalization conference in Tunis, film and theater screenings in Spain and the US, protesting in front of the UN in Caracas (Venezuela), a bicycle action in front of the International Court of Justice at the Hague, and street actions in most major cities across Italy and France. See the list of global actions at: <http://www.bdsmovement.net/?q=node/349>

Israeli Exporters Report Boycott as a Problem

31 March 2009 – A Jerusalem Post article discussing problems faced by Israeli exporters quoted Yair Rotloji, chairman of the association's foreign-trade committee, stating that "21 percent of local [Israeli] exporters report that they are facing problems in selling Israeli goods because of an anti-Israel boycott."

British Government Announces that it will Review Military Exports to Israel

21 April 2009 – The British Foreign Secretary David Miliband announces that his government will review all military exports to Israel in the light of the recent offensive in the Gaza Strip which killed around 1,400 Palestinians. In a written statement, Miliband announced that all current and future licenses permitting the export of military equipment would be reviewed in the light of the three-week Operation Cast Lead. The minister said Britain provided less than 1% of Israel's military imports, but acknowledged that some components supplied by Britain were "almost certainly" used by Israel in its military offensive.

Scottish Trade Union Congress Joins BDS Campaign

23 April 2009 - Scotland joined Ireland and South Africa when the Scottish Trade Union Congress, representing every Scottish trade union, voted overwhelmingly to commit to boycott, divestment and sanctions against Israel. The resolution also states that the Trade Union Congress will "review its relationship with the Histadrut" in the context of its resolution to join the BDS campaign. This is the third example of a national trade union federation committing to BDS and is a clear indication that, while Israel can kill Palestinians with impunity and Western support, it has lost the battle for world public opinion.

UK campaigners score victory towards arms embargo

30 April 2009 - The British government announced that it will be reviewing arms sales to Israel in light of the atrocities committed in the Gaza Strip. The move represents a real victory for the Stop Arming Israel coalition, which began its campaign for a two-way arms embargo against Israel during its invasion of Lebanon in July 2006 and serves as a potent example of public pressure forcing governments to review their policies towards Israel.

BDS Reaches Norway's University of Tromsø – The "Northernmost University in the World"

5 May 2009 - Twenty-one staff members of the University of Tromsø - a leading university during the boycott of South African apartheid - signed a call for boycott of all Israeli academic institutions. The initiative calls for the 9000-student University to "establish an academic boycott of Israel", of Israel's "institutions of education, research and culture, and the institutions' representatives, regardless of religion and nationality."

Debate on Academic Boycott held at York University, Canada

11 May 2009 - Having featured separate seminars by Omar Barghouti and Edward Beck, the York Centre for International and Security Studies (YCISS) held a public debate about the proposed academic boycott of Israeli academic institutions. This debate marked an important step in raising the issue in North American universities which had previously denounced the possibility of such a debate being held at all, let alone being held with the official sanction of an arm of the university.

British Fire Brigades Union Pass BDS Resolution

14 May 2009 – The Fire Brigades Union in Britain passed a resolution which stated that "Despite international condemnation of the Israeli occupation of Palestine... Conference believes that Israel has consistently failed to uphold its duties under international law... [and] calls on the Executive Council to support and promote throughout the Trade Union and Labor Movement a campaign to boycott Israeli goods, disinvest from Israeli institutions and for sanctions to be taken against Israel, similar to those sanctions imposed by the international movement against apartheid in South Africa, until such time as Israel ends its occupation of Palestine and its oppression of the Palestinian people."

Edinburgh International Film Festival joins boycott of Israeli State institutions

17 May 2009 - The 2009 Edinburgh International Film Festival organizers decided to return money donated by the Israeli Embassy after a persistent campaign by BDS activists in Scotland. The return of the money was accompanied by an admission that it had been "a mistake to accept the £300 from the Israeli Embassy" and followed a torrent of angry letters expressing incomprehension, fury or sadness at the EIFF being associated with the Israeli government.

Israeli tourism posters removed from London Underground

22 May 2009 – After activists began to see Israeli tourism ministry advertisements in metro stations portraying the West Bank and Gaza as part of Israel, UK BDS activists launched a sustained campaign targeting the Advertising Standards Authority (ASA) which succeeded within a week to bring down the advertisements.

