

# al majdal

Issue No. 35 (Autumn 2007)



a quarterly magazine of  
BADIL Resource Center for Palestinian Residency & Refugee Rights

## Accountability and the Peace-Making Process



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

**BADIL** was established in 1998 to support the development of a popular refugee lobby for Palestinian refugee and internally displaced rights and is registered as a non-profit organization with the Palestinian Authority.

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**Cover photo:** UN Partition Plan for Palestine (1947), Nakba 1948 (©UNRWA Archive), Meeting of Abbas, Rice and Olmert (Source: www.abc.net.au), Aida refugee camp, Bethlehem (©Nathalie Bardou)

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The views expressed by independent writers in this publication do not necessarily reflect the views of BADIL Resource Center.

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**Editorial**

60 Years After the UN Partition Plan, Still No Framework for Peace that Respects International Law .....	2
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**Accountability and the peace making process**

Appeasement through Apartheid versus an Anti-Apartheid Struggle for Just Peace <i>BADIL Report</i> .....	5
What Role for Refugees in an Agreed Upon Solution? <i>by Terry Rempel</i> .....	10
Bottom-up Peacebuilding in the Occupied Territories, Interview with Alastair Crooke <i>by Aisling Byrne</i> .....	17
Bosnia and Palestine: So Close, and Yet So Far <i>by Joseph Schechla</i> .....	22
Responsibility to Protect Palestinian Refugees: When International Authorities Fail <i>by Jeff Handmaker</i> .....	36
For the Sake of Dignity, Seeking Justice for International Crimes: Emerging Universal Jurisdiction Practice in Spain <i>by Elna Sondergaard</i> .....	43
Highlighting 1948 Dispossession in the Israeli Courts: Al-Lajjun Villagers Continue their Struggle <i>by Isabelle Humphries</i> .....	53

**General Articles**

1947 Partitions Revisited: The Case of India and Palestine Legacies and Lessons <i>by Ingrid Jaradat Gassner</i> .....	56
Palestine on Capitol Hill - Where Exactly? <i>by Noura Erakat</i> .....	63
Badil at the Human Rights Council and UNHCR Excom <i>Badil Report</i> .....	70
Palestinian Refugees in Iraq, When Solutions are not Solutions <i>by Karine Mac Allister</i> .....	74
One Year After: Update on the Situations in al Aqaba and Yanoun Villages <i>by Anne Paq</i> .....	78
Review: Newly Available Women's Voice Archive <i>by Isabelle Humphries</i> .....	84

**Document section**

BDS update .....	88
United Nations International Conference of Civil Society in Support of the Palestinian People, International Coordinating Network on Palestine, Plan of Action, Brussels, 30-31 August 2007 .....	91
Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law .....	94

## 60 years after the UN partition plan Still no framework for peace that respects international law

**W**ill the US-led Annapolis meeting fail, succeed, or even happen at all? Whatever the answer, one thing is clear: there is again no accountable process based on international law. In other words, the 'best' outcome will be another meaningless peace process, because it fails to take into account international law and best practice.

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Accountability is the countervailing force which confronts power and ensures that it is exercised responsibly.

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*Palestinian students protest against UN Partition Plan, 12 March 1947. (© Orient House Archives)*

The refugee question is being discussed, informally and outside the realm of international law, under the politically-driven and 'pragmatic' approach advocated by the Quartet and other members of the international community. Tzipi Livni, the Israeli Foreign Affairs Minister, has stated that one of the main goals of Annapolis is to 'agree' that Palestinian refugees should be resettled in a future Palestinian state and not return to their homes of origin. This position has also recently been endorsed by the new French president, Nicolas Sarkozy, who said that Palestinian refugees will not return to Israel.<sup>(1)</sup> All this despite the clear legal framework supporting the right of Palestinian refugees and internally displaced persons to a remedy and reparation, including return, restitution and compensation.

It is not surprising therefore that according to a recent survey by the Jerusalem Media and Communications Center, most Palestinians expect Annapolis to fail, although they still want to give peace negotiations a chance. But for such negotiations to have a chance, the rights of both peoples need to be recognized, those guilty of crimes against international law held accountable, and remedy provided. We are still far from this.

Indeed, the Quartet, the informal body self-mandated to lead the peace process based on the Road Map, does not take a rights-based approach to conflict resolution, but a so-called realistic-pragmatic approach based on power politics. The role of the UN in the Quartet is also questioned, in particular by the UN Special Rapporteur on the Occupied Palestinian Territory John Dugard, who stated in his latest report to the Human Rights Council in August 2007 that “instead of promoting Palestinian self-determination, striving to end the occupation and opposing the ongoing violation of human rights, the United Nations has chosen to give legitimacy to the statements and actions of the Quartet.” Indeed, the UN “acting through the Secretary-General, has ignored the views of the majority of its members and abandoned its role as guardian of international legitimacy.”<sup>(2)</sup> The rapporteur suggested that if the UN is unable to convince the Quartet to adopt an approach based on human rights law, international humanitarian law, the advisory opinion of the international Court of Justice and considerations of fairness and even-handedness, it should withdraw from the Quartet.

It is in this context of ongoing impunity that this issue of *al Majdal* examines the role of accountability in the Israeli-Palestinian peace process. It aims to contribute to the discussion on how Palestinian refugees and internally displaced persons, states, civil society and lawyers can and/or do hold accountable their representatives, Israel, the UN and other members of the Quartet.

There is not one definition of accountability; moral, political, legal, financial and other forms of accountability exist for individuals, armed forces and military personnel, companies, non-governmental organizations and international organizations. The Anti-Corruption Resource Center, which serves development agencies to more effectively address corruption challenges, says that accountability “denotes a relationship between a bearer of a right or a legitimate claim and the agents or agencies responsible for fulfilling or respecting that right”<sup>(3)</sup>. The Humanitarian Accountability Partnership-International (HAP), a movement of aid agencies committed to strengthening quality assurance practice within the humanitarian system, states that “accountability is the countervailing force which confronts power and ensures that it is exercised responsibly.”<sup>(4)</sup>

The concept of accountability is thus closely linked with responsibility, which for international organizations refers to “the legal consequences of noncompliance with an international obligation by conduct that is attributable to the organization.”<sup>(5)</sup> State responsibility has been extensively studied by the International Law Commission, which concluded that an international responsibility “arises from the serious and manifest breach by a State of an obligation owed to the international community. Such a breach entails, for the State responsible for that breach, all the legal consequences of any other internationally wrongful act ... it also entails, for all other States, the following further obligations:

- (a) not to recognize as lawful the situation created by the breach;
- (b) not to render aid or assistance to the State which has committed the breach in maintaining the situation so created;
- (c) to cooperate in the application of measures designed to bring the breach to an end and as far as possible to eliminate its consequences.”<sup>(6)</sup>

This issue of *al Majdal* includes, among others, a report from Badil, which analyzes the political context on the eve of the Annapolis Meeting and the need for Palestinian and international civil

societies to build an anti-apartheid movement, including the Boycott-Divestment-Sanction (BDS) campaign, in order to hold Israel to account for its gross breaches of fundamental obligations (*erga omnes*) and peremptory norms of international law (*jus cogens*). A comparative analysis of the Bosnian and Palestinian peace agreements examines how peace agreements have addressed remedies for the crime of population transfer while another article discusses the role of refugees in bringing about an 'agreed upon' solution to the refugee question. Based on the concept of a responsibility to protect, an overview is presented of the actions states and international organizations can undertake to end Israel's violations of human rights and humanitarian law. Finally, the emerging principle of universal jurisdiction and its applicability to the Palestinian case is examined.

60 years after India's partition and the failed UN partition plan for Palestine, other articles in this issue examine Israel's manipulative use of the Indian case to justify its discriminatory regime over Palestine, assess the importance of building a Palestine lobby in the US, and report about current forced displacement of Palestinians, as well as recent efforts at building accountability.

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**Endnotes**

- (1) Aluf Benn, "Sarkozy tells PM: Palestinian refugees will not return to Israel" Haaretz, 23 October 2007.
- (2) John Dugard, Situation of human rights in the Palestinian territories occupied since 1967, A/62/275, 17 August 2007, pp.3,20.
- (3) Taken from the website of the Anti-corruption Resource Center. See: <http://www.u4.no/document/glossary.cfm#accountability>
- (4) HAP -International Principles of Accountability. See: <http://www.hapinternational.org/en/page.php?IDpage=3&IDcat=10>
- (5) See the commentary on Article 1 reproduced in James Crawford, the International Law Commission's Articles on State Responsibility: Introduction, text and Commentaries, 77-80 (2002) in Gerhard Hafner, "Can International Organizations be Controlled? Accountability and Responsibility", 97 Am. Soc'y Int'l L. Proc. 236.
- (6) James Crawford, Third report on State responsibility, International Law Commission, A/CN.4/507/Add.4, Fifty-second session, 4 August 2000, p.24.

## Appeasement through Apartheid versus an Anti-Apartheid Struggle for Just Peace

*BADIL Report*



Wall in Bethlehem. (©Elin Lundstrom/BADIL)

Veiled in secrecy, the preparations of the US-sponsored international Middle East peace meeting in Annapolis, Maryland, give rise to rumours and conflicting messages. As always, the parties themselves screen optimism, and President Bush has declared the Palestinian state to be a foreign policy interest of the United States. Still, things have apparently not yet fallen into place. While a joint Israeli-PA statement suggests progress towards an agenda that will “address all core issues” (Haaretz, 18 October), it is common knowledge that Israel is unwilling to go for a detailed agreement. The fragmented Palestinian leadership, including the PLO and the PA Caretaker Government headed by Abu Mazen, is considered too weak to enforce the concessions that would entail for the Palestinians. Therefore, a “statement of principles which will guide subsequent negotiations” has become the apparent objective. But also here, Israel reportedly refuses to commit to a firm time-table for subsequent negotiations. Thus, negotiations may end up postponed to a time when neither the governments of Bush and Olmert, nor the Palestinian Authority, will anymore be around.

Bush's government will face elections next year, and Olmert's may face a re-shuffle even before, as a result of the findings of the Winograd Commission of inquiry into Israel's performance in its 2006 war on Lebanon. The Palestinian Authority faces a multitude of problems, including an unprecedented fiscal crisis. According to the latest World Bank report – euphemistically subtitled, “Restarting Palestinian Economic Recovery” - the PA has to overcome internal

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division and raise US \$1.26 billion annually, in order to ensure its survival in 2008 and beyond. Therefore, a timely and marketable Annapolis Meeting appears to be vital for the success of the PA donor meeting scheduled for December.

Also the Palestinian people are in need of progress towards genuine peace. But is the US-sponsored Annapolis process genuine?

#### Indicators of a genuine peace effort

1. **Stated Objective:** a genuine peace process must bring about a situation where Palestinians can exercise their inalienable rights, foremost the right to self-determination and return. On 9 July 2005, over 170 unions, campaigns and associations reflecting all sectors of the Palestinian people affirmed that this requires that Israel respects these rights and complies with international law by:
  1. Ending its occupation and all colonization of Arab lands and dismantling the Wall;
  2. Recognizing the fundamental right of Palestinian citizens of Israel to full equality, and,
  3. Respecting, protecting and promoting the Palestinian refugees right to return to their homes and properties as stipulated in UN Resolution 194.  
(See: [www.bds-palestine.net](http://www.bds-palestine.net))
2. **The Process** towards such peace must not be conditioned on provisions that have the effect of prolonging the *status quo* which is undermining Palestinian rights, or that preempt just outcomes, such as, for example: a Palestinian commitment/performance to ensure the security of Israel, as long as it constitutes the occupying power (e.g. reference to Road Map stages); affirmation of principles which endorse Israel's discrimination against its Palestinian citizens and refugees (e.g. affirmation of Israel as the state of the Jewish people; reference to US President Bush's 2004 Letter of Assurances to then Israeli Prime Minister Sharon);
3. **A Set of Immediate Measures** must be agreed upon, in order to facilitate the process towards genuine peace, for example: comprehensive freeze of all Israeli settlement activity in the OPT; removal of checkpoints; halt of all further construction of the Wall; revocation by Israel of its declaration of the Gaza Strip as enemy territory.

#### The Annapolis theater, major players and objectives

It would be a *farce*, if the stakes weren't so high. Foreign Minister Tzipi Livni, head of the Israeli negotiating team for the Annapolis summit, "has long taken an interest in the true pivot of the conflict, the Palestinian demand for 'right of return'" (Jerusalem Post, 15 October). Livni and her team are equipped with a 2004 letter from President Bush to then Prime Minister Sharon, which assures Israel that in the President's view a two-state solution does not require full Israeli withdrawal to the pre-1967 ceasefire lines, and return of Palestinian refugees to Israel is unrealistic and should occur to a future Palestinian state. This letter has since been compared by Palestinians with the Britain's 1917 pledge of support for a "Jewish National Home" in Palestine (Balfour Declaration). With Bush's letter in their hands, Livni and her team are expected to work hard to ensure that Abu Mazen will have to deliver from the start, in the first Annapolis round, what used to be considered the desired outcome of peace negotiations: Palestinian recognition of Israel as a "Jewish state", and of the principle that a solution of the Palestinian refugee question will not be based on Palestinian refugees' right of return to their homes of origin in Israel (UNGAR 194).

Israel's team is reportedly assisted in the United States by a Zionist lobby, including former



State Department and Pentagon officials, who urge Rice to adopt a peace framework that provides for Israeli and Palestinian capitals in Jerusalem and the exclusion of Palestinian refugee return to Israel (AP, 4 October). Tony Blair, Quartet Envoy to the Middle East, comes in to help on the ground with a proposal to establish a new Palestinian city near Ramallah that could accommodate “tens of thousands of Palestinians living in dreadful conditions and poverty in refugee camps.” (Haaretz, 17 October). Condoleezza Rice, in line with an old principle of US Middle East policy, assures that she has no intention of imposing on Israel “anything that will not be acceptable to it” (Haaretz, 15 October), and US policy will be backed by the Quartet, including the United Nations, as long as the UN Secretary-General does not withdraw as recommended by John Dugard, the UN Special Rapporteur on human rights in the OPT (A/62/275, 17 August 2007).

### Israel's quest for legitimacy as a “Jewish State”:

#### Special Knesset Session to reenact UN Palestine Partition Vote of 29 November 1947?

Based on lessons learned from the negotiations of 1993 – 2001, influential Israeli legal experts have warned of the dangers for Israel to recognize the right of return, even if only as a principle divorced from implementation. Ruth Gavison (Haaretz, 3 October), for example, reminds of the fundamental difference between Palestinian recognition of a two-state solution and the peace formula of “two states for two peoples”: “Israel's red line is not merely preventing the refugees' return in actuality; rather, it is the fact that Israel is the nation-state of the Jewish people. This is so not only because that is indeed the situation in Israel, but because such a situation is legitimate and justified.” (Ynet-News, 16 August 2007)

In light of the above and the advice of legal experts like Gavison that “over the long term, it is difficult to defend a reality that is based [...] solely on force”, Israel has launched a renewed public relations campaign for legitimacy on the occasion of its 60<sup>th</sup> anniversary. The Israel of today, which has failed to establish the borders and the constitution recommended in 1947 by the UN Palestine Partition Plan (UN Resolution 181), claims legitimacy under this resolution. Israeli press, for example, has informed that on 29 November 2007 a “special Knesset session will reenact [the] fateful United Nations vote that led to Israel's creation. The UN Secretary-General has been invited to preside over the session, which the event planners hope will include the participation of ambassadors from the 33 nations who voted in favor of the partition.”

(For analysis of the 1947 UN Partition vote and its implications for the Palestinian people, see the article “1947 Partitions Revisited” in this issue.)

The price-tag of “success” at the Annapolis meeting is unprecedented: recognition in principle by the divided PLO and PA Caretaker Government led by Abu Mazen of Israel as the “state of the Jewish people” and no Palestinian right to return. This would de-legitimize the Palestinian struggle for freedom, justice and equality, and trigger further fragmentation and conflict among the Palestinian people in Palestine and in exile. Apparently for this reason – and because “NGOs can reach segments of the population that governments have not been able to reach” - the US State Department has recruited the help of so-called civil society. (See press release, “Nongovernmental groups seek peaceful solution to Mideast conflict”, United States Department of State, 18 October 2007)

The State Department in particular promotes a dubious organization called “One Voice”, which operates mainly via the internet and is mainly sponsored by Daniel Lubetzky, a Mexican-born Jewish businessman in the United States. The latter is not only concerned with guaranteeing Israel's future as the state of the Jewish people, but also appears – along with a list of famous US neocons - among the “official core supporters” of the “United States Committee for a Free

**The global "One Voice" campaign, however, lacks reference to international law, Israel's obligations, and the inalienable rights of the Palestinian people.**

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Lebanon", described as a lobbying and propaganda organization in favor of US intervention to end Syrian intervention in Lebanese politics. "One Voice" claims to have recruited over 600,000 endorsers of its peace initiative, and holds, according Danya Shaikh, executive director in the US, that the conflict "wasn't Palestinians versus Israelis. It's really moderates versus extremists."

Equipped with apparently unlimited financial resources and much official clout, the *virtual* civil society of "One Voice" has challenged the *actual* Palestinian civil society in the occupied West Bank in a quest to prove that the official Annapolis agenda enjoys Palestinian public support. "One Voice" lost out in this round.

### **Building the Anti-Apartheid Movement**

Thousands of Palestinians and renowned Arab and Palestinian artists were to flock to Jericho for a large "One Voice" peace festival on 18 October, in order to join, via satellite, thousands in Tel Aviv and elsewhere in "one million voices calling for peace." The global "One Voice" campaign, however, lacks reference to international law, Israel's obligations, and the inalienable rights of the Palestinian people. The organizers tried to mislead the public and artists with deceptive slogans and discrepancy in the language used in Arab and English statements, claimed falsely that PA President Abbas was the event's main patron, and included names of well-known personalities as members of various committees of their organization without their knowledge or consent. Guided by the Palestinian Campaign for Academic and Cultural Boycott of Israel (PACBI), a solid partnership between diverse community organizations and political activists succeeded to expose the facts: many artists withdrew, and the organizers had to cancel the festival. "One Voice" continues to slander the Palestinian boycott campaign. An Arabic-language statement informed that the event was canceled for "technical reasons", while English-statements from the organizers cite "security reasons" and "threats" by "extremists" against the participating artists as the reason for the cancellation. Still, the fact that local organizations acting in unity were able to thwart this huge and handsomely funded event marks a success for the community-based Palestinian Campaign for the Boycott of Israel (BDS) in the OPT. (For more detail, see: [www.pacbi.org](http://www.pacbi.org), press release, 17 October)

Meanwhile, and also in the OPT, preparations of the first Palestinian conference for Israel boycott are under way (see announcement), and the Palestinian General Federation of Trade Unions (PGFTU) has taken a resolution for the boycott of the Histadrut, Israel's main Zionist trade union. At the same time, the National Committee for the Commemoration of Nakba-60 has launched preparations for the popular commemoration in the OPT in 2008. In a memorandum to President Abbas, accompanied by the press statement, the National Committee demands that Yasser Abedrabbo, member of the PLO Executive and notorious for his efforts to undermine Palestinian refugees' right of return, be stripped from any official role in Nakba-60 commemorations.

Parallel efforts are maintained abroad by Palestinian and global civil society, in order to develop vision, strategy, program and networks required for a sustainable Anti-Apartheid Movement. The UN Civil Society Conference held at the European Parliament in Brussels in August has issued a statement and call to action which reflects the emerging consensus: 60 years into the conflict and without a rights-based solution in sight, Israel's regime in historic

**Announcement**  
**Free Palestine – Boycott Israel**

**Palestinian BDS Conference to Build the  
Palestinian Campaign to Boycott Israel (BDS)**

- End Israeli Occupation and Colonization of Palestinian Land and the Apartheid-regime over its People
- Return the Palestinian Refugees

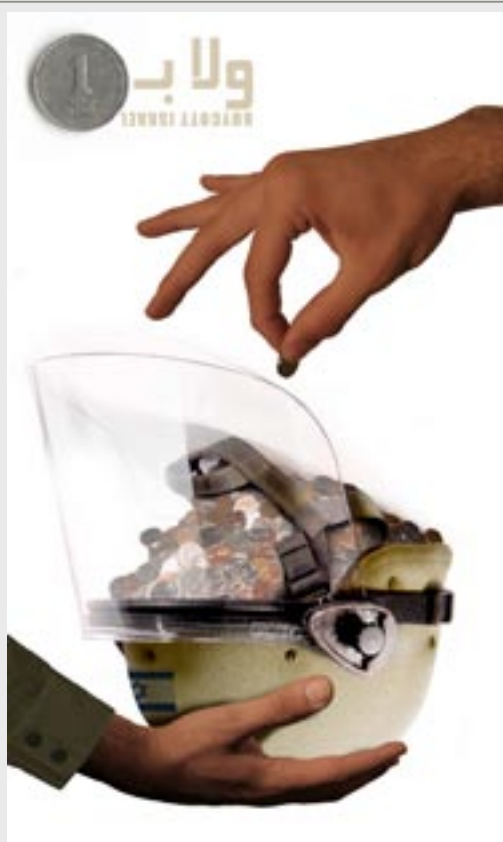
**22 November 2007**  
**Salim Affendi Hall, al-Bireh**  
**(Registration required)**

The conference is organized by Palestinian civil society networks, including academia and the trade union movement – with guest-speakers from the BDS movement in South Africa and the U.K.

Together we will plan action and public mobilization for the Palestinian BDS Campaign

**For additional information and registration, contact:**

PNGO: Hazem Alnamia [hazem@pngo.net](mailto:hazem@pngo.net)  
Tel: 02-2975320/1



Parallel efforts are maintained abroad by Palestinian and global civil society, in order to develop vision, strategy, program and networks required for a sustainable Anti-Apartheid Movement.

Palestine (Israel-OPT) is an Apartheid-regime. Nakba-60 and Palestinian refugees' right of return to their homes of origin (UNGAR 194) is the lead-theme for 2008 for raising awareness and exposing Israel's discriminatory regime. The global Campaign for Boycott, Divestment and Sanctions against Israel (BDS) is the strategic tool for building pressure on Israel and governments to comply with international law and permit exercise of the inalienable rights by the Palestinian people.

