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Defining the Conflict in a Time for Accountability

Defining and redefining the parameters of the protracted Israeli-Palestinian conflict is intrinsic to the conflict, because the ongoing lack of consensus on “what this conflict is about” gives rise to conflicting models of solutions. Recently for instance, proposals have been made to “revise” the Arab/Saudi Peace initiative by diluting its provisions on Palestinian refugees' right of return, in order to accommodate Israel's interest in “re-defining the conflict as a border dispute” (Tzipi Livni, 12 March).

The conflict continues to be defined as religious, ethnic, colonial, apartheid, with models of solutions spanning from a rights-based approach to the politically-driven model based on the principle of 'land for peace'. The UN has been a 'divided house' as to the nature of and solution to the conflict (See 'Known Knowns' and 'Unknown Unknowns': the UN and Israeli-Palestinian Conflict, by Terry Rempel). The role of the international community, particularly the European Union and the United States, in fostering a 'just peace' is being re-evaluated by many who question the commitment of these players to international law and democracy (See The Palestinian People at Cross-Roads, by Ingrid Jaradat Gassner and US Policy and Palestinian Rights: Is there a Way to Shift American Gears? by Nadia Hijab).

While the racist nature of Israel's regime and policies is known to Palestinians, the Palestinian National Liberation Movement has often failed to bring this to the forefront of its struggle and incorporate it into its strategy for national liberation (See Israel: The racist ghetto, by...
Nidal Azzeh and *A Call to Redefine the Conflict from a Palestinian Perspective*, by Nihad Boqai'. Renewed efforts at redefining the conflict under these terms are currently being launched, particularly among Palestinians in Israel, who are requesting equal rights in Israel and challenging the Jewish character of the state (See *The Future Vision of The Palestinian-Arabs in Israel*, by As'ad Ghanem).

At the same time, former US President Jimmy Carter’s book *Peace not Apartheid* has stirred considerable debate in the United States and around the world about the nature of the Israeli-Palestinian conflict and the applicability of the concept of apartheid (See *The Carter effect: What Mr. President says – and does not say*, by Shahira Samy). Similarly, Prof. John Dugard, the UN Special Rapporteur on the situation of human rights in the occupied Palestinian territories, reiterated in his latest report that there are elements of Israel’s prolonged military occupation of the OPT which constitute forms of colonialism and of apartheid. The Rapporteur noted that the 1973 *International Convention on the Suppression and Punishment of the Crime of Apartheid* appears to be violated by a number of Israeli practices.

The Special Rapporteur also called upon the International Court of Justice (ICJ) to examine what

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**The Crime of Apartheid**

**As defined by the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid**

**Article 2**

The term “the crime of apartheid”, which shall include similar policies and practices of racial segregation and discrimination as practiced in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:

(a) Denial to a member or members of a racial group or groups of the right to life and liberty of person:

(i) by murder of members of a racial group or groups;

(ii) by the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;

(iii) by arbitrary arrest and illegal imprisonment of the members of a racial group or groups;

(b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;

(c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;

(d) Any measures including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;

(e) Exploitation of the labor of the members of a racial group or groups, in particular by submitting them to forced labor;

(f) Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.

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are the “legal consequences of a regime of prolonged occupation with features of colonialism and apartheid for the occupied people, the occupying Power, and third States?” He further noted that the OPT are the only instance of a developing country denied the right to self-determination and oppressed by a Western-affiliated regime and called upon Western States to take steps to bring such situation to an end, in order to safeguard the future of the international human rights regime. Based on the principle of third state responsibility, all members of the United Nations have a legal obligation to protect the right to self-determination of the Palestinian people and take measures to ensure that Israel respects international law.

In February, the UN Committee for the Elimination of Racial Discrimination (CERD) also reviewed Israel's performance under the Convention on the Elimination of All Forms of Racial Discrimination. CERD concluded that a number of state practices in Israel and the OPT constitute apartheid and segregation and sent a clear call for equality between Jews and Palestinians, including equality in the right to return to one's country and repossess property. (See The UN Anti-Racism Committee Questions Israel's Policy of Apartheid..., by Badil staff).

In reaction to the impossibility to seek redress in Israeli courts, a number of initiatives are underway to pressure Israel to respect international law, such as the use of universal jurisdiction to bring cases in US and European courts. (See The Role of Universal Jurisdiction in the Fight Against Impunity, by Maria Lahood).

While legal actions are becoming increasingly important in the fight against occupation, colonialism and apartheid, civil society campaigns, such as the Campaign for Boycott, Divestment and Sanction (BDS), are vital for building pressure on states to enforce international law. Every week, new organizations join the BDS campaign to raise awareness of Israel's policies against the Palestinians (See the BDS Update). More pressure aimed at isolating and shaming Israel for its non-implementation of international law is necessary, particularly in light of the 40th anniversary of occupation in 2007 and the 60th commemoration of the Nakba in 2008.

In the meantime, Palestinian refugees around the world continue to face persecution, displacement, and detention (See Searching for Solutions for Palestinian Refugees Stuck in and Fleeing Iraq, by Badil staff and US Incarceration of Palestinian Children under Operation Return to Sender, by Karen Pennington). Their plight obliges to both, action for immediate and effective protection, and a determined effort for a rights-based solution derived from a definition of the conflict which is squarely based on international law.

*Endnotes:*

The Palestinian People at Cross-Roads

By Ingrid Jaradat Gassner

For the time being, the fragile Mecca Agreement and the subsequent Palestinian national unity government have restored a sense of direction and hope to the Palestinian people. But will the agreements hold? Will they end isolation, bring back respect and restore the economic and political lifeline of the Palestinian people? What kind of new Palestinian Authority and PLO will emerge? Will the Palestinian people be re-instated as a political actor? All of these questions have yet to be answered, and the answers will determine the fate of Palestinian unity, struggle and leadership in the longer term.

In the first months of 2007 a new chapter was added to the tragic annals of the Palestinian people: the international community accomplished in one year’s time what Israel, the major oppressor for almost 60 years, had failed to achieve. A people who had successfully remained steadfast and resisted Israel’s racist colonization, occupation and brutal military assaults for decades, was brought down in 2007 by an international sanctions regime which, for the first time in history, was imposed on an occupied people. At least 60 Palestinians were killed and hundreds injured in a wave of internecine violence in the Gaza Strip in January and February 2007. “It was a surreal but telling reflection of how lonely Palestinians have become as their leadership has seemingly been pushed into breakdown and failure, while Israel watched from the sidelines,” Sami Abdel-Shafi from Gaza describes the common feeling of Palestinians to whom “it seemed sadly clear that the moral credit of their cause was being eroded...” (1)

The above was not achieved by international sanctions alone: loss of leadership and internecine fighting might have been avoided in the absence of the overt encouragement of the election-looser Fatah by some, foremost the United States and Britain, to reverse by force the outcome of the democratic elections in the occupied Palestinian territories. According to both Palestinian...
Following a series of short-lived cease-fires and inconclusive talks between Fatah and Hamas in worldly places like Gaza, Ramallah, Cairo and Damascus, the holy city of Mecca became the Palestinian leadership’s last resort for reversing collapse. The spiritual weight of the place was obliging, and, in line with a long tradition in Middle East peacemaking, a “constructively-ambiguous” formula was found for Fatah and Hamas to announce from Mecca that Palestinian unity has finally been regained. The Mecca Agreement signed in headlines on 8 February re-affirms dialogue as the only means of conflict resolution among Palestinians, provides for a mechanism towards a new unity government of the Palestinian Authority, lays out ideas for reform and activation of the PLO, and mandates the Palestinian President to conduct political negotiations with Israel.

For the time being, the fragile Mecca Agreement and the Palestinian national unity government formed in March have restored a sense of direction and hope to the Palestinian people. But will these agreements hold? Will it end isolation, bring back respect and restore the economic and political lifeline of the Palestinian people? What kind of new Palestinian Authority and PLO will emerge? Will the Palestinian people be re-instated as a political actor? All of these questions have yet to be answered, and the answers will determine the fate of Palestinian unity, struggle and leadership in the longer term.

A major part of the answer lies now with the international community and its willingness to end the isolation of the Palestinian people and enforce Israel’s compliance with international law and UN resolutions. The Mecca Agreement, which – with the broad backing of Arab regimes – has established Hamas as a political player in the Middle East, poses a challenge. Although short of an explicit commitment to non-violence and recognition of Israel, it includes some - albeit implicit – acceptance of the Quartet’s conditions: the elected Palestinian Prime Minister Ismail Haniyeh is mandated to form and lead the new Palestinian unity government, which will “abide by the interests of the Palestinian people, preserve their rights, maintain their accomplishments and develop them and work to achieve their national goals as ratified by the PLO’s National Council [...] and respect the Arab and international resolutions and agreements signed by the PLO.”

Not surprisingly, Israel has launched a global campaign of lobbying against the terms of the Palestinian unity agreement and has announced that it will not cooperate with the Palestinian unity government. Those external actors moreover, foremost the United States and the EU, who instigated the collapse of Palestinian politics, law and order in the first place, appear determined to pursue their policy of demise of the Palestinian people. Although Russia’s President Putin has been outspoken about the need to end the international sanctions regime, a tripartite meeting between US Secretary Condoleezza Rice, Israel’s Prime Minister Ehud Olmert and Palestinian President Mahmoud Abbas on 19 February, and a meeting of the Quartet on 21 February, have remained without conclusive results.
In the longer term, the future of the Palestinian people also depends on internal unity and Palestinian capacities for reshaping the Palestinian struggle agenda outside the narrow framework of interests and privileges derived from the Palestinian Authority, whose survival is uncertain and which does not represent all of the Palestinian people.

The Quartet’s official stand thus remains unchanged. In a statement issued on 2 February 2007, shortly before the Palestinian meeting in Mecca, the latter calls for Palestinian unity behind a government “committed to non-violence, recognition of Israel and acceptance of previous agreements and obligations, including the Road Map,” while remaining silent about Israel’s blatant violations of international law and UN resolutions. It also calls for the Temporary International Mechanism (TIM) – the special mechanism set up under the sanctions regime for channeling international funds to the occupied Palestinian territories by-passing the elected government - “to be further developed to support the political process.” It does so in blatant disregard of professional opinion and studies which show that TIM is wasteful, ineffective, divisive and destroying the remnants of Palestinian governance institutions built with international aid in the past. The Quartet even “welcomed” US arming of the Presidential Guard as “efforts to reform the Palestinian security sector and thus to help improve law and order for the Palestinian people.” So-called optimism and commitment to the “goal of a Palestinian state living side by side in peace with Israel” is easily exposed as double-speak in this context.

We insist that [the Temporary Implementation Mechanism] must be temporary and if it persists beyond the current year there is a very real risk that the Palestinian Authority may be fatally undermined. This would set back not only the realization of the Palestinian rights to govern themselves in the West Bank and Gaza but also the prospect for peace.

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In the longer term, the future of the Palestinian people also depends on internal unity and Palestinian capacities for reshaping the Palestinian struggle agenda outside the narrow framework of interests and privileges derived from the Palestinian Authority, whose survival is uncertain and which does not represent all of the Palestinian people. The fact that a recent Birzeit University survey among Palestinian leaders in the 1967 occupied Palestinian territories shows that 67.5 percent support a solution in form of one secular and democratic state in all of historical Palestine for all its people, as well as new initiatives by Palestinians in Israel for a state that would provide equal rights and status to all its citizens, including Internally Displaced Persons (IDPs) and refugees, provide sources of inspiration in this context.

Hope for Palestinians is also found in the growing campaign of global civil society for boycott, divestment and sanctions (BDS) against Israel, and in the cracks that have started to appear as the political, economic and human cost of failed Middle East policy cause increasing concern in European and other capitals. South Africa has made a call to the UN Security Council,
to the United States and the European Union to lift their economic sanctions against the Palestinian Authority, and Norway, not a member of the EU, has re-launched official cooperation with the new Palestinian government. The British parliament’s International Development Committee, moreover, recommends a fundamental change in the strategic approach towards both the Palestinian Authority and Israel:

In other situations, ways have been found of UK representatives talking to those with whom we have profound and justifiable disagreements because we talk to them in their capacity as elected representatives, not in their capacity as representatives of a particular party or faction. Finding ways of achieving this [with the Palestinian Authority] does not mean a dilution of the international community’s insistence that Israel has the unqualified right to recognition and security within legitimate borders any more than our talking to the Government of Israel means endorsing its continued occupation of East Jerusalem, the West Bank and Gaza.

The British parliamentary Committee concludes that the approach of constructive engagement with Israel has not worked and should be replaced by increased pressure on Israel to end settlement expansion, dismantle the Wall, and comply with its obligations under previous agreements, the ICJ advisory opinion and UN resolutions. As an immediate measure, the Committee recommends that “the UK should urge the EU to use the Association Agreement with Israel as a lever for change and to consider suspending the Agreement until there are further improvements in access arrangements.”

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Endnotes:

(1) Sami Abdel-Shafi, Gaza City, “We are being suffocated,” The Guardian, 10 February 2007.
(4) “Millions in EU Aid destined for Palestinians paid in bank charges - More than a million euros of EU aid money to the Palestinians is being paid to the HSBC Bank every month, it was disclosed yesterday, as agencies accused authorities in Brussels of an “aid fiasco.” Oxfam said that Europe's efforts to bypass the Palestinian Authority had cost it Euro 3 million in bank charges last year – and that HSBC had received money through levying the fees for transferring allowances to more than 140,000 Palestinian workers and people on low incomes.” See: http://news.independent.co.uk/world/middle_east/article2245124.ece
(6) For the BZU poll see: http://home.birzeit.edu dsp. Initiatives of Palestinian citizens of Israel include: “The Future Vision of the Palestinian Arabs in Israel,” a document issued by the National Committee of Heads of the Arab Local Authorities in Israel (www.arab-lac.org) and a similar proposal for a new constitution for Israel published by Adalah (www.adalah.org/eng/democratic_constitution-e.pdf).
Defining the Conflict

‘Known Knowns’ and ‘Unknown Unknowns’: the UN and Israeli-Palestinian Conflict

By Terry Rempel

Presenting his last report to the UN Security Council in December 2006 outgoing Secretary-General Kofi Annan lamented that the ‘greatest irony’ in the unresolved Israeli-Palestinian conflict was that there was ‘no serious question about the broad outline of a final settlement.’ The only thing that was needed was a ‘new and urgent push for peace’.(1)

This simple assertion has become somewhat of an 'article of faith' among seasoned diplomats and policy analysts.(2) Former US Secretary of Defense Donald Rumsfeld might call this assertion a 'known known' or something that we know that we know. Annan's summary of the contours of a final settlement, however, is somewhat more specific than the Road Map, referring specifically to a solution for refugees 'consistent with the character of States in the region.'

Annan was not the first to apply this interpretation to Road Map provisions on refugees. His summary is consistent with US President George Bush's April 2004 letter of assurance to Ariel Sharon stating that 'an agreed, just, fair, and realistic framework for a solution to the Palestinian refugee issue ... will need to be found through the establishment of a Palestinian state, and the settling of Palestinian refugees there, rather than in Israel.'(3)

Last December Italian Prime Minister Romano Prodi was reported to have also endorsed this interpretation (the first European leader to do so publicly), although Israel's Channel 10 later broadcast footage appearing to show Prime Minister Ehud Olmert 'coaching' Prodi what to say.(4) Later that month the US Congress passed the Palestinian Anti-Terrorism Act formalizing American sanctions on the Palestinian Authority (PA) and calling upon the Hamas-led government to recognize Israel as a 'Jewish state.'(5)
Defining the Conflict

Anyone listening to Israeli Foreign Minister Tzipi Livni these days cannot help but pick up the same message. A future Palestinian state says Livni is ‘the answer for Palestinian refugees - wherever they may be’ and if Palestinians are ‘unwilling to say this, the world should say it for them.’ Of course, Livni’s statements are not surprising. Israel’s long-held belief that the solution for Palestinian refugees is outside the borders (yet to be established) of Israel is not a state secret.

But Annan’s remarks raise a different set of issues, particularly as the Quartet and others attempt to restart a political process to resolve the conflict. Their assertion that the ‘broad outline of a final settlement’ is well-known is premised on a ‘trade-off’ between individual and collective rights. In other words ‘peace’, as defined by the realization of collective rights (statehood), and individual (refugee) rights are irreconcilable.

Is this really how the UN understands the conflict and its solution? This brief article examines some of the defining moments in the UN’s treatment of the ‘Question of Palestine’, focusing on the General Assembly and the Security Council, with special attention to the refugee issue. It concludes with a few thoughts on what we know, or perhaps, what we think we know about the conflict and its solution.

A repository of rights

In the absence of Security Council intervention, the General Assembly has become a ‘repository’ (in the best and worst sense of the word) for the Palestine question over the past six decades. The Assembly and its subsidiary bodies, including the Council (formerly Commission) on Human Rights, have reaffirmed relevant legal principles, set up mechanisms to monitor and implement those principles, and it has initiated actions - political, humanitarian, and legal - when the Security Council has failed to do so.

Deliberations by the Assembly have generally upheld the essential complementarity of the collective right (to self-determination) and individual rights (of refugees to return, restitution, and compensation) in Israel/Palestine. While this debate is often situated in the post-1948 period, it can be traced back to 1947 when the UN ‘inherited’ the Palestine question from the British.

The 1947 partition plan was the General Assembly’s first attempt to address claims of Palestinians and the Zionist movement to self-determination in the same territory. While the recommendation to ‘over-ride’ the self-determination claims of Palestine’s majority (for a single democratic state) was hotly disputed, the Assembly did so only by providing extensive protections for the individual rights of all inhabitants of the country. Citizenship and property provisions essentially affirmed the right of Palestine’s inhabitants not to be displaced or dispossessed of their properties. In effect, the Assembly was saying that recognition of the collective right to self-determination (statehood) of each community through partition could not be used to arbitrarily restrict or violate the rights of individual Arabs and Jews.

The same formula can be found in the General Assembly’s next major consideration of the
Palestine question nearly 30 years later. In a plan put forward in 1976, the Assembly called for the establishment of a Palestinian state in the West Bank and Gaza Strip and provided for a phased return of refugees, first to the Occupied Palestinian Territories (OPT), to be followed by the return of 1948 refugees to their places of origin inside Israel. And it is endorsed in the 1983 Geneva Declaration on Palestine and Programme of Action for the Achievement of Palestinian Rights. The coming into force of the Convention on the Elimination of All Forms of Discrimination (CERD) and the International Bill of Rights further strengthened this approach, although it would be another two decades (3 in the case of CERD) before the UN bodies monitoring the implementation of these instruments would issue substantive rulings on the Palestinian refugee question. 

The 'Decider Decides'

But if the General Assembly and its subsidiary bodies are the repository for the question of Palestine, including refugee rights, the Security Council has often been, in the words of George W. Bush, 'the decider'. And it is the decider that has decided the peacemaking agenda. This has taken place through a two-fold process comprised of (1) blocking 'unwelcome' initiatives (28 vetoes, all cast by the United States, since 1973 when the Council first considered the issue of Palestinian rights) and (2) defining the 'principles of peace' that today provide the contours of a final settlement, namely Security Council Resolutions 242 (1967), 338 (1973), 1397 (2002), and 1515 (2003).

Unlike the General Assembly, the Council has generally promoted collective rights 'at the expense' of individual rights.
the expense’ of individual rights. On three separate occasions - twice in 1976 and again in 1980 - the US vetoed draft resolutions (along with the 1976 General Assembly peace plan) reaffirming the rights of Palestinian refugees to return to their homes and the right of the Palestinian people to self-determination. Resolution 237 of June 1967 reaffirms the principle of return but only in relation to those refugees first displaced in the 1967 war who originate from the OPTs, the proposed self-determination unit for a future Palestinian state. Resolution 242 of November 1967 calls for a ‘just settlement’ of the refugee issue; it does not address the right to self-determination. It would take another decade-and-a-half before the Security Council finally endorsed the self-determination rights of Palestinians through a two-state solution, although the term ‘self-determination’ is not used in Resolution 1397.