BDS Updates

British Academics Union Votes for Boycott Despite Legal Warning

27 May 2009 - The University and College Union (UCU), representing approximately 120,000 teaching and related staff in colleges and universities in the UK, passed a number of strongly-worded resolutions in support of the human rights of the Palestinian people and condemning Israeli atrocities in Gaza. Among the outcomes is that UCU has voted to host a Trade Union conference in the Autumn to "investigate the lawful implementation of the [BDS] strategy, including an option of institutional boycotts".

Launch of Broad Campaign against Agrexco in France

10 June 2009 – During the Israeli assault on the people of Gaza at the beginning of the year, Georges Frêche, President of the Languedoc-Roussillon region, announced, on behalf of the whole Regional Council, the setting-up of the Israeli company Agrexco in Sète harbor with wholesale promises of job creations and regional grants part of a 200 million Euro investment plan for the next 10 years. Agrexco is the main Israeli exporter of Jordan valley settlement produce, where 7,000 settlers have grabbed 95% of the land and 98% of the water resources, impoverishing Palestinian farmers and increasing their vulnerability to forced displacement. Twenty-eight French organizations, networks, unions and political parties launched a campaign to prevent setting up Agrexco in Sète.

Dexia Israel stops financing Israeli settlements

15 June 2009 - The Belgian-French financial group Dexia has announced it will no longer finance Israeli settlements in the occupied Palestinian territories through its Israeli branch Dexia Israel. This is the result of a months-long campaign in Belgium, supported by NGO's, political parties, local authorities, trade unions and other organizations. Dexia's management states that financing Israeli settlements is indeed against the bank's code of ethics and it will stop giving loans due to this.

Independent Jewish Voices (Canada) Joins Campaign of BDS Against Israel

16 June 2009 - Independent Jewish Voices (Canada) voted to join the growing international campaign in support of the Palestinian call for Boycott, Divestment and Sanctions (BDS) against Israel, at its first Annual General Meeting. This decision makes IJV the first national Canadian Jewish organization in the world to do so. The adopted resolution states that IJV will "Support the Palestinian call for a campaign of boycott, divestment and sanctions until Israel meets its obligation to recognize the Palestinian people's right to self-determination and complies with the precepts of international law, including the right of Palestinian refugees to return to their homes and properties as stipulated in UN resolution 194."

India Suspends Military Contracts

17 June 2009 - Israel Military Industries (IMI) were blacklisted by the Indian government, creating the potential for a cancellation that would put billions of dollars worth of defense contracts at risk. According to Indian news agencies, New Delhi censured seven arms manufacturers for alleged illicit trading and bribery, effectively halting all of its deals with them, IMI included. Arms trading between Israel and India began in the early 1990s, with deals amounting to \$8 billion to date. Israel is considered to be India's second biggest arm supplier after Russia.

Brazilian Football Teams Refuse to Play in Israel

18 June 2009 – The Brazilian government organized a friendly game between two of its leading soccer teams – Sao Paulo's Corinthians and Rio de Junior's Flamengo – in the West Bank city of Ramallah, while making it clear that they will not play in Israel.

"Queers Against Israeli Apartheid" March in Toronto's Gay Pride Parade

After intense pressure from Zionist organizations to ban the anti-apartheid contingent in this year's Pride Parade, Toronto's Queers Against Israeli Apartheid successfully met the challenge and marched in the parade. Included in the contingent were members of the Simon Nkoli Anti-Apartheid Committee, the Toronto gay activist group that fought against South African apartheid who carried with them the banner they carried in the parade in the 1980s.