Follow-up conferences have served to: affirm unity and coordinate action for the BDS and Nakba-60 Campaign (e.g., PSC and SOAS, London, October); rebuild and strengthen Palestinian/Arab unity and networks across borders (e.g., Ittijah, Cyprus, October; Annual Meeting/Palestine Right of Return Coalition, Sweden, November); deepen understanding and analysis of the Apartheid-reality in Palestine (e.g., Sabeel, October); analyze and promote the vision of a one-state solution (e.g., SOAS, November); and, develop legal analysis and strategy (e.g., Annual Meeting/BADIL Legal Support Network, Sweden, November). In December, Palestinian and global civil society networks and organizations will gather for a Civil Society Forum for Just Peace in Spain, in order to assess, plan and coordinate the steps ahead.

## What Role for Refugees in an Agreed Upon Solution?

By Terry Rempel

In recent years it has become increasingly common to emphasize that any solution to the Palestinian refugee question must be agreed upon. The Arab peace initiative and the Road Map both call for an agreed upon solution. This appears to be a common sense approach to resolving what the Office of the UN High Commissioner for Refugees (UNHCR) describes as “[b]y far the most protracted and largest of all refugee problems in the world today.”<sup>(1)</sup> Solutions that are agreed upon, in contrast to imposed ones, are widely seen to be more durable, not least of which is due to the broad ownership that such approaches tend to generate.<sup>(2)</sup> The question is: agreed upon by whom? What role, if any, do refugees themselves have?

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The UN refugee agency describes participation not only as a right in itself, but also as “a means towards the ends of protection and durable solutions.”

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*First Popular Refugee Conference, Deheisha refugee camp, Bethlehem 1996. (© BADIL)*

The UN refugee agency describes participation not only as a right in itself, but also as “a means towards the ends of protection and durable solutions.”<sup>(3)</sup> Literature on political participation similarly describes participation as a pre-condition to the enjoyment of all other rights.<sup>(4)</sup> Agency handbooks and guidelines underline the importance of refugee participation at all stages of a refugee crisis. The Global Consultations on International Protection, an international effort to improve refugee protection worldwide, explicitly recommend that UNHCR “[f]acilitate the participation of refugees, including women in peace negotiations.”<sup>(5)</sup> Yet there are few apparent examples where refugees have actually participated in the negotiation of their own solutions, the most visible being the direct participation of the camp-based Permanent [refugee] Commissions in the Guatemalan peace process.<sup>(6)</sup>

The absence of refugees from the negotiating table may be explained by a number of factors: insecurity related to the fact that one's negotiating partners may be those responsible for policies and practices that led to displacement, lack of trust or cynicism about the political process, insufficient skills, knowledge and/or resources to participate, disagreements among refugees about who should represent them and/or the refusal of elites to open up the peacemaking process. In some cases, refugees may simply not wish to participate. Others may have a direct voice in determining their own futures, but their methods of participation may be overlooked or made "invisible" by western-oriented models of political participation. At the same time, refugees face a number of obstacles to participation in peace negotiations that are inherent in the international human rights and refugee regimes.

To begin, international law is not altogether clear on the extent to which the individual right to participate in the political affairs of one's country applies to peace negotiations.<sup>(7)</sup> Human rights instruments simply affirm that refugees have a right to participate in the "public affairs" of their country after they return.<sup>(8)</sup> In other words, the individual right to participation "kicks in" presumably after a peace agreement has been struck. Repatriation operations, for example, often ensure that returning refugees are able to vote in post-agreement elections. Aside from provisions for electoral participation, the law itself is indeterminate on the mechanism through which individuals may participate in the public affairs of their country. The law on self-determination, meanwhile, would only appear to provide for participation in referendum and plebiscites in cases of decolonization.

International law thus appears to give state actors relatively "broad discretion" over the "modalities of [the individual right to] participation" in public affairs, including the participation of refugees in peace negotiations to craft durable solutions.<sup>(9)</sup> While UNHCR policies and guidelines (i.e., "soft law") refer extensively to refugee participation, the right itself is not enumerated in any of the refugee law instruments. At the same time, the state, which has the primary duty under international law to respect, protect and promote the right to participation, is often responsible for the displacement of its own population. In conflicts of an ethnic or national character, it is the very exclusion of individuals and communities from the political decision making process that often gives rise to forced displacement. Relying solely on the state then to include refugees in the political decision making of a peace process may be too much to expect.<sup>(10)</sup>

Efforts by international institutions like UNHCR to facilitate refugee participation in negotiations are similarly constrained by the nation-state system. UNHCR may encourage states to involve refugees in peace talks, but it has no means to ensure their participation. The agency has discussed but not adopted the idea of including refugees in tripartite commissions (comprising UNHCR, the country of origin and host state) to facilitate repatriation. At the same time, some researchers question whether "it is even possible, given the dominant organizational culture of UNHCR, to establish conditions for meaningful refugee participation."<sup>(11)</sup> A recent UNHCR evaluation describes "refugee participation itself [as having been] largely been marginalized or treated as a kind of occupational therapy to keep refugees busy while real decisions are taken elsewhere."<sup>(12)</sup>

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## Accountability and the peace making process

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Refugee conducting workshops confirm their choice for return. (© BADIL)

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Neither Israel and the PLO nor the international community, generally, have actively encouraged the participation of refugees.

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What does all of this mean for an agreed upon solution to the Palestinian refugee question? The fact that the law is less than clear about the right of refugees to participate in peace negotiations means little in a situation where international law itself has been excluded from the peace making process.<sup>(13)</sup> Neither Israel and the PLO nor the international community, generally, have actively encouraged the participation of refugees. As Haifa Jamal, a refugee from Shafa Amr in the Galilee, and the director of Association Najda in Lebanon, remarked to a British Commission of Enquiry on Palestinian refugees several years ago:

[E]very year we hear more stories and scenarios about what might be the solution for the refugees. We hear that no one considers solving it based on UN Resolution 194. They talk about this resolution, but in reality they don't discuss it to solve our problem. Sometimes we hear that they will send us to Canada, Australia or to London. Really, we hear different things every day. But no one comes to ask us our opinion and point of view. [...] Always we said: "We are human beings. You should ask us."<sup>(14)</sup>

While many Palestinian negotiators are themselves refugees, "the fact of being a refugee," as one former negotiator has acknowledged, "does not necessarily mean that one represents refugees."<sup>(15)</sup>

Palestinian refugees outside the OPT have also been prevented from voting in elections for the Office of the President of the Palestinian Authority and the Legislative Council that was set up in the occupied West Bank and Gaza Strip under the Oslo agreements. According to Israel's senior legal advisor at the time, Israel was concerned that if it allowed 1967 refugees to participate in PA elections, they may demand to return to the OPT in order to cast their ballots.<sup>(16)</sup> Nor have Palestinians been able to hold elections for the Palestine National Council (PNC), the parliament in exile representing all Palestinians, a measure which would allow refugees and non-refugees alike an opportunity to

participate in determining their own future. Refugees outside the OPT protested this exclusion by holding symbolic elections for the PNC during the 2006 Palestinian Legislative Council elections.

Meanwhile, the fact that international agencies like UNHCR can do little more than encourage states to involve refugees in peace talks has little relevance in a situation where there is no agency with an explicit mandate to search for and implement durable solutions for Palestinian refugees.<sup>(17)</sup> While some have suggested that this role devolved from the UNCCP to the UN Secretary-General, the Secretary-General in his role as a member of the Middle East Quartet has neither promoted refugee participation in negotiations, nor the “essential rights” commonly afforded to refugees elsewhere, namely, the right to voluntary return; the right to citizenship, identity and participation; the right to property; and, general human rights.<sup>(18)</sup> Even in the area of elections, which has been central to UN missions elsewhere, the international organization in its role as a member of the Quartet has been silent on the exclusion of the majority of Palestinian refugees from the electoral process.

The political self-organization of Palestinian refugees in the OPT and in other communities of exile further afield beginning in the 1990s provides an important antidote to some of the problems in the international human rights and refugee law regimes that hinder refugees from participating in the negotiation of their own solutions, namely, the lacunae in international law, the predominant role of the state and the limited ability of the international refugee regime to facilitate such participation.<sup>(19)</sup> Political self-organization and mobilization are not a means to “replace” the state or to “negate” the role of international actors like UNHCR, but rather, a mechanism to overcome the exclusion that the law, the state and the refugee regime often create.<sup>(20)</sup> At the same time, it is a mechanism through which refugees contribute to the development of the law itself.<sup>(21)</sup>

The example of the Permanent [refugee] Commissions in Guatemala illustrates how political self-organization and mobilization there enabled refugees to overcome the exclusionary politics of the Guatemalan state, participate in the determination of their own solutions and realize their basic human rights and fundamental freedoms. A tradition of collective organization, the maintenance of community structures in exile, the spatially-concentrated camp environment and physical and material security contributed to their ability to engage in the search for solutions while the support of UNHCR, NGOs and faith-based organizations enabled them to leverage the Guatemalan state’s need for international development assistance and the interests of neighboring states for a solution to the refugee crisis in Central America to “pry open” the peacemaking process. Post return disputes over land rights and the struggle of refugee women to maintain the freedoms they had won in exile provide some important lessons for refugees elsewhere.

Notwithstanding, the obvious differences between the two conflicts and the problems faced by Guatemalan refugees when they returned home, the Guatemalan experience reinforces the importance of self-organization and mobilization among Palestinian refugees. In fact, the assumption of a two-state solution based on ethno-national separation, the limited role of the UN in the peacemaking process, the exclusion of international law, the political and legal deficiencies in the Arab world and the relative weakness of the PLO heighten the role of collective action by Palestinian refugees in securing their basic rights. Palestinian refugees share many of the conditions that enabled the self-organization and mobilization of Guatemalan refugees. The democratic structures proposed by Palestinian refugees for a popular refugee campaign, including an elected General Refugee Council, are not unlike those in Guatemala.

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The role of the United Nations in promoting international law and that of the regional actors in creating the architecture for an agreed upon solution to the Palestinian refugee question is weak.

While it is ultimately up to refugees themselves to make these representative structures a reality, the UN, Arab states, the PLO and civil society actors can each play an important supporting role. A description of the role of each is beyond the scope of this short article, however, in comparison to the Guatemalan example, the role of the United Nations in promoting international law and that of the regional actors in creating the architecture for an agreed upon solution to the Palestinian refugee question is weak.<sup>(22)</sup> While Israel is relatively strong, calls for boycotts, divestment and sanctions linked to its respect for refugee rights, is an important component in creating the kind of leverage that helped Guatemalan refugees to secure their rights. In the meantime, “forward-looking political acts”<sup>(23)</sup> like demonstrations, petitions, commemorations (e.g., Nakba) and other types of demands for the rights of return and restitution have the effect of casting the “shade of the law”<sup>(24)</sup> over the negotiation process. While its “shadow” may be short, in terms of the lack of formal enforcement mechanisms, it is broad in the sense that such demands are also expressions of popular sovereignty, that is to say, the will of the people, which is the essence of an agreed upon solution to the refugee issue.

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**Endnotes**

- <sup>(1)</sup> Nada Merheb and Sean Loughna (eds.), *State of the World's Refugees, Human Displacement in the New Millennium*. Oxford: Oxford University Press, 2006, p. 112.
- <sup>(2)</sup> On the role of public participation in peacemaking see, Catherine Barnes (ed.), *Accord, An International Review of Peace Initiatives 13* (2002). Barnes concludes that “where a peace process enables broad-based participation and public debate, intensely conflictual issues can be reclaimed as the normal subjects of political dialogue, problem-solving and constructive action.”
- <sup>(3)</sup> *The Community Service Function of UNHCR, An Independent Evaluation*. Geneva: UNHCR/EPAU, 2003, p. 45.
- <sup>(4)</sup> See, e.g., Henry J. Steiner, “Political Participation and Human Rights,” *Harvard Human Rights Yearbook* 1 (1988), pp. 77-134; Thomas M. Franck, “The Emerging Right to Democratic Governance,” *The American Journal of International Law* 86/1 (1992), 46-91; and, Gregory Fox, “The Right to Political Participation in International Law,” *Yale Journal of International Law* 17 (1992), 539-607.
- <sup>(5)</sup> *Global Consultations on International Protection, Voluntary Repatriation*, UN Doc. EC/GC/02/05, Apr. 25, 2002, Annex 1, Activities to Implement Voluntary Repatriation. They also recommend that the agency “ensure refugee participation in developing property restitution plans.” UNHCR’s Handbook on Voluntary Repatriation makes similar recommendations.
- <sup>(6)</sup> See, e.g., Paula Worby, *Lessons Learned from UNHCR’s Involvement in the Guatemala Refugee Repatriation and Reintegration Programme (1987-1999)*. Geneva: Regional Bureau for the Americas and Evaluation and Policy Analysis Unit, 1999; Sean Loughna, *The Role of Women’s Organizations During and after Intrastate Conflict in Guatemala*. Background Paper for USAID, Final Report, Jan. 31, 1999; Roman Krznaric, “Guatemalan Returnees and the Dilemma of Political Mobilization,” *Journal of Refugee Studies* 10/1 (1997), pp. 61-78; and, Galit Wolfensohn, “Refugees and Collective Action: A Case Study of the Association of Dispersed Guatemalan Refugees,” *Refuge* 19/3 (2000), pp. 25-31.
- <sup>(7)</sup> Barnes argues that negotiations are a form of “political decision-making” to the extent that they “address questions involving the state structure, political systems or the allocation of resources” and should therefore “be understood within the wider context of the right to effective participation in governance.” Barnes, *supra* n. 2, p. 10.
- <sup>(8)</sup> General Recommendation 22 to the Convention on the Elimination of All Forms of Racial Discrimination, Committee on the Elimination of Racial Discrimination, General Recommendation 22, Refugees and displaced persons, 49th Sess., UN Doc. A/51/18, annex VIII at 126 (1996), reprinted in, *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc. HRI/GEN/1/Rev.6 (2003), p. 211.



- <sup>(9)</sup> See, comments on the right to participate in the public affairs of one's country in article 25(a) of the International Covenant on Civil and Political Rights in, Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary*. Arlington, VA: N.P. Engel, 1993, pp. 569 and 572. Nowak also notes, however, that a cursory review of ICCPR case law suggests the "[d]irect rights of participation [in the public affairs of one's country] may ... be derived from article 27 [on minorities]..." Ibid., p. 573.
- <sup>(10)</sup> For a critical review of the role of the state in the human rights regime see, chapter 7 in, Balakrishnan Rajogopal, *International Law from Below, Development, Social Movements and Third World Resistance*. Cambridge, UK: Cambridge University Press, 2003, pp. 163-232.
- <sup>(11)</sup> The Community Service Function of UNHCR, supra n. 2, p. 56. See also, Jarat Chopra and Tanja Hohe, "Participatory Interventions," *Global Governance* 10/3 (2004), p. 290 (stating that the "subculture of UN missions is rooted in a diplomatic habit, relating institution to institution or at most talking to a minority elite.")
- <sup>(12)</sup> The Community Services Function of UNHCR, *ibid.*
- <sup>(13)</sup> For a useful analysis see, Richard Falk, "International Law and the Peace Process," *Hastings International & Comparative Law Review* 28 (2004-2005), pp. 331-48; and, Norman Finkelstein, "The Camp David II Negotiations: How Dennis Ross Proved the Palestinians Aborted the Peace Negotiations," *Journal of Palestine Studies* 36/2 (2007), pp. 39-53.
- <sup>(14)</sup> Quoted in, Joint Parliamentary Middle East Councils Commission of Enquiry – Palestinian Refugees, Right of Return. 2nd Edition. London: Labour Middle East Council, Conservative Middle East Council, Liberal Democrat Middle East Council (March 2001), p. 277.
- <sup>(15)</sup> "Palestinian Refugees and the Palestinian-Israeli Negotiations, An Interview with Salim Tamari," *Journal of Palestine Studies* 29/1 (1999), p. 88. Tamari also warned that unless refugees were brought into the process, any agreement "would be completely unpopular and illegitimate." See also, Elia Zureik, "Palestinian Refugees and Peace," *Journal of Palestine Studies* 24/1 (1994), pp. 5-17.
- <sup>(16)</sup> Israel and the PLO had yet to agree on the modalities governing the admission of this group of refugees to the OPT. Joel Singer, "The Emerging Palestinian Democracy under the West Bank and Gaza Strip Self-Government Arrangements," *Israel Yearbook on Human Rights* 26 (1996), p. 347. On the other hand, Palestinian officials may have opposed the inclusion of 1948 refugees in PA elections because it could have implied that the solution for this group of refugees would be found in the OPT. In fact, camp refugees in the OPT rejected participation in later municipal elections for just that reason.
- <sup>(17)</sup> The search for durable solutions to the refugee issue was devolved from the UN Conciliation Commission for Palestine (UNCCP) to the parties themselves in the early 1950s following several unsuccessful attempts by the Commission to facilitate the implementation of paragraph 11 of General Assembly Resolution 194 (III) of December 1948. For a brief overview of the mandate of UNRWA and UNHCR see, *The United Nations and Palestinian Refugees*. Gaza City and Geneva, 2007.
- <sup>(18)</sup> For a recent critique of the UN role in the Middle East Quartet see, UNGA, Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, 62nd Sess., Provisional Agenda Item 72(c), UN Doc. A/62/275 (2007), paras. 46-50. For an overview of the "essential rights" afforded to refugees in peace agreement see, Nicole Campion and Melanie Nakagawa (eds.), *Refugee Return, Peace Agreement Drafter's Handbook*. Washington, DC: Public International Law and Policy Group, 2005, p. 7.
- <sup>(19)</sup> On the popular refugee campaign see, e.g., Ingrid Jaradat Gassner, "A Programme for an Independent Rights Campaign," in Naseer Aruri (ed.), *Palestinian Refugees, The Right of Return*. London: Pluto Press, 2001; and, Anwar Hamam, "A Commentary on the Palestinian Coalition for the Right of Return," *al-Majdal* 24 (December 2004), pp. 11-15.
- <sup>(20)</sup> For a useful commentary see, Dan Bousfield, *The Logic of Sovereignty and the Agency of the Refugee: Recovering the Political From "Bare Life"*. YCISS Working Paper No. 36, Oct. 2005. See also, Rajogopal, supra n. 10. "[E]mphasizing the role of the state in the realization of human rights simply reproduces the same structures that prevented the realization of those rights in the first place."
- <sup>(21)</sup> See, Mamdani's argument that rights are derived from struggle. Mahmoud Mamdani, "Social Movements and Constitutionalism in the African Context," Working Paper No. 2. Kampala, Uganda: Centre for Basic

- Research, 1989, pp. 1-2, cited in, Celestine Nyamu-Musembi, "Towards Actor-Oriented Perspective on Human Rights," IDS Working Paper No. 169. Brighton, UK: Institute of Development Studies, 2002, p. 6.
- <sup>(22)</sup> For a general list see the recommendations in, Karine Mac Allister and Ingrid Jaradat Gassner (eds.), *Survey of Palestinian Refugees and Internally Displaced Persons 2006-2007*. Bethlehem: BADIL Resource Center, 2007, pp. x-xii. On the specific role of the UN Secretary-General see, Alvaro de Soto, *End of Mission Report, May 2007*; and, Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, supra n. 18.
- <sup>(23)</sup> Laleh Khalili, "Commemorating Contested Lands," in Ann M. Lesch and Ian S. Lustick (eds.), *Exile and Return: Predicaments of Palestinians and Jews* (Philadelphia: University of Pennsylvania Press, 2005), p. 21.
- <sup>(24)</sup> For use of this metaphor see, Omar M. Dajani, "Shadow or Shade? The Roles of International Law in Palestinian-Israeli Peace Talks," *Yale Journal of International Law* 32 (2007), pp. 62-124. Dajani describes the shade of the law as the influence it "derives from the normative force of the ideas it embodies and its capacity to legitimize negotiated outcomes in the eyes of other international actors and domestic constituencies." The shadow of the law refers to "the influence law exerts on bargaining as a result of the possible imposition of a legal remedy if negotiations fail."

#### In Memoriam: Dr. Haider Abdel Shafi (1919 – 2007)

The recent death of Dr. Haider Abdel Shafi is a great loss. For generations of Palestinians, Dr. Haider has symbolized principled commitment to the struggle for justice and provided a role model for leadership. He has provided guidance and inspiration to so many, irrespective of illness and age. The fact that he had to conclude his long journey in the isolated Gaza Strip, in times when the international community is more than ever failing the Palestinian people and the latter are more fragmented and desperate than before, leaves a legacy and challenge for the younger generations.



Some of us at BADIL had the honour of working with Dr. Haider in the early 1990s. At that time, local human rights organizations campaigned and lobbied for attention to the fact that Israel was about to employ the political agreements, part of the Madrid-Oslo process, in order to permanently change the demographic composition of occupied eastern Jerusalem. Local human rights organizations warned that the situation of Palestinian residency and family rights in the city was deteriorating as a result, but such warnings went unheard by Palestinian and international policy makers, who were blinded by what was perceived as rapid progress towards Israeli-Palestinian peace. As he was on so many other occasions, Dr. Haider was the exception. He did not hesitate to endorse and support this civil society campaign which – already back then – stated clearly that there could be no peace without respect for international law and freedom from occupation, in particular in Palestinian Jerusalem.

Unnoticed by Palestinian VIPs and the international community, the same "peace process" led to the closure of the Gaza Strip for local West Bank residents already in the early 1990s. Therefore, BADIL was prevented from meeting and consulting with Dr. Haider in his home town Gaza. His personal example, however, has always transcended Israel's checkpoints and "terminals", and it will continue to inspire our work for the Palestinian refugees and their right of return.

## Bottom-up Peacebuilding in the Occupied Territories

*Interview by Aisling Byrne*

### Interview with Alastair Crooke

**Former special Mid-East adviser to European Union's Foreign Policy Chief, Javier Solana, and adviser to the International Quartet**

**A**lastair Crooke facilitated various Israeli-Palestinian ceasefires during 2001-2003; he was instrumental in the negotiations leading to the ending of the siege on the Church of Nativity in Bethlehem and mediated in the negotiations leading to the ceasefire declared by Hamas and Islamic Jihad in June 2003. He was a staff member of President Clinton's Fact Finding Committee, led by Senator Mitchell, into the causes of the Second Intifada and has had direct experience of conflict over a period of 30 years in Ireland, South Africa, Namibia, Afghanistan and Colombia. He is currently co-director of Conflicts Forum based in Beirut.