Resolution 242 also shifted the substance of the peace process in Israel/Palestine from one based on rights to one that relies primarily on a political formula (‘land for peace’). In contrast to the clarity found in the General Assembly’s approach to the conflict and the refugee issue in particular - i.e., refugees have a right to return to their homes, repossess properties, and receive compensation for damages - the Security Council-driven framework is characterized by ‘creative ambiguity’ (i.e., what does a ‘just settlement’ for refugees mean?) befitting a politically-driven approach.

In contrast to the clarity found in the General Assembly’s approach to the conflict and the refugee issue in particular - i.e., refugees have a right to return to their homes, repossess properties, and receive compensation for damages - the Security Council-driven framework is characterized by ‘creative ambiguity’ (i.e., what does a ‘just settlement’ for refugees mean?) befitting a politically-driven approach. But while the Security Council has not reaffirmed the rights of Palestinian refugees, neither has it (yet) endorsed the idea of a Jewish state as defined by Israel and alluded to by Kofi Annan. To do so would put the Council in potential conflict with the UN’s human rights mechanisms.

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**THE CANADIAN GOVERNMENT ESTABLISHES “ISRAEL ALLIES CAUCUS”**

The Canadian government established the “Canadian Parliamentary Israel Allies Caucus” at the beginning of February 2007 to strengthen relations between Israel and the evangelical Christian groups and promote “Judeo-Christian values”. Similar bodies are expected in the Philippines, South Korea, Malawi, South Africa and Finland.

Abraham Weizfeld, the Administrative Secretary of The Alliance of Concerned Jewish Canadians, said that the pro-Israeli lobby means “condoning a brutal forty-years of occupation of Palestinian territory,” the Wall, the seizure of Palestinian land and water, economic strangulation, and daily military assault on civilians making “life in the occupied territories a living hell.” Such pro-Israeli stance also contradicts the position of most Canadians; indeed, 77% of Canadians favor the pursuit of a neutral foreign policy in the Middle East, and 45% of all Canadians and 61% of the Quebeccois disagree with the pro-Israeli position of the current government. Weizfeld called upon the Canadian government to take a position in support of international law and not to provide partisan support to the “dominant economic and military power in the region.”

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**Endnotes:**

Defining the Conflict

Unlike the General Assembly's 1976 initiative which was drafted in consultation with Palestinians, Resolution 242 was adopted in the absence of Palestinian representation and was essentially forced upon the PLO as a condition for political engagement. Thus, while Security Council Resolutions 242 ('land for peace') and 1397 ('two-states' - i.e., the second partition), in particular, delineate the 'broad outline of a final settlement', the extent to which they represent a shared vision of the future - i.e., the known known - must be gauged in light of the fact that the Security Council effectively 'shifted the agenda away from the priorities articulated by Palestinians. Moreover, recent opinion polls are of little help in deciphering grassroots support for the Council's approach as they tend to exclude Palestinians outside the OPTs.

The Unknown Unknown?

It has become an 'article of faith' that everyone knows what the solution to the conflict is, and increasingly, it has been suggested that this involves a trade-off between individual and collective rights such that refugees will not be returning to their homes of origin inside Israel. The United Nations itself is a 'house-divided' on its definition of the conflict and its solution. The General Assembly and its subsidiary bodies generally affirm the essential complementarity of collective and individual rights. The Security Council has all but sidelined the Assembly, promoting a solution that offers not marriage but rather permanent divorce of the collective from the individual.

As efforts gear up towards renewing political contacts, it might be worthwhile to reexamine whether Annan's 'known known' might in fact be an 'unknown unknown' or, as Donald Rumsfeld explains, something that we don't know we don't know (but arguably really should know). Do the parties, and not just the elites, really accept the contours of a final settlement proposed by the Road Map, as clarified by President Bush and now Kofi Annan? Even Annan seems to hint at some doubt, suggesting that Israel needs to 'grasp' and 'acknowledge' the 'fundamental Palestinian grievance ... namely, that the establishment of the State of Israel had involved the dispossession of hundreds of thousands of Palestinian families, and had been followed 19 years later by a military occupation that brought hundreds of thousands more Palestinian Arabs under Israeli rule.'

One way to find out is to democratize the peacemaking process. As Jarat Chopra and Tanja Hohe observe in a recent article on international peacemaking and global governance: 'What may be feasible is a longer-term transition in which space is provided for local voices to be expressed and for communities to get directly involved in the evolution of their own cultural or political foundations, as part of a gradual integration into the national state apparatus. This means giving time for an indigenous paradigm to coexist with, or to gradually transform during the creation of, modern institutions. Integral to the process is the design of mechanisms for genuine popular participation in administrative bodies at the local level, which can also guarantee representation upward throughout the government-building enterprise from the very beginning to ensure its social viability.'

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Defining the Conflict

Endnotes:


(2) See, e.g., Remarks by Gareth Evans, President, International Crisis Group, to Concluding Plenary Session, Madrid +15 Conference, "Towards Peace in the Middle East: Addressing Concerns and Expectations," Madrid, Jan. 12, 2007 (describing the 'huge and depressing gap' between 'the collective awareness of what needs to be done' and 'collective impotence when it comes to doing it') See also, Robert L. Rothstein, How Not to Make Peace. Washington, DC: US Institute of Peace, March 2006, p. 5 (stating that the 'general outlines of a painful but bearable compromise solution - some details aside - had been apparent for many years').


(5) Palestinian Anti-Terrorism Act of 2006 (requiring Presidential certification to ensure that no assistance shall be given to a 'Hamas-controlled Palestinian Authority' unless it has 'publicly acknowledged the Jewish state of Israel's right to exist').


(8) These include: the right to return, restitution, and compensation (Res. 194 (III), Dec. 11, 1948); the inalienable rights of the Palestinian people (Res. 2535 (XXIV) C, Dec. 10, 1969); and the right to self-determination (Res. 2672 (XXV), Dec. 8, 1970). These rights are consolidated in Res. 3236 (XXIX), Nov. 22, 1974.

(9) Subsidiary bodies relating to the Palestine question include: the UN Conciliation Commission for Palestine (Res. 194 (III), Dec. 11, 1948); the Advisory Commission on the UN Relief and Works Agency for Palestine Refugees in the Near East (Res. 302 (IV), Dec. 8, 1949); the Ad Hoc Committee for the Annunciation of Voluntary Contributions to UNRWA (Res. 1729 (XVI), Dec. 20, 1961); the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of Occupied Territories (Res. 2443 (XXIII), Dec. 19, 1968); the Working Group on the Finance of UNRWA (Res. 2656 (XXV), Dec. 7, 1970); the Committee on the Exercise of the Inalienable Rights of the Palestinian People (Res. 3376 (XXX), Nov. 10, 1975); the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967 (Res. 1993/2 A), Feb. 19, 1993); and the Register of Damage (Res. ES-10/17, Dec. 15, 2006).

(10) Pursuant to Res. 377 (V) of November 1950 the General Assembly may take action in situations where there is a threat to peace, breach of peace or act of aggression if the Security Council fails to do so due to the negative vote of a permanent member. The General Assembly has launched several efforts to resolve the Palestine question, including the 1947 Partition Plan (Res. 181 (II), Nov. 29, 1947); the 1976 Recommendations by the Committee on the Inalienable Rights of the Palestinian People (Res. 31/20, Nov. 24, 1976 and 35/169; Dec. 15, 1980); the Geneva Peace Conference (Res. 36/120, Dec. 10, 1981; the call for a meeting of the High Contracting Parties to the Fourth Geneva Convention (Res.
ES-10/2, Apr. 25, 1997), and the request for an International Court of Justice Advisory Opinion on the Wall (Res. ES-10/14, Dec. 8, 2003), among others.


(12) For a contemporary perspective see, the UN Guiding Principles on Internal Displacement. Sec. II - Principles Relating to Protection Against Displacement (Principle 5 stating 'All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons'; Principle 6(1) stating 'Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence').


(18)In addition, the United States has pledged to block all competing or parallel initiatives in the Security Council as long as the peace process is 'actively ongoing'. US Letter of Assurances to the Palestinians,
Defining the Conflict

Oct. 18, 1991, in Palestine Yearbook of International Law 6 (1990-91), 281-2 cited in John Quigley, 'The Role of Law in a Palestinian-Israeli Accommodation', Case Western Reserve Journal of International Law 31 (1999), 351-82, pp. 356-7. This was followed by a short-lived and unsuccessful initiative to 'expunge' all resolutions relating to the conflict, including those on refugees, from the General Assembly's record. See, Ambassador Madelaine K. Albright, Letter to Ambassadors to the United Nations, New York, Aug. 8, 1994, in Journal of Palestine Studies 24 (1995), p. 153 (stating "We believe that resolution language referring to "final status" issues should be dropped, since these issues are now under negotiation by the parties themselves. These include refugees..."). See also, 'American and European Initiatives to Cancel the Right of Return', al-Majdal 20 (December 2003), p. 41.


(20) The Road Map, calling for an 'agreed, just, fair, and realistic' solution is characterized by the same ambiguity. On the question of Israel's withdrawal from the 1967 occupied Palestinian territories, slight differences in the English and French versions have given rise to questions by Israel and the United States about the extent of the required withdrawal. For an overview see, Donald Neff, 'The Clinton Administration and UN Resolution 242', Journal of Palestine Studies 23/2 (Winter 1994), pp. 20-30.

(21) See, e.g., Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel (1998), supra note 17, para 10 (stating 'The Committee expresses concern that a excessive emphasis upon the State as a "Jewish State" encourages discrimination and accords a second class status to its non-Jewish citizens').

(22) See, e.g., Statement by the Acting Permanent Observer of the Palestine Liberation Organization at the fifth meeting of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, UN Doc. A/AC.183/2, Mar. 9, 1976.

(23) The PLO initially opposed Resolution 242 because it did not recognize Palestinians as a people with the right to self-determination and because it failed to explicitly recognize the right of refugees to return to their homes. For an explanation see the PLO's 10-point program adopted at the 12th meeting of the Palestine National Council.

(24) See, comments on the role of international actors in Owning the Process: Mechanisms for Public Participation in the Peacemaking Process, An Accord Programme Joint Analysis Workshop Report, Old Jordan's, Buckinghamshire, UK, 1-3 February 2002, p. 5. Also see, former UNHCR High Commissioner Sadako Ogata, 'Healing the Wounds: Refugees, Reconstruction and Reconciliation', Report of the Second Conference at Princeton University, 30 June – 1 July 1996 (stating 'When societies have been fundamentally shaken by conflict and group co-existence is at stake, peacebuilding requires an agreed concept of society. Perhaps even when one party totally defeats the other, there must be a minimum common understanding of the causes of the conflict and a genuine compromise on the main features of the future society. ... The international community can help to overcome difficulties in implementation, but it cannot substitute for the essence of a common concept of society. That concept must be owned by the people, not by the international community').


(26) Supra, note 1.

(27) Jarat Chopra and Tanja Hohe, 'Participatory Interventions', Global Governance 10/3 (2004), 289-306, p. 289. See also Barnes stating 'As leadership systems vary between societies, there is a need to understand existing societal structures of authority and decision-making. Several suggested that it is important to involve traditional leaders or authority figures as they can help to ensure legitimacy of process as well as its accessibility in the communities where they are rooted.' Barnes, supra note 23, p. 5.
Defining the Conflict

US Policy and Palestinian Rights: Is there a Way to Shift American Gears?

By Nadia Hijab

In early 2007 there seemed to be some movement to revive the Israeli-Arab peace process. United States Secretary of State Condoleezza Rice talked of a “political horizon” for the Palestinians and promised to remain engaged. How should one interpret these moves against the background of decades long US support for Israel? And, in the all too likely event that Rice’s efforts do not lead to a resolution, what should advocates of a just peace between Palestine and Israel do?

The Bush Years

Rice recently recalled that President George W. Bush was the first American president to make “the creation of a Palestinian state, with territorial integrity, with viability, living side by side with Israel, in peace and security” a matter of policy.1

Some policy, some state. The Bush years have been marked by, among other things, continued Israeli settlement in the West Bank and East Jerusalem, rapid construction of the Separation Wall and a vast Jewish-only road network throughout the West Bank, and the collapse of the Palestinian economy with the US-led cut off of direct aid to the Palestinian Authority after the free and fair election of Hamas to government in January 2006.

Moreover, the April 2004 exchange of letters between Bush and former Prime Minister Ariel Sharon provided a US green light for permanent Israeli control of much occupied Palestinian land, denial of the Palestinian Right of Return, and preservation of the Jewish identity of Israel.

The Administration was unwilling to back even those agreements that Rice herself had
facilitated such as the 15 November 2005 Agreement on Access that was supposed to provide free access between Gaza and the rest of the world but that failed to free even the Gaza harvest.

A Look Back

The absence of peace led to enormous human suffering and loss. Yet, while it is easy to criticize the Bush Administration, one should not forget that many of these Israeli policies evolved during the term of the far more “engaged” former president Bill Clinton, who was happy to usher in the Oslo peace process in September 1993. As one writer noted, “Oslo enabled Israel to begin separating both peoples without having to withdraw from the Occupied Territory.”(2) The system of closures in the West Bank was institutionalized after March 1993, Gaza was sealed off by an electronic wall in 1994, and the pass system was introduced in 1994, with passes given to less than 3% of the Palestinian population in 1995.

In other words, it was during the heyday years of the Oslo peace process that Israel began to introduce what many more people, including former president Jimmy Carter, are now calling Israel’s system of apartheid in the West Bank and East Jerusalem.(3)

Over the past six decades, the US has reversed Israeli actions towards the Arabs on three noteworthy occasions: Dwight D. Eisenhower’s demand for withdrawal from Egypt in 1956, Carter’s demand for withdrawal from south Lebanon in 1978, and George H. W. Bush’s refusal to support $10 billion in loan guarantees for Israel unless it halted settlements.(4) Otherwise, successive US Administrations have not sustained pressure on Israel to abide by international law and UN resolutions dealing with the part of mandate Palestine that became Israel in 1948 or in the Palestinian lands it occupied in 1967.

Why Is US Policy the Way It Is?

The debate that often rages among US groups dealing with the Israeli-Palestinian conflict is whether the pro-Israel lobby has a stranglehold over US Middle East policy, or whether the US has its own foreign policy agenda that Israel serves.

Certainly, there would be a painful domestic cost for any US administration that takes a stand against Israel. Members of Congress and the Administration provide considerable support, due in large part to ceaseless efforts by the pro-Israel lobby. This helps to maintain US aid to Israel at over $3 billion a year and secures a US veto against efforts at the UN to apply international law.

At the same time, when the US believes its interests are threatened, it acts to stop Israel in its tracks. For example, when Israel sold unmanned drones to China in defiance of US restrictions, the US in 2005 slapped sanctions on Israel, suspending cooperation on several arms development projects. It insisted not only on cancellation of the sale but also on stringent conditions before it would resume cooperation on arms technology.(5)

And there are recent hints that the US may be using Israel in ways Israel does not want to be used. When Israel escalated Hizballah’s capture of two soldiers in July 2006 into all-out
war, some reports suggested that Israel wanted to end the war sooner than the US did. More recently, there were reports that Israel would like to talk to Syria about a peace deal, but is not being allowed to do so by the US, whose current policy is to isolate Syria and Iran as it deals with the bloody chaos unleashed by its 2003 invasion of Iraq.

Moreover, as several analysts have noted, US support for Israel increased exponentially after it showed its military prowess in 1967, which led to what is now known as the “special relationship.” Some Israelis now fear that Israel’s inability to crush Hizballah in 2006 - although the US gave it ample time to do so by forestalling attempts to reach a ceasefire - will lead the US to reappraise the special relationship.

Explaining the Present Movement

The US clearly has its own interests in the Middle East: not just access to but control of major sources of oil, as the EU, China and India shape up to become economic and political superpowers over time. US oil interests have informed its policy in the region for decades, particularly towards the Gulf. The US supported Saddam Hussein against Iran during the 1980s, supported Kuwait against Iraq’s 1990 invasion, and controlled Iraq thereafter by a US-led, UN-imposed regime of sanctions from 1990 to 2003.

The main difference between past and present US policy is that the radical rightwing elements of the US policy and defense establishment known as the Neocons have opted for a less subtle expression of US control, to the horror of the earlier architects of policies of indirect control such as former secretary of state James Baker. Throughout, Israel has positioned itself as a strategic ally to US interests so as to promote its own interests, much as it had done with Britain during its days of empire.

Today, the US needs Arab allies in its attempts to secure a stable Iraq so that it can hand over direct control to the Iraqis and exercise indirect control from the massive military bases it has constructed in the country since 2003. But now those Arab allies are more insistently demanding
movement on the Israeli-Palestinian front. The European Union is also more emphatically demanding action, most recently when German Chancellor Angela Merkel visited Washington D.C. to do so as soon as Germany became EU president in 2007. Meanwhile, Russia is resurgent, in the region and beyond.

Hence Rice’s recent re-engagement. However, it is unlikely that the US and Israel will offer the Palestinians the minimum that any leadership can accept: that is, a sovereign state in the West Bank, Gaza, and East Jerusalem, which accounts for 22% of mandate Palestine, and a solution for Palestinian refugees that they would consider just. At most, we might see an amelioration that would bring some relief to Palestinians under occupation but would not lead to a comprehensive settlement.

**Which Way Forward?**

There are two main lessons to be drawn from the above account: nothing is immutable, not even the US-Israeli special relationship, and an enormous amount of work is needed to achieve Israeli and US policies that are based on human rights and international law.

Within the US, movements are building to challenge current US policy. They include “realists” such as John Mearsheimer and Stephen Walt (of The Israel Lobby fame) as well as liberal Zionist groups that argue that neither American nor Israeli interests are served by an alliance that precludes a fair settlement of the conflict. They also include a range of US human rights advocates - Christians, Muslims, Jews, Arab Americans, African Americans, and many others - who have come together in such organizations as the US Campaign to End the Israeli Occupation
to argue for a human rights-based US policy towards the conflict and to push their elected representatives in that direction. There are some signs, albeit modest, of change, for example, the resolution introduced in the House of Representatives on 8 February 2007 calling for US support of a lasting peace in Palestine and Israel.

Within Israel, the small anti-occupation camp is being joined by groups that also work for equal rights between Jews and Arabs, thus challenging the exclusively Jewish identity of Israel. The Israeli Arab leadership recently demanded, for the first time ever, that Israel should become the state of all its citizens. Internationally, there is a small but growing movement for boycott, sanctions, and divestment against Israel’s occupation similar to that against South Africa.

These movements, if reinforced through constant struggle, are what will, over time, change US policy and bring a just and peaceful resolution to Palestine, Israel, and beyond. And struggle there must be. Too many people have suffered too much to do otherwise.