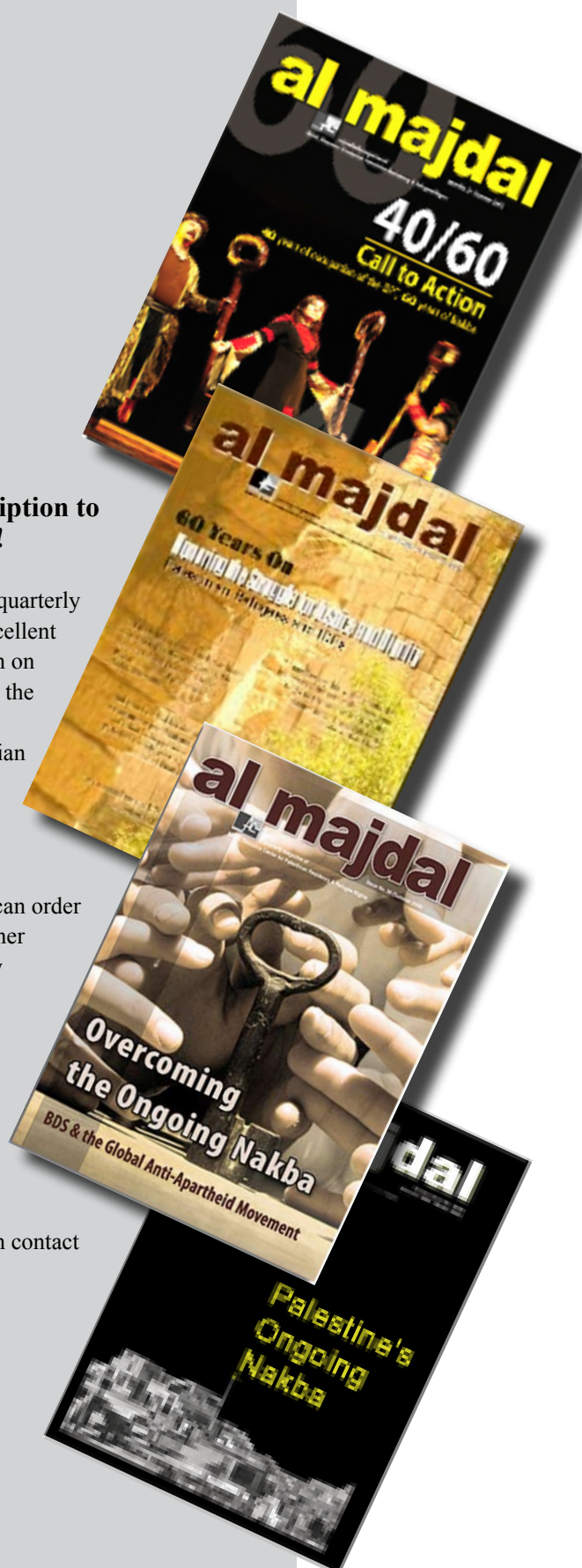
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About the meaning of al-Majdal

al-Majdal is an Aramaic word meaning fortress. The town was known as Majdal Jad during the Canaanite period for the god of luck. Located in the south of Palestine, al-Majdal was a thriving Palestinian city with some 11,496 residents on the eve of the 1948 Nakba. Majdalawis produced a wide variety of crops including oranges, grapes, olives and vegetables. Palestinian residents of the town owned 43,680 dunums of land. The town itself was built on 1,346 dunums.

The town of al-Majdal suffered heavy air and sea attacks during the latter half of the 1948 war in Palestine. Israeli military operations (Operation Yoav, also known as "10 Plagues") aimed to secure control over the south of Palestine and force out the predominant Palestinian population. By November 1948, more than three-quarters of the city's residents had fled to the Gaza Strip. Israel subsequently approved the resettlement of 3,000 Jews in Palestinian refugee homes in the town. In late 1949 Israel began to drive out the remaining Palestinian population using a combination of military force and administrative measures. The process was completed by 1951. Israel continues to employ similar measures in the 1967 occupied West Bank, including eastern Jerusalem, and the Gaza Strip.

Palestinian refugees from al-Majdal now number over 71,000 persons, and Israel has Hebraized the name of their town as "Ashkelon". Like millions of other Palestinian refugees, Majdalawis are not allowed to return to their homes of origin. Israel opposes the return of the refugees due to their ethnic, national and religious origins. *al-Majdal*, BADIL's quarterly magazine, reports about and promotes initiatives aimed at achieving durable solutions for Palestinian refugees and displaced persons based on international law and relevant resolutions of the United Nations.



The State of Israel must be held accountable to its legal obligations. Impunity for its massive and systematic violations of international law and treating it as an exception above the law of nations must be ended. Only thus can justice and dignity be restored to the Palestinian people, and lasting, comprehensive peace be established in the Middle East.

(From "United Against Apartheid, Colonialism and Occupation: Dignity and Justice for the Palestinian People" Palestinian Civil Society Strategic Position Paper for the 2009 Durban Review Conference)