*Peace talks, 11 July, 2000. (© AP/WAFA)*

#### **Can you describe your role in your former position as EU Middle East Envoy:**

My role was to co-ordinate a bottom-up process to compliment a diplomatic top-down process - typically an effort by the diplomatic community or politicians to come up with an agreement. But unless an agreement has some connection with reality and addresses real power relationships and security, and has a certain acquiescence of grassroots support, then it will fail.

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This was the first time the EU had been involved in bottom-up peace-building which I started on an informal basis. Initially opposed to it, the Israelis objected, but reluctantly acquiesced. Part of my role was also to explain to Israelis that we weren't involved with Palestinians in a conspiracy against Israel, but were trying to bring about the de-escalation of violence that would allow a political process to start.

### **What were your 'town hall' meetings - what did they achieve?**

The meetings served three purposes: first to explain to people with influence in communities what was being proposed - many had a completely wrong idea of what was being proposed at the national level. The extent of misconception surrounding a political process is vital because it has the potential to undermine the initiative. Secondly, they showed the process was transparent and not hidden from people and hatched in 5 star hotels, but was something about which they could have their say. Thirdly, they provided an opportunity for people to vent frustrations and anger at the international community. In general, when people are not consulted, they oppose something, but once consulted, they may grudgingly express reservations, but generally would not sabotage it.

Their importance was to explain the peace-building process and push-start daily developments to give substance and momentum. I would meet with Arafat every day, and I then took his responses back to community leaders and commanders who had been at the meetings. Arafat would push things in a certain direction; it was time-consuming, but was fundamental to the process.

One way of influencing people with weapons is to influence the community that supports them. This needs to be a natural process of starting a debate on political options. One of my rules of thumb was never to undermine the concept of resistance, but rather to change the meaning of words; to say, of course everyone has the right to resist occupation, but there are other ways of continuing resistance.

### **Were there positive outcomes, for example, removing checkpoints?**

Checkpoints were particularly difficult: it took 17 different Israeli agencies to lift a checkpoint. There are realms of different interests in the checkpoints: settlers committees, customs and revenue, the Civil Administration, and several military, intelligence and internal security interests. Essentially, de-escalation of violence requires an accelerating dynamic towards improvement in people's lives. Visible feel-good factors are important. Opening a checkpoint, paradoxically, seemed to be the most difficult for Israelis. The first 2 weeks of an attempt to de-escalate conflict are critical; you have a small horizon. What was apparent in 2001-2003 was that the period to bring about change was getting shorter.

### **What were the lessons learnt for the EU at a policy-level?**

Before 2000 - a period when Palestinians and Israelis had no communication between each other - my role had been to try and get Israelis to talk to the EU about security. They had steadfastly refused to do this: their position was that the EU was there to sign cheques but not to involve itself in policy. Eventually isolation broke down and discussion began without which this initiative would not have been possible.

For Palestinians, the hardest thing was Israel's policy not to engage with the EU. I had built up

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Establishing a good relationship; under-not overstating prospects; being clear what you are trying to achieve, what is not achievable; and avoiding diplomatic 'constructive ambiguities' is fundamental.

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trust with Palestinian political leaders - with Tanzeem and Fateh leaders and the rank and file of Hamas and Islamic Jihad, not their political leadership. The EU first engaged with Hamas' leadership in 2000. It had been generally viewed that Israel would be so angered by it that it would damage relations and that the EU would lose the ability to work with Israel who resisted Europeans venturing into the political process.

The EU understood there needed to be a practical element to peace-building as a way into the political process. But they found this difficult because the natural instinct was to go to member states rather than develop a joint European approach. They currently have a top-down approach with, I feel, insufficient understanding of conflict dynamics, psychology, and the complexity and divisions within Palestinian society. Many believed it was self-evidently in the Palestinians' interest to stop the firing. I think EU policy retreated out of fright at what the schism with the US over Iraq, and resulting internal divisions which the attack on Iraq provoked.

**What is your experience from working in other areas of conflict on peace-building in a context of asymmetrical power?**

In most of these processes there is a lack of trust. This is not an obstacle, but should be expected and a process designed for this. Preparation for a political process must include psychological preparation - treating people with respect, courtesy and patience. This may be obvious but is often ignored. Often mediators get irritated because people don't want to shift positions; they instruct them on what is in their interests which is a mistake. Establishing a good relationship; under- not overstating prospects; being clear what you are trying to achieve, what is not achievable; and avoiding diplomatic 'constructive ambiguities' is fundamental. You can't demand a large element of trust at the beginning of a process. Many contexts show how poor Western mediation efforts have generally been: the claim to be objective has proved hollow, instead pushing political positions that skew outcomes towards western interests.

**After you left, did the EU continue with this initiative?**

I don't know why it wasn't continued after I was removed. Many people asked and complained why there wasn't a successor. The breakdown of trust and then putting Hamas on the proscribed list had created too many uncertainties for people to agree how to move ahead. Presumably, there was also opposition from Israel.

**What did the Israelis and Palestinians feel about this initiative and process?**

We had an indirect channel with Israel which had divided views: some were opposed to the conflict's internationalization and wanted it to be dealt with only by America; others felt the war on terror should be taken advantage of to undermine the Palestinian national project. Others in the security services welcomed this as a way to prevent crises and occasionally save lives. They said so in the press. I know everything major that I did was reported to PM Sharon; he was probably skeptical but at that stage he was still thinking of a two-state political solution and so was ready to listen. But when he opted for the unilateral approach, I don't think he wanted mediators - probably one of the reasons for my removal.

Palestinians felt it was a positive approach, but that the EU did not back it up with sufficient resources. Arafat wanted it expanded. However imperfect, they felt it important to have people see and report back the effects of Israeli actions to make it less easy for Israel to take certain actions.

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**Many contexts show how poor Western mediation efforts have generally been: the claim to be objective has proved hollow, instead pushing political positions that skew outcomes towards western interests.**

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**Trust is not going to come from signing a paper.**

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**The institutionalization  
of occupation mindset  
for Israel constitutes a  
major problem.**

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**Does the offer of a long-term hudna provide a context for initiating bottom-up peace-building?**

A hudna offers a good opportunity - de-escalation of violence provides the opportunity to build steps that can be reciprocated between parties. Trust is not going to come from signing a paper. For Islamist movements, it is important that there should be psychological parity in the process between the parties, and a sense in which a just solution, not a pragmatic or compromise one, is the focus. They tend to be more self-reliant, preferring a third party or mediator engage with them first; only when they see a real political process underway would they sit with the other side. For Islamists, when there is conflict, it is the duty of Muslims to push parties to negotiation and reconciliation of differences.

**How does the Islamist approach challenge Western models on conflict resolution which assume paradigms of violence that are basically Eurocentric?**

Because of the asymmetry of power, Muslims have a view that continued resistance is not detrimental to a political process - resistance sometimes is necessary to create circumstances for political processes to begin. This is different from Western models which see violence as an obstacle to political processes, rather than as a necessary component to arriving at a solution.

**How do you bring into negotiation processes psychological requirements for conflict transformation where conflicts have gone on for a long time?**

There is no easy answer to this. One major thing is to find other tasks for the military. On the Palestinian side, if people cannot be armed, they can act as citizens committees - to directly organize their communities, thereby giving them a sense of value; that they are still needed even if their military skills aren't.

The institutionalization of occupation mindset for Israel constitutes a major problem. One army commander told me it took him 2 years to effect a change in the ethos of toleration of unnecessary Palestinian casualties caused by his troops – and this at a time when relations were not strained. He knew pointless deaths were happening which were a fact of an army on the ground getting into local conflicts. It takes 5- 10 years to have an impact on an army's ethos that has developed over years where people are seen as enemies. The only thing you can do is ensure that people give strict orders from the very top. On the military side, change requires political decisions. They have to do their own internal consensus-building.

**How would you try to sell this approach now?**

The only way you can sell it to Israelis is to advocate a step-by-step approach: reassure them that parties will not be irrevocably committed to something until they choose to be. Israel has traditionally set preconditions that are intended to commit Palestinians, whilst leaving Israel unencumbered, and third party mediators generally have acquiesced to Israeli demands. Senator Mitchell told me you can't have a political process until the sides at least see that the other has a case, so maybe you have to step further back and start by convincing people that the other side has valid aspirations – even if these are contested.

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**Narrative – by which  
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process.**

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**Were lessons from your involvement in the Mitchell Committee incorporated in this initiative?**

Narrative – by which I mean a party’s perception of its own history, its vulnerabilities and view of the future - was pre-eminently important in the Mitchell process. The ability to listen and hear this narrative is crucial. Other lessons were the need to focus on core issues and not get sidetracked, and then build on these. The key issues for Senator Mitchell was a trade off between a cessation of settlement building in return for security from the Palestinians. That was the key to the process - at the beginning we insisted on a real stopping of settlement expansion. A third element is to keep a final report or recommendations simple.

**Given the current polarization in the OPT with the West supporting one side against the other, could such a process be developed now?**

It isn’t hard to convince people of this approach: most understand this, yet to implement it seems difficult for Europe. It could be done by the Swiss or Norwegians; Sweden or Ireland might be possible, although neither France, Germany, nor the US or Britain, have credibility.

An individual with credibility can give a strong element of integrity. There will be a huge sense among people that something disadvantageous is being cooked up behind their backs, so how they regard the person overseeing the process is vital. I know it made a huge difference in Northern Ireland – Senator Mitchell was key to the whole process there.

The Palestinian-Israeli situation is totally different now; this role couldn’t be done by someone drafted in. I’m not sure they would not survive; they would need armoured cars and you can’t do this in those circumstances. One would need a tremendous amount of trust in the individual leading this. The only person who could do this at the moment is George Mitchell. Palestinians would give him the opportunity. The idea of people coming in and having the ability and time to make connections and links is just not there. We have cut ourselves off from that.

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*Aisling Byrne is Projects Co-ordinator with Conflicts Forum in Beirut ([www.conflictsforum.org](http://www.conflictsforum.org))*

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## Bosnia and Palestine: So Close, and Yet So Far

By Joseph Schechla

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It is noteworthy—and  
contradictory—how  
similar population trans-  
fer situations could be  
treated diversely under a  
single international law  
regime.

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*BADIL fact-finding visit to Bosnia-Herzegovina. 10-17 June 2002. (©BADIL)*

Already in 1863, the U.S. Civil War-era Lieber Code, which influenced the subsequent Hague Conventions, instructed that, in our modern age, “private citizens are no longer carried off to distant parts.”<sup>(1)</sup> That claim now appears majestically naïve and tragically premature. At a time when the UN Subcommission on Prevention of Discrimination and Protection of Minorities was considering the human rights dimensions of “population transfer,”<sup>(2)</sup> 130 years later, that crime manifested once again in the Balkans and central Africa under a new euphemism: “ethnic cleansing.” The label became synonymous with the international law term “population transfer,” which itself may appear in some contexts as a euphemism for specific practices better described as mass expulsion,<sup>(3)</sup> deportation, colonization, demographic manipulation,<sup>(4)</sup> removals<sup>(5)</sup> and even genocide.<sup>(6)</sup> However, “population transfer,” also inherent in other 20<sup>th</sup> Century conflicts with enduring effect, remains the omnibus term of international human rights and humanitarian law, further enshrined as a war crime and crime against humanity in the Rome Statute on the International Criminal Court.

Seeking a common definition, the 1997 UN Seminar of Experts on the Human Rights dimensions of Population Transfer drew on over a century of legal opinion and jurisprudence to conclude that population transfer and its cohort, the implantation of settlers, violate international law when they are:

collective in nature, affecting a group of persons, either involving large numbers of people in a single event, or gradual, incremental, or phased;  
carried out by threatened or actual force;  
involuntary, without full, informed consent of the affected population(s);



deliberate on the part of the government or other perpetrating party, with or without whose knowledge the violations occur;  
systematic, forming a pattern of policy or practice;  
discriminatory, affecting one or more distinct population;  
without due legal process.<sup>(7)</sup>

Population transfer usually targets national, ethnic, religious or linguistic minorities and, therefore, *prima facie*, violates individual as well as collective rights that several important international human rights instruments guarantee.<sup>(8)</sup> These include treaty-law standards such as the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Rights of the Child; and the humanitarian norms of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War; as well as crimes defined in the Rome Statute on the International Criminal Court. The offending practices are clearly incompatible with norms of *lex feranda* (“soft law”) as well, including multilateral resolutions, opinions of legal authorities and principles of customary international law (*jus cogens*). Such sources and standards notably include, among others, the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and National Minorities; and the UN Declaration on the Rights of Indigenous Peoples.<sup>(9)</sup>

Every violation has its remedy in law. The remedy prescribed for victims of gross violations or human rights and/or grave breaches of humanitarian law, including population transfer, is reparation. International norms require no more or less than the formula of reparation for such crimes, whether arising from individual or State responsibility. That formula consists of seven indispensable elements: 1) restitution of the *status quo ante*; 2) voluntary return of refugees and displaced persons; 3) suitable resettlement, if return is not a physical option; 4) rehabilitation upon return/resettlement; 5) compensation for costs and losses unaddressed by restitution; 6) a pledge of nonrepetition of the violation/crime and 7) the victim’s sense of satisfaction that justice has been served, including the perpetrator’s contrite admission of responsibility.

It is noteworthy—and contradictory—how similar population transfer situations could be treated diversely under a single international law regime. The obvious distinguishing factor of politics, or, rather, political bad faith, can generate inconsistencies that perpetuate—even reward—crime and prolong suffering and loss. With a full decade of hindsight, a glance at the headline-grabbing treatment of the Bosnia and Palestine cases in the 1990s reveals such a problematique; whereas, international law content of their respective framing documents, as well as their productivity, are grossly uneven.

Human displacements in the Bosnia and Palestine cases, however analogous, also bear distinguishing features: (1) addressing population transfer freshly carried out in an ongoing armed conflict and (2) an ethnic cleansing and belligerent occupation of long duration. Such a typology serves organizational purposes, but is with full recognition that these distinctions—just as the legal distinction between “international refugees” and “internally displaced”—is arbitrary, having little relevance to the victims’ perspective. For the personal loss, injustices, humiliation, palpable suffering and lingering effects are uniformly felt across these imaginary legal lines, geographical distance and over time. At various episodes in the population transfer process, the various sides of both the Bosnia and Palestine cases involve ambiguous relations to a bona fide state. That apparent fact, too, does not affect the legal issues involved or the values at stake, except as a further reason for the

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international community to engage in good faith toward resolution and reparation. It is important also to recognize that these two cases are by no means unique contemporary manifestations of population transfer, nor are they the only cases that have led to significant international agreements aimed at their resolution.<sup>(10)</sup>

### **Bosnia-Herzegovina and the Dayton Accords**

The unraveling of Yugoslavia emerged as a case in which, not uniquely in this century, the elimination and transfer of distinct populations formed the principal aim of the conflict and remains the most intractable obstacle to its resolution. All parties to the conflict have been cited as having committed this crime; however, the various Serbian factions have emerged as the most-indicted violators,<sup>(11)</sup> directing their crimes mainly at the Muslims of Bosnia-Herzegovina. At the end of the war, more than 1 million people (from a pre-war population of 4.4 million) had been made refugees by the war and another million were internally displaced within the country. The conflict there is instructive, particularly since the culminating peace agreements have engaged international humanitarian and human rights law to an exemplary extent, largely due to the response of the international community through the UN.

The Accords embodied agreement by the Parties (Republic of Bosnia-Herzegovina, Republic of Croatia and the Federal Republic of Yugoslavia, which also was authorized to sign on behalf of Republika Srpska) to conduct their relations “in accordance with the principles set forth in the United Nations Charter, as well as the Helsinki Final Act and other documents of the Organization for Security and Cooperation in Europe” (Article I).<sup>(12)</sup> In Article IX, the Parties agree to cooperate fully with all the entities involved in the implementation of the peace settlement that are described in the eleven Annexes to the Agreement, or which the UN Security Council authorizes, “pursuant to the obligations of all Parties to cooperate in the investigation and prosecution of war crimes and other violations of international humanitarian law.”<sup>(13)</sup>

Annex 6: Agreement on Human Rights enumerated the relevant rights and freedoms in its Chapter One. With explicit reference to the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocol, the Annex specifies the rights to be upheld in the process.<sup>(14)</sup>

Chapter Two of Annex 6 established the Commission on Human Rights under the Agreement. It charged the Commission’s Office of the Ombudsman and the Human Rights Chamber to consider alleged or apparent violations of these and other rights, including nondiscrimination. Moreover, it recognized the right of “all persons” to submit applications to the Commission concerning such alleged violations, and prohibited any of the parties to undertake any punitive action against persons who submit or intend to submit allegations (Part A, Article II). The Annex further authorized the Ombudsman to investigate an allegation directly by any party or group claiming to be the victim of a violation by any other party, or acting on behalf of alleged victims who are deceased or missing (Article V).<sup>(15)</sup> Any such person, party or group could submit an allegation meeting six criteria directly to the Human Rights Chamber, or through the Ombudsman, under his jurisdiction (Article VIII). Article XII of Annex 6 provided that “Parties shall allow full and effective access to nongovernmental organizations for the purpose of investigating and monitoring human rights conditions.”

Finally, the text of Annex 6 specified also that the international “hard law” norms constitute the framework within which these functions were to proceed. The Appendix: Human Rights Agreements obviated potential ambiguities about the obligations of states parties by citing 16 applicable treaties.<sup>(16)</sup>

Annex 7 treated both refugees and displaced persons equally, overriding the artificial distinction between those fleeing or transferred across international boundaries (refugees) or suffering similar conditions within a given territory (displaced persons). Its Chapter One affirms their right to return to property of which they were deprived in the course of the hostilities since 1991, and compensation for property that cannot be recovered (restituted). All those who left the territory enjoy the same right, regardless of where they sought refuge or the basis of the discrimination they suffered. That Annex faithfully reflected the inextricable link between ethnic discrimination and population transfer in former Yugoslavia, calling for parties to take all necessary measures to prevent any activities that would impede the return of refugees and persons, and to take positive “confidence-building” measures. These measures elaborated in Chapter One of Annex 7 are consistent with prior obligations of states parties to the International Convention on the Elimination of All Forms of Racial Discrimination, including obliging the parties to take specific steps to end offending practices, in particular, population transfer.<sup>(17)</sup>

In addition, the Dayton Accords’ Parties were required to create “suitable conditions for return.” That was defined to mean political, economic and social conditions conducive to the “voluntary return and harmonious reintegration of refugees and displaced persons, without preference or discrimination.” These conditions were to be consistent with the UN High Commission for Refugees repatriation plan (Article II).

Chapter Two established a Commission for Displaced Persons and Refugees that has been empowered to receive and decide any claims for return or compensation of real property in Bosnia-Herzegovina of which the claimant does not now enjoy possession and that, since 1 April 1992, has not been sold or transferred voluntarily (Article XI). This Annex also establishes a Refugees and Displaced Persons Property Fund that the Commission is to administer and that may be replenished by direct payments from responsible parties, or from contributions by states, international bodies or nongovernmental organizations.

## **Implementing the right of return**

Regrettably, violations of freedom of movement are reported to be widespread at the hands of all Parties in the areas of former conflict in Bosnia-Herzegovina. The majority of reported incidents have taken place at the Inter-entity Boundary Line under the jurisdiction of the Republika Srpska.<sup>(18)</sup> The maps agreed—or imposed—in the Dayton agreement also rewarded the acquisition of territory by force, selectively legitimizing some crimes that the parties had committed in the conduct of the war. The peace agreement also established some of the consequences of ethnic cleansing by dividing Bosnia into ethnoterritorial entities with state-like administrative powers. That created a Bosnia-Herzegovina with a weak governing centre with two strong entities, ten cantons, and a special district under military occupation and international supervision. That resulted in 13 different constitutions, prime ministers, assemblies, and law-making institutions. In retrospect, some have charged that the Dayton Peace Accords created an “ungovernable country,” giving rise to excessive administrative procedures and offices functioning on the basis of patronage, including also officials who allegedly had engaged in the ethnic cleansing.

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body of the Israel-PLO  
agreements.**

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Officially, by 2005, over one million Bosnians have returned to their pre-war homes and, by 1 July 2007, the remaining IDPs numbered 134,200.<sup>(19)</sup> The apparent inevitability of return under the peace agreement led some ethnonationalist organizations, beginning with Bosnian Croats, to manipulate demography by creating “facts on the ground” that would establish their ethnic dominance in certain localities through strategic land allocations for displaced peoples. This sought to ensure that, even with returns, returnees would never become an ethnic majority in the community again. Obstructionism and violence against returns endures in some parts of Bosnia today, while new demographic manipulation policies across former Yugoslavia have seen the general cancellation of social housing rights for entire ethnic communities.<sup>(20)</sup>

With the returnee process delegated to local institutions, the Bosnian Ministry of Human Rights and Refugees (MHRR), a Commission for Refugees and Displaced Persons, a Return Fund, and *opstina* (municipality) commissions face a funding gap. Over 23,000 families registered to return with the MHRR are stranded due to insufficient funds. Unemployment and divergent pension benefits in certain areas also have been a deterrent to displaced persons’ return.<sup>(21)</sup>

The homes and property of about 82% of displaced Bosnians remains destroyed. Apparently, about 22% live in units owned by others, with some 8% living in collectives and a similar percentage in socially owned housing. Rehabilitation remains incomplete, with only 17% of DPs employed and some 20% without any source of income.<sup>(22)</sup>

## **Decades of population transfer in Palestine**

The conflict between Zionism and the Palestinian people is one of the richest population transfer cases in history, embodying virtually all of the conditions and consequences catalogued in the UN rapporteurs’ initial report on “the human rights dimensions of population transfer.”<sup>(23)</sup> It involves a colonial-settler state engaging in a variety of military and administrative methods of dispossession of an indigenous people. These include discriminatory transfer as a function of “development,” removing the indigenous population in favor of an exclusive group of external people, whom the state defined under its law as having “Jewish nationality” (*le’om yahudi*). Overarching these government practices is a “parastatal” apparatus—consisting of the Jewish Agency, World Zionist Organization and Jewish National Fund and their affiliates—that plans and implements this population transfer policy, just below the radar of public and legal scrutiny.<sup>(24)</sup> Those parastatals continue to operate on behalf of the state, according to Israeli legislation, but do so in their own names and with claims to *charitable, tax-exempt* status.