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Endnotes:

(3) In 1973 the United Nations General Assembly defined apartheid, which means “apartness” or “separate” in Afrikaans, as a crime against humanity that was not specific to South Africa and adopted the International Convention on the Suppression and Punishment of the Crime of Apartheid.
(4) Israel suspended construction for a period of time and agreement was reached between Bush and the late Yitzhak Rabin on the loan guarantees.
(5) See, for example, The Guardian 13 June 2005, “US acts over Israeli arms sales to China.”.
(6) See, among others, The Independent 2 February 2007, “After 40 years, could the ice be melting on the Golan Heights?”
(7) See, e.g., The New York Times, 13 November 2006, “In New Middle East, Tests for an Old Friendship”.
A view of the rapidly expanding Jewish colony of Har Gilo closing the hill-top above the Palestinian town of Beit Jala. Har Gilo, constructed on land of al-Walaja and Beit Jala, will be located west of the Wall, and a new access road for the settlers is under construction. © BADIL

Land of the Walaja refugees to be cut off by the Wall. Although confiscated by Israel since 1948, and despite frequent patrols by Israeli border police, local Palestinian residents are currently using the land for agriculture, grazing and recreation. (view from north to south). © BADIL

View from the top of Beit Jala (Ha’s Beit Jala) southwards on Palestinian land to be lost to the Wall, including al-Makhrour, especially dear to Palestinians in the Bethlehem district for its fruit trees, beauty and open space (view to the south-west). © BADIL

Recording Losses and Damage caused by the Wall

By Badil Staff

On the ground - March 2007

Construction of the Wall is proceeding at a rapid pace in Bethlehem district. Palestinians of the towns of Bethlehem and Beit Jala and Palestinian refugees of the nearby village of al-Walaja are about to lose access to all of their open land located in a semi-circle to the West of their densely populated communities:

View from the top of Beit Jala (Ha’s Beit Jala) southwards on Palestinian land to be lost to the Wall, including al-Makhrour, especially dear to Palestinians in the Bethlehem district for its fruit trees, beauty and open space (view to the south-west). © BADIL
To be lost once more due to the Wall: remains of the 1948 depopulated village of al-Walaja, which is famous for its many springs and fertile land. The former residents of this home currently reside in the Dheisha refugee camp, Bethlehem, and demand their right to return home. In the background: Jewish colony, occupied East Jerusalem (view from south to north). © BADIL

Israel’s Wall terminal under construction west of Beit Jala and the Palestinian town of al-Khader. This terminal will prevent Palestinian movement on Road no. 60 linking Jerusalem to the southern West Bank (view to the south). © BADIL

At the United Nations
Meanwhile, establishment of the UN Register of Damages caused by the Wall, including mandate, structure and budget, was endorsed by the UN General Assembly in December 2006 (see document section). No other practical steps have yet been taken, however, by the UN to register the losses and damages incurred to Palestinians. Palestinian and international NGOs remain concerned about the lack of transparency of the process, including nomination of the Register’s three-member Board. A Technical Working Group of NGOs, including BADIL, meets regularly, monitors progress, lobbies the UN for speedy and professional implementation of UN Register in accordance with the standards set by the 2004 ICJ advisory opinion, and offers its expertise to Palestinian popular committees and official bodies whose role will be essential for successful documentation of Palestinian losses and damages by the United Nations.
Since the colonial invasion in the region at the end of the 19th century, intellectual leaders of the Arab National Movement, including the Palestinian movement, have been aware of the links between Zionism and the western colonial movement. Although early writings about the dangers of Zionism and its role in the conflict, especially those of Palestinian thinkers, pointed at the racist nature of Zionism, they failed to analyze it in-depth. This is evidenced by their failure to effectively manage the conflict and alliances; inadequate theoretical and practical attention to the racist nature of Zionism; and, their failure to assess the reason why the western colonial movement preferred Zionism over the Arab National Movement, although some of its major and dominant streams showed readiness for alliance or cooperation with the western colonial movement.

Thus, although the Arab National Movement and the Palestinian National Movement understood the dangers of the Zionist project for the land, sovereignty and independence of Palestinians as well as for Arab unity, they remained largely unaware of its racist nature. In other words, the two movements failed to see the effect of Zionism on human rights, beyond its physical manifestation in form of dispossession and displacement. They failed to see that Zionism really targets people’s value as human beings, because it portrays Palestinians as the potential danger, while defining Zionism as the ‘humane’.

This article addresses the racist elements of the Zionist ideology and their impact on the way Israel was established. It shows that Zionism, the core of the conflict, has been neglected.
Defining the Conflict

It appears that the leaders of Israel have wanted from the start to create a ghetto named Israel, a project the international community and the Arab and Palestinian movements have failed to understand.

in the analysis advanced by the mainstream of Arab, including Palestinian, politicians and intellectuals. It aims to highlight the racist elements that should be addressed, because they have affected the emergence, formation and development of Israel.

Arab and Palestinian writings show that the racist character of Zionism remained little understood until the beginning of the “contemporary Palestinian Revolution” marked by the establishment of the Palestine Liberation Organization (PLO) in 1964. Although some opinions and trends highlighted in their analysis the nature of the alliance between Israel and the forces of colonialism, or the nature of the emerging state entity, these remained individual and marginalized attempts. Early writings used ethical or moral concepts to describe Zionist-Israeli racism and did not develop into a program to confront and resist the Zionist project. Instead, the conflict was defined as a religious-historical conflict over sovereignty, land and property ownership deeply rooted in history and severed from the colonial context. Moreover, some writers fell into the trap and employed racist concepts, a fact which was used by Zionists and Israel to support their claim that Arab/Palestinian anti-Semitism represented a continuation of their historical oppression. These shortcomings can, to a large extent, be attributed to the fact that philosophy and experience of the human rights movement were new at a time, i.e. before 1948, when racism was not yet legally prohibited as an inhuman concept or practice.

The forces of the modern Palestinian liberation movement (“Palestinian Revolution”) succeeded in highlighting the alliance between Zionism/Israel and the forces of colonialism. They also contributed to the study of Israel as a special, colonialist settler-based project not related to the need to solve the “Jewish question.” These modern forces showed strategic creativity, when compared with the past, in understanding and responding to the conflict, when they posed the goal of the “democratic state” or “the progressive society...without any discrimination on grounds of race, religion, gender or color.” However, their analysis too, suffered from two major shortcomings. First, the Palestinians “rejected the internationalization of the Palestinian cause” in response to the perceived unfair stance of the western colonial powers in support of Israel. This position resulted in an almost total absence of international engagement by the Palestinian leadership and civil society. The second shortcoming, which also prevented a thorough examination of racism, is imputable to the lack of study of the emerging Israeli society, including its socio-economic structure, ideological, legal, institutional and psychological components, as well as studies of the Israeli political system, including programs of its political parties and elections.

“Racism” in the Zionist ideology and later, in the Israel regime, can be identified in the following:

1-Political concepts, ideas and visions inspired by religious thought, provisions of the Talmud, and legends, most importantly, the notions of Jews as “the chosen people of God,” “the pure race” and “the promised land,” all of which are at the heart of Zionism and the state of Israel;

2-The mentality of segregation, nurtured by life in the ghettos and voluntary and forced isolation, i.e. the impact of life in the ghetto on Zionism, which cannot be ignored.

Former Israeli Foreign Minister Abba Eban wrote in his book, The Voice of Israel (1957), that Israel must strive to exclude the Arab-Islamic sphere from the Jewish homeland, because
according to Zionism, Israel “must be totally free from any Arabs.”\(^{(1)}\) It appears that the leaders of Israel have wanted from the start to create a ghetto named Israel, a project the international community and the Arab and Palestinian movements have failed to understand.

Thus, ghetto life and isolation, whether forced or voluntary, have played a vital role in particular in the formation of the western Jewish “Ashkenazi” mentality that produced Zionism in all those secular and religious streams which shape Israel’s policies until today.

Zionism and Israel, moreover, have successfully invested anti-Semitism for the purpose of justifying, rather than ending, racism. In other words, “anti-Semitism” has become a tool to justify the racism of Zionism and Israeli policies,\(^{(2)}\) and many intellectuals, politicians and organizations avoid criticizing Zionism and Israel, in order to avoid accusations. Guided by the wrong belief that by avoiding confrontation with Israel as a racist regime they would gain wide international support, Arab and Palestinian national movements have fallen into the same trap.

The liberation of Palestine through the destruction of the state of Israel, as advocated by Arabs in the period between the Nakba and the contemporary Palestinian national movement (1948-1967), is still used by Israel and members of the international community as an example of what could lead to another massacre or holocaust. Irrespective of changes that have occurred since, Arab and Palestinian political forces, even the so-called moderates, have so far failed to erase this out-dated notion of the liberation of Palestine from the minds of Jews, Israelis and the world.

In a speech to Congress in 1983, former U.S. President Reagan said that “Israel is the only and sole strategic ally of the United States and that due to its characteristics, it will be impossible for Israel to integrate in the Middle East ... and that the U.S. should not repeat the mistakes committed in Iran before 1978.”\(^{(3)}\) These words do not only answer the question of why Western States, especially the U.S., have adopted a policy of double-standards in the Middle East; they also explain why such policies of unlimited support have encouraged Israel to be “different.” Hence, the West has not been seeking of Israel the status of a classical ally or a mere military base, but rather that of a state that can not integrate in the region and with its peoples. It becomes clear in this context, why racism, at least as enshrined in core Israeli laws, is necessary for maintaining unlimited western support for Israel and preventing it from becoming an “Eastern State”, which could threaten the interests of the West in the future.

Time has come to give the racism inherent to Zionism and Israel’s policies the attention it deserves and build a clear strategy for challenging it.

Nidal al Azzeh is Badil’s Arabic Media Officer. This article is a summary of an article published in BADIL’s Arabic language magazine Haq Al Awda and based on a longer unpublished paper.

Endnotes:


DID YOU KNOW?
Apartheid South Africa and Israel

November 1977: The UN Security Council imposes a Mandatory Arms Embargo on South Africa. Israeli foreign minister Moshe Dayan says Israel will simply ignore the resolution. South Africa trades 50 metric tons of yellowcake uranium for 30 grams of Israeli tritium, a radioactive isotope used as a component in triggering thermonuclear reactions. Three major Israeli electronics companies, Tadiran, Elbit, and Israeli Aircraft Industries, help South Africa design and build its own electronics manufacturing capability, and sell it a variety of electronic and infra-red equipment for sealing its borders to prevent passage in and out of insurgents.

March 4, 1983: Israeli radio reports that “close ties will be established between Israel and Ciskei, one of the puppet states set up in South Africa for the blacks.” The radio also quotes South African reports that Israel will supply weapons to Ciskei.

October, 1984: The Israeli West Bank settlement of Ariel is twinned with Ciskei’s “capital” Bisho. Ciskei’s Israeli representative Yosef Schneider observes: “It is symbolic that no country in the world (except South Africa) recognizes Ciskei, just as there is no country in the world that recognizes the Jewish settlements in Judea and Samaria.”

December 13, 1984: The UN General Assembly passes resolution 39/72C, entitled “Relations between Israel and South Africa,” which declares: “…that the increasing collaboration by Israel with the racist regime of South Africa, especially in the military and nuclear fields, in defiance of resolutions of the General Assembly and the Security Council, is a serious hindrance to international action for the eradication of apartheid ... and constitutes a threat to international peace and security.”

For more on this, see: Americans for Middle East Understanding (AMEU) on Israeli policies towards the Palestinians and comparing them to Apartheid. AMEU Header <http://www.ameu.org/index.asp>
A Call to Redefine the Conflict from a Palestinian Perspective

By Nihad Boqai

Two comments are in place at the beginning of this essay: first, criticism presented here should not be interpreted as downplaying the historical role, work and activities of the Palestinian national movement amid an extremely adverse political climate; and, second, it is important to remember that the national movement, which has grown from the conflict, is a dynamic movement which has shaped the course of the conflict while being shaped by it. It has defined its position and place among the Palestinian people by adjusting and adapting to the varying circumstances.

The Palestinian national movement developed in the 1920s, when Palestine was for the first time defined as one unified geopolitical entity separate from “Greater Syria.”

The Palestinian national movement developed in the 1920s, when Palestine was for the first time defined as one unified geopolitical entity separate from “Greater Syria.” In general, the national movement has since then viewed Palestine as a homeland threatened by a western colonialist campaign that denied, in a blatant manner, the desires and aspirations of the Palestinian people and their right to self-determination.

In light of the above, the struggle of the Palestinian national movement has since then remained a struggle for legitimacy, with the Zionist movement representing its natural enemy. At the same time, the national movement has emphasized the need to distinguish between the confrontation with Zionism as a hostile, colonialist and racist movement, and respect for Judaism as a divine religion. The Palestinian left, moreover, in particular the Popular Front for the Liberation of Palestine (PFLP), went even further when it considered the liberation of Palestine as a process including Jewish masses victims of imperialism and Zionism.
The above is the broad framework which has constituted the consensus and the basis of the Palestinian movement of liberation and state building. This broad framework, however, has remained vague and failed to provide clear answers to a number of questions which affect the development of a vision and strategy to respond to the conflict. The different, and sometimes even contradictory positions on these issues are indicators of a lack of a clearly formulated Palestinian vision and national consensus.

**Zionism and capitalism: who serves who?**

The political factions of the Palestinian national movement have regarded the relationship between Zionism and capitalism, including imperialism, as a functional relationship in which the former serves the latter, and – to a lesser extent – as one of converging interests. Irrespective of their specific intellectual, political, ideological beliefs and approaches, all Palestinian factions have described Zionism as “the long arm”, “launching point”, “human base”, or “spearhead” at the service of capitalism and imperialism and aiming to strike – depending on their ideological background - the “national liberation movements”, the “Islamic nation”, or the “Arab homeland.”

The National Liberation League (a communist party during the British Mandate) defined Zionism in its political program of 1946 as “a hostile movement that serves imperialism, which is also hostile to the Arab nation and to the Jews themselves.” This idea was strongly embraced once again by the Palestinian left (the communist party and PFLP). The leading faction of the Palestinian left, the PFLP, stated that the “main goal of the Zionist invasion is to implant an armed human base to serve imperialism in its confrontation with the Arab liberation movement whose victory is deemed a threat to imperialist interests in this vital region of the world.” Therefore, the struggle of the PFLP was directed not only against Zionism, but at the whole system of imperialism. The Fatah Movement, on the other hand, was more reserved and vague. It considered Zionism as “a natural ally of world colonialism and imperialism”, a description which was adopted also in the Palestinian National Charter of 1968. The Islamic movements which emerged in the 1980s, including Hamas and the Islamic Jihad, saw Zionism as the “spearhead of the western modern colonialist scheme in its all-out war against the Islamic nation.”

In general, the Palestinian discourse has emphasized the major role of western imperialism in supporting the establishment of a Zionist state to the detriment of studies on the signification of the land of Palestine (Eretz Isra’el) to the Zionist ideology. In this context, inadequate attention was paid to the emergence and development of the Yeshuv, i.e. organized Zionist colonization in Palestine during the British Mandate, and Israel since 1948. The notion of independent Zionist activity was actually rejected by Palestinian studies. This explains in part why Palestinian factions discovered only at a later stage how Israel had exploited western capitalist regimes, in order to achieve its own Zionist objectives, and that great efforts were required to gain the support of western countries for the Palestinian cause. The Palestinian debate about this matter is not new but dates back to the period of the British Mandate. Thus, for example, when a group of Palestinians headed by Sheikh Izzaddin al-Qassam targeted the Mandate government, other Palestinian groups, including Haj Amin al-Husseini, repeatedly stressed the necessity to focus on the Zionist movement, rather than on the Mandate government. The latter believed that
the Palestinian cause would be better served if the door remained open for negotiations with the Mandate regime.

In short, Palestinian understanding of Zionism and its practices on the ground has remained largely implicit: discrimination and segregation are perceived as expressions of racism, and racism as one of the faces of colonialism. Therefore, the struggle for liberation is led by the call to confront colonialism, which is considered to be the root cause – rather than the result – of the problem. In line with this logic, Zionist racism is expected to disappear when colonialism ceases to exist.

Arab unity: complementary to or a condition for the liberation of Palestine?

Following the Palestinian Nakba of 1948, the majority of Palestinians hoped that salvation would come from Arab regimes. At that time, pan-Arab nationalism was widespread, and strategic efforts were focused on encouraging Arab regimes to engage in military confrontation with Israel.

The rapid defeat of the Arab armies in the 1967 War, however, led to a change of the Palestinian strategy and two new approaches emerged. The first approach was led by Fatah under the slogan of “Palestinization of the revolution.” It stipulated that there would no longer be any interference in the affairs of Arab countries and that the focus would be on liberating Palestine. This approach was subsequently adopted by the PLO, and the Palestinian National Charter stipulated that the relationship between the liberation of Palestine and Arab unity was interdependent and reciprocal. The second approach, led by the PFLP, viewed the conflict as organically linked with the autocratic, “reactionary” Arab regimes, whose change was a basic condition for the liberation of Palestine. The PFLP believed that the contradictions and differences with the Arab regimes were “fundamental and not secondary.”

The Islamic Jihad and its slogan of “Palestine as the core of the contemporary Islamic project” led to the emergence, in the mid-1980s, of a religious stream alongside the Palestinian national movement. Although Islamic Jihad does not explicitly aspire to interfere in the affairs of Arab states, the logic of the “contemporary Islamic project” requires, to a large extent, a change in the existing ruling regimes.

Strategy, theory and practice: a meddled discourse

Confusion between strategy, theory and practice has meddled the Palestinian discourse and contributed to a lack of a clear and comprehensive vision. The history of the Palestinian national movement features frequent changes of ideological orientation, especially among the Palestinian left which struggled to situate itself among various intellectual trends and approaches. When pan-Arab nationalists turned to socialism, for example, they called themselves the “new left” and “nationalist Marxists,” in order to distinguish themselves from the communist parties. Each party or faction imported new ideologies, like fast food meals, and tried to apply them to the Palestinian reality. Much time and effort were thus consumed at the expense of work towards a practical approach, which – based on the
various political and intellectual models of struggle - could have created a united vision, strategy and discourse. Numerous splits among factions, moreover, gave rise to alliances which did not necessarily stand for a common ideology or analysis of the conflict.

Recent debate over the one-state and the two-state solution of the conflict stands out as an example of the confusion between strategy, i.e. goal and tactic. The program of liberation of the Palestinian national movement as developed in the 1950s and 1960s suggested a vision of one secular state under the umbrella of the PLO. The relationship between this vision and the project of establishing “a struggling national authority on any liberated part of Palestine” adopted as the so-called “interim program” in the early 1970s was never clarified, until the 1988 PLO Declaration of Independence, and later the 1993 Oslo Accords, which provided for recognition of the state of Israel and replaced the earlier strategic vision of a one-state solution.

Islamic movements, such as Hamas, on the other hand, continue to promote the liberation of all of Palestine. At the same time, Hamas is not opposed to the establishment of an independent Palestinian state on the Palestinian territory occupied in 1967. Currently the latter is presented as a condition for a long term truce with Israel, while the relationship between the Islamic movement and the PLO has remained unclear. As it stands, Hamas has adopted a course of action that does not reject the pragmatic policies of the PLO and its member factions, but opposes their method of dealing with the conflict and Palestinian society. In practice, Hamas does not explicitly accept the PLO’s leadership role; it continues to build its institutions and networks outside of the PLO, without, however, presenting itself as an alternative to the PLO.

**Armed struggle versus diplomacy**

The “political option” has been commonly defined by the Palestinian national movement as diplomacy and negotiations, while other possible political strategies and options were not
considered. (Other definitions are, therefore, beyond the scope of this article). Since the national movement aimed at liberation, statehood and the right of return, and since neither armed struggle or diplomacy alone could achieve these aims, the question about the relationship between both has been a matter of much debate whose results have remained inconclusive.

At the beginning of the British Mandate, the Palestinian leadership tried to influence the Mandate Government mainly by traditional peaceful means which failed to achieve results. Locally organized armed struggle replaced this approach in the 1930s, first with the uprising led by Sheikh Izzaddin al-Qassam and then by the “Great Revolt.” The Nakba of 1948 brought a dramatic change to the Palestinian political reality and gave rise to the idea that armed struggle provided the sole path to the liberation of Palestine. This idea was adopted by the majority of the newly emerging Palestinian factions, with the exception of Palestinian communists who had joined the Communist Party of Palestine before the Nakba. The latter were rapidly integrated into new political structures, mainly the Israeli Communist Party and the Jordanian Communist Party.

Armed struggle was adopted by the majority of the Palestinian organizations as a strategy in line with their respective ideologies: the Palestinian left, such as the PFLP, adopted the principle of “revolutionary violence,” while Fatah termed it “armed popular revolution.” The political option – understood as peaceful diplomacy for a settlement of the conflict - was unable to compete and did not become a national priority until the 1980s. The assassination in 1983 of Issam al-Sartawi, Palestinian National Council (PNC) member and Fatah Revolutionary Council member, is illustrative of that period when mere support of dialogue with Israelis was considered to be treason.

When political Islam, the Islamic Jihad and the Islamic Resistance Movement Hamas, joined the Palestinian struggle in the 1980s, another synonym for armed struggle - “Jihad” - was added to the Palestinian lexicon, not only in the 1967 occupied Palestinian territory, but also inside Israel, where the “Uusrat el Jihad” was established but rapidly repressed by the Israeli authorities.