Israel’s transfer of Palestinian population has been carried out on the basis of domestic laws, including “basic laws,” since the state emerged in 1948. Motivating this process is a righteous ideology that bonds the incoming population and rationalizes the government and state agencies with a claim of superior rights conveyed only to the “nationals” at the expense of the indigenous Palestinian people, including over remaining Palestinian “citizens” of the state. Since 1970, population transfer policy planning and execution is ostensibly shared between the Jewish Agency’s responsibility inside the “green line” (1948 borders of Israel/historic Palestine), and the World Zionist Organization mainly recruiting and implanting settlers in the 1967-occupied territory of the West Bank, Jerusalem and, until 2005, the Gaza Strip.

Israel's pattern of transferring out the indigenous people with the intensification of the *yishuv* colonization process in areas under its control since 1947 presaged the fate of the West Bank and Gaza Strip during and since the 1967 war. Adding to an initial 780,000 refugees in 1947–48, the 1967 conflict created at least 300,000 West Bank refugees (some for the second time)<sup>(25)</sup> and over 100,000 refugees from the Syrian Golan Heights.<sup>(26)</sup> The West Bank, (East) Jerusalem and the Gaza Strip remain the focus of tepid-but-costly multilateral efforts at realizing a Palestinian self-determination unit. The agreements between Israel and the Palestine Liberation Organization (PLO) since 1991 pertain to the status of these areas and serve as the subject of this search for a legal framework.<sup>(27)</sup>

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The current Israeli government 1996 guidelines are more emphatic: it "will oppose 'the right of return' of Arab populations to any part of the Land of Israel west of the Jordan River."

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The diplomatic consistency of both Israel and its principal ally, the United States, has rejected persistent UN calls for an international conference on the question and, instead, sought to address the various aspects of the Arab-Israeli conflicts by way of direct negotiation, itself requiring implied recognition of Israel, despite its unlawful establishment. It has been the shared position of those two states that, in order to serve perceived interests, the collective role of the international community of states should be held to a minimum. To involve the wider international community necessarily would mean subjecting the process to a framework of relevant international law as developed. For U.S. and Israeli diplomats, not proponents of public international law, separating the issue from its consensual framework, particularly in a contentious Cold War environment, was a precondition to talks. However, the post-Berlin Wall, post-USSR, Post-Gulf War world was transformed by 1991. While political and financial motivations for the eventual Madrid Conference and Oslo Accords have been analyzed elsewhere, suffice it to say that geopolitical factors, rather than legal compunction, enabled the process that has led us to where we are today.

## What legal framework?

The principles of international agreement cited in the U.S.-U.S.S.R. invitation letter to the 1991 Madrid Conference are the UN Security Council resolution 242,<sup>(28)</sup> which, by extension, apply the UN Charter and call for "the withdrawal of Israel armed forces" from the 1967-occupied territories, and resolution 338,<sup>(29)</sup> which "calls upon parties" to implement "Security Council resolution 242 (1967) in all its parts." In addition, the "principles" of peace and security for the states and peoples of the Middle East are mentioned. Adopted in the aftermath of the 1967 Six-day War, resolutions 242 and 338 established the principle of Israel's withdrawal in exchange for recognition of its right to exist within secure borders. At that historical juncture, 242 and 338 also crowned two decades of Israeli dispossession and population transfer policies, implicitly recognizing the integration of all of Israel's territorial gains by various illegal means up to June 1967. Despite decades of General Assembly resolutions affirming Palestinians' right to self-determination, neither resolution mentions that people, nor its corresponding right. Although similarly omitting the *jus cogens* principle of self-determination as such, the Madrid Conference letter nonetheless projects that Israel and the Palestinians (sitting as part of a joint Jordanian-Palestinian delegation) would engage in phased "self-government" talks.

In addition to the sponsoring states, the U.S.S.R. and United States, representatives of the

## Accountability and the peace making process

The Declaration of Principles refers to “mutual political rights” and even the “legitimate rights of the Palestinian people”; however, it does not explicitly affirm the Palestinians’ right to self-determination and defers—even dismissed—refugee and displaced persons rights and reparations.

United Nations Secretary-General and the Gulf Cooperation Council were invited as observers, and the European Community, Israel, Syria, Lebanon, Jordan and Egypt were invited as participants. The presence and participation of UN member states implies a certain consensual framework; however, no “hard law” is cited by the sponsoring states as a basis for the Madrid Conference, nor for the process that was to ensue. That fact remains true today in such evasive post-Oslo diplomatic mechanisms as the lawless Mid-East Quartet.



Refugees living in Bethlehem refugee camps visit their village of origin, Beit Jibrin. 15 May 2000 (©BADIL)

The Declaration of Principles (DoP), agreed on 19 August and signed on 13 September 1993, did recognize a “Palestinian Delegation” as representing the “Palestinian people.” In addition to reaffirming their consistency with resolutions 242 and 338, the DoP set out to establish agreement on the transfer of powers and responsibilities to the Palestinian Interim Self-governing Authority. It also begins to detail, in the protocols annexed to the DoP, the gradual withdrawal of Israeli forces from the occupied territory (recognizing the West Bank and Gaza Strip as a single territorial unit). The status of Jerusalem, despite established legal status, was deferred.

The DoP recognized that the eventual Palestinian Council would be empowered to legislate, in accordance with the Interim Agreement, within all territories transferred to it. It also sets forth that both Israel and the Palestinian Authority “will review jointly laws and military orders.” However, these legal issues are strictly internal.

The Government of Israel and “the Palestinians” signed the DoP, and the United States and the Russian Federation both witnessed the pact. Before signing, the sponsoring parties and Israel compelled PLO Chairman Yasser Arafat to affirm on behalf of the PLO that the articles of the Palestinian Covenant denying Israel’s right to exist and other “provisions of the Covenant which are not consistent with the commitments of this letter are now inoperative and no longer valid.”<sup>(30)</sup> No comparable demands prevailed on Israel to repeal its laws dispossessing the Palestinian people or affectively negating its existence as such. Prime Minister Rabin reciprocated only with a one-sentence letter to Chairman `Arafat, recognizing “the Palestine Liberation Organization as the representative of the Palestinian people.”<sup>(31)</sup>

The Cairo Agreements of February 1994 elaborated on the previous instruments of agreement, regulating movements, passage and conduct of the respective Israeli and Palestinian forces in the Jericho autonomous area and the Gaza Strip. These agreements contain no mention of international law principles or obligations. The 4 May 1994 Israeli-PLO Agreement on the Gaza Strip and the Jericho Area, also signed at Cairo, only projected that “the negotiations on the permanent status will lead to the implementation of Security Council resolutions 242 and 338.”

The May 1994 agreements set the limits of Palestinian Authority jurisdiction in the areas under its control, namely excluding “foreign relations, internal security and public order of Settlements and the Military Installation Area and Israeli, and external security.”<sup>(32)</sup> The protocol in Annex III details the respective jurisdiction of the Israeli and Palestinian authorities in the two zones; these too, however, are only of internal significance and invoke no international norms.

The February 1994 Cairo Agreement reflected anticipation that Israel’s military government would continue functioning in the interim (preceding final status). In selective fashion, the relevant passage (Article 5) invokes “accordance with international law” in order to validate that arrangement, however vaguely and toothlessly.<sup>(33)</sup>

This passage, therefore, also qualifies Israel as the belligerent occupier, and constitutes Palestinian recognition of that fact. The international law reference here apparently establishes Israel’s entitlement to rule through its existing functions as the occupier of the West Bank and Gaza Strip at least through the interim phase of the process.<sup>(34)</sup> Specific reference to humanitarian law is omitted from the entire body of the Israel-PLO agreements. Nonetheless, one might conclude that the reference to international law in Article 5 would suggest Israel’s recognition of the Geneva Civilians Convention,<sup>(35)</sup> which is the principal instrument applicable to occupying powers, despite Israel reneging on its 1949 signature on the Civilians Convention’s and its refutation of its *de jure* applicability to its role in Palestine ever since.<sup>(36)</sup>

The only other reference to international norms in the Agreements is in a passing reference in Article 14 of the 1995 Interim Agreements. It states that the parties “shall exercise their powers and responsibilities pursuant to this agreement with due regard to internationally accepted norms and principles of human rights and the rule of law.” However, this commitment refers only to the parties’ exercise of powers within their respective jurisdictions. It in no way implies that human rights provide a framework or guide the mistitled “peace process” toward its final terms. Even this weak gesture to the rules of the game of nations emerges as disingenuous in light of the contradictions that manifest in the text of the agreements, as well as in their unruly implementation. Article XXII on “Rights, Liabilities and Obligations,” though void of any reference to international legal instruments, nonetheless may be seen as significant in actually derogating the rights of victims to seek remedy and compensation for violations by Israel’s Civil Administration.<sup>(37)</sup>

## Addressing displacements

The Oslo process agreements present a dim prospect for displaced and refugee Palestinians to pin their enduring hope on international law norms, including their right of return. Israeli-Palestinian negotiations on the core problem of refugees began at Palestinian insistence with the first Multilateral Working Group on Refugee Affairs in 1992. After the 1993 Oslo Accords, a Quadripartite Committee, involving Israel, Jordan, Egypt and the PLO, took up the issue of 1967-refugee repatriation. The international community pledged to continue financial and technical assistance to Palestine refugees in the meantime, but UNRWA was projected to dissolve by 1999, with its functions transferred to the Palestinian Authority. One year ahead

of that putative deadline, the Multilateral Working Group was inactive and the Quadripartite Committee has not been able to achieve any tangible results.

One source of Palestinian refugees' vocal frustration—and a great disappointment for the Palestinian people as a whole—is the failure of the two sides to agree even on the definition of a “displaced person.” The Quadripartite Committee on the Repatriation of 1967 Displaced Persons was based on the Oslo Agreements, and consequently rested on no relevant principles of law. Since the first meetings in Amman in 1995, the Israelis of both dominant parties refused to accede to the Palestinian position that families and descendants, as well as persons evicted in the 29-year course of occupation, constitute displaced persons. The Israelis insisted that only those persons personally evicted during the 1967 War could be so considered. The negotiating gap between the two positions left a difference of 600–700,000 souls, while excluding at least another 4,500,000 Palestinian refugees. The last meeting of that committee took place on 14 February 1996.<sup>(38)</sup>

Since 1992, the broader, multilateral Refugee Working Group has convened eight plenary sessions and 12 “intercessional” meetings on technical matters such as those related to health, data collection, family reunification. In the multilateral sessions, procedure dictated that decisions be by consensus of the 12 participating delegations. Evidence of progress is lacking and, after the 1996 change of government in Israel over a decade ago, no progress manifested either in negotiations, nor in the diplomatic sphere.

These negotiations appear to have omitted the 1948 refugee from the picture altogether, although the General Assembly has consistently recognized their status and right to return or compensation.<sup>(39)</sup> As with many other aspects of this negotiation process, matters of law and international consensus are now subject to being negotiated away. It is not insignificant that one of the cosponsoring states now manifests declining support for the rights of 1948 refugees.

The United States, at the political level, has never made a strong statement affirming the Palestinian right to return, but rather couched its support for the peace process in terms of the preferences for one side only. In a parting gesture as Secretary of State, Warren Christopher issued a letter to newly elected Prime Minister Benyamin Netanyahu, spelling out these terms:

You can be assured that the United States' commitment to Israel's security is iron clad and constitutes the fundamental cornerstone of our special relationship. The key element in our approach to peace, including the negotiations and implementation of agreements between Israel and its Arab partners, has always been a recognition of Israel's security requirements to work cooperatively to seek to meet the security needs that Israel identifies.<sup>(40)</sup>

The dominant Israeli view is that the repatriation of refugees, even to the areas under Palestinian Authority control, is a “security threat.”<sup>(41)</sup> The current Israeli government 1996 guidelines are more emphatic: it “will oppose ‘the right of return’ of Arab populations to any part of the Land of Israel west of the Jordan River.”<sup>(42)</sup>

The legal questions surrounding the implantation of settlers in occupied territories have been



well elaborated elsewhere.<sup>(43)</sup> In blinding contrast, the U.S. government's foreign policy representative, Madelaine Albright, while an engine of the Dayton Process, hypocritically announced in a 1 October 1997 interview that Israeli settlements in the occupied Palestinian territories are "legal"; she would only concede that they are just "not helpful."<sup>(44)</sup>

## Conclusion

In most cases of population transfer, the affected population's sovereignty is the intended target, while settlements and settlers form the ordinance of choice. The international community implicitly has acknowledged that fact through various UN resolutions on the Israeli settlements. Recently, the international community also has reasserted general international law principles of reparation and property restitution for victims of human rights violations and humanitarian breaches.<sup>(45)</sup> Palestinian refugees and displaced persons' rights and mechanisms for reparation are conspicuous—by their absence—in the multilateral framework of the Israel-PLO agreements since Oslo.

The Declaration of Principles refers to "mutual political rights" and even the "legitimate rights of the Palestinian people"<sup>(46)</sup>; however, it does not explicitly affirm the Palestinians' right to self-determination and defers—even dismissed—refugee and displaced persons rights and reparations.<sup>(47)</sup> As noted above, both the DoP and interim agreements provide that the final status negotiations will lead to the implementation of Security Council resolutions 242 and 338. Those two UN instruments may establish a limit to Israel's encroachment on Palestinian territory, but they are notoriously tacit on the national (i.e., sovereign) dimension of that territory and the indigenous people belonging to it.<sup>(48)</sup>

Meanwhile, plausible rumors abound about secret arrangements to negate Palestinians' entitlement to reparations, including the right of return. As early as 1997, reports of Palestinian negotiations with Israel's former Foreign Minister Shimon Peres have left his Palestinian negotiating counterpart Mahmoud Abbas (Abu Mazen) indelibly on record as agreeing to limit the right of return even for 1967 refugees.<sup>(49)</sup>

More broadly, the Oslo-era agreements are void of any reference to "hard" international human rights or humanitarian law (*lex lata*). The framework, if such it is, rests essentially on a series of phased, technical protocols that establish the presence of the Palestinian people's official representatives within portions of that people's self-determination unit under unambiguous Israeli control, pending the much-anticipated "final status" arrangements. The text of the agreements remain effectively silent on the human rights, humanitarian and other public law conditions of that portion of the Palestinian people, as on the practices of Israel toward that entire people that are at the root of the conflict. Without an international law framework or adherence to their norms, in fact, the Oslo-inspired interim and final-status arrangements have failed.

Contrastingly, the Dayton Accords reflect the theoretical application of relevant international law. That fact appears to be the consequence of a concerted effort among many nations, particularly European states and the active involvement of the United Nations, but engaging also the involvement of other states in the Mediterranean region and North America. At the same time, certain aspects of the Accords themselves and their implementation, as

discussed above, contradict the very framework that the Accords explicitly contain. Other obstacles remain, while new forms of housing discrimination also have emerged. For all their flaws, the Dayton Accords are not perceived as a set of agreements dominated by one state, or cartel of overwhelmingly dominant states with a common ideological predisposition contrary to the relevant legal norms. Human rights and humanitarian law guarantees lie at the very heart of the Dayton Accords and contribute a basis for protection and leverage pertaining to noncompliance. The Israel-PLO agreements contrast with the Dayton Accords in all of these respects. This comparison demonstrates that there is much to learn, and even more to repair.

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### Endnotes

- (1) Article 23. Lieber Code (Washington, 24 April 1863). L. Friedman, ed., *The Law of War*, Vol. I (New York: Random House, 1972).
- (2) In resolution 1992/28 of 27 August 1992, the Subcommission entrusted Mr. Awn Shawkat al-Khasawneh and Mr. Ribot Hatano as special rapporteurs. In 1993, Mr. al-Khasawneh assumed the mandate alone until 1997.
- (3) See, Jean Marie Henckaerts, *Mass Expulsion in Modern International Law and Practice* (The Hague: Martinus Nijhoff, 1995).
- (4) See Joseph Schechla, "Forced eviction as an increment of demographic manipulation," *Environment and Urbanization* vol. 6, no. 1 (April 1994), 89–105.
- (5) The term of art applied to population transfer policies affecting indigenous populations in North America, particularly under the President Andrew Jackson Administration (1929–37), and in South Africa subsequent to the 1922 Stallard Commission.
- (6) The International Law Commission has determined that changes in the demographic composition of an occupied territory seem "to be such a serious act that it could echo the seriousness of genocide." (International Law Commission, Commentary on article 21 of the Draft Code of Crimes against the Peace and Security of Mankind, article 2, section 2 [b]).
- (7) The Expert Seminar on Population Transfer met at Geneva from 17 to 21 February 1997. Its deliberations are reported in the special rapporteur's final report "Freedom of Movement: Human rights and population transfer," UN Doc. E/CN.4/Sub.2/1997/23.
- (8) See conclusions of the special rapporteurs Awn al-Khasawneh and Ribot Hatano, "The human rights dimensions of population transfer, including the implantation of settlers and settlements," UN document E/CN.4/Sub.2/1993/17 of July 1993, at XX–XX.
- (9) E.g., resolutions 1992/28, 1994/24, 1995/13 and 1996/9.
- (10) In fact, this review represents part of a broader textual comparison that covered other agreements coinciding with the UN Subcommissions independent initiative, including the International Conference on the Victims of War (Geneva, 1993) and the German-Czech Reconciliation Protocol, concerning the post-WWII Sudetenland expulsions of Germans. See Joseph Schechla, "Legal frameworks of Recent International Agreements pertaining to Population Transfer," UN Doc. HR/SEM.1/PT/1997/WP.2, 13 February 1997. Expert Seminar on the Human Rights Dimensions of Population transfer, including the Implantation of Settlers and Settlements, Geneva, 17-21 February 1997.
- (11) Tadeus Mazowiecki, special rapporteur of the UN Commission on Human Rights on the human rights situation in the former Yugoslavia, UN Doc. E/CN.4/1992/S-1/9; Amnesty International, *Bosnia-Herzegovina: "You Have No Place Here": Abuses in Bosnian Serb-controlled Areas* (London: Amnesty

- International, June-July 1994); and Elisabeth Rehn, special rapporteur of the UN Commission on Human Rights on the human rights situation in the former Yugoslavia, UN Doc. E/CN.4/1997/9, at 6.
- (12) ...“General Framework Agreement for Peace in Bosnia and Herzegovina,” initialed at Dayton, Ohio on 21 November 1995 and signed at Paris on 14 December 1995. Citations here are from the text released by the Office of the Spokesman, 1 December 1995, United States Department of State (website).
- (13) Chapter Three, Article XIII of the Agreement on Human Rights (Annex 6) invites the United Nations Commission on Human Rights, the OSCE, the United Nations High Commissioner for Human Rights and other intergovernmental or regional human rights missions or organizations to monitor closely the human rights situation in Bosnia-Herzegovina,” including also the International Tribunal for the Former Yugoslavia and any other organization that the Security Council authorizes with a mandate concerning human rights or humanitarian law.
- (14) The right not to be subjected to torture or to inhuman or degrading treatment or punishment; the right not to be held in slavery or servitude or to perform forced or compulsory labor; the rights to liberty and security of person; the right to private and family life, home and correspondence; the right to property; the right to liberty of movement and residence; the right not to be subject to discrimination on any ground, such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
- (15) The UN Commission on Human Rights’ special rapporteur has reported that the Federation ombudsman’s work has been greatly encouraging, but also strongly recommended that Republika Srpska authorities establish a similar ombudsman institution. Elisabeth Rehn, “Situation of human rights in the territory of the former Yugoslavia,” UN doc. E/CN.4/1997/56 of 29 January 1997, at 15.
- (16) Convention on the Prevention and Punishment of the Crime of Genocide (1948); 1. Geneva Conventions I–IV on the Protection of the Victims of War (1949), and the Geneva Protocols I-II (1977); 3. European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and its Protocols; 4. Convention relating to the Status of Refugees (1951) and its Protocol (1966); 5. Convention on the Nationality of Married Women (1957); 6. Convention on the Reduction of Statelessness (1961); 7. International Convention on the Elimination of All Forms of Racial Discrimination (1965); 8. International Covenant on Civil and Political Rights (1966) and its Optional Protocols (1989); 9. Covenant on Economic, Social and Cultural Rights (1966); 10. Convention on the Elimination of All Forms of Discrimination against Women (1979); 11. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1987); 12. European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987); 13. Convention on the Rights of the Child (1989); 14. Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990); 15. European Charter for Regional or Minority Languages (1992); 16. Framework Convention for the Protection of National Minorities (1994).
- (17) These included to: “repeal domestic legislation and administrative practices with discriminatory intent or effect; prevent and prompt suppression of any written or verbal incitement, through media or otherwise, of ethnic or religious hostility or hatred; disseminate through the media warnings against, and prompt suppression of acts of retribution by military, paramilitary and police services, and by any other public officials or private individuals; protect ethnic and/or minority populations wherever they are found and to provide immediate access to these populations by international humanitarian organizations and monitors; and protect, dismiss or transfer, as appropriate, person in military, paramilitary and police forces, and other public servants, who are responsible for serious violations of the basic rights of persons belonging to ethnic or minority groups.”
- (18) Rehn (1997), *op cit.*, at 5–8; and Rehn, “Situation of human rights in the territory of the former Yugoslavia,” E/CN.4/1998/13, at 13–14 and 36.
- (19) Internal Displacement Monitoring Center, “Final review of the registration process indicate that the number of displaced persons has been further reduced to 134,200 (2007),” at: [http://www.internal-displacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/FF8BD931BDA09AFE802570B8005A7424?OpenDocument](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/FF8BD931BDA09AFE802570B8005A7424?OpenDocument).
- (20) “Croatia: A Decade of Disappointment, Continuing Obstacles to the Reintegration of Serb Returnees,”

- Human Rights Watch, Vol. 18, No. 7 (D), at: <http://www.hlrn.org/violation/croatia0906web.pdf>.
- (21) The Bosnian unemployment rate was 45.4% in 2004.
- (22) UNHCR, "UNHCR and Displaced Persons in Bosnia and Herzegovina," at: <http://www.unhcr.ba/protection/DPsbackgroundnote.pdf>.
- (23) "The human rights dimensions of population transfer, including the implementation of settlers and settlements," E/CN.4/Sub.2/1993/17, 6 July 1993.
- (24) For a discussion of the dual nature of civil status under Israeli municipal law, see Roselle Tekiner, "On the Inequality of Israeli Citizens, Without Prejudice vol. I, no. 1 (1987), 48–57.
- (25) Janet Abu Lughod, "The continuing expulsions from Palestine: 1948–1985," in Glenn E. Perry, *Palestine: Continuing Dispossession* (Belmont MA: AAUG Press, 1986), 17–45, at 21.
- (26) The UN secretary-general cited 107,000 from UN sources. UN Doc. S/8158, 2 October 1967. Others have estimated this number as low as 99,000. Colbert C. Held, *Middle East Patterns: Places, People and Politics* (Boulder: Westview Press, 1994), at 188.
- (27) These include the Invitation Letter to the Peace Conference in Madrid, 18 October 1991; the Declaration of Principles on Interim Self-government Arrangements, signed at Washington 13 September 1993; the Cairo Agreement, 9 February 1994; Agreement on the Gaza Strip and Jericho Area, 4 May 1994; the Paris Economic Agreement (1994); the Hebron-West Bank Accord, 15 January 1997. Security Council resolution 242, concerning Principles for a Just and Lasting Peace in the Middle East, 22 November 1967.
- (28) Security Council resolution 242, concerning Principles for a Just and Lasting Peace in the Middle East, 22 November 1967.
- (29) Security Council resolution 338, concerning the October War, 22 October 1973.
- (30) Letter of Chairman Yasser Arafat to Prime Minister of Israel Yitzhak Rabin, 9 September 1993.
- (31) Letter of Prime Minister of Israel Yitzhak Rabin to Chairman Yasser `Arafat, 9 September 1993.
- (32) Article V "Jurisdiction," Agreement on the Gaza Strip and the Jericho Area, 4 May 1994.
- (33) "Israel shall exercise its authority through its military government, which for that end, shall continue to have the necessary legislative, judicial and executive powers and responsibility, in accordance with international law."
- (34) See John Quigley, "The P.L.O.-Israeli Interim Arrangements and the Geneva Civilians Convention," in Stephen Bowen, ed., *Human Rights, Self-Determination and Political Change in the Occupied Palestinian Territories* (The Hague: Martinus Nijhoff, 1998), 25–46, at 30–31.
- (35) The Fourth Geneva Convention relative to the Treatment of Civilian Persons in Time of War of 12 August 1949.
- (36) Israel has argued the non-applicability of the Civilians Convention due to the putative absence of the "reversioner," or sovereign to which the occupied territory would be "returned." See Yehuda Blum, "The Missing Reversioner: Reflections on the Status of Judea and Samaria," 3 *ISRAEL LAW REVIEW*, 279 (1968); and Meir Shamgar, "The Observance of International Law in the Administered Territories," 1 *ISRAEL YEARBOOK OF INTERNATIONAL LAW*, 263, at 263–64 (1971). See also W. Thomas Mallison and Sally V. Mallison, *The Palestine Problem in International Law and World Order* (London: Longman, 1986), Chapter 6: "A Juridical analysis of the Israeli Settlements in the Occupied Territories," at 240–75.
- (37) It reads: "1.a. The transfer of all powers and responsibilities to the Palestinian Authority, as detailed in Annex II, includes all related rights, liabilities and obligations arising with regard to acts or omissions which occurred prior to the transfer. Israel will cease to bear any financial responsibility regarding any such acts or omissions and the Palestinian Authority will bear all financial responsibility for these and for its own functioning.... I.e. In the event that an award is made against Israel by any court or tribunal in respect of such a claim, the Palestinian Authority shall reimburse Israel the full amount of the award." *Al-Nidham al-Qadha'i al-Madani fi il-Dhafa al-Gharbiyya wa Qita' Ghaza: al-Hadhir wa al-Mustaqbal* [The Civil Justice System in the West Bank and Gaza Strip: The Present and the Future] (Geneva: International Commission of Jurists, June 1994), at 59–60.
- (38) "Political Negotiations on the Palestinian Refugee Question: Interview with Salim Tamari," *Middle East Report* (fall 1996), 7–9.

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- <sup>(39)</sup> Count Folke Bernadotte, "Palestine - Progress Report of the United Nations Mediator," General Assembly Official Record, "Resolutions," at 21–25, UN Doc. A/910 (21 September–12 December 1948), adopted as GA resolution 194 (III), 11 December 1948.
- <sup>(40)</sup> Donald Neff, "The role of Dennis Ross," *Middle East International* (24 January 1997), 4–6, at 6.
- <sup>(41)</sup> *Middle East Report*, op cit., at 8.
- <sup>(42)</sup> "Government Guidelines for the Israeli Government Elected on May 29, 1996," *Jerusalem Post* (18 June 1996), at 3.
- <sup>(43)</sup> See W. Thomas Mallison and Sally V. Mallison, *The Palestine Problem in International Law and World Order* (London: Longman, 1986); also "Letter of the State Department Legal Advisor Mr. Herbert J. Hansell, concerning the Legality of Israeli Settlements in the Occupied Territories," 21 April 1978, ILM (1978), at 777–79. As cited in the progress report of Special Rapporteur `Awn Shawkat al-Khasawneh to the Subcommission, E/CN.4/Sub.2/1994/18, at 19–23.
- <sup>(44)</sup> Interview with Matt Lauer on the morning broadcast of the Today Show, National Broadcasting Company, 1 October 1997.
- <sup>(45)</sup> "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of Human Rights and Serious Violations Humanitarian Law," UN General Assembly, , A/RES/60/147, 16 December 2005; "Housing and property restitution in the context of the return of refugees and internally displaced persons," final report of the Special Rapporteur, Paulo Sérgio Pinheiro, submitted in accordance with Sub-Commission resolution 2004/2, E/CN.4/Sub.2/2005/17, 2 May 2005; "Guiding Principles on Internal Displacement," E/CN.4/1998/53/Add.2, 11 February 1998.
- <sup>(46)</sup> Preamble and Article III (3) of the Declaration of Principles, and Oslo II Article XXXI.
- <sup>(47)</sup> For an erudite discussion of population transfer through the lens of self-determination, see Catriona J. Drew, "Self-determination, Population Transfer and the Middle East Peace Accords," in Stephen Bowen, ed., *Human Rights, Self-Determination and Political Change in the Occupied Palestinian Territories*, (The Hague: Martinus Nijhoff, 1997), 119–68.
- <sup>(48)</sup> See discussion in "A Human Rights Assessment of the Declaration of Principles on Interim Self-Government Arrangements for Palestinians" (Ramallah: Al-Haq, 1993). An analysis by Antonio Cassese asserts, however, that the Palestinians' right of self-determination is implied in resolution 242 by concluding that the DoP "is rounded upon, and logically presupposes the idea of the final attainment by Palestinians of external self-determination." See Antonio Cassese, "The Israel-PLO Agreement and Self-Determination, EJIL, Vol. 4 (1993), 564, at 569.
- <sup>(49)</sup> *Middle East Report*, op cit.

## Responsibility to protect Palestinian refugees: when international authorities fail

By Jeff Handmaker

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The responsibility to protect is firstly a duty to ensure that mechanisms are in place to prevent violations from taking place and secondly a duty of states, acting in their individual or – ideally – collective capacities, to intervene in order to protect civilians from potential or further violations.

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Violations of human rights and humanitarian law, particularly when systematically carried out with no regard to their consequences, demand that other states and international organisations not simply take notice, but take action. The legal basis for proportionate and “effective”<sup>(1)</sup> responses to such violations are gaining momentum through an emerging international legal principle of the *responsibility to protect*, which forms part and parcel of state responsibility. The responsibility to protect is firstly a duty to ensure that mechanisms are in place to prevent violations from taking place<sup>(2)</sup> and secondly a duty of states, acting in their individual or – ideally – collective capacities, to intervene in order to protect civilians from potential or further violations.<sup>(3)</sup>



Massive Israeli home demolition in Khan Younis refugee camp, Gaza Strip, 2004. (©WAFA)

In his report of August 2007, UN Special Rapporteur, Professor John Dugard was harshly critical of the failure of the United Nations, as a member of the *Quartet*, to protect Palestinians and ensure respect for international law and human rights.

The Security Council has largely relinquished its powers in respect of the Occupied Palestinian Territory in favour of ... the Quartet. ... without a founding resolution or mandate from either the Security Council or the General Assembly. ... The Quartet does not see it as its function to promote respect for human rights, international humanitarian law, the advisory opinion of the International Court of Justice, international law or countless United Nations resolutions on the subject of the Occupied Palestinian Territory.<sup>(4)</sup>

When international authorities fail in their responsibility to protect, states, regional bodies (such as the EU) and also civil society have important roles to play in ensuring that international law

is promoted as a determining framework to protect human security and resolve conflicts. As the International Court of Justice has confirmed on numerous occasions, States have legally binding obligations to hold other states to account to prevent violations of international humanitarian law.

## State responses to violations of human rights and IHL

There are several possible interventions available to states, acting on their own or collectively, to put pressure on a belligerent state in order to prevent or stop violations of international humanitarian law. Umesh Palwankar has produced a useful overview of possible state responses, in order of severity, from state protests to collective, armed intervention.<sup>(5)</sup>

### *Exercising diplomatic pressure through protests and denunciation*

States can challenge violations by other states through stepped-up phases of diplomatic pressure, beginning with *protests*. Official protests are directed either towards the ambassador and other diplomatic representatives representing the alleged violating state or directly to the government of the alleged violating state via one's own diplomatic representatives. In order to be effective, Palwankar argues that such protests be "vigorous and continuous".

A further level of diplomatic pressure is *public denunciation* of another state, preferably by more than one state and ideally through an influential organisation such as the Council of the European Union or the Security Council of the United Nations. An example was on 20 December 1990, when the USA called on the UN Security Council to denounce Israel's deportation of Palestinian civilians from territories occupied by Israel and to "comply fully" with the provisions of the Fourth Geneva Convention.<sup>(6)</sup>

Diplomatic pressure can also be exercised against "intermediary" states, particularly when it is alleged that they are co-responsible for violations taking place, for example by providing arms, training and other equipment used by a belligerent state to violate human rights or humanitarian law. This is particularly relevant in the case of the USA and its role in arming the Israeli military.

## Calling states to account through fact-finding missions

Palwankar refers to international fact-finding commissions as a further means of exerting pressure against alleged violating states. Such mechanisms operate under the auspices of the United Nations and regional political organisations, which have established various committees and special rapporteurs to gather information about a particular issue and report back to the organisation on recommended measures that could be taken against an alleged violating state.

Such commissions draw their legitimacy from a state (or group of states), who declare their acceptance of the competence of that body and their desire to approach it, even if the alleged violating state itself has not declared its acceptance. Such diplomacy in the establishment of a fact-finding commission can itself be a means of inducing a state to take steps to suppress continued violations of international humanitarian law. A refusal to accept a commission can be "publicly regretted" by states.

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## Accountability and the peace making process

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Trade restrictions, bans on direct and/or indirect investment in a belligerent state and the freezing of capital held by nationals of a belligerent state are steps beyond state acts of retaliation that aim to do more than simply remove trading privileges, but to place direct pressure on a belligerent state's economy.

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Israel's Wall, Bethlehem, West Bank 2006. (©Anne Paq)

Matters can also be referred to international tribunals, notably the international Court of Justice (ICJ), which has the capacity to issue binding decisions concerning disputes between states, provided both states explicitly accept its jurisdiction. The ICJ also has the authority to receive requests from the United Nations to issue an advisory opinion on the application of international law to a given situation.

### Holding states to account through retaliation and reprisals

If “diplomatic” measures prove to have little or no effect against a state’s violations of international humanitarian law and human rights, then more aggressive options become available, though most options still fall short of armed intervention. Palwankar explains, by reference to various examples, that states have authority to respond by way of acts of retaliation or reprisals. Acts of *retortion* are designed to leverage external political pressure against an alleged violating state. Such measures, though “unfriendly”, are intrinsically lawful, provided they are carried out in direct response to an act of state that may also simply be unfriendly (and lawful), or internationally unlawful. State *reprisals*, on the other hand, are counter-measures and thus by definition unlawful acts, though considered to be exceptionally justified in light of prior unlawful acts committed by the belligerent state to which they are directed.

#### *Acts of Retortion*

A state that is believed to be violating international humanitarian law can face expulsion of its diplomats and/or severance of diplomatic relations with other states. Such measures are exercised as temporary, though forceful responses. For example, the government of Venezuela recalled its ambassador from Tel Aviv in the summer of 2006 in protest at Israel’s attacks on the civilian population in Southern Lebanon.



Further steps include halting ongoing negotiations on bilateral or multilateral agreements with a violating state, or refusing to ratify agreements already signed with a violating state. Such measures often concern trading agreements that provide for preferential terms of trade, for example Israel's Association Agreement with the European Union. The EU includes Israel's largest trading partners, as such the Association Agreement could be a substantial means of exercising combined political and economic pressure against Israel's belligerence.

### **Reprisals**

When a state still refuses to comply and continues to violate international humanitarian law with impunity, further counter-measures can be taken by individual or groups of states against a belligerent state. As with the above, most of these measures do not involve armed intervention, though they may well aim to reduce the military capacity of the belligerent state concerned.

Trade restrictions, bans on direct and/or indirect investment in a belligerent state and the freezing of capital held by nationals of a belligerent state are steps beyond state acts of retaliation that aim to do more than simply remove trading privileges, but to place direct pressure on a belligerent state's economy. In order to be most effective, such restrictions should focus directly on the mechanisms of state repression, in particular the banning of military and other state security equipment. However, long-term efforts often demand broader trading restrictions. Such restrictions are intended as a means of punishing a belligerent state by way of economic sanctions and potentially a much broader official boycott.

For example, the Government of France in 1985, later followed by the United Kingdom, The Netherlands and eventually the USA, banned all new investment in the Republic of South Africa in response to the Apartheid regime's increasingly repressive and violent repression against the country's majority black nationals.

A final measure of last resort that states can exercise against a belligerent state are armed interventions. Such measures must satisfy a range of minimum requirements, discussed by others, not least the High Level Panel.<sup>(7)</sup> Armed measures must only be carried out under the auspices of the United Nations Security Council in reference to chapter VII of the UN Charter. Under Chapter VII, this may involve explicit delegation from the Security Council to regional security agreements such as the North Atlantic Treaty Organisation (NATO).

### **Responses to violations from civil society**

When both states *and* international authorities fail in their responsibility to protect, as the Quartet has clearly demonstrated, civil society organisations often present the last hope for ending a violent and/or repressive regime or to prevent mass violations of human rights. In this context, it is important to emphasise that *civil society* (see below) exercises a tertiary role in the responsibility to protect, with the primary purpose of such interventions being directed at urging states to take action.

This complex process of *claiming* rights, either directly (against a violating state) or indirectly (via a third state) are important components of the responsibility to protect. Individuals, both on their own and through collective mechanisms, are increasingly holding states to account. This is achieved through an ever-growing array of national, regional and international mechanisms.

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## Accountability and the peace making process

Civil society exercises a tertiary role in the responsibility to protect, with the primary purpose of such interventions being directed at urging states to take action.



Somerville Town meeting for the right of return. (©Ron Francis)

Beyond direct and indirect claims, there are many other human rights advocacy strategies that civil society organisations can follow in seeking to hold authoritarian regimes to account. Examples of these include public shaming and boycott and divestment actions. As discussed in a previous *Al-Majdal* article<sup>(8)</sup>, bringing about change in a country that persistently refuses to abide by international law (such as the South African Apartheid regime) is not an easy task, but it is by no means insurmountable.

### International legal responses to the Palestinian refugee crisis

There is no issue that has received more attention by the United Nations than the conflict in Israel / Palestine. Beginning with the 1947 UN Partition Plan, the UN has consistently sought to uphold international law as the context in which the conflict ought to be resolved and in which refugees are to be protected, but sadly, with only marginal success.<sup>(9)</sup>

The UN recognised its responsibility to protect Palestinian refugees back in 1948, with the creation of the UN Conciliation Commission on Palestine (UNCCP) in 1948 and the UN Relief and Works Agency (UNRWA) in 1949. The creation of these two institutions was to ensure, respectively, protection of and assistance to Palestinian refugees. The mandate of the UNCCP is enshrined in UN General Assembly Resolution 194 of 1948,<sup>(10)</sup> although the UNCCP ceased all effective activities a few years later.

In July 2004, following a request by the United Nations Secretary General, the International Court of Justice in The Hague delivered an advisory opinion on the legal consequences of the construction of a Wall in the occupied Palestinian territory.<sup>(11)</sup> As with every judgement it issues, the ICJ's conclusions in an advisory opinion are more than mere rhetoric, they represent the most authoritative statement of the content and applicability of international law. As discussed in previous issues of *Al-Majdal*, the court's judgement proved significant in a number of relevant aspects, including a confirmation that third states also have obligations.

Unfortunately, there has continued to be a persistent failure on the part of the United Nations, European Union and most individual states to hold Israel to account and protect Palestinians. States indeed continue supporting Israel and its military occupation, despite such actions clearly violating international law.

The consequences have been disastrous. Israel's non-recognition of the right of return, coupled with its illegal annexation of land and control of movement in occupied Palestinian areas, has resulted in 55, densely-populated Bantustans and a decades-long exile in refugee camps. Civilian areas, including refugee camps, are regularly subjected to attacks by the Israeli army, whether through indiscrete policies of extra-judicial assassinations or collective punishment.

## **Conclusions**

With prevention of human rights and humanitarian law violations at the core of the responsibility to protect, states and international organisations have expressed a renewed commitment to respect international law and protect vulnerable populations.

In finding a way forward, it is helpful to recall two of Professor Dugard's most recent recommendations.<sup>(12)</sup> In addition to recalling states' independent obligations to hold Israel accountable, Dugard advised the UN Secretary General:

If the Secretary-General is unsuccessful in persuading the Quartet to act as proposed above, the United Nations should cease to give its imprimatur to the actions of the Quartet and should withdraw from the Quartet.

And to the UN General Assembly:

The General Assembly is urged to request the International Court of Justice to give a further advisory opinion on the legal consequences for the occupied people, the occupying Power and third States of prolonged occupation.

When the United Nations *and* states fail in their responsibility, it is left to individuals, *global citizens* acting on their own or through NGOs, who can take steps on their own account, including boycott, divestment and sanctions, until international law is respected. At the other end of the international law spectrum is still the ICJ, which as Dugard reminded, resolves disputes and advises the UN in international crises. All have a key role to play when international authorities fail in their responsibility to protect.

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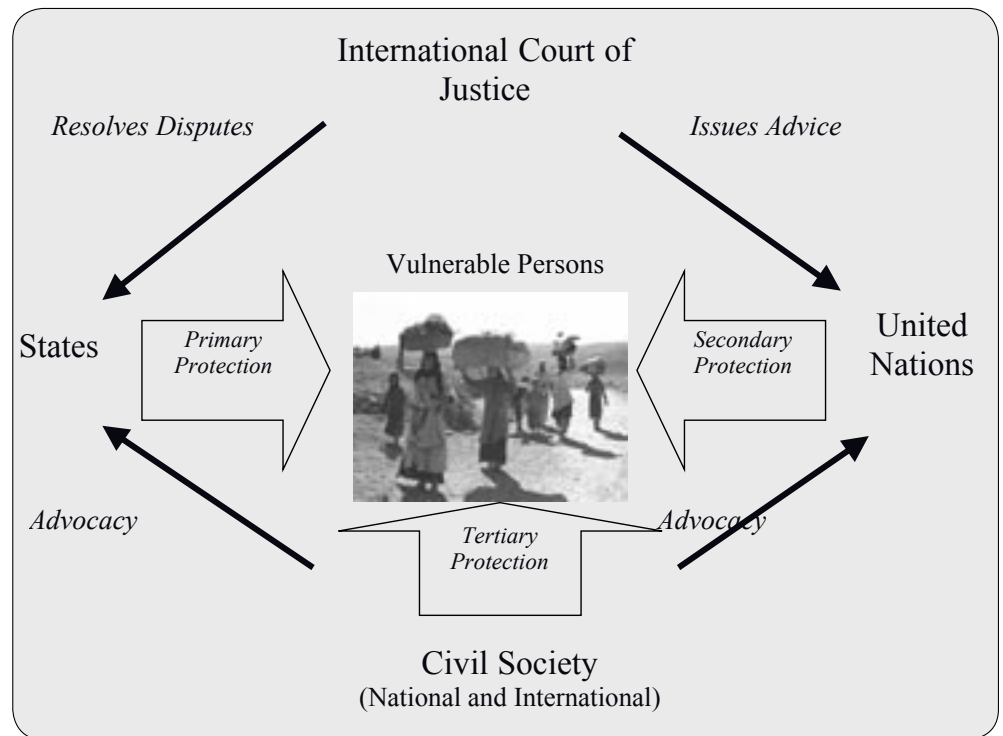
*Jeff Handmaker is lecturer in Development, Human Rights and Governance, Institute of Social Studies, The Hague. This article is an abbreviated version of a chapter originally published in The Responsibility to Protect: Ethical and Theological Reflections, World Council of Churches: Geneva, 2005 and draws partly on a presentation by Susan Akram and Jeff Handmaker, 'Legislative and political advocacy: the obligations of Governments under international law', United Nations International Conference on the Question of Palestine, New York, Sept 2004.*

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Annex – Roles and responsibilities of various actors in the responsibility to protect



**Endnotes**

- (1) *Effective Strategies for Protecting Human Rights*, David Barnhizer (ed), Ashgate, 2001.
- (2) Marco Sassoli, 'State responsibility for violations of international humanitarian law', *IRRC*, Vol 84, No 846, June 2002 argues that "the focus of implementing mechanisms is and must always be on prevention", 401.
- (3) *The Responsibility to Protect*, Report of the International Commission on Intervention and State Sovereignty (ICISS Report), December 2001; *A More Secure World: Our Shared Responsibility*, Report of the High Level Panel on Threats, Challenges and Change, December 2004; *In Larger Freedom: Towards Development, Security and Human Rights for All*, Report of the Secretary-General of the United Nations, March 2005.
- (4) *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, United Nations General Assembly, 17 August 2007, Ref: A/62/275.
- (5) Umesh Palwankar, 'Measures available to States for fulfilling their obligation to ensure respect for international humanitarian law', *International Review of the Red Cross*, No. 298, February 1994, p.9-25.
- (6) Palwankar, *Ibid*.
- (7) Above, note 4.
- (8) Handmaker, J., 'Palestine Does Not Have to Bargain to Obtain its Human Rights', *Al-Majdal*, Issue 25, Spring 2005.
- (9) *Countless books and articles have been written about this. See: [www.reahamba.nl/palestine/biblio.pdf](http://www.reahamba.nl/palestine/biblio.pdf)*
- (10) United Nations General Assembly Resolution 194 (III), 11 December 1948.
- (11) *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, *International Court of Justice*, 9 July 2004.
- (12) See note 5, above.