Prior to that, Islamic movements had rejected diplomacy and had refrained from armed struggle. The Muslim Brotherhood Movement had rather adopted the strategy of building a generation of liberation through the teaching of Islamic values and social change. It only established Hamas at the beginning of the first intifada, when it was blamed and accused – inside and outside of Palestine – of failing to struggle against the Israeli occupation. The Islamic Jihad Movement, on the other hand, adopted from the start an Islamic revolutionary approach that did not consider the teaching of Islamic values to a new generation as a condition for resistance against the occupation.

**Between national liberation and statehood**

Since the 1948 Nakba, the national liberation movement has been preoccupied with the difficult and complicated process of “state building.” The PLO emerged in the late 1960s as a “quasi-state without territory,” or a “government in exile” as a result of major political, military and diplomatic efforts. While the PLO remained on many occasions supportive of the actions of the military wing, it contributed to confusion at other times between the two approaches it
promoted. While most national movements pursued the goal of liberation from colonialism to engage in state-building once liberation is achieved, the Palestinian national movement (i.e., PLO) engaged in a dynamics of state-building before independence was achieved.

The 1993 Oslo Accords and the establishment of the Palestinian National Authority (PNA) constituted a critical juncture in the relationship between armed struggle and diplomacy. From the outset, and in the absence of an actual state, those in charge of the PNA emphasized the PNA’s elements and symbols of statehood in an exaggerated manner, giving the impression that the occupation had ended. Faced with the incompatibility of the development of the PNA and the national liberation discourse and armed struggle, priority was given to a process of rapid institutionalization; the concepts and culture of struggle were replaced by a system characteristic of post-conflict situations. New elites started to emerge and the political heritage was reformulated in a manner that avoided addressing the heart of the problem. The result was confusion, paralysis and widespread destruction among the national liberation movement.

\textit{Fatah}, which headed the Palestinian national liberation movement for decades, took on features of a ruling party (in the post-liberation era) more than of a national liberation movement. After having become intertwined with the PLO earlier on, it merged with the PNA subsequently. With both frameworks engaged in state-building, other Palestinian factions were pushed to join this process. Many Palestinian factions, including \textit{Hamas} and the Palestinian left, adapted to a large extent to the “reality of PNA statehood” under the pretext of acting for the sake of national liberation.

\textbf{Conclusion: Time is serving who?}

This question is of interest to both Palestinians and Zionist Israel, and it has remained open. The Palestinian national movement has failed to provide a well-founded and convincing answer. In light of the set-backs and achievements that have accumulated in this protracted conflict, analysis of whose project is advancing and whose is loosing ground remains inconclusive. Available answers reflect respective wishes and prejudices more than objective assessment and analysis. Palestinian (and Arab) assessments thus range between a view of Israel which magnifies its strength and power to the point of assuming total internal harmony on the one hand, and the expectation that Israel would fall apart in response to the slightest pressure on the other hand. In general, the question whom time is serving more can be answered only if the Palestinian national movement is able to tackle all of the above core issues and provide for clarity of vision, goals and discourse.

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Palestine Right of Return Coalition Convenes for 7th Annual Meeting

Coalition members from Palestine, Arab host countries, Europe and Latin America participated the 7th annual meeting hosted jointly by the Greek Intifada Association and the Organizing Committee of the European Social Forum in Athens, Greece, on 2-5 November 2006. The meeting was opened in the presence of the Palestinian Ambassador in Greece, Samir Abu Ghazala, who urged the participants to increase efforts for the national objectives, especially the right of return of the refugees to their original homes.

During three days Coalition members discussed their plans of action, as well as challenges currently faced by the Palestinian people: Israel’s determination to continue construction of the Apartheid Wall and colonies; military aggression in Gaza Strip and the West Bank; the disappointing conflict among Palestinian factions and their disastrous consequences for the national struggle for freedom; and, motives and consequences of the U.S.-Israeli aggression against Lebanon. A joint session with the BADIL Legal Support Network, which held its 5th annual meeting parallel to the meeting of the Right of Return Coalition, focused on issues of common interest, including activation of the return movement, the Nakba at 60 Campaign (2008), and ways to empower the Campaign for Boycott, Divestment and Sanctions (BDS) against Israel until it complies with international law.

The 2006 annual meeting concluded with the release of a final statement, in which the Coalition affirms, among others:

1. its solidarity with and support of the Palestinian refugees in Iraq. The Coalition calls upon the international community, UN agencies concerned, all Arab states and the PLO to assume their responsibilities toward ending their suffering, and to redouble efforts for a rapid solution of their plight;
2. its support of the Lebanese people’s right to self-defense and the right of the Lebanese resistance to defend Lebanon, protect its national unity and independence, and free its territory from Israel’s occupation;
3. its commitment to the right of return of the Palestinian refugees and internally displaced persons to their homes of origin in accordance with international law and UN resolutions, in particular UN Resolution 194. The Coalition resolved that this right can most realistically be achieved through the realization of a single democratic state in all the land of historic Palestine.

The Coalition also approved membership of the Ramallah-based Consortium of the Displaced Villages and Towns, affirmed its participation in the regular meetings of the European Coordinating Committee of NGOs in Palestine (ECCP), and delegated the role of coordinator in 2007 to BADIL.

The Future Vision of The Palestinian-Arabs in Israel

By Dr. As’ad Ghanem

Dr. Shawqi Khatib is the head of the Supreme Follow-up Committee of the Arabs in Israel, Arabs’ highest and most authoritative representative body, and of the National Committee of the Heads of Arab Local Councils. Recently, he published the “Future vision of the Palestinian Arabs in Israel”, a document that has attracted national and international interest and elicited a wide variety of responses across the political spectrum of Jews, Arabs and others.

The “future vision document” (hereinafter the Document) is the outcome of an initiative launched three years ago by Dr. Khatib. He convened around 40 intellectuals and politicians representing all streams of thought in the Arab community in Israel and received funds from the UNDP to bring them to Jerusalem for four or five weekends to discuss all issues of concern.

In the meetings in Jerusalem the group of representatives discussed the situation of the Palestinians in Israel in different domains: political, social, economical, educational and cultural. The initiative reflected the assessment that there is a deterioration at three levels in the lives of Palestinians in Israel: first, with the state of Israel since October 2000; second, at the internal level, where social issues are getting more complicated with regard to clan and local politics and the status of women (in fact, six of the eight chapters of the document are devoted to internal issues); and, third, with the Palestinian national movement.

Representatives of the Arab community agreed from the beginning, and as a compromise among the diverse views, to support the establishment of a Palestinian state alongside Israel. The representatives agreed that the creation of a Palestinian state would resolve the Palestinian demand for a state and self-determination and devoted their energies to Palestinians in Israel, in particular their problems and future in that state.

The most controversial issue, and the one that triggered the strongest reactions among the Jewish media, is the relationship of Palestinians citizens of Israel with the Jewish majority and the state. It was clear to the representatives of the Arab community that there was a need
to clarify the situation and present an alternative, taking into account that the group sought to change the situation by promoting a profound change in the Israeli regime and citizenship.

From our point of view, Israel cannot be characterized as a democratic state. It can be defined as an ethnocratic state such as Turkey, Sri Lanka, Latvia, Lithuania, Estonia (and Canada forty years ago). These states have engaged their minorities in a very limited and unequal way in their political, social and economic affairs, while a firm policy of control and censorship guarantees the hegemony of the majority and the marginalization of the minority. The ethnocratic paradigm provides tools for understanding societies that prefer one group over others and the dynamics of domination between different ethnic groups.

The principles of an ethnocratic system include:
1. Control by an ethnic group of the state system.
2. Ethnicity (and religion), and not citizenship, regulate the distribution of resources and powers and undermine the role of the “nation” (i.e., citizens in general).
3. A political process and system based on ethnic groups.
4. A permanent state of instability.

We demand that Israel stops to be an ethnocratic regime and adopts a system based on consensual democracy; a system that embodies the presence of two groups; Jews and Palestinians. Such system would guarantee fair resource distribution, shared decision-making and participation. With regard to our future relation with the state of Israel, we call upon the state to:
• Recognize the Palestinian Arabs in Israel as an indigenous and minority group.
• Acknowledge that Israel is the homeland of both Palestinians and Jews.
• Acknowledge the rights of minorities in line with international conventions. It should recognize that Palestinian Arabs in Israel have a special status under international law as an indigenous cultural and national group and are entitled to full citizenship rights in Israel.
• Refrain from adopting policies and schemes which privilege the majority. Israel must remove all forms of ethnic superiority at the executive, structural, legal and symbolic level. Israel should adopt policies of corrective justice in all aspects of life, in order to compensate Palestinian Arabs for the damage inflicted on them by the policies of ethnic discrimination which have benefited the Jews.

Reactions to this document have so far not included a reasonable alternative proposal for involving the Palestinians in Israel as equals within the state. Most of the responses from the Jewish majority accuse the Palestinians in Israel of undermining Israel’s foundations as a “Jewish and democratic” state. In fact, they completely ignore the blatant abuse of the rights of Palestinian citizens of Israel under the present regime.

The responses of Israeli journalist Tommy Lapid, professor of law Amnon Rubinstein and historian Professor Alex Jacobson are illustrative of the reaction of those representing the Zionist consensus. Their well-known nationalist readiness to recognize the right to self-determination of a single group and to disregard the pluralistic reality is anchored in the extreme form of nationalism which was represented in the 20th century by Franco in Spain, Mussolini in Italy, Saddam Hussein in Iraq and others, and ultimately led to disasters of historic dimensions. This Zionist model ignores the compromises reached, for example, in Spain after Franco, in Belgium and in Canada since the Quiet Revolution, when a pluralistic reality facilitated solutions based
on mutual recognition, the right to self-determination and self-rule for more than one national or ethnic group within a single political framework.

At the other end of the spectrum, among the Palestinians of Israel themselves, there are those who propose a different platform and do not see the need for a compromise that can be accepted by the majority of the Palestinian citizens. Representatives of the Islamic movement, part of the socialist Abnaa al-Balad Movement, and some intellectuals who were involved in drafting the document, are now demanding its cancellation. They insist that it is “not representative”, as if “representative” meant that every single party must accept it, although the document protects the right to criticism of those who disagree.

The vision advanced in the document responds to its Palestinian critics with a centrist platform. It also offers an alternative to the Israeli right, most prominently represented today by the Minister of Strategic Affairs, Avigdor Lieberman. I believe that an egalitarian existence within a democratic state is the only alternative to the extreme nationalism he represents.

I believe this document should be considered a historic event in the annals of the Palestinians in Israel and their relationship with the Jewish majority and its regime. This is the first time a representative national body of Palestinians in Israel has prepared and published a principled document that describes both the existing situation and the changes needed across a broad spectrum of Arab life: relations with the Jewish majority, the legal situation, land, social and economic issues, the status of civil and political institutions, etc. The document was written by activists from all political streams among the Palestinians in Israel (including some who later opposed the positions adopted). It delineates the conditions necessary for defining the future relationship between the majority and the minority in the state of Israel.

In my view, the document is based on three principles that have constituted the foundations of human, social, political and cultural development for at least the past two centuries. First is the principle of human rights: the document addresses the fundamental rights of the Palestinians in Israel to economic and social development, women’s and children’s rights, the right to live without violence, etc., and demands their realization. The second principle is the principle of civil equality: the basic democratic right to equality before the law and the annulment of laws, structures and symbols that alienate the Palestinian citizens of Israel and ensure Jewish superiority. The third principle is the right of communities to self-determination, including the right to manage specific areas of life autonomously, such as education, cultural and religious affairs.

In order to realize these principles, the drafters of the document demand the implementation in Israel of a consensual system. This system would replace the existing liberal system that is exploited by the Jewish majority and that, indeed, constitutes a “tyranny of the majority:” in the name of liberal democracy, the majority takes draconian steps against the Palestinian minority and its fundamental rights.

Dr. As’ad Ghanem is head of the Department of Government and Political Philosophy at the School of Political Sciences, University of Haifa, and chair of the executive committee of the Ibn-Khaldun Association. He participated in the drafting of the document “The Future Vision of The Palestinian-Arabs in Israel.”
Adalah Proposes First-ever Democratic Constitution for Israel

The proposed constitution classifies Israel as a “bilingual and multicultural” country rather than a Jewish state. The proposal invalidates the Law of Return, which grants automatic citizenship to people with at least one Jewish grandparent, and states that citizenship will be granted to those who come to Israel for humanitarian reasons, regardless of their religion. Identity and culture of Israel’s Jewish and Palestinian populations are to be preserved through educational and cultural institutions and political representation.

The proposed constitution provides for Israel’s recognition of the “historical injustices that it caused the Palestinian nation in its entirety,” Palestinian refugees’ right of return in accordance with UN Resolution 194 (Chapter 1, paragraph 4), and the Palestinian people’s right to self-determination. Israel will withdraw from the 1967 occupied Palestinian territories and the state’s borders are defined by the 1948/9 cease-fire lines. Citizenship will be granted to all descendants of Israeli citizens, whether born here or abroad, as well as to all spouses of Israeli citizens.

The “internal refugees”, i.e. Palestinians and their descendants expelled in 1948 whose number is estimate to be a quarter of today’s Palestinian citizens of Israel, will return to the area where they used to live and receive compensation. All assets of the Waqf (the Muslim religious trust) that were expropriated after 1948 and all assets seized by the state from Palestinians will be returned to their original owners, who will also receive compensation for the period of expropriation. The state will also immediately recognize all unrecognized Palestinian Arab communities.

According to Adalah, the proposed constitution is based on international human rights law and was drafted in consultation with legal experts from around the world, including some who were involved in South Africa’s transition from apartheid to a democratic state. Adalah also notes that the document is a draft intended for a year of discussion.

For more detail see:
ENGLISH COPY: http://www.adalah.org/eng/democratic_constitution-e.pdf
HEBREW COPY: http://www.adalah.org/heb/democratic_constitution-h.pdf
The Carter effect: What Mr. President says – and does not say


By Shahira Samy

“One of the major goals of my life, while in political office and since I was retired from the White House by the 1980 election, has been to help ensure a lasting peace for Israelis and others in the Middle East.”

If such was Jimmy Carter’s opening statement of his latest book Palestine Peace Not Apartheid, why would the Israel-sympathetic words cause uproar among US Jews and elsewhere? And why would the former US president be accused by many Jewish groups of being a liar, a bigot, an anti-Semite, a coward and a plagiarist? And why would staunch protest to the book come from none other than 14 members of the advisory board of the twenty-five year old Atlanta-based Carter Center, resigning en masse, stating that ‘we can no longer endorse your strident and uncompromising position.’ The letter of resignation addressed to Carter went on attacking the book as being ‘unfairly critical of Israel and riddled with inaccuracies’. In effect, the most vociferous of protestations were geared against the comparison of Israel’s treatment of Palestinians with South Africa’s gruesome apartheid system of racial segregation.

In his first direct address to Jewish Americans on his book at Brandeis University last month, Carter said the word ‘apartheid’ was intended to provoke debate about the rights of Palestinians, unfairly treated by Israel. Ironically, the campaign to discredit the 2002 Nobel peace prize laureate has achieved nothing, but opened up forums of discussing Palestine in the context of apartheid and put the focus on the crimes of the Israeli occupation. For the 11th consecutive week now since it hit the market last November, Palestine Peace not Apartheid has ranked high on the New York Times best selling list, unyieldingly defiant to its assailants. For the mere effect of injecting such a debate in American circles, Carter’s latest publication is no meager accomplishment.

Outlining steps that ought to be taken for Palestinians and Israelis to share the Holy Land devoid of a system of apartheid and the constant fear of ‘terrorist’ attacks, is the book’s declared objective. And Carter does not mince his words when he asserts that Israel’s refusal to fully withdraw from the Occupied Territories is the main obstacle to a settlement. A glance through the last few pages of the book are sufficient to learn of the author’s three most basic premises for peace: Israel’s right to exist within recognized borders accepted by Palestinians and all other neighbors, a halt to acts of violence against civilians and the necessity for Palestinians to live in peace and dignity in their own land as specified by international law, unless modified by good-faith negotiations with Israel.

But it would indeed be a great pity if the reader limited him/herself to the two last pages, for
the author has been very clever and skillful in building up his case. Contrary to his stated objective, the prescription for peace is in fact not the goal, but rather pricking the abscess is what is at stake.

Apart from the controversial title, the word apartheid does not resurface till relatively late in the chapter on the separation wall, or the ‘imprisonment wall’ as Carter emphasizes is a more accurate description than ‘security fence’. Absent it may be, yet apartheid is the omnipresent thread running throughout the various chapters reviewing the Oslo agreement, the Camp David summit in 2000, the subsequent Clinton parameters, the road map, the Geneva Initiative of 2003, Sharon’s unilateral disengagement from Gaza, the legislative elections won by Hamas, the war in Lebanon and finally the deteriorating situation in Gaza. One page after the other, Carter skillfully introduces the intrinsic details of daily life under occupation in Palestine unraveling the essence of an apartheid system beyond scholarly definitions and philosophical interpretations.

It is no coincidence that a strong emphasis is placed on the use of the term ‘Holy Land’ in the first chapter. Carter dwells on his biblical affiliation with Jerusalem and dedicates considerable space to narrating his impressions from his first trip to the holy sites in Palestine in the early 1970s. By the end of the chapter, the average American reader imbued with a Judeo-Christian affinity with Palestine as a holy land has warmed to Carter and is indeed ready to receive what the following chapters are about to say.

The realities of living under occupation in Palestine come in a flashing sequence of simple narrative: Truckloads of ‘Palestinian’ oranges held by the Israeli army till they rot and their owner matter-of-factly giving away the spoil fruit for livestock feed. A family describing to the author how their home was demolished by Israeli bulldozers and dynamite. Doctors pointing at idle ambulances donated by the European Union, left to bask in the sun, denied a license. Some of the most powerful pages describe the voting process in East Jerusalem and the systematic intimidating measures imposed by Israeli authorities on the voters. And even though Carter – who was an observer to the elections in 2006- hails the clean elections leading to Hamas’ victory, he does not hide his condemnation of the suicide bombing policy of the movement. Nevertheless, the author painstakingly delineates why some Palestinians may consider this as an option to resist occupation.

Likewise, settlements in the reader’s psyche change from being leafy compounds perched on hills, welcoming New Yorkers wishing to fulfill their dreams of living in the Holy Land, to an image of how the West Bank is sliced into three Bantustan-like parts where 200 Jewish-only settlements are mostly erected on confiscated Palestinian land. For the safety and convenience of some 187,000 settlers, about 2,460,000 Palestinians in the West Bank suffer considerable restriction of movement imposed by a rigid permit system enforced by 520 checkpoints and roadblocks.

Interestingly, the many reviews flooding the press of the world have either emphasized the much welcome truth of the grim situation of occupation in Palestine or Carter’s ‘biased’ position towards Palestinians. None or few have dwelt on the peace blueprint Carter proposes. Several observations are worthy of noting.

From the very beginning he emphasizes international law as a basis for solving the conflict.
Yet he fails to explain what international law is in more concrete terms, a term spanning a wide variety of norms, principles and issues ranging from relevant United Nations resolutions, state responsibility, reparations to self-determination - just to name a few. Carter also declares a penchant for Security Council resolution 242 of 1967 and keeps mute on General Assembly resolution 194 of 1948. He may have wanted to avoid delving into the Palestinian refugee problem. With one of three refugees in the world being Palestinian, Carter may have deemed it ‘easier’ to shun from discussing UN Resolution 194 calling for the right of return, compensation and restitution of property. In fact, the refugee problem is so strikingly trivialized throughout the book that it is almost unperceived. One wonders how peace can be discussed without a mention of the fate of over 5 million Palestinian refugees.

From another angle, the only US president to have succeeded in brokering a peace agreement within the context of the Arab-Israeli conflict offers surprisingly little on his insights into bridging gaps between conflicting parties. We are told nothing about the lessons learnt from negotiating Camp David between Egypt and Israel in 1978. Nor do we find resonance of the wealth of experience accumulated throughout a presidency of a superpower and a conflict-resolution center dealing with conflicts throughout the globe.

"Palestine Peace Not Apartheid" is not an authoritative analytical view on the conflict nor does it innovate on the solution front. What Carter succeeds in doing is shake up Americans slumbering under George Bush’s interpretation of the world and a media confusing its readers over who is fighting over what in Palestine. More importantly, for the many who have not read the book, debating realities of Israeli occupation of Palestine is very much on the menu of the written and visual media. Jimmy Carter is indeed paying his tribute to the Holy Land.

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Defining the Conflict

the only US president to have succeeded in brokering a peace agreement within the context of the Arab-Israeli conflict offers surprisingly little on his insights into bridging gaps between conflicting parties.

What Carter succeeds in doing is shake up Americans slumbering under George Bush’s interpretation of the world and a media confusing its readers over who is fighting over what in Palestine.

Wall in Bethlehem. ©Anne Paq.
Israel continues apace to implement its plan to develop the southern Negev (Naqab) region through direct displacement of Bedouin citizens. In 2007 so far, the Interior Ministry and the Israel Lands Administration (ILA) has destroyed nearly thirty homes and issued numerous demolition orders.

Destruction of seven homes in the unrecognized village of al-Batal on 7 February left some 70 people homeless. Approximately 80,000 Bedouin in the Negev are living in villages which Israel fails to recognize, thus preventing successful applications for building permits and denying residents access to official state services which, as Israeli citizens, they should be entitled to receive.

Al-Batal is located to the south of the town of Rahat, one of several “concentration points” built by Israel in the attempt to sedentarize Bedouin, cramming them into tiny overcrowded areas, denying a traditional semi-nomadic lifestyle and failing to provide adequate alternative sources of income. A year ago the ILA had sent demolition orders to the residents of al-Batal on the grounds that the area was required for the expansion of Rahat. This is not the first displacement of the 200-300 members of the Al-Ataika family. They came to al-Batal after being forced to leave their original homes elsewhere in the Naqab in the 1950s during forced transfer of Arab populations inside Israel. Despairing of this possibility to remain in their current homes, many villagers had been negotiating with the ILA’s Bedouin Administration department in recent months, in order to secure new satisfactory accommodation. At the time of the demolition, negotiations had not been completed, thus leaving the families with nowhere to go.

A month earlier, on January 9, special police units and a helicopter protected Ministry of Interior and ILA officials as bulldozers destroyed more than twenty houses in the unrecognized village of Tawil Abu Jarwal in the northern Naqab. Nearly a hundred people, including 63 children, were left homeless in the bitter desert winter. The Regional Council for the Unrecognized Villages in the Negev (RCUV) – representing people with no legal municipal council – explains that in 1978 under Israeli pressure these families had bought land in the government-created Bedouin settlement of Laqiya. Yet, after years waiting on the edge of the town to receive plots and build homes with permission, they despaired and returned to their ancestral lands and built there ‘illegally’. This is the fourth time in recent months that homes are destroyed in the village.

On top of these demolitions, fifty demolitions orders were received on February 1 by the Tarabin El-Sana’a living close to the Jewish settlement of Omer. Three days earlier, one hundred orders were delivered by the authorities, backed up dozens of police, to families in the village of Nasasrah to the south-west of Kasileh. Destruction of these homes in Nasasreh would result in at least three hundred homeless.

On January 28, Adalah, the Legal Center for Arab Minority Rights, called upon PM Ehud Olmert and his deputy Shimon Peres to abandon ‘Negev 2015: The National Strategic Plan for the Development of the Negev’. Adalah accused the government of discriminating against Arab Bedouin citizens and of basing its plans for the region on illegal governmental policy. Adalah demanded that a restructured plan includes development for Arab citizens, ‘based on the principles of equality and justice in resource allocation’.

The government plan claims to promote development and growth in population, employment and education for citizens of the Negev – a budget of $80 million (US) has been set aside for 2007. In reality, however, marginalized Bedouin are to be further sidelined; almost all the 75,000 housing units planned are designated for Jewish towns and communities.
The saying that occupation exists best in the dark explains one reason for the controversy surrounding the use of the term Apartheid to describe the Israeli system. It also explains why what is a clear and simple fact to those intimately acquainted with the reality on the ground has caused so much confusion or strife among those who are not.

Generally speaking, there are three sides to the debate about the use of the term to describe Israel’s political system and its comparison with South African Apartheid. Staunch Zionist defenders are completely against the use of the term, charging it as ‘anti-Semitic’, with no thoughtful discussion of the issues. By dismissing the criticism as a personal attack, they fail to account for the basic facts and reality on the ground and reveal their limitations in understanding or wanting to know the severe injustices committed in their name. Then there are activists, academic and legal experts who support the use of the term. As a matter of convenience, they borrow the term from the oppressive South African regime, which most people know to be reprehensible, in order to strengthen the Palestinian case. They argue that although the term may not be entirely representative of the situation the underlying racism and discrimination are the same. Because of the advances made in South Africa in ending oppression, it is useful to leverage the parallels and draw on the successes of the South African anti-Apartheid Movement as a means for building the Israel-boycott campaign. Finally, even amongst Palestinians and solidarity activists, there are internal disagreements about the use of the term. Because the term “Apartheid” is borrowed from South Africa, it fails to portray the complexity of the Israeli system and, in fact, causes more confusion rather than better understanding.
Most well intentioned people would agree that the only way to end the ongoing Israeli-Palestinian conflict is to first engage in honest analysis of the situation. Still, generalities prevail and distinctions are muddled, and people with the best of intentions are often left alone to interpret meanings, or worse, completely confused by the insidious details of the system at work. Jimmy Carter’s well intended book titled, *Palestine Peace Not Apartheid*, which in fact feeds into misconceptions, is one recent example. He asserts that Apartheid is found in the West Bank and Gaza Strip but ignores the regime existing inside Israel, thereby implying that the situation there is fine. Yet, inside Israel the comparison with Apartheid is more accurate; the case can be made from the basic laws alone, and the result is cultural genocide\(^1\) of the Palestinian identity in Israel. The system of domination and militarized control of the West Bank and the Gaza Strip is, in fact, more accurately described as one on the path of ethnocide.\(^2\) Although the means of the Zionist settler project may vary within Israel and the occupied Palestinian territory (OPT), the goals are the same and should be analyzed as such: its demographic objectives and colonization of all of historic Palestine (“Eretz” Israel) translate into the dispossession and transfer of Palestinians.

Still, Zionist leaders know that to the outside world they must walk the fine line and uphold the appearance of a democracy while maintaining the Jewish state. As both Israel and the Palestinian people are extremely dependent - economically, politically and in the realm of public relations – the conflict ultimately becomes a *war of public opinion*. Perhaps this is why Israel’s main success lies in its public relations campaign. Indeed, over the years, Zionist leaders have engaged in the world’s most brilliant and cunning PR campaign. Adding to the complexity, confusion and profound misunderstanding of the state of Israel is perhaps the fact that Israel is one of the most multi-cultural places on earth. In South Africa racist practice was identified much more easily; it manifested itself in separate laws for “Whites”, and “non-Whites” based on the color of one’s skin. In Israel, you are either a “Jew”, whether religious or not (which makes it a matter of race), or a non-Jew.

For Israel as for the Apartheid South Africa, the goals are/were colonial and imperialistic in nature. However, in former South Africa, the system of control and separation was designed to expropriate the valuable natural resources for the ruling minority through oppression of the natives, who did not enjoy the right to vote. Whites there were the extreme minority; they therefore realized the impossibility of upholding even a fallacy of a democracy, and laws were made and upheld by and for the ruling class. The Palestinian populations of the OPT and Israel will soon surpass the number of Jews. Hence, the question of how to achieve and maintain the demographic majority of Jews in Palestine has become the single most important obsession of Israel’s leaders. The fact that Palestinians in Israel are allowed to vote adds to the confusion and the illusion of democracy. Moreover, the basic laws in Israel, and countless military orders in the OPT, which exclude Palestinians are so deeply embedded in the fabric of Israeli Apartheid, that they are seldom questioned in a systematic manner.

As a result, the point which begs understanding – although obvious to Palestinians, anti-Zionist Jews and other scholars - is that Israel as a state ‘for Jews’ leads directly to the oppression and subjugation of Palestinians. Herein lies the inherent racism against Palestinians on both sides of the ‘Green Line’: either we come to terms with Jewish superiority and Israel’s “right to exist” as it is as “Greater Israel,” or we cannot ‘coexist’ at all. The implication is that it is naïve, unrealistic, perhaps ideal but definitely impossible, to live as equals on this land, if Israel continues...
to be allowed to define itself exclusively as a Jewish state. This message advanced clearly by representatives of Palestinians in Israel in their “Future Vision of Palestinian Arabs in Israel:”

Defining the Israeli State as a Jewish State and exploiting democracy in the service of its Jewishness excludes us, and creates tension between us and the nature and essence of the State. Therefore, we call for a Consensual Democratic system that enables us to be fully active in the decision-making process and guarantee our individual and collective civil, historic, and national rights.³¹

The implication is that it is naïve, unrealistic, perhaps ideal but definitely impossible, to live as equals on this land, if Israel continues to be allowed to define itself exclusively as a Jewish state.

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**Defining the Conflict**

The contradiction is that it is naïve, unrealistic, perhaps ideal but definitely impossible, to live as equals on this land, if Israel continues to be allowed to define itself exclusively as a Jewish state.

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**Israeli ‘Democracy’: The Formula for Dispossession**

Since the inception of the state, the basis of Zionist ideology and Apartheid has been manifest in Israel’s Law of Return of 1950, which states that any Jew in the world, spanning three generations, is allowed to ‘return’ to the ‘promised land’ of over 2000 years ago. This stands in stark contrast to the laws for Palestinians who are forbidden to return to their own homes of just 60 years ago. This law alone, makes it impossible to construct, much less uphold, a democratic system. Such discrimination contradicts every democratic principle and the otherwise universally recognized right of 6 million 1948 Palestinian refugees, who are entitled to Israeli nationality based on the right of return and the law of state succession.

Since 1950, the Absentee Property Law has ensured that the new immigrant settlers find a comfortable home in the properties belonging to those who fled or were forced to leave because of Zionist terrorism during the 1948 War. The same law was later applied to Palestinians in the West Bank and Gaza Strip after the 1967 war. Property rights were transferred to the Custodian of Absentee Property without compensation and effective appeal. In the OPT the seized land has been used predominately for military bases, Jewish-only bypass roads, and
settlements. So-called “state land” also allows for the Apartheid “roads and tunnels plan”. Israel is currently in the process of completing 24 tunnels for Palestinians to drive through and connect with their Palestinian prison-islands, and paving the 56 settler-only Apartheid roads for Jews only to travel on!46

In order to prevent additional Palestinians from becoming Israeli citizens, against international law, on 14 May 2006, the Supreme Court of Israel, issued a decision to uphold the racist Nationality and Entry into Israel Law of 2003, which violates the right of Israeli citizens to family reunification with their Palestinian spouses from the OPT.

These laws combined with countless supplemental policies result in the cleansing of Palestinians and the population of the land with Zionist settlers. The suffering of Palestinian residents of Jerusalem has reached tragic proportions; while illegally annexed to Israel, they are considered “permanent residents” whose residency permits can be taken away if they go abroad for more than 7 years. Jews may have dual citizenship, but a non-Jewish Jerusalemite loses residency if acquiring additional citizenship. Palestinian communities in East Jerusalem are enduring the same systematic process as those in the rest of the West Bank as the Wall leads to house demolitions, property confiscation, forced displacement, isolation and denial of access to social services. Such practices found in Jerusalem, can also be seen from the Galilee to the Naqab and the Jordan Valley. It all adds up into one bigger picture, and the larger context, its analysis and the recipe become clear to see.

It is time to define our own terms and claim our rights, in practice and as enshrined in human rights conventions and international law. In addition to the concept of Apartheid, it is critical we challenge the acquiescence to cultural genocide and ethnocide, in part and in full.

Noura Khouri is a Palestinian American activist who has written on the situation in the occupied Palestinian territories. This is a shortened and edited version of a longer article which can be found in full at: http://palestinehumanrights.blogspot.com/

Endnotes:

(1) Article 7 of the “United Nations draft declaration on the rights of indigenous peoples” defines Cultural genocide as (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities; (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources; (c) Any form of population transfer which has the aim or effect of violating or undermining any of their rights; (d) Any form of assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative or otherwise.

(2) Raphael Lemkin, the linguist and lawyer coined the term genocide as “the union of the Greek word genos (race, tribe) and the Latin cide (killing), used ethnocide as an alternative form representing the same concept, using the Greek ethnos (nation) in place of genos.” The broader definition of ethnocide may be useful in addressing perceived shortcomings and restrictions of genocide law and in identifying cultural destruction when it occurs by less violent and less visible means (All Experts Online Encyclopedia: http://en.allexperts.com/e/ra/raphael_lemkin.htm)

(3) The National Committee for the Heads of the Arab Local Authorities in Israel, of the Palestinian Arabs in Israel presented titled, A Manifesto for the “Future Vision of Palestinian Arabs in Israel”.

The Jahalin Bedouin are Being Transferred

Close to 3,000 Bedouin living near the Jewish colony of Ma’ale Adumim are being displaced by house demolition to make room for the expansion of the colony and the construction of the Wall. Their displacement is one of the examples of Israel’s policy of population transfer, which aims to create “Jewish only areas.” The Ma’ale Adumim ‘bubble’ is set to be annexed to occupied East Jerusalem, and Israeli officials have publicly said that they want this area, which will be encircled by the Wall, to be empty of Bedouin.

Population transfer, defined as the forced displacement of persons by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law, is a crime against humanity and a war crime. International law provides that everyone has the right to be protected against being arbitrarily displaced from his or her home, land or place of habitual residence.

Call to action

A meeting was held on 3 March in Abu Hindi with the Bedouin and community representatives from al-Ezariya, Abu Dis, Anata and Al Khan al Ahmar as well as with Palestinian, Israeli and international organizations. The Bedouin said that they do not want to move and have nowhere to go, because most of the land, especially in area C, is now inaccessible to Palestinians. They accuse the Wall of destroying the land from which they live and affirm that without land their whole lifestyle will be destroyed. The Bedouin refuse to be resettled on land belonging to Palestinians and expressed the desire to stay where they are. They say they would only move voluntarily if they were allowed to return from where they were first expelled in the 1950s: Bir as-Sab’a (Beersheba), Israel.

The Bedouin urge all organizations to help them resist displacement and respond to home demolition. They call for international action and solidarity to prevent their displacement and counter Israel’s plan to transfer them from the area by the end of 2007 or in early 2008.

Defining the Conflict

The UN Anti-Racism Committee Questions Israel's Policy of Apartheid in Israel and the OPT and Calls for Equality in the implementation of the Right of Return

By Badil Staff

On 22-23 February 2007, after nearly 10 years of evading its responsibility, Israel finally met with the Committee on the Elimination of Racial Discrimination (CERD) to discuss its report on the implementation of the Convention on the Elimination of All Forms of Racial Discrimination. A number of Palestinian, Israeli and international NGOs attended, including Adalah, ACRI, Al Haq, Amnesty International, Badil, B’Tselem, Habitat Coalition International, National Lawyers Guild and the International Association of Democratic Lawyers.

Summarized below are some of the issues raised by the members of the Committee during their discussion with the Israeli delegation and in their Concluding Observations.*

The Jewish and democratic state and the Law of Return

A number of Committee members asked the Israeli delegation to explain the preferential treatment for Jewish nationals and the extraterritorial application of the concept of Jewish nationality through the Law of Return. The Israeli delegation said that the Law of Return did not discriminate between Jewish nationals and “others” because “the distinction took place before acquiring Israeli citizenship” and that once citizenship is granted, “the rights of all citizens were equal.” Moreover, Israel said that the right of return did not discriminate against “non-Jews or others,” because they could acquire citizenship under the 1952 Citizenship Law. In its Concluding Observations, CERD
called upon Israel to ensure that “the definition of Israel as a Jewish nation state does not result, in any systemic distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin in the enjoyment of human rights” and urged Israel “to assure equality in the right to return to one’s country and in the possession of property.” The Committee finally said they would welcome “more information on how the State party envisages the development of the national identity of all its citizens.”

(1)

The right to equality in Israel

The Israeli delegation defined Israel as a pluralistic society where the Jewish and democratic nature of the State live in harmony. The Country Rapporteur, Morten Kjaerum, asked about the right to equality in Israel because neither the law of return, the citizenship law nor the Basic Law: Human Dignity and Freedom, include a clause on the prohibition of discrimination or on the right to equality. The Israeli delegation responded that based on its Declaration of Independence, Israel aimed to ensure the “complete equality of social and political rights irrespective of religion, race or sex; to guarantee freedom of religion...” The rapporteur, however, concluded that “relying on jurisprudence of the Supreme Court, according to which the principle of equality was derived from the Basic Law on Dignity, was not sufficient.”

CERD recommended that Israel “ensure that the prohibition of racial discrimination and the principle of equality be enacted as general norms of high status in domestic law.” It further recommended “that the State party increase its efforts to ensure the equal enjoyment of economic, social and cultural rights by Arab Israeli citizens, in particular their right to work, health and education.”

(3)

Para-statal institutions and access to land

The Country Rapporteur on Israel, Morten Kjaerum, asked Israel to explain the mandate of bodies related to the state, namely, the Jewish National Fund (JNF), World Zionist Organization (WZO) and the Israeli Land Administration (ILA) and how the principle of non-discrimination applies to them. In its Concluding Observations, the Committee said it is “concerned by information according to which these institutions manage land, housing and services exclusively for the Jewish population” and “urge[d] the State party to ensure that these bodies are bound by the principle of non-discrimination in the exercise of their functions.”

(4)

Bedouin in the Naqab

One expert asked the Israeli delegation if the state recognized the traditional patterns of landholding of the Bedouin while another expert wondered about the classification as illegal or unrecognized villages of a whole collective group. The Israeli delegation said that the state has adopted a policy of encouraging the Bedouin to move to planned towns because it was unable to provide all services to isolated and scattered communities. Israel said it provides land free of charge and compensation to those Bedouin who move into the planned towns. The Committee concluded that “the lack of basic services provided to the Bedouins may in practice force them to relocate to the planned towns” and recommended “that the State party enquire into possible alternatives to the relocation of inhabitants of unrecognized Bedouin villages in the Negev/Naqab to planned towns, in particular through the recognition of these villages and the recognition of the rights of the Bedouins to own, develop, control and use their communal lands, territories and resources traditionally owned or otherwise inhabited or used by them.”

(5)
Other discriminatory practices

CERD also questioned the Israeli delegation as to whether the right balance had been struck between security laws and human rights, particularly in the case of family reunification and recommended the revocation of the Citizenship and Entry into Israel Law (Temporary Order) and called upon Israel to “reconsider its policy with a view to facilitating family reunification on a non-discriminatory basis.”(6)

Redress against racial discrimination

Israel did not respond to questions regarding the lack of investigation and law enforcement in response to complaints filed by Palestinians citizens of Israel. CERD recommended that Israel “guarantee the right of every person within its jurisdiction to an effective remedy against the perpetrators of acts of racial discrimination, or acts committed with racist motives, without discrimination of any kind, whether such acts are committed by private individuals or State officials, as well as the right to seek just and adequate reparation for the damage suffered.”(7)

Apartheid and segregation in both Israel and the OPT
The Committee looked at the applicability of Article 3 of the ICERD to both Israel and the occupied Palestinian territories.(8)

A Committee member defined apartheid or policies of segregation as a deliberate system based on an ideology of superiority resulting in institutional and structural racial segregation, which is racist in intent and in effect.