## For the Sake of Dignity

### Seeking Justice for International Crimes: Emerging Universal Jurisdiction Practice in Spain

By Elna Sondergaard

**"The fundamental idea behind justice is to dignify the memory of our deceased. It is to dignify the children, the women, the elders who were annihilated through genocide, those who were kidnapped, those who were disappeared, those who were tortured."**

- Rigoberta Menchú, 1992 Nobel Peace Prize Laureate <sup>(1)</sup>



Deheisha refugee camp, Bethlehem 2007. (©BADIL)

The Constitutional Court concluded that in light of the aim of universal jurisdiction as a means to fight impunity and the specific nature of the crimes "by legislative mandate, the scope of the Organic Law is so broad that it establishes unconditional universal jurisdiction."

## Introduction

In theory, victims of human rights violations are entitled to effective remedies under international law. <sup>(2)</sup> This implies remedies which are capable of redressing the harm which victims have suffered by providing them with access to justice and, ultimately, with adequate, effective and prompt reparation for harm suffered. <sup>(3)</sup> These principles have recently been restated by the United Nations General Assembly while recommending "that States take the Basic Principles and Guidelines into account, promote respect thereof and bring them to the attention of members of the executive bodies of government, in particular law enforcement officials and military and security forces...". <sup>(4)</sup>

The failure of some countries to implement these norms has led victims of serious crimes to seek remedies elsewhere and to bring their claims to courts in countries which have adopted

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**The Tibetan victims have not had access to justice in Chinese courts, and the case in Spain was in fact “the first judicial complaint ever filed against (former) Chinese leaders for the acts committed in Tibet”.**

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universal jurisdiction laws. Some of these courts have been willing to hear their cases, but as the law stands today, there are still only a few cases which have actually ended with a trial and a conviction of the accused. <sup>(5)</sup>

The further development and success of universal jurisdiction will depend on various factors, including, of course, the position of national judges, but also the adoption of a clear domestic legal framework without which judges would be reluctant to admit such cases. <sup>(6)</sup>

This short article will focus on the promising position taken by some national judges and the possibilities this might provide Palestinians when seeking judicial remedies outside Israeli courts. The position of Spanish judges will first be discussed, as they have taken the lead in admitting cases and investigating crimes committed elsewhere, at least in respect of cases initiated by the victims themselves. Since Judge Garzon’s admission of the case against former Chilean dictator Augusto Pinochet in 1998<sup>(7)</sup>, several important cases have been investigated and the judges of the Spanish Constitutional Court have clearly spoken out in favour of universal jurisdiction as a means of fighting impunity and as a means of providing effective judicial protection to victims who have been denied remedies in national courts. <sup>(8)</sup> That happened in the landmark decision from September 2005 related to the civil war in Guatemala, which since then has been supported by a decision by the Spanish Audiencia Nacional in a case related to Tibet. Finally, I will briefly discuss the position taken by national judges in three universal jurisdiction cases initiated by Palestinians.

The article can be seen as a contribution to the ongoing debate in Al-Majdal and elsewhere regarding the increasing importance of taking legal action to fight the Israeli occupation. <sup>(9)</sup> In addition, an argument is made for treating individual legal actions as ends in themselves whereby redress is sought for Palestinians whose fundamental rights have been violated by Israeli authorities who might, in turn, be held *individually* accountable.



*Destruction caused by Israeli occupation forces in Wadi al-Salqa, central Gaza Strip. (© Palestinian Center for Human Rights)*

## Universal Jurisdiction Cases from Spain

It is important to stress that in Spain, there is a clear legal basis providing courts with the competence to try serious crimes committed abroad (i.e., Article 23 (4) of the Organic Law 6/1985 of the Judiciary<sup>(10)</sup>, and for crimes against humanity, the Spanish Criminal Code<sup>(11)</sup>). Further, procedural rules are in favour of the victims: Under the *action popularis* procedure (Article 125 of the Constitution<sup>(12)</sup>), victims and NGOs are entitled to bring private prosecutions. Hence, they are entitled to initiate a criminal investigation if they can convince the investigating judge that they have a *prima facie* case.<sup>(13)</sup> In other words, such initiative does not depend on the position of the public prosecutor, which obviously might be a serious obstacle for successful litigation.<sup>(14)</sup>

### Guatemala

The highest Spanish court, the Constitutional Court, has had the chance to interpret this legal framework and address the key issue whether a criminal investigation could be opened when the accused was not present in Spain. This happened in its landmark decision of 26 September 2005<sup>(15)</sup> related to crimes committed during the civil war in Guatemala against the Mayan ethnic group. The case in Spain had been initiated by Nobel Prize winner Rigoberta Menchu<sup>(16)</sup>, supported by some NGOs, and followed a recognition of the lack of remedies within the Guatemalan judicial system. The victims sought justice against General Rios Montt who was the head of the military government in the early 1980s and other Guatemalan military officials.<sup>(17)</sup>

The investigating judge's decision to admit the case was set aside by the Audiencia Nacional and the Tribunal Supremo which required, for the case to proceed, a link between Spain and the accused or victims, or the presence of the accused.

The Constitutional Court in reversing these decisions concluded that in light of the aim of universal jurisdiction as a means to fight impunity and the specific nature of the crimes prosecuted under the universal jurisdiction law, "by legislative mandate, the scope of the Organic Law is so broad that it establishes *unconditional* universal jurisdiction."<sup>(18)</sup> Presence of the accused in Spain would therefore not be required for the purpose of opening a criminal investigation, although s/he would need to be in Spain for the trial to begin (trials in absentia are generally not permitted). Hence, "the only condition to which the exercise of universal jurisdiction is subject is that the state of the locus *commissi delicti* is not already investigating and prosecuting the case effectively".<sup>(19)</sup>

As a consequence of this decision, the Audiencia Nacional began investigations and carried out a fact-finding mission to Guatemala in June 2006. However, Judge Santiago Pedraz "was forced to return empty-handed due to "obstructionism" and lack of cooperation of those accused of atrocities and of the Guatemalan judicial system".<sup>(20)</sup> On 7 July 2006, General Montt and others were charged with genocide, torture and crimes against humanity, and the Spanish court issued an international warrant for the arrest of General Montt. Guatemala's Constitutional Court is currently considering this extradition order.<sup>(21)</sup> However, as General Montt in September this year won a seat in the parliament and as he is expected to take up his position in January next year,<sup>(22)</sup> it is now unclear how the case will proceed in the future.

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**"It's an important first step to bring justice to one of the biggest injustices committed on this planet...in 50 years nobody has talked about these crimes. It is also a relief and consolation for the victims and their relatives".**

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## Accountability and the peace making process

Spanish judges are increasingly willing to adjudicate cases on the basis of universal jurisdiction and are thereby opening up their courtrooms for victims who have been unable to obtain justice in national courts.



(Source: [www.dismalworld.com/disputes/tibet.php](http://www.dismalworld.com/disputes/tibet.php))

### *Genocide in Tibet*

The Audiencia Nacional in Madrid has also admitted a case related to crimes committed by Chinese authorities in Tibet. In 2005, the Comite de Apoyo al Tibet in Madrid (CAT) and other Tibet support groups and a Tibetan with Spanish nationality<sup>(23)</sup> brought a case against the former president of China, Jiang Zemin, former Prime Minister Li Peng and other former top Chinese officials. The Tibetan victims have not had access to justice in Chinese courts, and the case in Spain was in fact “the first judicial complaint ever filed against (former) Chinese leaders for the acts committed in Tibet”.<sup>(24)</sup>

The case primarily relates to allegations of genocide, but it also includes charges of terrorism and crimes against humanity, including the acts of religious persecution, forced disappearances, arbitrary execution, apartheid, racial discrimination and forced sterilization.

In January 2005, the Spanish court, at appeal level, accepted the case relying on the principles set out by the Constitutional Court. The Court then noted that there was overwhelming evidence in favour of the plaintiffs:

*“It is sufficient to read the various sections that describe systematically the various acts that occurred in Tibet and to the Tibetan people to deduce that without a trace of doubt the acts described therein, some of which are supported by documentary evidence, possess prima facie the characteristics and descriptions listed in the abovementioned Article II [of the Genocide Convention].”*<sup>(25)</sup>

The Court then discussed whether the victims would have access to justice elsewhere and noted that the International Criminal Court would not have jurisdiction over the crimes, nor would the victims be able to seek redress in Chinese courts.<sup>(26)</sup> The Court then concluded that:



*“in view of the facts described in detail in the lawsuit together with the important documents that accompany them, it is clear not only that the acts denounced possess the attributes of a crime of genocide that should be investigated by Spanish jurisdiction as argued above, but also that this legal body has competence to accept and process the lawsuit that was originally rejected, bearing in mind the assumptions and principles established in the ruling of the Constitutional Court on 26 September 2005.”*<sup>(27)</sup>

While the Chinese Ministry of Foreign Affairs dismissed the decision and asked the Spanish government to stop the case, the plaintiffs celebrated their victory<sup>(28)</sup> and Alan Cantos, the president and coordinator of CAT concluded: “It’s an important first step to bring justice to one of the biggest injustices committed on this planet...in 50 years nobody has talked about these crimes. It is also a relief and consolation for the victims and their relatives”<sup>(29)</sup>

The National Court began its first hearing in June 2006 when plaintiff Thubten Wangchen testified. Written testimonies have been submitted, and the Court has requested documentary evidence from the US, UK and the United Nations. The lawsuit is still in its preliminary investigation stage with victims and witnesses being interviewed.<sup>(30)</sup>

There are other similar cases pending in Spanish courts, including several complaints submitted by the Falun Gong group against Chinese authorities.<sup>(31)</sup>

### **Palestinian Universal Jurisdiction Cases (outside the US context)** <sup>(32)</sup>

Palestinians<sup>(33)</sup> have recently sought justice by submitting criminal complaints to courts in Belgium (in the case against Ariel Sharon, Amos Yaron and others charged with war crimes, crimes against humanity and genocide in relation to the Sabra and Shatila Massacre<sup>(34)</sup>); in the United Kingdom (in the case against Major General Doron Almog charged with war crimes in relation to, *inter alia*, serious house demolitions which the IDF carried out in Rafah in January 2002<sup>(35)</sup>); and in New Zealand (in the case against Lieutenant General Mosche Ya’alon charged with war crimes for his role in the dropping of a 1-ton bomb in Gaza in July 2002 which lead to significant loss of civilian life).<sup>(36)</sup>

Although none of these cases proceeded to the trial phase, let alone to an arrest of any of the accused, there is at least one positive aspect to be highlighted from these cases which lawyers might explore further when seeking remedies for Palestinians. In the preliminary proceedings of all three cases, the national *judges* were, to some extent, favourable towards the claims made by the Palestinians: in the Sabra and Shatila case, the Brussels Court of Cassation *did* admit the case in relation to Amos Yaron and others and concluded that prosecution against these should proceed<sup>(37)</sup>; in the Almog case, the Bow Street Magistrates’ court *did* issue a warrant for the arrest of Almog; and, finally, in the case from New Zealand, the Court in Auckland *did* issue an arrest warrant against Ya’alon noting that:

*“I [Judge A. Deobhakta] have carefully perused all the material placed before me and I am satisfied that it disclosed that there are “good and sufficient reasons” to believe that he [Mosche Ya’alon] was together with others responsible for the bombing at Al Daraj that resulted in the deaths of several persons and destruction of civilian property”.*<sup>(38)</sup>

Put differently, a *prima facie* case existed.

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In light of these new developments and the general recognition of victims’ right to remedies, legal action appears, more than ever, a feasible way of responding to the current crisis in the Occupied Palestinian Territory, as well as to the 60 years of ongoing impunity for crimes committed in 1948.

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These decisions did not stand for various reasons, and, in that respect, they reflect some of the many obvious obstacles which have to be overcome in order to succeed in litigating on the basis of universal jurisdiction and, hence, ultimately, obtain redress and justice for the victims.<sup>(39)</sup>

## Conclusion

As discussed, Spanish judges are increasingly willing to adjudicate cases on the basis of universal jurisdiction and are thereby opening up their courtrooms for victims who have been unable to obtain justice in national courts. This new Spanish practice and the growing support for universal jurisdiction seen in other European countries are of immense importance when deciding on future strategies for litigating Palestinian claims.

We should also remember that at least in three key cases involving Palestinian victims, national *judges* have been cognizant of the realities of the Palestinians and have been convinced, based on the evidence collected by the lawyers on the Palestinian side, that the allegations were credible, and therefore willing to hear the cases.

In light of these new developments and the general recognition of victims' right to remedies, legal action appears, more than ever, a feasible way of responding to the current crisis in the Occupied Palestinian Territory, as well as to the 60 years of ongoing impunity for crimes committed in 1948.<sup>(40)</sup>

For the victims, seeking redress abroad might by itself restore some sense of dignity. For states, allowing such cases to be heard in their courts would be a way of fulfilling at least some of their obligations under international law<sup>(41)</sup> and implementing one of the most fundamental human principles, agreed upon 60 years ago, "that human beings are born free and equal in dignity and rights."<sup>(42)</sup>

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## Endnotes

- <sup>(1)</sup> Citation taken from Amnesty US website.
- <sup>(2)</sup> See article 8 of the United Nations Declaration of Human Rights: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law"; article 2 of the International Covenant on Civil and Political Rights; article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination; article 14 of the Convention against Torture and other Cruel, Inhuman and Degrading Treatment; and article 39 of the Convention on the Rights of the Child.
- <sup>(3)</sup> For a discussion of the distinction between the procedural aspect of remedies (access to justice) and substantive redress, see Dinah Shelton "Remedies in International Human Rights Law", second edition, Oxford University Press, 2005, 7: "The word "remedies" contains two separate concepts, the first being procedural and the second substantive. In the first sense, remedies are the processes by which arguable claims of human rights violations are heard and decided, whether by courts, administrative agencies, or other competent bodies. The second notion of remedies refers to the outcome of the proceedings, the relief afforded to the successful claimant."
- <sup>(4)</sup> See "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross

Violations of International Human Rights Law and Serious Violations of International Humanitarian Law” U.N. G.A. Res. 60/147 of 16 December 2005. The General Assembly emphasized that “the Basic Principles and Guidelines contained herein do not entail new international or domestic legal obligations but identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law which are complementary thought different to their norms”. Article VII sets out the different forms of remedies: “Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim’s right to the following as provided for under international law: (a) Equal and effective access to justice; (b) Adequate, effective and prompt reparation for harm suffered; (c) Access to relevant information concerning violations and reparation mechanisms.” See also “Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power” U.N. G.A. Res. 40/34 of 29 November 1985, and Draft UN Convention on Justice and Support for Victims of Crime and Abuse of Power, 14 November 2006.

- <sup>(5)</sup> Successful cases from Europe: In Belgium, there have been some cases related to crimes committed in Rwanda, including the case involving four Rwandans who were tried and convicted for war crimes in June 2001. In Germany, in the 1990s, the authorities investigated and prosecuted several serious crimes committed in the former Yugoslavia, but these cases were based on the German Criminal Code. I am not aware of successful cases based on the Code of Crimes against International Law which entered into force 30 June 2002 which provide for universal jurisdiction in cases of alleged genocide, crimes against humanity or war crimes. In the United Kingdom, the first successful prosecution under universal jurisdiction case came in July 2005 when an Afghan militia leader (Zardad) was convicted of acts of torture and hostage-taking that had taken place in Afghanistan in the 1990s. In Denmark, there have been a few cases, including the first in August 1995 when Saric (Bosnian Muslim) was sentenced to eight years in prison for war crimes committed in Bosnia in 1993. In Spain, in April 2005, Adolfo Scilingo (former navy commander from Argentina) was sentenced to 640 years in prison for crimes against humanity. There have also been a few cases in the Netherlands, including in April 2004 when the Rotterdam District Court convicted a Congolese national of complicity in acts of torture.
- <sup>(6)</sup> For further discussion, see M. Cherif Bassiouni “The History of Universal Jurisdiction and Its Place in International Law”, 46, in “Universal Jurisdiction – National Courts and the Prosecution of Serious Crimes under International Law”, edited by Stephen Macedo, University of Pennsylvania 2004: “To the knowledge of this writer, no state practice presently exists whereby states have resorted to universal jurisdiction without the existence of national legislation, even when international treaties provide for such jurisdictional basis”. See also Anne-Marie Slaughter “Defining the Limits: Universal Jurisdiction and National Courts” published in the same book.
- <sup>(7)</sup> For information on the case, see Amnesty International’s website [www.amnesty.org/ailib/intcom/pinochet](http://www.amnesty.org/ailib/intcom/pinochet), and Human Rights Watch’s report “Universal Jurisdiction in Europe: The State of the Art”, June 2006, section on Spain.
- <sup>(8)</sup> The Spanish Constitution stipulates the right to “effective judicial protection” (Article 24(1)) which includes the right to access to courts.
- <sup>(9)</sup> See Al-Majdal no 33. The United Nations High Commissioner for Human Rights, Louise Arbor, stressed during her last visit to Jerusalem the need for accountability (see United Nations Press Release of 23 November 2006): “Ultimately, of course, what is required, preferably sooner rather than later, is for there to be a lasting political solution to this conflict: for Palestinians to be able to realize their right to self-determination; and for both Israelis and Palestinians to live in safety within negotiated, internationally recognized, secure borders. What can be done immediately, however, is for discussion of this crisis, and more importantly action to address it, to be re-positioned within a framework of international human rights law”; and “Evidence shows that an effective system of accountability, including personal criminal accountability, will lead to a change in approach in the use of force – ensuring compliance with international law and appropriate punitive or remedial action where negligence, recklessness or intent is established.” See also John Dugard, Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, report A/HRC/4/17 March 2007: “Palestinians who

launch Qassam rockets into Israel, killing and injuring civilians and damaging property, should be held individually accountable – that is prosecuted. But so should Israelis who have committed violations of international humanitarian law on a much greater scale. Despite the fact that Israel – unlike Palestine – has a sophisticated and advanced criminal justice system, prosecutions are very rare”.

- (10) As amended by Organic Law 11/1999 and 3/2005: “Likewise, Spanish jurisdiction will be competent to try acts committed by Spanish or other nationals outside Spanish territory that can be classified under Spanish criminal law as falling under one of the following crimes: a) genocide; b) terrorism; c) piracy and the illicit high jacking of aeroplanes; d) falsification of foreign currency; e) crimes involving prostitution and the corruption of minors or the mentally disadvantaged; f) illegal trafficking of toxic drugs and narcotics; g) crimes involving female genital mutilation, when the persons responsible are on Spanish soil; h) any other crime that according to international treaties and conventions should be pursued in Spain.”. Translated by Jose Esteve, the Spanish lawyer who prepared the Tibet case.
- (11) Spanish Penal Code 1995, as amended in 2004. This legal basis was used in the case against Adolfo Scilingo when the Audencia Nacional court held that crimes against humanity may be prosecuted even if they were committed before the amendment of the Criminal Code. See further Human Rights Watch’s report “Universal Jurisdiction in Europe: The State of the Art”, June 2006, section on Spain.
- (12) “Citizens may engage in popular action and participate in the administration of justice through the institution of the jury in the manner and with respect to those criminal trials as may be determined by law, as well as in customary and traditional courts”. Translated by Jose Esteve.
- (13) The role of the investigating judge is crucial from the victims’ perspective. “The investigating judge is in charge of the investigation and is assisted, where necessary, by the “judicial police”. Once the complaint is filed, the investigating judge takes the necessary steps to process the complaint, including giving specific orders to the police, hearing witnesses, requesting documents or sending rogatory letters, the latter being particularly important in cases concerning crimes committed in Chile and Argentina”, see Human Rights Watch’s report “Universal Jurisdiction in Europe: The State of the Art”, June 2006, section on Spain.
- (14) See recent cases from Germany, including the complaint against Donald Rumsfeld; see decision by the Prosecutor General at the Federal Supreme Court, Karlsruhe, April 5, 2007, 3 ARP 156/06-02 not to initiate proceedings.
- (15) Available in Spanish at <http://www.tribunalconstitucional.es/JC.htm>
- (16) Ms. Menchú’s brother, father and mother all died during the Guatemalan internal armed conflict.
- (17) Herve Ascensio “The Spanish Constitutional Tribunal’s Decision in Guatemalan Generals: Unconditional Universality is Back”, *Journal of International Criminal Justice* 4 (2006), 586-594.
- (18) Decision FJ no. 3. Translated by Herve Ascensio.
- (19) Herve Ascensio “The Spanish Constitutional Tribunal’s Decision in Guatemalan Generals: Unconditional Universality is Back”, *Journal of International Criminal Justice* 4 (2006), 586-594.
- (20) Amnesty International USA: “Guatemala Appeal Case: Crimes Against Humanity Remain Unpunished in Guatemala”, 17 November 2006, available at [www.amnesty.org/library](http://www.amnesty.org/library).
- (21) Amnesty International USA, Press Release, 18 January 2007: “Amnesty International Again Calls for Rios Montt to Either be Tried in Guatemala or Extradited to Spain to Face the Charges Against Him”.
- (22) *Diario El Pais* 14 September 2007, translated by Serene Assir.
- (23) Thubten Wangchen who was four years old when his mother died in a Chinese work camp. He has lived in Spain for 24 years. See “Spanish Court Looks at Tibetan Genocide”, Lisa Abend and Geoff Pingree, at Global Policy Forum, 2 March 2006, [www.globalpolicy.org](http://www.globalpolicy.org).
- (24) Christine A.E. Bakker “Universal Jurisdiction of Spanish Courts over Genocide in Tibet: Can it Work?”, *Journal of International Criminal Justice* 4 (2006): 595-601.
- (25) Writ of Acceptance, 10 January 2006, National Court, Madrid, appeal no 196/05, Preliminary proceedings 237/05, no 2 Central Investigative Court, section 8 of the decision, translated by CAT.
- (26) The Court also discussed Article VI of the Genocide Convention. The European Court of Human Rights has recently interpreted the same provision and concluded that Germany had the right under the European Convention of Human Rights to sentence someone for genocide based on universal jurisdiction (see case of *Jorgic v. Germany*, application no. 74613/01, judgment of 12 July 2007. In paragraph 54, the court referred