Segregation and separation in Israel

With regard to Israel, the expert questioned the Israeli delegation as to the reason for practices of segregation and the use of the terms “Jewish sector” and “Arab sector” in the Israeli state report. The member further requested the Israeli delegation to explain the state’s understanding of the concepts of segregation and separateness, a request to which the state did not clearly respond to. The Committee recommended to Israel to “assess the extent to which the maintenance of separate Arab and Jewish “sectors” may amount to racial segregation” and called upon the state to “develop and implement policies and projects aimed at avoiding separation of communities, in particular in the areas of housing and education.”(9)

Access to state land in Israel

CERD also applied article 3 to issues of access to state land by Palestinian citizens of Israel and recommended that “all measures are taken to ensure that State land is allocated without discrimination, direct or indirect, based on race, colour, descent, or national or ethnic origin.”(10)

Apartheid-like practices in the OPT

CERD applied article 3 to violations of human rights generated by the construction of the Wall and its associated regime, severe restrictions on the freedom of movement of Palestinians and the dual legal system being applied to Israelis and Palestinians in the OPT.
Legal systems in the OPT

Israel said that two legal regimes are applicable to Palestinians and Israelis in the West Bank: Palestinians are subject to “the law of the West Bank” while Israeli citizens or visitors are subject to Israeli law and criminal law applicable in the West Bank. In their Concluding Observations, the Committee expressed concerns “at the State party’s assertion that it can legitimately distinguish between Israelis and Palestinians in the Occupied Palestinian Territories on the basis of citizenship” and called upon Israel to ensure that “Palestinians enjoy full rights under the Convention without discrimination based on citizenship and national origin.” CERD called upon Israel to “ensure that restrictions on freedom of movement are not systematic but only of temporary and exceptional nature, are not applied in a discriminatory manner, and do not lead to segregation of communities.”(1)

The Wall and its associated regime in the occupied West Bank

Expert Committee members asked Israel whether it had undertaken any studies on the impact of the Wall on affected communities and whether it had taken steps to implement the 2004 Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. Israel said that the Court did not conclude that the Wall was discriminatory and said that in terms of freedom of movement

### Impossible travel

All the promises to relax restrictions in the West Bank have obscured the true picture. A few roadblocks have been removed, but the following prohibitions have remained in place. (This information was gathered by Haaretz, the United Nations Office for the Coordination of Humanitarian Affairs and Machsom Watch)

**Standing prohibitions**

* Palestinians from the Gaza Strip are forbidden to stay in the West Bank.
* Palestinians are forbidden to enter East Jerusalem.
* West Bank Palestinians are forbidden to enter the Gaza Strip through the Erez crossing.
* Palestinians are forbidden to enter the Jordan Valley.
* Palestinians are forbidden to enter villages, lands, towns and neighborhoods along the ‘seam line’ between the separation fence and the Green Line (some 10 percent of the West Bank).
* Palestinians who are not residents of the villages Beit Furik and Beit Dajan in the Nablus area, and Ramadin, south of Hebron, are forbidden entry.
* Palestinians are forbidden to enter the settlements’ area (even if their lands are inside the area).
* Palestinians are forbidden to enter Nabus in a vehicle.
* Palestinian residents of Jerusalem are forbidden to enter area A (Palestinian towns in the West Bank).
* Gaza Strip residents are forbidden to enter the West Bank via the Allenby crossing.
* Palestinians are forbidden to travel abroad via Ben-Gurion Airport.
* Children under age 16 are forbidden to leave Nabus without an original birth certificate and parental escort.
* Palestinians with permits to enter Israel are forbidden to enter through the crossings used by Israelis and tourists.
* Gaza residents are forbidden to establish residency in the West Bank.
* West Bank residents are forbidden to establish residency in the Jordan valley, seam line communities or the villages of Bet Furik and Beit Dajan.
* Palestinians are forbidden to transfer merchandise and cargo through internal West Bank checkpoints.

“the distinction between a citizen and a non-citizen[...] was not a form of discrimination under the Convention.” It also said that neither Israel nor the Quartet had accepted the Court’s ruling. It concluded by saying that the Israeli Supreme Court reserved the right to “judge separately whether each and every segment of the fence was legal under international law.”(12) CERD urged Israel to “cease the construction of the wall in the Occupied Palestinian Territories, including in and around East Jerusalem, dismantle the structure therein situated and make reparation for all damage caused by the construction of the wall.”(13)

Colonization

Committee members also highlighted the impact of Jewish colonies in the OPT as seriously affecting the human rights of Palestinians, particularly in the city of Hebron. CERD reaffirmed that the colonies in the occupied West Bank, including East Jerusalem, are illegal and that other “actions that change the demographic composition of the Occupied Palestinian Territories are also of concern as violations of human rights and international humanitarian law.” The Committee also recommended to Israel to increase its efforts to protect Palestinians against settler violence and ensure that redress is offered to the victims.(14)

Note:
* References to the position of the Israeli delegation and the questions of the members of the Committee are from notes taken during the review of Israel by Badil staff on 22-23 February 2007.

Endnotes:

(1) Concluding observations of the Committee on the Elimination of Racial Discrimination, Israel (Unedited version), Committee on the Elimination of Racial Discrimination, CERD/C/ISR/CO/13, Seventieth Session, paras. 17-18.
(2) See UN Committee on Elimination of Racial Discrimination Considers (CERD), Report of Israel, 27 February 2007.
(3) Supra note 1, paras. 16, 24.
(4) Ibid, para. 19.
(5) Ibid, para. 25.
(6) Ibid, para. 20.
(7) Ibid, para. 30.
(8) Applicability of the Convention to the OPT: Most Committee experts asked Israel why it did not include the occupied territories in its report, saying that Israel submitted only “half of the report.” Israel said it was willing to informally answer questions pertaining to the West Bank, not the Gaza Strip, which it no longer considers occupied.
(9) Ibid, para. 22.
(10) Ibid, para. 23.
(11) Ibid, paras. 32-35.
(13) Supra note 1, para. 33.
The Israeli High Court Approves the Legality of the Wall and its associated regime*

By Usama Halabi**

The Palestinian Authority and other Palestinian institutions have not developed a clear policy as to whether Palestinians should challenge the Wall and its associated regime in Israeli courts. Moreover, no real evaluation of the consequences of such a decision has ever taken place. Since 2003, however, a large number of Palestinians have brought cases to the Israeli courts (mainly to the Israeli Supreme Court sitting in its capacity as High Court of Justice).

On the one hand, the Israeli High Court has never accepted the arguments against the legality of the Wall raised by Palestinian claimants. On the other hand, it has almost unconditionally accepted the legal and discretionary powers of the area commander to build the Wall and the security arguments brought by the government.

This article argues that the Israeli High Court has used this opportunity to legalize the Wall and its regime by upholding the security argument advanced by Israel. Through its rulings, the High Court has “advised” the respondents on how to correct ‘technical’ mistakes made by the planners of the Wall, such as a lack of “agriculture gates” for Palestinian farmers (Beit Surik case), which in fact, has helped diminish the pressure put on Israel by the International Court of Justice (ICJ) advisory opinion on the 9th of July 2004, which found the Wall in the occupied territory to be illegal. The High Court also took the opportunity to attack the credibility of the ICJ by stating that the International Court (not like the Israeli HC) based its ruling on “partial information” and that it should have examined the legality of each sections of the Wall and not the legality of the Wall itself (Alfe Menashe case).

On the one hand, the Israeli High Court has never accepted the arguments against the legality of the Wall raised by Palestinian claimants. On the other hand, it has almost unconditionally accepted the legal and discretionary powers of the area commander to build the Wall and the security arguments brought by the government.
accepted the legal and discretionary powers of the area commander to build the Wall and the security arguments brought by the government. At best, the Court questioned the route chosen and requested the planners to re-route the Wall, but fell short of examining the legality of the Wall itself. The Court’s analysis contradicts statements made by a number of Israeli officials stating that the Wall is the future border between Israel and the ongoing internationalization and privatization of the checkpoints or ‘mega-terminals’ built within the Wall.\footnote{3}

Except for two,\footnote{4} all cases brought after Beit Surik and Alfe Menashe were dismissed by the Court. As of February 22, 2007, review of 64 petitions submitted by Palestinians\footnote{5} to the Israeli High Court regarding the Wall reveals the following: 47 were dismissed, 3 were in favor of the petitioners, 6 were settled between the parties and 8 are still pending.\footnote{6} The Beit Surik (2004) and Alfe Menashe (2005) cases have come to epitomize the reasoning of the Court. Since then, the decisions of the Court have basically been a ‘copy-paste’ of these two principal rulings. Today, the only ground on which lawyers can ‘win’ a case, - i.e., slightly change the route of the Wall – is if they can prove that the route: (1) cause severe and disproportionate harm to the petitioners; (2) and, is unnecessary to the achievement of the desired security goals.

In the case of Beit Surik the Court ruled in favor of the Palestinian Petitioners finding that the harms caused to the Petitioners by the particular Wall’s planned route in this particular case is not proportional to the benefit that might be gained of it for security. The Court thus restricted its legal examination to a particular case and only applied the test of proportionality. Moreover, the Court recognized the right not only of existing Jewish colonies but also of planned “neighborhoods” to be protected by the Wall, hence legitimizing the colonial feature of the occupation.\footnote{7}

In the case of Alfe Menashe, the Court ruled in favor of four Palestinian villages trapped by the Wall in an enclave with the colony of Alfe Menashe because the chosen route was not proportional to the security that might be achieved. The Court also endorsed the legality of the construction of the Wall far from the Green Line, as long, it argued, that it is done for security reasons. The Court further reaffirmed the duty of the military commander to protect Jewish settlers and their properties, regardless of whether the colonies are in accordance with international law or not.

After Israel announced the construction of the Wall in 2002 and started work on the ground (2003), the Ministry of State Affairs in the PA established the Committee for the Struggle against the Wall. The Committee did not take a clear position as to the value of petitioning Israeli courts on the Wall, but did coordinate work between lawyers who had been contracted by the Ministry to represent the plaintiffs, including to the Israeli Supreme Court. It is only in April 2005 that the Committee convened a meeting to discuss the value of petitioning Israeli courts. A decision was taken to continue to bring cases to Israeli courts although no serious discussion and evaluation have taken place as to whether an important issue that has direct implications on the Palestinian National interest such as the Wall should be brought before the Israeli High Court of Justice.

After three years and more of petitioning the Israeli Supreme Court, and with almost no success, except for a slight “shift” in the route of the Wall in three or four cases, it is reasonable to conclude that crucial matters such as the Wall, which have grave implications on the life and
interests of the Palestinian people, should not be brought before the said Court because it has failed to uphold international law. It would have been much wiser if the PA had “sticked” to the ICJ ruling of 9 July 2004, used all international arenas to try ensuring its enforcement, rather than giving the Israeli High Court the opportunity to legalize the Wall and thus give the Israeli Government a good excuse to claim that Israel has opened its courts before the Palestinians and that Palestinian petitioners have had a fair opportunity to oppose the construction of the Wall.

* This article is based on a presentation of the present writer made on 11/06 at Badil LSN Annual meeting held in Athens. It would not have been possible to publish it without the great help of Karine Mac Allister, Coordinator for Legal Advocacy, BADIL Resource Center for Palestinian Residency & Refugee Rights.

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Endnotes:

(1) HCJ 2056/04. Village Council of Beit Surik et al v. Gov. of Israel et-al, submitted on 26/02/04, ruling on 20/06/04.
(2) HCJ 7957/04. Mara’abah et al v. Gov. of Israel et-al, submitted on 31/08/04, ruling on 15/09/05.
(3) See UN OCHA,”The Humanitarian Monitor, Occupied Palestinian Territory”, No.9, Jerusalem: OCHA, January 2007, p.4.
(4) One is the Alfe Menashe case and the second is: HCJ 2732/05 Mayor of Azoun et-al v. Gov. of Israel et-al, submitted on 20/3/05, ruling on 15/6/06. In this case the Court decided that the respondents have misled the Court and thus ruled in favor of the petitioners. The present writer did not include a third decision made in favor of Palestinians in the Hebron southern area, where the Court decided that a tence 0.80 meter high belt to the side of a main street had to be dismantled (HCJ 1842/06, HCJ 1748/06, HCJ 1856/06).
(5) The present writer is aware of 10 petitions submitted by Jewish settlers (living in the West Bank) and Jewish citizens. These petitions are not relevant because they were submitted by Israeli Jews who demand/ed that the Wall be built on a different route (far from their settlements).
(6) This information is based on court rulings/decisions published in High Court website: www.court.org.il located by the present writer searching for the term :”Gader Ha-Hafradah” (separation wall) until 22-02-07.
(7) See the Beit Surik case, sec. 80.
The Role of Universal Jurisdiction in the Fight Against Impunity

By Maria Lahood

Avi Dichter, the former Director of Israel’s General Security Service (GSS), has been sued in a United States court for his role in the Al-Daraj, Gaza bombing that killed fifteen people and injured approximately 150 others. The Center for Constitutional Rights (CCR), along with CCR cooperating attorneys and the Palestinian Center for Human Rights (PCHR), represent the survivors of the July 2002 bombing in a class action lawsuit against Dichter for war crimes, crimes against humanity and extrajudicial killings.¹

Plaintiffs have alleged that Dichter participated in the decision to drop the one ton bomb around midnight on the residential neighborhood in the densely-populated area, and that GSS provided the necessary intelligence and final approval to carry out the attack. The Complaint alleges that Dichter not only knew the bomb would kill the so-called “target,” Saleh Shehadeh, but also his wife, and possibly ten other civilians. The court has jurisdiction over Dichter because he was served with the complaint when he was in New York in December 2005, after he had left the GSS, and prior to becoming the Minister of Public Security.

Under the principle of universal jurisdiction (UJ), courts exercise jurisdiction over internationally condemned crimes regardless of where they were committed, and often without the state having a connection to the perpetrator or the victim. UJ laws seek to prevent impunity, whereby human
rights violators may evade accountability for their conduct. Such laws in nations that include Spain, Belgium, Germany, and the United Kingdom have been used to convict criminals for human rights abuses committed in other countries. The U.S. criminal UJ torture statute was recently used for the first time to indict Chuckie Taylor for torture in Liberia.\(^2\)

Although universal jurisdiction often refers to criminal proceedings, where a state can (and sometimes must) bring charges, and the defendant can be arrested and imprisoned, it also applies to civil cases brought by survivors for monetary damages, as with the case against Dichter. The suit was brought under the Alien Tort Statute (ATS) (or Alien Tort Claims Act (ATCA)), a statute from 1789 that gives federal courts jurisdiction over civil tort actions by foreign nationals for violations of customary international law. Since 1980, when CCR won Filártiga v. Peña-Irala, holding a former Paraguayan official liable for torturing a Paraguayan citizen in Paraguay, the ATS has been used to sue human rights violators found in the U.S. for violations occurring anywhere in the world.\(^3\) Former government officials from countries including Guatemala, Indonesia, Haiti, the Philippines, El Salvador, Ethiopia, and Argentina have been held liable in U.S. courts for human rights abuses committed outside the U.S., against foreign citizens.

Despite such precedent, Dichter moved to dismiss the case claiming that he is immune from liability under the Foreign Sovereign Immunities Act (“FSIA”), which governs U.S. courts’ jurisdiction over foreign states. Some courts have applied the FSIA to individual officials acting within their scope of authority, but the Second Circuit (where Dichter’s case is being heard) has not. A class action case brought by CCR against Moshe Ya’alon on behalf of survivors of the 1996 shelling of a U.N. compound in Qana, Lebanon was recently dismissed pursuant to the FSIA in the District of Columbia District Court, where the FSIA applies to individuals.\(^4\) Relying on a letter from the Israeli Ambassador to the U.S. Department of State\(^5\) claiming that these cases “challenge sovereign actions of the State of Israel, approved by the government of Israel in defense of its citizens against terrorist attacks”, the D.C. court found that Ya’alon was acting in his “official capacity” and therefore was immune from suit.

Responding to the court’s July 2006 invitation to the U.S. State Department to submit its views on issues relevant to the case against Dichter, the U.S. Government submitted a “Statement of Interest”, arguing that even though the FSIA does not apply to individuals, Dichter is immune under federal common law and customary international law for any official acts.\(^6\) Plaintiffs maintain that there is no immunity for violations of\(^\text{\textit{jus cogens}}\) norms, including war crimes, since no derogation is permitted from such peremptory norms.

Dichter also argued that Plaintiffs’ claims are “political questions” that would interfere with U.S. foreign policy if adjudicated, asserting that courts shouldn’t get involved in political and military decisions, especially regarding the Middle East, and especially by a U.S. ally. But U.S. courts do adjudicate matters arising out of incidents occurring in conflicts, including the Israeli-Palestinian conflict (albeit against Palestinian organizations). The Israeli Ambassador’s letter claimed the case risks undermining U.S. diplomatic efforts to bring peace to the Middle East and end terrorism. Notably, the U.S. did not adopt this argument, but reiterated its “serious objections” to the Al-Daraj attack, which the White House had condemned in 2002 as a “deliberate attack against a building in which civilians were known to be located.”
The Israeli Ambassador also called the case “political” and “inappropriate,” and claimed that it appears to be part of an agenda “to import political conflicts into foreign courts.” In his motion to dismiss, Dichter pointed out that CCR had filed a complaint in Germany seeking prosecution of former U.S. Secretary of Defense Donald Rumsfeld and others for torture. In its Statement of Interest, the U.S. argued that failing to grant immunity for “official” acts would “threaten serious harm to U.S. interests, by inviting reciprocation in foreign jurisdictions,” and expressed concern that U.S. officials would be the “targets of politically driven lawsuits abroad”. Rhetoric describing cases against people holding power as “political” ignores the fact that these claims seek to enforce the law, and that it is incumbent upon courts to decide the issues before them.

Such transparent attempts to stem the international trend toward UJ, respect for human rights, and the fight against impunity are nothing more than self-protection by the most powerful.

Belgium yielded to pressure by Israel and especially the United States to restrict the scope of its criminal UJ law after complaints were brought against Ariel Sharon for Sabra and Shatila, against George H.W. Bush for war crimes during the first Gulf War, and against the commander of U.S. troops in the second Gulf War. Israel has been pressing the United Kingdom to amend its UJ laws since PCHR worked with U.K. attorneys to get an arrest warrant for Doron Almog for the January 2002 destruction of 59 houses in Rafah. Almog evaded arrest after being tipped off, and travel by Israeli officials to the U.K. was subsequently curtailed. The assault on UJ is being wielded by those in power to protect themselves from being subject to the rule of law that should bind, and protect, us all.

International law prohibitions against jus cogens violations such as war crimes and crimes against humanity largely ring hollow if they cannot be enforced. Cases such as the one against Dichter, which is still pending before the court, not only seek justice for the victims of the human rights abuses, but also seek to raise international awareness of the crimes being committed and deter future violations. Governments must be reminded that if they do not hold their own officials liable, another nation just might. Officials must be aware that when they travel to another nation, they could be subject to its jurisdiction for crimes they have committed. International efforts to hold the perpetrators of these crimes accountable are essential to ensure that human rights are protected around the world.

Maria Lahood is an attorney at the Center for Constitutional Rights (CCR), a non-profit legal and educational organization based in New York and dedicated to protecting and advancing the rights guaranteed by the U.S. Constitution and the Universal Declaration of Human Rights. Ms. LaHood specializes in international human rights litigation, seeking to hold government officials and corporations accountable for torture, extrajudicial killings and war crimes. In addition to Matar v. Dichter and Belhas v. Ya’alon, her cases include Corrie v. Caterpillar, brought on behalf of Palestinians killed and injured in home demolitions and on behalf of Rachel Corrie, alleging that Caterpillar continued to sell D9 bulldozers to the IDF knowing they would be used to unlawfully demolish homes in the Occupied Palestinian Territory. Ms. LaHood also represents Maher Arar, a Syrian-born Canadian citizen, against U.S. officials for sending him to Syria where he was tortured and detained for a year. See www.ccr-ny.org for more information.
Endnotes:


(2) Besides national courts, international criminal justice may also be meted out by the International Criminal Court (ICC), but the United States and Israel have refused to ratify the treaty.