- to the Spanish National Court's decision on 5 November 1998 related to Pinochet where the National Court held that Spanish courts had jurisdiction: "Neither do the terms of Article 6 of the Convention of 1948 constitute an authorization to exclude jurisdiction for the punishment of genocide in a State Party such as Spain, whose law establishes extraterritoriality with regard to prosecution for such crimes".
- <sup>(27)</sup> Writ of Acceptance, 10 January 2006, National Court, Madrid, appeal no 196/05, Preliminary proceedings 237/05, no 2 Central Investigative Court, section 10 of the decision, translated by CAT.
- <sup>(28)</sup> Thubten Wangchen said: "[J]ust the fact that the National Court has agreed to take the case is a great success... Spain may not have the sufficient power to force China to justice, but at least the Spanish people will know what Tibetans are suffering", see "Spanish Court Looks at Tibetan Genocide", Lisa Abend and Geoff Pingree, Global Policy Forum, 2 March 2006, [www.globalpolicy.org](http://www.globalpolicy.org).
- <sup>(29)</sup> "Spanish Court Agrees to Consider Genocide Complaint Filed Against China by pro-Tibet Group", Mar Roman, Global Policy Forum, 11 January 2006, <http://www.globalpolicy.org>. Alan Cantos also noted: "[W]e have been working for almost nine years to do this well to present all the evidence properly and in line with the law and we are... very happy and excited that this first path towards justice in Tibet is opening up", see <http://tibetwillbefree.blogspot.com>
- <sup>(30)</sup> Information obtained from the Spanish lawyer Jose Elias Esteve.
- <sup>(31)</sup> See <http://flgjustice.org>: under legal documents "Spain: On April 17<sup>th</sup>, 2007, Falun Gong practitioners filed a lawsuit against Wu Guanzheng for the crimes of genocide and torture of Falun Gong practitioners in China."
- <sup>(32)</sup> For Palestinian cases in the US see Maria Lahood "The Role of Universal Jurisdiction in the Fight Against Impunity", *Al-Majdal* no. 33.
- <sup>(33)</sup> This section is based on some preliminary research. The cases mentioned are, to my current knowledge, the only three cases, outside the US context, in which Palestinians have succeeded in persuading judges to issue arrest warrants, or to admit their case. In the UK, there have been other attempts to have an arrest warrant issued: On 12 February 2004, the Bow Street Magistrates' Court rejected, based on immunity reasons, to issue an arrest warrant against Israeli Defence Minister Shaul Mofaz (Application for Arrest Warrant Against General Shaul Mofaz (Bow St. Mag. Ct. Feb. 12, 2004) (per Pratt, Dist J), referred to in Human Rights Watch Report "Universal Jurisdiction in Europe: The State of the Art", under section on the United Kingdom; in 2002, solicitor Imran Khan submitted a dossier to the British Police again related to Shaul Mofaz, but he left the UK before an arrest warrant was issued. Attempts to have Israeli authorities arrested in other European countries have also failed, for example in Denmark in August 2006 when a Danish MP requested the Danish police to arrest Israeli foreign minister Tzipi Livni.
- <sup>(34)</sup> Complaint lodged by Survivors Against Israeli Prime Minister Ariel Sharon, Director General of the Defence Ministry Amos Yaron and other Israelis and Lebanese Responsible for the Sabra and Shatila Massacre, 18 June 2001, published in the *Palestine Yearbook of International Law*, Vol. XII. 2002/2003, pp. 219-258, together with other documents on the case.
- <sup>(35)</sup> Press Release by Palestinian Center for Human Rights of 12 September 2005 "Anyone Responsible for Perverting the Court of Justice Must also Face Prosecution."
- <sup>(36)</sup> District Court at Auckland, decisions of 27 and 29 November 2006 in the case between Janfrie Julia Wakim and Lieutenant General Mosche Ya'alon.
- <sup>(37)</sup> Brussels Court of Cassation Decision on Appeals From 26 June 2002 Ruling by the Brussels Court of Appeals (Chambre des Mises en Accusation) of 12 February 2003, published in English translation in the *Palestine Yearbook of International Law*, Vol. XII. 2002/2003, pp. 279-284: See Section IV of the decision. Part A "regarding appeals to the decision related to the criminal action against defendant A. Y. and others unknown" concluding that "having held the opposite, the contested ruling is not legally supported". Subsequently, on 10 June 2003, the Brussels Appeals Court confirmed that "in the present state of the proceedings, there is no cause for nullity, inadmissibility or extinguishment of the case brought against Amos Yaron and other parties unknown". See also Luc Walleyn "The Sabra and Shatila Massacre and Belgian Universal Jurisdiction" in "The Case of Ariel Sharon and the Fate of Universal Jurisdiction", edited by John Borneman, Princeton Institute for International and Regional Studies, Princeton University, 2004. There are key similarities between the current legal framework in place

- in Spain, and that which was applicable in Belgium when the Sabra and Shatila case was lodged, but subsequently changed.
- <sup>(38)</sup> District Court at Auckland decision of 27 November 2006 in the case between Janfrie Julia Wakim and Lieutenant General Mosche Ya'alou.
- <sup>(39)</sup> Immunity issues is one limitation and the reason why the case against Sharon was not admitted by the Brussels Court of Cassation, see section IV of the decision, part B: "Whereas the ruling holds that these proceedings are not admissible; that, based on the grounds given by the Court – which replace the ones the applicants contest – the criminal action for the counts of genocide, crimes against humanity and war crimes is indeed inadmissible with regards to the defendant". Other obstacles include, for example, national procedural limitations; failure of the police to arrest the accused (Almog and Ya'alou cases); intervention by the Attorney General (Ya'alou case: the Attorney General noted that "on advice from Crown law I was assured the material supplied to support the warrant did not meet the evidentiary standards required for a court in New Zealand to be able to convict this man of the crimes that were alleged against him", press release of 1 December 2006); and lack of a clear legislative basis for universal jurisdiction.
- <sup>(40)</sup> See for example the ongoing case in the UK where the High Court of Justice in London will hear the case of R (Saleh Hasan) v. Secretary of State for Trade and Industry regarding UK sale of arms-related equipment to Israel (see Al-Haq Press Release of 19 September 2007), and the ongoing case in France where an NGO (Association France Palestine Solidarité) has filed a complaint in "le Tribunal de Grande Instance de Nanterre" against Alstrom and Veolia in relation to their involvement in the construction of a tramway in Jerusalem. Recently PLO has decided to intervene in the case, see Press Release by AFPS 22 October 2007: "L'organisation de Libération de la Palestine... vient de décider d'intervenir au process engage contre les sociétés Alstrom et Véolia Transport...". Lawyers and scholars have referred to universal jurisdiction as an important mechanism for litigating Palestinian rights, see for example Monique Chemillier-Gendreau "Israel's Violent Attacks on Palestinian Arabs in 1948-49: Qualifying Crimes in Light of International Law and Consequences", the Palestine Yearbook of International Law, vol. XII, 2002/2003, pp. 117-144: "Domestic legal systems with universal jurisdiction provisions present the fewest restrictions in this regard". Marwan Dalal "Choices of Law, Fragments of History: On Litigating in the Israeli Legal System", Journal of Palestine Studies, issue 139, Spring 2005: "There is no doubt that with developments in international law in recent years, particularly though the jurisprudence of universal jurisdiction, Israel will have to take law and rights more seriously than it has in the past".
- <sup>(41)</sup> See for example their obligations under Chapter III "Serious Breaches of Obligations under Peremptory Norms of General International Law" in the Articles on Responsibility of States for Internationally Wrongful Acts: "States shall cooperate to bring to an end through lawful means any serious breach within the meaning of Article 40" (Article 41(1)) and "No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation". States also have specific obligations to prosecute (or extradite) war criminals who are alleged to have committed serious crimes under the Geneva Conventions (see for example article 146 of the Fourth Geneva Convention). A similar obligation is set out in article 5 of the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment.
- <sup>(42)</sup> Article 1 of the Universal Declaration on Human Rights (10 December 1948) stipulates that "all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

## HIGHLIGHTING 1948 DISPOSSESSION IN THE ISRAELI COURTS:

### Al-Lajjun villagers continue their struggle

By Isabelle Humphries



Return march to al-Lajjun. April 2007. (©Nadim Natour)

Living at the foot of the plain of Marj ibn Amr, an ancient crossroads where the road from Haifa and Lebanon crosses the Damascus to Cairo thoroughfare, the village of al-Lajjun has a long history of political significance. In 1516 when the Ottomans took the area from Mamluk control, Lajjun was one of five district (*liwa*) towns in Palestine. During the British Mandate villagers played a significant role in the Arab Revolt – the anti-colonial struggle of 1936-1939. This legacy of resistance is proudly remembered by today's villagers fighting a legal battle from their position as internally displaced only 6 kilometers down the road.

After al-Lajjun was occupied by the Israeli Golani Brigade in 1948, around 80% of over a thousand villagers were displaced to Umm al-Fahem where they remained. At first part of a Jordanian West Bank, the town came under Israeli occupation a year later following the 1949 Rhodes agreement. The Lajjun villagers became Israeli citizens still unable to return to their village. Umm al-Fahem today functions as the unofficial capital of the Triangle, a densely populated Palestinian area in Israel, positioned with the West Bank on its eastern border and Jewish coastal towns to the west.

Following the Nakba, many groups of internally displaced Palestinians with Israeli citizenship held out hope that the new Jewish state would allow them to return to the lands from which they fled in

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fear. Many groups of villagers – from Saffuriyya, Ghabsiyya, Kufr Bir'im and Iqrit – attempted to pursue the case of village lands through the courts. By the mid 1950s however most had had cases dismissed or had witnessed military authorities blatantly disregard the orders of the courts, thus people despaired of pursuing the legal route.

Today Kibbutz Megiddo sits on the land of al-Lajjun and almost all of the original buildings have been destroyed. When a previous mayor of Umm al-Fahem complained that the kibbutz was using the village mosque as a carpentry workshop, the kibbutz sealed it up and surrounded it with mounds of earth preventing any possible visitors or renovation. The cemetery still exists, with the tomb of Yusef al-Hamdan, a prominent fighter of the Arab revolt clearly visible, but villagers can not enter in large groups for visiting or renovation, having to settle instead for a quiet visit on Jewish holidays when it is hoped no kibbutzniks are around.

Cases pursued in a legal forum today usually relate to appeals for access to and protection of holy sites, but in the case of al-Lajjun, villagers have continued to struggle over rights to a section of village land. Adalah: The Legal Center for Arab Minority Rights in Israel is supporting the struggle of a group of 200 villagers to attempt a legal challenge of the 1953 confiscation of 200 dunams of village land.

The 200 dunam plot which is the subject of the current campaign was confiscated along with other plots of land totaling 34,600 dunams by order of then Minister of Finance (later Prime Minister) Levi Eshkol in 15 November 1953. This procedure was undertaken invoking Article 2 of the Land Acquisition Law, facilitating confiscation for 'essential settlement and development needs'. Adalah points out that today the specific piece of land is covered by Israeli planted forest and an industrial facility owned by the Israeli water company Mekorot. After years of struggle, in March 2007 the Nazareth District Court rejected the lawsuit, accepting the argument of the Development Agency that the land had been used for settlement purposes in the broadest sense of the word. In response Adalah filed an appeal to the Supreme Court, claiming the land was never used for such purpose.

Muhammad Fayed, chair of the al-Lajjun Cultural Association explains how the villagers first brought the case to court. In 1990, when legal ownership of another part of al-Lajjun land came into question, the government distributed forms amongst families in Umm al-Fahem. The documentation required a signature registering certain portions of land as theirs, so that the government could officially disburse 'compensation' and thus claim that the land was legally purchased, not confiscated. If the al-Lajjun residents refused to sign the order they simply would not get compensation and the government would keep the land anyway.

In that case one extended family decided to sign and accept the compensation however reduced, whereas another family refused to accept the terms and received nothing. It was at this point, on seeing the form that his late father received, that Fayed, a second generation refugee, decided that the community must act collectively to challenge this issue. He discovered a number of people keen to do this, and thus the al-Lajjun Cultural Association was formed, building their own historical records of ownership and determined to challenge further government strategies to cheat villagers of their supposed rights as Israeli citizens. Thus when the issue of the second piece of land came around, villagers were ready to fight collectively through the courts.



This April the village hosted the annual Nakba Day March, an event that saw thousands of al-Lajjun refugees gather with others from across the country to walk through the fields and gather at the site. Seeing the interest that the court case stirred, Fayed and the others on the committee are determined to instill a motivation to action in a younger generation, not an easy task in a society where the impact of Israeli domination and control is visible at all levels of social, cultural and political life. While a booklet was distributed at the march, Fayed is working on a longer publication about the history of the village. Born in 1955, he himself never lived in the village, but his meticulous research amongst the elders of the community has provided him with the names of springs and wells and sites which he is plotting onto a map of the village lands, names long since wiped from Israeli cartography.



*Mohammad Hani Fayed - Chair of al-Lajjun Heritage Association. (©Nadim Natour)*

Muhammad Fayed is also working to secure a location in Umm al-Fahem to create a model of the old village that could act as a site for educational visits. A group of volunteers are currently working to get permission from local headteachers to hold sessions in Umm al-Fahem schools. As is the case for all Palestinian refugees, the group knows that the fundamental hope of the community rests not in results of one particular legal struggle, but in educating the new generation to struggle for their basic rights, the right to have access to their ancestral land of which they were unlawfully dispossessed.

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*See Adalah press releases regarding case at [www.adalah.org](http://www.adalah.org)*

*Isabelle Humphries - currently completing doctoral research regarding Palestinian internally displaced refugees. Contact [isabellebh2004@yahoo.co.uk](mailto:isabellebh2004@yahoo.co.uk)*

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**Today Kibbutz Megiddo  
sits on the land of al-  
Lajjun and almost all of  
the original buildings  
have been destroyed**

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## 1947 Partitions Revisited: The Case of India and Palestine, Legacies and Lessons

by Ingrid Jaradat Gassner

Having shared similar struggles for decolonization and freedom from the same British imperial power, and traumatic and formative partition experiences, the peoples of pre-1947 India and Palestine have taken little notice of each other's apparently similar historical tragedies.



(Source: [freespace.virgin.net/~andrew.randall1/india.html](http://freespace.virgin.net/~andrew.randall1/india.html))

15 August 2007 marked the 60<sup>th</sup> anniversary of India's partition. However, little attention was paid by Palestinians this summer to the ways in which governments and people of India, Pakistan and Bangladesh tackled the legacy of "their" partition, a violent event whose repercussions are apparent 60 years on. Having shared similar struggles for decolonization and freedom from the same British imperial power, and traumatic and formative partition experiences, the peoples of pre-1947 India and Palestine have taken little notice of each other's apparently similar historical tragedies.

In light of the powerful impact the efforts to partition Palestine have had on Palestinian individual and collective identity and struggle, Palestinian indifference of the ways in which the current societies of India, Kashmir, Pakistan and Bangladesh cope with and interpret their partitioned past is striking. Is this so, because there are far more differences between the two cases than similarities? Or is it because former ties of solidarity and cooperation between the PLO and the Movement of Non-Aligned States have been replaced by new political alliances? This brief article cannot address these questions in depth, but will focus on a few key points of comparison between the two partition 'experiences' that are of particular relevance today.

## Motives for Comparison

Partition of Palestine into two states has been the internationally promoted solution since 1947, irrespective of sustained opposition to it by Palestinians and Arab states in the region. The negotiated two-state solution for the conflict between Israel and the Palestinian people promoted by the so-called Quartet is the most recent version of the 60-years-old attempt at resolving the conflict through partition. As it is increasingly clear that the two-state model is no longer feasible, there is new debate among Palestinians and their supporters about the option of partition itself, and about the viability and legitimacy of alternative single-state models.

On the other hand, Israel claims that its legitimacy as a “Jewish state” derives, among others, from the 1947 UN Partition Plan for Palestine. Israel and its supporters in academia and public relations, moreover, are increasingly resorting to playing up historical cases of conflict resolution. These historical cases, which are situated in times when modern human rights law was just emerging, are used to justify Israel's past, build legitimacy, and garner support for the claim that Palestinian refugees do not have a right of return. Recourse is taken, in particular, to a number of historical cases of massive population exchange, which were agreed-upon by the conflicting parties and/or the international community in very different historical and political contexts. Thus, the post-WWI population exchange between Greece and Turkey (Treaty of Lausanne, 1923), the expulsion of the Sudeten Germans from Czechoslovakia in the context of post-WWII Europe and de-Nazification (Potsdam Conference, 1945) - as well as the case of the partition of India in the process of de-colonization (1947) - are cited, interpreted, and often distorted, in order to assert that what was legitimate and maybe lawful then should be so for Israel today. Amnon Rubinstein's article in *Ha'aretz* entitled "*Nobody nags India about the right of return*" illustrates this point:

"[...] Muslim refugees [] fled India at about the same time and [] have been deprived of two things by the Indian authorities: the right to return to India and their Indian citizenship [...] Pakistan did not declare war on India and did accept the principle of the partition of the Indian subcontinent. [...] and the mass waves of refugees between the two countries began in the wake of bloody riots that broke out at the time. In contrast, the Arab states and the Palestinian leadership of the late 1940s refused to accept the principle of partition of Palestine into two states – one Jewish, the other Arab – and instead initiated hostile actions against the Jews [...] Actually, the picture [...] is almost completely distorted, because Israel, and Israel alone, is being asked to implement principle that other democracies – and India is undeniably a thoroughly democratic country – have chosen to ignore [...] In the vast majority of instances, the attacks on Israel stem from a basic refusal to regard it as a legitimate state whose existence expresses the right of the Jewish people to self-determination [...]"<sup>(1)</sup>

## Revisiting the facts

A closer examination of the critical facts and circumstances surrounding the 1947 initiatives for partition of India and Palestine, as well as the outcomes of those initiatives, will show what are the major lessons that can be learned from them.

### *Who initiated partition and for what aim?*

**India** - Although fostered by divisive British colonial policies which spurred communal division along ethnic and religious lines, the partition of India was an initiative of the indigenous political

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**As it is increasingly clear that the two-state model is no longer feasible, there is new debate among Palestinians and their supporters about the option of partition itself, and about the viability and legitimacy of alternative single-state models.**

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**Israel and its supporters in academia and public relations, moreover, are increasingly resorting to playing up historical cases of conflict resolution.**

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**India's political elites came to see partition as the only feasible option for achieving de-colonization and self-determination**

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elites of the Muslim League and, later, the Indian National Congress. Having failed to reach agreement about power-sharing in a unitary state for the period after Britain's colonial regime, and despite strong criticism and warnings of possible horrific consequences by influential political leaders, India's political elites came to see partition as the only feasible option for achieving de-colonization and self-determination. In particular among the Muslim League, partition became considered as the only model that could avoid political, socio-economic and cultural domination by the predominantly Hindu National Congress in the future. For this reason, partition also enjoyed popular support, and many communities appeared unaware of its potential human cost:

"[...] outside leading circles 'partition' was little more than a vague, unfathomable – even harmless – word that cropped up occasionally in the speeches of political leadership. That they would be forced one day to leave their homes and livelihoods amidst raging violence, was yet inconceivable to millions of ordinary people. This feeling of disbelief is best summarized in the words of an officer in charge of refugee rehabilitation in Punjab, who said: 'we in India were only vaguely familiar with the word 'refugee' and used to wonder why people should be compelled to leave their homes. Even our refugees expressed surprise at the strange phenomenon of exchange of population and were heard saying: we used to hear about the change of rulers but for the first time the ruled are also changing places.'"<sup>(2)</sup>

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**Partition was not proposed by the Zionist movement. It was rejected by the indigenous inhabitants and political elites, and by all Arab states in the region, because it would prevent de-colonization and violate the right to self-determination of the indigenous majority in Palestine. Several attempts by Arab states in 1947 to refer the question of partition to the International Court of Justice (ICJ) were voted down by the UN General Assembly.**

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**Palestine** – The British Mandate regime had facilitated Zionist immigration and colonization in line with an earlier British pledge to support establishment in Palestine of a "Jewish National Home" (1917 Balfour Declaration) which was incorporated into the Covenant of the League of Nations (1922). When Britain announced that it wished to terminate its Mandate in Palestine, the newly formed United Nations accepted responsibility for determining the future legal status of the country. Partition was then proposed by the UN as a matter of last resort, based on the conclusion that promotion of self-government in a unitary state (also incorporated into the League of Nations Covenant) would destroy the Jewish National Home, simply because the majority of the country's inhabitants were Arabs.<sup>(3)</sup> Partition was not proposed by the Zionist movement. It was rejected by the indigenous inhabitants and political elites, and by all Arab states in the region, because it would prevent de-colonization and violate the right to self-determination of the indigenous majority in Palestine. Several attempts by Arab states in 1947 to refer the question of partition to the International Court of Justice (ICJ) were voted down by the UN General Assembly. This, although the UN's own report concluded that language about the exclusion of Palestine from earlier promises of independence made by Britain and France "was not so specific and unmistakable as it was thought to be at the time"<sup>(4)</sup>, and ceded that the Jewish National Home and the British Mandate for Palestine may well run counter to the principle of self-determination.<sup>(5)</sup>

### *Was partition implemented? What were the results?*

**India** – Britain decided to terminate its colonial regime nine months earlier than planned. A tripartite partition agreement between the Indian National Congress, the Muslim League and the British Empire was completed in haste, and India's partition was marked by parallel official ceremonies in Delhi and Karachi on 15 August 1947. In this context, the original plan of partition, which would have resulted in two contiguous states divided along the lines of the religious affiliation, was changed. A secret agreement had been concluded in haste between

Britain and the Indian National Congress and provided that the Punjab would be divided in half, and all the eastern and northern Muslim areas would go to India. It resulted in the division of East and West Pakistan by a thousand miles of Indian territory and the split of Kashmir. This, as well as the fierce competition for power among all ethnic and religious groups sparked by the prospect of partition earlier on, triggered massive collapse of authority, flight and massacres, and resulted in approximately 1.5 million deaths and the forced displacement of more than ten million people (Hindus and Sikhs to India and Muslims to Pakistan).