(3) Plaintiffs also brought extrajudicial killing claims under the Torture Victim Protection Act (TVPA), which Congress passed in 1992 to allow damages suits on behalf of victims of torture or extrajudicial killing when the defendant acted under the authority or color of law of a foreign country.


(5) Letter from Daniel Ayalon, Ambassador of Israel, to Nicholas Burns, Under-Secretary for Political Affairs, U.S. Department of State (Feb. 6, 2006).

(6) Dichter similarly argues that the case impermissibly challenges a so-called “act of state” or official act of Israel, but again, *jus cogens* violations can’t be official acts, and this defense requires that the act occur within Israel’s territory, whereas the bombing at issue was in Gaza.

(7) PCHR also worked with attorneys in New Zealand to obtain an arrest warrant for Moshe Ya’alon for the Al-Daraj bombing, but the warrant against Ya’alon was extinguished.
US INCARCERATION OF PALESTINIAN CHILDREN UNDER OPERATION RETURN TO SENDER

By Karen Pennington

Palestinian children as young as five years old have been jailed in the United States since early November 2006. They are currently being treated more harshly in the United States than even in Israel. The manner of the arrest and detention of the Palestinian children in Texas contravenes international law. Article 37 of the UN’s Convention on the Rights of the Child states that detaining children should be a measure of last resort, and that the detention must be for the shortest possible period of time. Under international law, children are to be detained only in facilities dedicated exclusively for them, and never with adults. Israel signed the pact in 1990, but only applies it to Israeli children. The Palestinian Ministry for Prisoners’ Affairs confirm the presence of about 450 Palestinian children from the West Bank in Israeli prisons, including three girls aged 15, 16 and 17. However, even Israel is not known to have ever detained a 5 year old girl like Faten Ibrahim who was jailed in a criminal jail facility in Texas with adult prisoners for almost three months.

Beginning in the early morning hours of November 2, 2006, United States Immigration and Customs Enforcement (“ICE”) arrested three Palestinian families in Dallas, TX and jailed them, including their minor children. They are the families of Adel Suleiman, Salaheddin Ibrahim and Radi Hazahza. All three families had been under final removal orders from the United States for several years because their applications for political asylum were denied more than two years ago and all avenues of appeal had been exhausted. Under prior policy, ICE had not actively sought removal of these families from the US, and Palestinians denied asylum had regularly been allowed to remain in the United States without legal immigration status although formally under orders of removal. In the early hours of November 2, 2006, that policy changed and numerous Palestinian asylum applicants with denied asylum claims in the Dallas, TX area were arrested under a new ICE initiative, “Operation Return to Sender.”

Because the United States does not recognize the right of 1948 and 1967 Palestinian refugees to refugee status as a matter of law, under Article 1(D) of the 1951 Refugee Convention, Palestinians are regularly denied asylum and recognition of their refugee rights in the United States. The denials are frequently on the basis of the applicant having been a victim of...
generalized conditions of violence rather than having been individually targeted, and only applicants with Palestinian National Authority (PNA) passports are identified as Palestinian in the immigration system in the United States. The US Department of Justice reports that of 30 Palestinian asylum applications filed in the United States from 2001-2005, 2 have been granted and 28 have been denied. But none of the families discussed here were probably included in that number because all three families carried Jordanian passports at entry to the United States. Palestinians carrying travel documents from other countries or who were born outside of Palestine are regularly categorized by the US immigration system as nationals of their country of birth or country whose travel documents they carry. For example, a Palestinian child born to a guest worker in Saudi Arabia would be considered Saudi Arabian by American immigration despite having no right to legal residence or citizenship in Saudi Arabia.

The adult males from the Ibrahim and Hazahza families and the two oldest daughters of the Hazahza family were jailed in Haskell, Texas. The mothers and minor children (with the exception of Ahmad Hazahza, 17 who was held in Haskell as an adult) were jailed at the T. Don Hutto Detention Center in Taylor, Texas, south of Austin, TX, and many hundreds of miles from their family members. While called a detention center, the T. Don Hutto Center is a prison, and is a diabolical new creation of the Department of Homeland Security. It is a prison designed specifically for the purpose of jailing non-Mexican families who the US government is deporting from the United States, including children no matter how young they may be. The government claims that despite the children never having committed any criminal offense, the jailing of these immigrant children is humane and reasonable because they are to be deported from the United States. In the author’s view, there is no possible justification for jailing children. What could 5, 8, 11 and 14 year olds possibly have done to warrant jailing in a prison? That their imprisonment was allowed to continue for three months is a crime against humanity.

All three Palestinian families entered the United States legally with visas and applied for political asylum.

**The Ibrahim family**

The Ibrahim family came from the West Bank and includes Salaheddin, 36, his wife Hanan Ahmad, 34, who is pregnant, Faten Ibrahim, 5; Maryam Ibrahim, 8; Rodaina Ibrahim, 14; and Hamsa Ibrahim, 15. Three year old Zahra Ibrahim has been separated from her parents, brother and sisters for about three months. Because she was born in the United States and is a US citizen, Zahra was not jailed and has been cared for by her uncle Ahmad during the detention of her family. The Board of Immigration Appeals has recently issued a decision reopening the political asylum case of Salaheddin Ibrahim. Pursuant to that decision, Hanan and the Ibrahim children were released from custody on Saturday, February 2, 2007 and they have returned to their home in Richardson, Texas. A new hearing will now be scheduled on the asylum application in immigration court. Salaheddin remains incarcerated at this time and it is uncertain whether he will be released from custody while the asylum claim is processed or whether he will remain jailed until the case is completed in immigration court. A bond hearing in immigration court is currently scheduled on Wednesday February 7, 2007.
The Hazahza family

The Hazahza family includes Radi, a 1948 refugee, age 60, whose Jordanian citizenship was taken from him under the Disengagement Accords because he obtained a PNA passport, i.e. a travel document, and moved his family to the West Bank; his wife Nazmieh Juma, Ahmad Hazahza, 17; Suzan Hazahza, 19 (engaged to US citizen); Mirvat Hazahza, 23 (newly married to a US citizen and honors graduate of college in the US); Mohammad Hazahza, 11 and Hisham Hazahza, 23. Nazmieh Juma, his wife, is a Jordanian citizen and does not have a PNA passport, but the children do. When Radi’s Jordanian citizenship was taken away, Nazmieh Juma’s Jordanian passport was marked that her children were of a “foreigner” father. Another son, Bassam Hazahza was recently shot to death by police officers in the Dallas area and the police officers were scheduled for hearing before the grand jury several days after the incarceration of the Hazahza family. The family was in mourning at the time of their arrest and incarceration, and Nazmieh Juma has been separated even from her daughters, who are imprisoned in Haskell. It is believed that their removal is currently being sought to Jordan but the status of the removal is currently unknown.

The Suleiman Family

The Suleiman family includes Adel, a 1948 refugee, age 60, his wife Asma Quaddura and their 17 year old son Ayman whose high school graduation was ruined by his imprisonment. Adel was jailed at the Oklahoma County Jail in Oklahoma City, Oklahoma while his wife and son were jailed at the Hutto Detention Center for families, many hours and hundreds of miles away. It is believed that the Suleiman family was removed to Jordan on Monday, January 28, 2006. Adel Suleiman was born in a refugee camp in Silwad, Palestine in 1955 to 1948 refugee parents from Haifa and is a 1948 Palestinian refugee. Adel’s father moved his family to Kuwait in 1960. Asma, Adel’s wife, was born in Kuwait as was their son, Ayman. Adel’s affidavit regarding his immigration case and asylum claim can be found at: http://texascivilrightsreview.org/phpnuke/modules.php?name=News&file=article&sid=72. Despite Adel’s credible fear of persecution in Jordan, Kuwait and Palestine, he and his family have now been removed to Jordan where they have no known means of survival.

Public reaction

There have been small but vocal protests in the United States because of the jailing of the Palestinian families, including young children, in Texas. The cases have also received fairly extensive media coverage. Neither action was successful in obtaining the release of the
unfortunate families, not even the release of the youngest of the children. The reopening of Salaheddin Ibrahim’s case by the Board of Immigration Appeals has resulted in the release from custody of his pregnant wife and young children but it has not been sufficient to release him from jail at this time. Article 1(D) of the 1951 Refugee Convention entitles 1948 and 1967 Palestinian refugees to recognition as refugees anywhere outside of the area of UNRWA operation without the necessity of proving entitlement to refugee status under Article 1(A) of the Convention. It is essential that the United States and its western allies both recognize the rights of Palestinian refugees under the 1951 Refugee Convention and stop jailing innocent children in contravention of the UN Convention on the Rights of the Child based on failed American immigration policy.

Karen H. Pennington is a refugee and immigration lawyer based in Dallas, Texas.

Endnotes:

(1) The United States has signed the Convention but has never completed its ratification process. The administration of George Bush has explicitly opposed the treaty, stating: “The Convention on the Rights of the Child may be a positive tool for promoting child welfare for those countries that have adopted it. But we believe the text goes too far when it asserts entitlements based on economic, social and cultural rights... The human rights-based approach... poses significant problems as used in this text.”

(2) It has been reported that the Canadian Consulate in Amman, Jordan has offered to resettle 1948 Palestinian refugees in Jordan to Canada, contingent on the applicant proving UNRWA registration as a 1948 refugee and subject to the agreement in writing to give up all refugee rights under the UNRWA registration and any claim of land rights in 1948 Palestine. The Canadian Consulate has also reportedly advised applicants that both Australia and Germany have adopted the same resettlement policy for 1948 Palestinian refugees. The author has tried to ascertain whether these are formal policies of the countries in question but has been unsuccessful thus far in making that determination.

(3) No. From US Dept. State 2002 “During the year, there were allegations that the [Jordanian] Government did not consistently apply citizenship laws. There were 32 cases reported in which passports were taken by the Government in efforts to implement 1988 West Bank disengagement laws. In 2001, there were reports of 52 complaints from persons or families claiming that the Government denied their right to citizenship. All 52 reported complainants disputed the Government’s claim that they were ineligible for citizenship under the regulations, and many filed appeals with the Ministry of Interior.”
Searching for Solutions for Palestinian Refugees Stuck in and Fleeing Iraq

By Badil Staff

All our lives we’ve been refugees. My family fled, we fled. My family stayed in tents. Now we’re staying in tents. They saw war. We saw war.

Palestinian refugees have reached Iraq in three waves; 1948 (Nakba), 1967 (occupation) and 1991 (Gulf War). The majority of Palestinians in Iraq are 1948 refugees who originate from the villages of Ijzim, Jaba’, and Ein Ghazal as well as other villages south of Haifa and the Galilee. The refugees still have strong ties with their relatives who now live in the West Bank camp of Jenin, Nour Shams and al-Fara refugees camps in the West Bank as well as in Israel. Palestinian refugees were protected by the previous Iraqi government based on resolutions of the League of Arab States and the 1965 Protocol for the Treatment of Palestinians in Arab States, also known as the Casablanca Protocol. By 2003, UN High Commissioner for Refugees (UNHCR) had registered 23,000 Palestinian refugees in Iraq, but registration was interrupted due to the evacuation of the UN staff from Iraq in August 2003. The exact number of Palestinian refugees in Iraq is thus unclear, and estimates vary between 34,000 and 90,000.

Since the American invasion and occupation of Iraq in April 2003, an increasing number of Palestinian refugees are fleeing Iraq. Palestinians refugees have become victims of the general violence as well as persecution on the ground of nationality, including eviction from their homes, arbitrary detention, kidnapping, torture, rape, extra-judicial killings. They have had difficulties renewing their residency permit on a two months basis as recently required.

The UNHCR estimates that over 10,000 Palestinian refugees have left Iraq, but for a few exceptions,
their whereabouts and legal status remain unknown to UN agencies. The lack of information on and assistance and protection to Palestinian refugees and Iraqis fleeing Iraq is largely imputable to the difficulties of working in Iraq and financial constraints. Thus many Palestinian refugees are left with little choice other than the dangerous option of trafficking and smuggling. Some Palestinian refugees from Iraq have been reported by UNHCR offices in locations as far as India and Thailand. It is estimated that about 15,000 Palestinian refugees may still be in Iraq, mainly the most vulnerable who are unable to flee. Almost all of the Palestinian refugees in Iraq have expressed the desire to leave.\(^{(3)}\)

Despite the difficulties, UNHCR has followed the situation of Palestinians refugees and has issued a number of press releases expressing strong concern and urgently calling for at least a temporary solution for Palestinians refugees from Iraq. At the end of January, UNHCR wrote that “right now, it’s an untenable situation for the Palestinians and it is deteriorating on a daily basis.”\(^{(4)}\) A few days later, UNHCR urged “the international community, including neighboring and resettlement countries, to help find a humane solution for these refugees who are persecuted inside Iraq and have nowhere to go.”\(^{(5)}\) A few weeks later, the head of UNHCR’s Iraq Support Unit, Andrew Harper, said “how much more will have to happen before the international community and the countries in the region respond positively to calls to have Palestinians relocated out of Iraq?”\(^{(6)}\)

UNHCR and the Palestine Liberation Organization (PLO) have also urged the American occupation forces and the Iraqi government to protect and ensure the security of Palestinian refugees. In light of the ongoing crisis, it is doubtful whether the Iraqi government and American forces are able and/or willing to protect the refugees. The PLO has advocated three realistic options; (1) protection in Iraq; (2) an internal flight alternative within Iraq; (3) relocation out of Iraq on a temporary basis until the right or return to their homes of origin can be realized. The PLO has also called upon UNRWA to register Palestinian refugees in and from Iraq.

UNHCR has in the past approached the Israeli authorities to allow Palestinian refugees to enter the occupied Palestinian territories, and the Palestinian Authority (PA) has said it is willing to welcome the refugees, but Israel, who controls the borders, has so far refused to discuss this option. UNHCR has also tried to facilitate the entry of Palestinian refugees to Jordan and Syria and find relocation space in other Arab states, but to no avail. As Rafeef Ziadah wrote, “once again, Palestinians see how Arab regimes offer nothing more than the rhetoric of Arab summits. When it comes to protecting Palestinians these regimes consistently abdicate responsibility.”\(^{(7)}\)

According to the 1965 Casablanca Protocol and international law, Palestinian refugees have the right to depart from the state where they reside according to their interest, travel documents, work, education, housing and return to their homes of origin.\(^{(9)}\) Moreover, states are bound to respect the principle of ‘non-refoulement’ which stipulates that “no Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”\(^{(9)}\)

Jordan has refused to allow Palestinian refugees to enter its territory, except for a limited number of Palestinians (approximately 400) married to Jordanian nationals. The only Palestinian refugees remaining in the Jordanian-Iraq border area are those stuck in the Ruweished camp, located 50km from the border in Jordan. UNHCR wants to close the Ruweished camp because of the dire living conditions there and is actively looking for relocation opportunities for the 97 Palestinian refugees remaining in the camp. The government of Syria also has allowed entry of a small number of Palestinian refugees only. It has denied entry to the majority of the refugees on the ground that they do not have...
proper travel documents and that the Arab League has not yet taken any decision as their future of the refugees. The small number of Palestinian refugee officially hosted in Syria with the help of the UN are in the Al Hol camp (around 300 persons), a UNHCR camp serviced by UNRWA, and they have not yet been issued personal documents by the Syrian authorities. Other groups of Palestinian refugees are stranded on the Syrian-Iraqi border at the al-Tanf border crossing point (around 320 persons) in miserable conditions. Palestinian refugees in the Ruweished camp, Al Hol camp and al-Tanf fall under the mandate of UNHCR although they are located in UNRWA area of operations. Another 356 persons are stranded in the ‘No Man’s Land’ area between Syria and Iraq, and at least 520 others are stuck in El Waleed on the Iraqi side of the border. An unknown and probably greater number of Palestinian refugees are also believed to have entered Syria with forged documents and are now left without proper papers. The Arab League has not yet taken any decision on the future of Palestinian refugees from/in Iraq. The issue is, however, on the agenda of the next Arab League summit scheduled to take place at the end of March.

Meanwhile, UNHRC continues to look for a place to secure the refugees' lives and has turned to other states such as Canada, Australia and Latin American countries to accept Palestinian refugees. Some states have already taken in a small number of Palestinian refugees; Canada received 55 Palestinian refugees from the Ruweished camp, the United States has agreed to take 16 refugees, while Chile is currently considering taking between 30 to 200 Palestinian refugees.

Palestinian refugee organizations insist that solutions to Palestinian refugees remain temporary and on a humanitarian basis, until they can voluntarily return to their homes of origin and repossess their property according to international law and UN Resolutions, notably UN General Assembly Resolution 194 and UN Security Council Resolution 237. Similarly, UNHCR affirms that temporary stay in the OPT or neighboring countries as well as resettlement in third countries “should be seen as a temporary solution for Palestinians, without jeopardizing their right to return.”

Endnotes:

Repatriation in Peace Agreements
A Comparative Analysis of the Cases of Refugees from Darfur and Bosnia

By John Quigley

Refugees from the Bosnia war have been repatriated under a peace agreement that permitted them to return to their homes. Refugees from the Darfur region of Sudan are assured of a right of return under an as yet unimplemented peace agreement. In both instances, the countries from which the displacement occurred agreed to repatriation, and they acknowledge the nationality status of the displaced.

These two situations contrast sharply with that of the Palestine refugees. No agreement with Israel, the state in control of the territory from which displacement occurred, calls for repatriation. Israel, far from having agreed to repatriation, insists it is not required to repatriate. Further, Israel has failed to recognize the displaced as entitled to its nationality.

Bosnia and Darfur are but two instances of recent international practice relating to conflict situations in which a right of repatriation has been recognized, both as a human right of those displaced, and as a necessary element to resolving an international conflict. The three situations were the focus of analysis last February at the Washington College of Law of the American University in Washington DC. Experts on the three situations examined how repatriation has - or has not - been handled.

Dr. Clovis Maksoud analyzed the Palestine refugee situation in comparison to other refugee situations. Dr. Maksoud, who formerly was Arab League representative to the United Nations
and to the United States, and currently is a professor of the American University, pointed to the Palestine refugee situation as unique, and as an exception to the practice followed generally in the international community. In most conflict situations, Dr. Maksoud said, repatriation is accepted as a basic element of a resolution, but the Palestine refugees have had to struggle for over half a century, so far unsuccessfully, to gain an agreement for repatriation, even in principle, from the state of displacement.

The Bosnia conflict was resolved on the basis of a peace agreement concluded in Dayton (U.S.A.) in 1995. The agreement included a series of annexes. Annex 7 was devoted to repatriation. Thousands of Bosnians had fled their homeland during the ethnic cleansing campaign that ravaged Bosnia in 1992-93. The homes they abandoned were for the most part occupied by others in their absence. Hence, provision had to be made not only for repatriation, but as well for ensuring that the new occupants gave way, and that they would be accommodated in some acceptable fashion. Annex 7 declared:

All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them. The early return of refugees and displaced persons is an important objective of the settlement of the conflict in Bosnia and Herzegovina. The Parties confirm that they will accept the return of such persons who have left their territory, including those who have been accorded temporary protection by third countries.

Annex 7 also addressed the question of safety for returnees:

The Parties shall ensure that refugees and displaced persons are permitted to return in safety, without risk of harassment, intimidation, persecution, or discrimination, particularly on account of their ethnic origin, religious belief, or political opinion.

Bosnia and Darfur are but two instances of recent international practice relating to conflict situations in which a right of repatriation has been recognized, both as a human right of those displaced, and as a necessary element to resolving an international conflict.
The Parties shall take all necessary steps to prevent activities within their territories which would hinder or impede the safe and voluntary return of refugees and displaced persons.

In addition, Annex 7 provided broad choice to returnees:

Choice of destination shall be up to the individual or family, and the principle of the unity of the family shall be preserved. The Parties shall not interfere with the returnees’ choice of destination, nor shall they compel them to remain in or move to situations of serious danger or insecurity, or to areas lacking in the basic infrastructure necessary to resume a normal life. The Parties shall facilitate the flow of information necessary for refugees and displaced persons to make informed judgments about local conditions for return.

Annex 7 addressed the practicalities of a large-scale repatriation as follows:

The Parties call upon the United Nations High Commissioner for Refugees (‘UNHCR’) to develop in close consultation with asylum countries and the Parties a repatriation plan that will allow for an early, peaceful, orderly and phased return of refugees and displaced persons, which may include priorities for certain areas and certain categories of returnees. The Parties agree to implement such a plan and to conform their international agreements and internal laws to it. They accordingly call upon States that have accepted refugees to promote the early return of refugees consistent with international law.

Financial assistance was to be provided to returnees in need, as follows:

The Parties shall facilitate the provision of adequately monitored, short-term repatriation assistance on a nondiscriminatory basis to all returning refugees and displaced persons who are in need, in accordance with a plan developed by UNHCR and other relevant organizations, to enable the families and individuals returning to reestablish their lives and livelihoods in local communities.

The Bosnia agreement addressed issues that will need to be addressed in a repatriation of the Palestine refugees.

Unlike the Bosnia peace agreement of 1995, the Darfur peace agreement has yet to be implemented. It was concluded between Sudan and one major rebel group in Darfur, at a meeting in Abuja, Nigeria, in May 2006. Many Darfurians have fled to other locations in Sudan, or to neighboring Chad, to escape violence directed against them. Article 21 of the 2006 agreement addresses repatriation, declaring:

Displaced and war-affected persons will enjoy the same human rights and fundamental freedoms as any citizen under the law of the Sudan. In particular, the relevant authorities have a responsibility to ensure that such persons enjoy freedom of movement and of choice of residence, including the right to return and to re-establish themselves at their places of origin or habitual residence.
Like the Bosnia agreement, the Darfur agreement addresses the safety of returnees, stating:

Relevant authorities with the assistance of the African Union and the international community shall assure proper protection and dignified treatment of displaced persons during the process of voluntary return and reintegration or voluntary resettlement at another place of their choice.

Provision is also made in the Darfur agreement to ensure returnees’ access to food and shelter, as well as the means to re-start economic activity. International relief agencies are to have access to assist returnees. Returnees are assured a right to a passport or other identification documentation. They are entitled to compensation, in the following terms:

Displaced persons have the right to restitution of their property, whether they choose to return to their places of origin or not, or to be compensated adequately for the loss of their property, in accordance with international principles. Property claims committees are to resolve disputes over claims to land.

Although the Darfur peace agreement remains to be implemented, it seems clear that when peace is achieved, refugee repatriation will be a central feature.

The Bosnia and Darfur provisions are more elaborate and detailed than those of UN General Assembly Resolution 194, of 11 December 1948, which called upon Israel to repatriate the Palestine refugees. The General Assembly, basing itself on the norm of customary international law that inhabitants of a territory have rights there, stated that repatriation and compensation were required. An agreement providing for actual return and compensation for the Palestine refugees must include the kind of detail that one sees in the Bosnia and Darfur agreements, and that ensures proper implementation of the right of return.

In the Bosnia situation, as indicated, repatriation has for the most part been accomplished. Bosnia experts at the American University program indicated that while difficulties were encountered, the repatriation has been achieved with a large measure of success.

The Bosnia and Darfur provisions call for repatriation and compensation for refugees. The nationality status of returnees is not questioned. The agreements thus provide additional indication that the repatriation called for by Resolution 194 is required under customary international law. Persons displaced across an international boundary are not regarded as losing their right to nationality. They have a right to return to their homes.

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BDS Update
Boycott, Divestment and Sanctions against Israel
December 2006 to early March 2007

John Bergen and 93 Other Authors, Film-makers, Musicians and Performers Call for a Cultural Boycott of Israel
15 December – The Guardian, London: In a letter published in The Guardian, the 94, including renowned author John Berger, UK musicians and song-writers Brian Eno and Leon Rosselson; film makers Sophie Fiennes, Elia Suleiman and Haim Bresheeth; documentary maker Jenny Morgan; singer Reem Kelani; writers Arundhati Roy, Ahdaf Soueif, and Eduardo Galeano, call on their colleagues not to visit, exhibit or perform in Israel. (www.pacbi.org)

Pickets in Canada against Book Store Chain Supporting Israel’s Occupation
25 December 2006 - In Toronto and Montreal the Coalition against Israeli Apartheid, supported by Not in Our Name, launched a boycott of Indigo Books and Music Inc., a bookstore chain affiliated with the ‘Foundation Foundation for Lone Soldiers’ (HESEG) providing financial support to soldiers in the Israeli occupation army. The boycott campaign launched at the height of the holiday shopping season will continue until major shareholders of the bookstore chain publicly cut ties to the HESEG foundation. (www.caiaweb.org, www.stopthewall.org)

Catholics Call For Divestment
2 January 2007 - Roman Catholics have come out in favor of divesting from Israel in a poll conducted by the Catholic organ, The Tablet. A majority of those questioned (68.5%) agreed that they “would disinvest from companies whose products are used by the Israeli government in the occupied territories”; 75% called for the “removal of Jewish West Bank settlements,” and 79.4% disagreed with the statement that “the security wall is needed to protect the population of [Israel] from suicide bombers.” (www.christiantoday.com)

Amazon Petition Demands Fair Treatment for Carter Book
22 January 2007- Berkeley, CA: ten days after shoppers began a campaign protesting Amazon.com’s extraordinarily hostile presentation of former President Jimmy Carter’s book on Palestine, a petition with 16,200 signatures was delivered to Amazon CEO Jeff Bezos, and the
company responded by revamping its web-page. It now begins with a tribute from Amazon to the former president’s achievements and an interview with him about the book, plus a photo of him and graphic links to some of his other books – all new material, and all of it posted ahead of the negative review.

**South African Union Calls for Boycott and Embargo of Israeli Avocado**

23 January - South Africa: the Food and Allied Workers Union (FAWU) condemned Shoprite Holding’s Checkers and Pick ‘n Pay and Fruit and Veg for import of avocado pears from Israel and the occupied Palestinian territories. The Union explained in a statement that, “We are appalled at the insensitivity towards the plight of the Palestinian people by the procurement of supplies from an oppressive, apartheid country like Israel” and called for a boycott of and the halt of such imports. (www.fawu.org.za)

**Women In Black Call to Boycott Israeli Philharmonic**

5-6 February - Los Angles: Women In Black-Los Angles called for a silent candlelight vigil for boycott of the Israeli Philharmonic at Disney Hall in Los Angles to oppose Apartheid in Palestine and call for an end to Israel’s occupation of Palestine. The organization explained in its statement that this call to boycott the Israeli Philharmonic is part of the Palestinian and international civil society campaign for cultural and economic boycotts, along with divestment and sanction campaigns against Israel. They said, “We oppose Israeli Apartheid and oppose Israel’s Occupation of Palestine. Just as the international community imposed a cultural, sports and economic boycott of South African in order to end Apartheid there, we call for a similar boycott to end Israeli Apartheid.” (www.wib-la.org)

**Palestinian Labor Unions Call for Boycott of Israeli Goods**

11 February - Ramallah: The Palestinian General Federation of Trade Unions (PGFTU), the General Union of Palestinian Workers, the Coalition of Independent Democratic Trade Unions, other professional associations, and the Palestinian Anti-Apartheid Wall Campaign called for a comprehensive boycott, divestment and sanctions movement to isolate Israel and the Zionist Histadrut. At the press conference in Ramallah, labor official Haider Ibrahim said, “The unions and the popular campaign appeal for an inclusive boycott of Israeli products and for continued resistance to the Apartheid Wall.” Ibrahim asked that Palestinian workers escalate their boycott of Israeli materials to include all of those available on the market. He appealed to the Arab League to support the nonviolent action against occupation. (www.stopthewall.org)

**UK Activists Boycott Israeli Flowers on Valentine’s Day**

10 February – U.K.: the Boycott Israeli Goods (BIG) Campaign called for a boycott of Israeli flowers and launched blockade actions in the run up to Valentine’s Day, in order to prevent cut flowers from reaching stores across the country. The action aimed to strengthen the ongoing campaign against Carmel-Agrexco, Israel’s main marketing venture of agricultural produce abroad. (www.bigcampaign.org.uk)
Third Annual “Israeli Apartheid Week”
12-16 February – U.K. and North America: recalling the UN International Convention on the Suppression and Punishment of the crime of Apartheid, students at the Universities of Oxford, Cambridge, London (SOAS), Montreal, Ottawa, New York and Hamilton held the third Israeli Apartheid Week (IAW) with events in their respective campuses. According to the week organizers, the week’s goal was to “push forward the analysis of Israel as an apartheid state and to bolster support for the boycott, divestment, and sanctions campaign in accordance with the demands outlined in the July 2005 Statement: full equality for Arab citizens of Israel, an end to the occupation and colonization of the West Bank and Gaza, and the implementation of the right of return and compensation for Palestinian refugees pursuant to UN resolution 194. (www.endisraeliapartheid.net)

Norwegian Workers’ Union
Trondheim, 19 February - The Norway workers’ union conference decided (separately) to call for a 2 percent “war tax” on all Israeli products, and that funds should be used to rebuild the Palestinian infrastructure. The union also called to establish weapons embargo on Israel, pull out investment in Israel from the Norwegian Pensions Fund, require Israel to disengage from the Palestinian occupied Territories, put pressure on Israel to stop its military actions against the Palestinians, and dismantle the Wall and settlements. The Union has 83,000 members.

Canadian Action Party
7 March – the Canadian Action Party (CAP/PAC) endorsed a call to boycott, divestment and sanctions campaign against Israel’s apartheid-like practices against the Palestinian people based on the July 2006 Call by Palestinian civil society. A motion in this respect was tabled at the party’s convention in September 2006 in order to become more familiar with the issue; it has now been officially approved. CAP/PAC believes that Israel must demolish the separation or “Apartheid” Wall which is encroaching Palestinians land and making daily life impossible for Palestinians. CAP/PAC said in a press release that, “Israel must compensate those injured by the wall to date, must cease its brutal occupation of the West Bank and Gaza and must comply 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.” (www.canadianactionparty.ca)

Prominent Call for Divestment at Howard
17 March - Activists calling for ending financial support for Israel welcomed a victory at Howard, a university in Washington, DC. The faculty of the College of Arts and Sciences voted overwhelmingly to call on the university’s board of trustees to divest from Israel. (www.pacbi.org)

Endorse the 2005 Palestinian civil society BDS Call: www.bds-palestine.net
The General Assembly,

Guided by the principles enshrined in the Charter of the United Nations and the rules and principles of international law, including international humanitarian law and human rights law,

Reaffirming the permanent responsibility of the United Nations towards the question of Palestine until it is resolved in all its aspects in a satisfactory manner on the basis of international legitimacy,

Recalling the relevant resolutions of the Security Council,

Recalling its relevant resolutions, including the resolutions of its tenth emergency special session on illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory,

Recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,1 and recalling in particular the Court's reply to the question put forth by the General Assembly in resolution ES-10/14 of 8 December 2003, as set forth in the dispositif of the advisory opinion,2

Recalling in this regard the Court's conclusion that, inter alia, "Israel is under an obligation to make reparation for all damage caused by the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem",3

Reaffirming its resolution ES-10/15 of 20 July 2004 entitled "Advisory opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, including in and around East Jerusalem",4

Recalling the request made in resolution ES-10/15 for the Secretary-General to establish a register of damage caused to all natural or legal persons concerned in connection with paragraphs 152 and 153 of the advisory opinion,

Noting in this connection the Court's conclusion whereby, inter alia:

Israel is accordingly under an obligation to return the land, orchards, olive groves and other immovable property seized from any natural or legal person for purposes of construction of the wall in the Occupied Palestinian Territory. In the event that such restitution should prove to be materially impossible, Israel has an obligation to compensate the persons in question for the damage suffered. The Court considers that Israel also has an obligation to compensate, in accordance with the applicable rules of international law, all natural or legal persons having suffered any form of material damage as a result of the wall's construction,5

Deploring the continuing construction, contrary to international law, by Israel, the occupying Power, of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, against the conclusions of the International Court of Justice in its advisory opinion of 9 July 2004 and of resolution ES-10/15 and in breach of the applicable rules and principles of international law,

Recognizing the necessity of accurately documenting the damage caused by the construction of the wall for the purpose of fulfilling the obligation to make the above-mentioned reparations, including restitution and compensation, in accordance with the rules and principles of international law, and noting that the act of registration of damage, as such, does not entail, at this stage, an evaluation or...
assessment of the loss or damage caused by the construction of the wall,

Taking note with appreciation of the report of the Secretary-General of 17 October 2006 pursuant to General Assembly resolution ES-10/15,

1. **Reaffirms** its resolution ES-10/15 of 20 July 2004 entitled "Advisory opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, including in and around East Jerusalem", and reiterates the demands made therein, including, inter alia, the demand that Israel, the occupying Power, comply with its legal obligations as mentioned in the advisory opinion;

2. **Takes note with appreciation** of the report of the Secretary-General pursuant to General Assembly resolution ES-10/15;

3. **Establishes** the United Nations Register of Damage caused by the Construction of the Wall in the Occupied Palestinian Territory:

   (a) To serve as a record, in documentary form, of the damage caused to all natural and legal persons concerned as a result of the construction of the wall by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem;

   (b) To be referred to henceforth in brief as the "Register of Damage";

4. **Decides** to set up an office of the Register of Damage, which will be:

   (a) Responsible for the establishment and comprehensive maintenance of the Register of Damage;

   (b) Composed of a three-member Board and a small secretariat, headed by an Executive Director and consisting of substantive, administrative and technical support staff;

   (c) A subsidiary organ of the General Assembly operating under the administrative authority of the Secretary-General;

   (d) Established at the site of the United Nations Office at Vienna;

5. **Requests** the Secretary-General to appoint the three-member Board of the office of the Register of Damage, according to the selection criteria in the above-mentioned report, at the earliest practicable date;

6. **Decides** that the responsibilities assumed by the Board of the office of the Register of Damage shall be as follows:

   (a) The Board shall have overall responsibility for the establishment and maintenance of the Register of Damage;

   (b) The Board shall establish the rules and regulations governing the work of the office of the Register of Damage;

   (c) The Board shall determine the eligibility criteria, bearing in mind varying circumstances with regard to the title and residency status of the claimants, for the inclusion of damages and losses caused in the Register of Damage with an established causal link to the construction of the wall;

   (d) The Board shall, guided by the relevant findings of the advisory opinion, general principles of international law and principles of due process of law, also determine the criteria of damage and the procedure for the collection and registration of damage claims;

   (e) The Board, on the recommendation of the Executive Director, shall have the ultimate authority in determining the inclusion of damage claims in the Register of Damage;

   (f) The Board shall meet at least four times each year at the office of the Register of Damage to determine which claims should be included in the Register of Damage, based on the established objective criteria defined in the rules and regulations;

   (g) The Board shall engage, periodically and as deemed necessary, the expertise of technical specialists in relevant fields, including, inter alia, agriculture, land law, topography and assessment and compensation, to assist it in establishing and maintaining the Register of Damage;

   (h) The Board shall render progress reports periodically to the Secretary-General for transmission to the General Assembly, including, as appropriate, possible further steps in connection with paragraphs 152 and 153 of the advisory opinion;

7. **Requests** the Secretary-General to appoint, at the earliest practicable date, the Executive Director
of the office of the Register of Damage, who shall:
(a) Have responsibility for overseeing and administrating the work of the secretariat of the office of the Register of Damage;
(b) Be responsible for forwarding all damage claims to the Board for its approval for inclusion in the Register of Damage and serve in an advisory capacity to the Board in this regard;
8. Decides that the secretariat of the office of the Register of Damage shall provide substantive, technical and administrative support for the establishment and maintenance of the Register of Damage by undertaking, inter alia, the following functions:
(a) Designing the format of the damage claims;
(b) Administering a public awareness programme to inform the Palestinian public about the possibility of and the requirements for filing a damage claim for registration, including an extensive community outreach programme to explain the purpose of the Register of Damage and provide guidance on how to fill out and submit the claim forms;
(c) Receiving, processing and establishing the credibility of all damage claims for registration in the Register of Damage;
(d) Submitting all processed damage claims through the Executive Director to the Board for inclusion in the Register of Damage;
(e) Aggregating and maintaining the records of damage claims approved by the Board, including both hard copies of the claims and their electronic version, which shall be maintained at the office of the Register of Damage;
(f) Providing legal advice regarding the operations of the office of the Register of Damage and the submitted claims;
9. Resolves that the Register of Damage shall remain open for registration for the duration of existence of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem;
10. Resolves also that the office of the Register of Damage shall remain active for the duration of the process of registration and shall carry out the specific functions and directives ascribed to it by the Secretary-General in his report, as set out in the present resolution, and such additional functions as requested by the General Assembly upon recommendation by the Secretary-General;
11. Calls for the establishment and operation of the office of the Register of Damage and the establishment of the Register of Damage itself within six months of the adoption of the present resolution and the immediate undertaking thereafter of the process of registration of damage claims;
12. Instructs the office of the Register of Damage, immediately upon its establishment, to seek the cooperation of the concerned Governments and authorities so as to facilitate its work in connection with the collection, submission and processing of damage claims in the Occupied Palestinian Territory, including East Jerusalem;
13. Calls upon the Government of Israel and the Palestinian Authority and relevant Palestinian institutions to cooperate with the office of the Register of Damage;
14. Calls upon the Secretary-General to instruct the United Nations agencies and offices present on the ground in the Occupied Palestinian Territory to lend their support and expertise to the office of the Register of Damage, upon its request, so as to facilitate its work;
15. Requests the Secretary-General to provide the necessary staff and facilities and to make appropriate arrangements to provide the necessary funds required to carry out the terms of the present resolution;
16. Also requests the Secretary-General to report to the General Assembly within six months on the progress made with regard to the establishment and operation of the office of the Register of Damage and the establishment of the Register of Damage;
17. Decides to adjourn the tenth emergency special session temporarily and to authorize the President of the General Assembly at its most recent session to resume the meeting of the special session upon request from Member States.

* On behalf of the States Members of the United Nations that are members of the Non-Aligned Movement.

Notes
The first Al-Awda award was prepared and launched by BADIL in 2006 as a means for sustained Palestinian/Arab civil society activation and publicity for Palestinian refugees’ right of return. The initiative is part of the campaign to end 40 years of occupation (2007) and 60 years of Nakba (2008).

**The 2007 award is composed of a public competition for:**

i) best Nakba-Awda posters,

ii) video clips,

iii) children’s stories,

iv) oral history accounts and

v) research papers. Criteria for submissions in Arabic language were designed in cooperation with five expert teams who will also serve as independent selection committees for each award category.

**Timetable:**

- 1 December 2006: public announcement of the award;
- 31 March 2007: deadline for submissions to BADIL;
- April: screening and selection by independent committees;
- 1 May: public award ceremony for best 3 submissions in each category and launch of the 2007 public Nakba commemorations;
- May - December: print and dissemination by BADIL of award-winning contributions as tools for the 2007-2008 awareness-raising campaign;

Contact BADIL for a copy of the 2007 Nakba posters.

The award-winning posters will be announced on 1 May and be made available for campaigners worldwide. For details see: www.badil.org (in Arabic) or contact: camp@badil.org
Returning to Kafr Bir’im

Returning to Kafr Bir’im features the story of the protracted struggle of the Palestinian residents of Kafr Bir’im for return to their village in the Upper Galilee from which they were forcibly displaced in 1948.

In 120 pages, the book recounts key events, achievements, obstacles and failures of this struggle through the oral and written narratives of a community who gives a vibrant example of the Palestinian people’s quest for ending the Nakba (catastrophe) and injustice almost 60 years on.

BADIL’S Brief: Palestinian refugee children

Information & Discussion Brief No.10: Palestinian Refugee Children, International Protection and Durable Solutions

Palestinian refugee children growing up in the context of the protracted Israeli-Palestinian conflict are particularly vulnerable and in need of protection.

In 56 pages, this brief examines the rights of Palestinian refugee children under three sets of international law, i.e. humanitarian, human rights, and refugee law as well as relevant United Nations resolutions.