Partition created a post-colonial climate of ethnic and religious nationalism and racism, which was the basis for four wars between the successor states and continues to cost lives and undermine the rights of minorities until today. The incorporation by India of the predominantly Muslim state of Kashmir has been challenged by Pakistan since partition. The dispute over Kashmir has given rise to two wars, ongoing hostilities, and massive violations of international humanitarian and human rights law by India and Pakistan. In 1970-1971, Pakistan itself was further divided as the geographically separated East Pakistan became the new state of Bangladesh. This process of separation, led by local national forces, was again accompanied by horrendous inter-communal violence and massacres.

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(Source: [freespace.virgin.net/~andrew.randall1/india.html](http://freespace.virgin.net/~andrew.randall1/india.html))

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The failure of the 1947 UN Partition Plan, including UN refusal to uphold the rule of law and acquiescence with Israel's unilateral establishment by force, interrupted the process of Palestine's de-colonization and laid out the framework for the Apartheid-regime emerging today.

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**Later agreements between India and Pakistan (e.g. the New Delhi Accord, 1950) include provisions for refugee return and property restitution and protect minority rights.**

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**Palestine** - On 29 November 1947, the UN General Assembly recommended, based on the vote of 33 states, the partition of Palestine into a Jewish state on 55% of Palestine and an Arab state on 45% of the country (UNGAR 181). Thirteen states, including all Arab member states and states that had previously undergone partition (India, Pakistan) or population exchange (Greece, Turkey) voted against what they saw as a measure that would obstruct Palestine's self-determination, while ten states, including Britain, abstained.<sup>(6)</sup> The United Nations, however, failed to implement its partition plan, because member states were unwilling to commit troops required for enforcement. Hostilities between the Palestinian resistance and Zionist forces peaked, and Arab neighbor states declared war in response to the unilateral declaration of Israel's establishment on 14 May 1948, the day marking the official end of the British Mandate. In the period between the 1947 UN Partition resolution and the 1949 Arab-Israeli ceasefire agreements, approximately 800,000 Palestinians (some 80% of the indigenous population) were forcibly displaced from the 78% of Palestine which became Israel, and Palestinians' pre-1948 civilization was destroyed.

The failure of the 1947 UN Partition Plan, including UN refusal to uphold the rule of law and acquiescence with Israel's unilateral establishment by force, interrupted the process of Palestine's de-colonization and laid out the framework for the Apartheid-regime emerging today. It also formed the basis for the emergence of the modern Palestinian resistance movement (PLO), and for a climate of violence, impunity and non-enforcement of international law. The results are sustained hostilities, at least five additional wars, Israel's military occupation and colonization of the remaining 22% of Palestine since 1967, and massive violation of international humanitarian and human rights law.

***What treatment has been afforded by the successor states to the refugees and national/ethnic/religious minorities?***

**India, Pakistan** – Although partition into modern India and Pakistan was planned along the lines of religion (Hindu, Muslim), the plan did not provide for massive exchange or transfer of populations. Despite early doubts raised by critics, the leadership of the National Congress and the Muslim League hoped to contain the movement of populations by partition along strict religious-majority division lines, and religious minorities were expected to remain in each successor state. The question whether the dramatic scope of massacres and displacement of persons was unavoidable, or could have been prevented, if partition lines had not been re-drawn, can no longer be answered today.

Measures undertaken by the successor states after partition, moreover, emphasize that population transfer/ethnic cleansing was not intended: India and Pakistan adopted secular constitutions which enshrine the fundamental right to equality of their respective minorities, and at least India's constitution provides an option for citizenship of persons displaced to Pakistan. Early post-partition agreements provided for the principle that ownership of refugees' property should remain vested in the refugees, and that claims for compensation should be raised on their behalf by the respective refugee receiving country.<sup>(7)</sup> Later agreements between India and Pakistan (e.g. the New Delhi Accord, 1950) include provisions for refugee return and property restitution and protect minority rights. In fact, many refugees appear to have returned and reclaimed their property, although implementation of these agreements has remained partial.<sup>(8)</sup> Today, Muslims make up at least 13.4% of

India's citizens and constitute a population which is almost equal in size with the Muslim population of Pakistan.

**Palestine-Israel:** Non-implementation of the UN partition plan was followed by the failure of Israel, the only successor state in Palestine, to abide by the UN-recommended provisions for constitutional protection of the rights of the indigenous Arab population (“minority rights” in UNGAR 181). Israel neither respected international law on state succession, which protects the right to citizenship of the indigenous population, nor UNGAR 194 (December 1948) resolving that the Palestinian refugees should be permitted to return. Israel has not adopted a constitution, and none of its basic laws guarantee the right to equality. Israel rather legislated a dual system of laws and military orders which privileges Jewish citizens and immigrants, and segregates/discriminates against Palestinian refugees and citizens and residents in Israel and the OPT, i.e. an Apartheid regime.

Discrimination is particularly apparent in Israel's citizenship laws (e.g. 1950 Law of Return, 1952 Citizenship Law) and its land regime (e.g. 1950 Absentees' Property Law). 1948 Palestinian refugees were denationalized, and the property of the refugees and internally displaced persons was transferred to state ownership under the same dual system of law and orders. All Palestinian refugees are denied return to Israel and the OPT, and Israel's ongoing violation of international humanitarian and human rights law causes more forced displacement of Palestinians. Since 1948 Israel has employed armed conflict, occupation, planning of public development, immigration – as well as its laws - with the intent to obtain control over more land and resources for Jews and exclude, and reduce the number of, Palestinians. Such practice amounts to population transfer, i.e. a phenomenon often termed “ethnic cleansing”.

## Lessons learned

This brief comparison sheds some light on “why nobody nags India about the right of return.”<sup>(9)</sup> It shows why India's partition has largely been accepted as legitimate, despite its enormous human cost and frequent UN interventions in subsequent armed conflicts between the successor states. Finally, it explains also why the legitimacy of both, the 1947 UN Partition Plan for Palestine and the state of Israel as a “Jewish state”, have remained challenged, irrespective of the fact that Israel is recognized by the majority of states worldwide.

Today, Population transfer (ethnic cleansing) is a crime under international law, and partition, if imposed against the will of the population, is illegal. Moreover, there appears to be consensus among the diplomatic community of today, that partitioning countries is a method of resolving conflicts which is extremely costly, risky and unlikely to lead to socially and politically stable outcomes. Assessments and reflections published this summer on the occasion of the 60<sup>th</sup> anniversary of India's partition seem to confirm that this is also one of the lessons learned from there. As protection of the sovereignty of existing states has evolved into a primary concern, the reluctance of the international community, since the late 20<sup>th</sup> century, to accept or promote the creation of new states through partition/separation, may be understood in this context.

In the case of Palestine-Israel, where partition has failed since 1947, and where Israel is in

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effective control of the entire territory of historic Palestine since 1967, however, the same international community refuses to consider alternatives. From 1947 until today, western states have dismissed unitary models of conflict resolution, and the failed partition/two-state model is pursued with persistence, irrespective of its enormous cost and risks, including the risk of sanctioning 60 years of population transfer (ethnic cleansing).

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*Ingrid Jaradat Gassner is Director of Badil Resource Center.*

#### **Endnotes**

- <sup>(1)</sup> Amnon Rubinstein, "Nobody nags India about the right of return", in: Haaretz, 20 June 2000. For a similar argument, see also: Joan Peters, "Why are Palestinian refugees treated differently from all other refugees in the world?", at: [www.erezyisroel.org](http://www.erezyisroel.org)
- <sup>(2)</sup> Ravinder Kaur, "India and Pakistan: partition lessons", 16 August 2007, at: [www.opendemocracy.net](http://www.opendemocracy.net)  
A variety of book reviews and reports published in 2007 and providing analysis of Indian and Pakistani writers of the legacy of India's partition served as additional resources for this article.
- <sup>(3)</sup> See: UN Special Committee on Palestine (UNSCOP), Report to the General Assembly, 3 September 1947 (A/364), 137.
- <sup>(4)</sup> UNSCOP Report, 167-169.
- <sup>(5)</sup> UNSCOP Report, 176.
- <sup>(6)</sup> The 33 countries that voted in favor were: Australia, Belgium, Bolivia, Brazil, Byelorussian SSR, Canada, Costa Rica, Czechoslovakia, Denmark, Dominican Republic, Ecuador, France, Guatemala, Haiti, Iceland, Liberia, Luxembourg, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Philippines, Poland, Sweden, South Africa, Ukrainian SSR, United States of America, Union of Soviet Socialist Republics, Uruguay, Venezuela. The 13 countries that voted against resolution were: Afghanistan, Cuba, Egypt, Greece, India, Iran, Iraq, Lebanon, Pakistan, Saudi Arabia, Syria, Turkey, Yemen. The 10 countries that abstained were: Argentina, Chile, Republic of China, Colombia, El Salvador, Ethiopia, Honduras, Mexico, United Kingdom of Great Britain and Northern Ireland, Yugoslavia. One state (Thailand) was absent.
- <sup>(7)</sup> See UNSCOP, A/AC.25/W/41 including information up until 1948.
- <sup>(8)</sup> See for example: Joseph B. Schechtman, "Evacuee property in India and Pakistan", in: 50 Years of Indo-Pakistani Relations, Vol. 1, edited by Verinder Groever and Ranjara Arora. New Delhi: Deep and Deep Publications, 1955, p. 55. See also: Maren Zariffi, "Reply to Rubinstein: India, the Right to Return and Historical Comparison", in: *fognet*, 23 June 2000.
- <sup>(9)</sup> See: Amnon Rubinstein, quoted above.



## Palestine on Capitol Hill-where exactly?

By Noura Erakat



San Diego, 12 August, 2006. (Source: <http://www.al-awda.org>)

Palestinian human rights advocates have written off the U.S. Congress as an agent for positive change in the lives of Palestinians. Rightly so, advocates for Palestinian human rights have been disillusioned by the deluge of biased legislation and the incessant waves of military aid provided to Israel. However, dismissing Congress is not an option. Although grassroots, media, and legal activism can tarnish the U.S.'s foreign policy in the Middle East, such admirable efforts cannot change it. To the contrary, Congress can reverse the gains made by advocates in one fell swoop. Harvesting the gains of grassroots, media, and legal advocacy will require a complementary legislative strategy.

Presently, that strategy is non-existent and its non-existence is evidenced by the invisibility of Palestine on Capitol Hill. Whatever mention is made of Palestine in the Halls of Congress is made in relation to Syria and Iran's looming threat and/or to Israel's security.<sup>(1)</sup>

### Congress and Foreign Policy

The domain of the Executive Branch seems, particularly of late, to exercise exclusive control over U.S. foreign policy. However, through its "power of the purse," or ultimate control of the national budget, Congress exerts its influence on the President's foreign policy agenda. As the overseer of the national budget, Congress has the ability to end wars as it did in Vietnam in 1973,<sup>(2)</sup> to support reconstruction as it did in Europe post-WWII,<sup>(3)</sup> and to impose sanctions on other states as it did on the South African Apartheid regime in 1985.<sup>(4)</sup> Unlike the Executive Branch, Congress is a site of political practice, one that is responsive to political upheaval and sustained resistance.

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Congress's role in the Israel/Palestinian conflict has been no less distinguished as it provides uncritical and overwhelming support for Israel. This unconditional support for an internationally recognized occupying power has made Israel the largest recipient of U.S. foreign aid since 1976 and the largest cumulative recipient since World War II.<sup>(5)</sup> The U.S. renewed its financial support for Israel, which has been critical to that state's survival since the mid-1970s when it could no longer meet its balance of payments without borrowed capital. On August 16, 2007, the United States and Israel signed a ten year Memorandum of Understanding for 30 billion dollars of U.S. military aid to Israel, which signifies a 25 percent increase from the pre-existing 24 billion dollar package.<sup>(6)</sup> According to the U.S. State Department, this increase is meant to maintain Israel's military edge in the Middle East.<sup>(7)</sup>

The aid will be subject to Congressional approval each year but opposition in its halls is unlikely. Congress has never disapproved aid appropriated for Israel and when Congress has reduced Israel's aid package, the reduction has been unrelated to Israel's devastating human rights record.<sup>(8)</sup> U.S. statutes including P.L. 102-391 and 108-11, which prohibit the use of U.S. aid in the occupied Palestinian territory including East Jerusalem, and the Arms Export Control Act, which prohibits the use of aid in violation of human rights, condition the granting of aid to Israel. However, because aid to Israel is given as direct government to government budgetary support without any specific project accounting and because money is fungible, there is no way to prove that aid was used in violation of the AECA, P.L 102-391 or 108-11.<sup>(9)</sup> This suggests that were aid granted to Israel better defined and more concrete, objections over its use in the Occupied Territories or in violation of human rights could be made.

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The absence of controversy over Israel's human rights abuses in Congress reflects the virtual invisibility of the question of Palestine on Capitol Hill. Its invisibility is not simply attributed to Palestine's marginal contribution to the U.S.'s geopolitical interests in the region, but also because there is no concerted legislative effort made on its behalf. For that reason, on the Hill, Palestinians are defined and spoken of by association; on the one hand fuelling Syria and Iran's broader regional "threats" and on the other endangering Israel's security.

### **Palestine as told through Syria and Iran**

Especially since the U.S.'s invasion of Iraq, Syria and Iran have figured centrally on the U.S.'s Middle East agenda. In his opening statement at a Senate Committee on Foreign Relations hearing, ranking member Senator Richard Lugar said:

*Developing a broader Middle East strategy is all the more urgent given that our intervention in Iraq has fundamentally changed the power balance in the region. In particular, the fall of Saddam Hussein's Sunni government opened up opportunities for Iran to seek much greater influence in Iraq. An Iran that is bolstered by an alliance with a Shiite government in Iraq or a separate Shiite state in southern Iraq would pose serious challenges for Saudi Arabia, Jordan, and Egypt, and other Arab governments. Iran is pressing a broad agenda in the Middle East with uncertain consequences for weapons proliferation, terrorism, the security of Israel, and other U.S. interests. Any course we adopt in Iraq should consider how it would impact the regional influence of Iran.<sup>(10)</sup>*

Like Iran, Congress admonishes Syria for its role in destabilizing Iraq.<sup>(11)</sup> And like Iran, Congress considers Syria one of the most notorious state sponsors of terror.<sup>(12)</sup> Disdain for Syria and Iran as sponsors of terror, threats to Israel, and in Iran's case a looming nuclear power ran rampant among Congress long before the invasion of Iraq.

In 2003, Senators Barbara Boxer and Rick Santorum introduced *Syria Accountability Act* (S. 982), which Congress quickly passed. Among other things, the bill sought to halt Syrian support for terror. The legislation called on Syria to halt this support by closing the offices of Hamas, Hezbollah, the Popular Front for the Liberation of Palestine, and the Popular Front for the Liberation of Palestine-General Command in Damascus. The aforementioned groups are deemed a threat to Israel and to the region's stability.<sup>(13)</sup>

In early August 2007, Representative Barney Frank, Chairman of the House Financial Services Committee, introduced *The Iran Sanctions Enabling Act*, which authorizes state and local governments to divest from companies doing business in Iran's energy sector and gives legal protections to pension funds and mutual fund managers who choose to divest.<sup>(14)</sup> Representative Frank's bill is only one of many measures that aim to freeze Iran's nuclear energy program and its sponsorship of groups on the U.S. State Department's list of terrorist organizations.<sup>(15)</sup> Lobbyists supporting such measures cite Iran's threat to 'wipe Israel off the map,' as their primary motivation.<sup>(16)</sup>

Hizbollah and "a wide array of Palestinian terrorist groups" figure as the primary benefactors of Iranian and Syrian sponsorship of terror.<sup>(17)</sup> Consequently, Congress often mentions Palestinians in this context—as irrational actors motivated by hate and enabled by Syria and Iran. As described by Representative Gary Ackerman, chair of the House Subcommittee on the Middle East and South Asia, in the face of a humanitarian crisis in May 2007 Hamas "still has one strategy. It is: 'Don't just stand there. Kill some Jews.'"<sup>(18)</sup>

Congress targets Palestinians as extensions of Syria and Iran primarily by highlighting Islamic groups such as Hamas and Islamic Jihad. U.S. politicians whether in Congress or outside of it effectively draw a distinction between such Islamic groups and the rest of Palestine's "civilized" and "moderate" population.

In a Subcommittee on the Middle East and South Asia hearing entitled *U.S. Assistance to the Palestinians*, Chairman Ackerman asks, "What do we do to promote and encourage the ascendancy of precisely the kind of Palestinians. . . , people that are interested in civilization, people that are interested in the well-being of their neighbours, and in their family, and in security? Let me just ask that very broad question, are there Palestinian moderates? And if there are some, how do we get more of them?"<sup>(19)</sup>

Chairman Ackerman's and his colleagues are inevitably in consensus when they answer such questions. They locate the moderates among non-Islamic political groups and non-Islamic leaders. Mahmoud Abbas is perhaps the penultimate of the "moderate Arab" who "espouse[s] negotiation and co-existence."<sup>(20)</sup> Although Abbas was elected President in 2005, Congress did not exalt him as a model Arab or Palestinian until the popular election of Hamas. Prior to Hamas's electoral victory, Abu Mazen's legacy on the Hill was as an ineffectual leader with a corrupt and unaccountable Cabinet. This theme of the "good Palestinian" versus the

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**The Israeli narrative of a threatened, beleaguered nation in a sea of hostile Arabs – so central to its self-definition since its inception – continues to hold incredible sway in Congress, even as Israelis themselves question the limits of such a narrative.**

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“bad Palestinian” became explicit only when it became clear that defeating Hamas would necessitate bolstering an alternative Palestinian leadership. The consideration and redress of grievances common to all Palestinians caused by Israeli occupation and apartheid policies was not an option. Instead, Congress deemed those who accepted Israel’s behaviour in moderated doses “good” and those who rejected it all together “bad.” Meanwhile, Congress continues to perpetuate the myth of Israel as the “only democracy in the Middle East.”

### **Palestine as told through Israel**

The Israeli narrative of a threatened, beleaguered nation in a sea of hostile Arabs – so central to its self-definition since its inception – continues to hold incredible sway in Congress, even as Israelis themselves question the limits of such a narrative. The conspicuous absence of Israel’s culpability in modern Middle Eastern conflicts is the clearest example of Israel’s unquestioned status as a threatened entity, despite the fact that it is, indeed, the only nuclear power in the Middle East. During the most recent of such conflicts, Israel’s war against Lebanon in the Summer of 2006, Congress blamed Hizbollah for Lebanon’s destruction and civilian casualties.<sup>(21)</sup>

Congress’s conception of Israel as beyond culpability also determines how Congresspersons tell the very story of Palestine and Palestinians. In the context of Syria and Iran, Palestinians are either good or bad. When the perspective shifts to the narrative of Israel, Palestinians become the hapless victims of their own design.

Congress is not unfamiliar with the history of Israel’s establishment on historic Palestine and the displacement of Palestinian refugees, a refugee population that numbers approximately 7 million people today. In the Subcommittee on the Middle East and South Asia hearing, *Two Sides of the Same Coin: Jewish and Palestinian Refugees*, Chairman Ackerman begins in his opening statement by stating:

For Palestinians the refugee question more than any other embodies their cause. It carries the weight of their dispossession, collective anger against Israel, their frustration with the inability of their leaders to resolve national crises, and their sense of abandonment by the world despite the reality that millions of Palestinian refugees daily receive services from UNRWA...For Palestinians the refugee question connects 1948 to 1967 to 2007 and an unbroken string of tragedy.

Chairman Ackerman tempers his unfettered rendition of the Palestinian narrative with the primary concern of securing Israel as a Jewish state. Rep. Ackerman goes on to say, “For Israelis...the implications of demography, make Palestinian demands concerning refugees sound not like calls for justice, but calls for suicide.”<sup>(22)</sup> Rep. Ackerman reconciles his description of Palestinian loss by equating it to the loss of Middle Eastern Jewish refugees. He then admonishes Arab states for failing to absorb the Palestinian refugee population as Israel did with Middle Eastern Jews and as other nations have done with their refugees. Effectively, the problem is not the expulsion of Palestinians but their *persona non grata status in their host countries*.

Rep. Ackerman asks witness Dr. Shibley Telhami, the Anwar Sadat Professor for Peace and Development at the University of Maryland, “I have a question, are they considered inferior

human beings?” In response to the Congressman’s constant refrain, Dr. Telhami tries to discuss issues of responsibility for refugee populations to which Rep. Ackerman snaps, “Inasmuch as you have opened the issue of responsibility, it seems to some that in 1948 after the civilized world through the United Nations created Israel a state it was attacked by the Arab world, creating all these refugees that fled to the countries that attacked Israel. So they bear the responsibility in the minds of many, including myself, for initiating the action that created the refugees in the first place. That is that for responsibility. Now that these refugees are located in so many of these countries and treated as not even second class citizens because they are not citizens at all, I will come back to my question, are they inferior human beings?” Rep. Ackerman answers his own question when he says, “...they are held in that status to be used as political pawns.”<sup>(23)</sup>

The solution, Rep. Ackerman concludes, is not to “coerce someone in love out of it,” (Palestinian refugees longing for return) but to tempt them by “another offer, especially one that is more attractive and available,” (settling in an independent Palestinian state alongside Israel or resettle in a third country).

The notion that Arab and Palestinian leaders are to blame for Palestinian suffering, while Israel is not at all culpable, is a pervasive theme. In a hearing on *US Assistance to the Palestinians*, minority ranking member of the Subcommittee on the Middle East and South Asia, Rep. Mike Pence explains that “this vexing condition has plagued the Palestinians for some time now. Some of their leaders would rather wage war on each other and Israel than have a society where basic rights and freedoms are protected. Somewhere between autocracy and Islamism certainly there must be a renewed Arab civilization waiting to emerge.”<sup>(24)</sup> Whereas Rep. Ackerman blames the Arabs for political duplicity, Rep. Pence points to the lack of “civilization.” Both Congressmen share the central perception; Israeli policies are unrelated to the Palestinian refugee situation, the fault lies with the Arabs and the Palestinians themselves.

Thus, on the one hand, Congress pities Palestinians and takes the posture of bestowing nominal forms of humanitarian relief. On the other hand, Congress impedes Palestinian self-determination at every turn, pushing for “human rights” in Lebanon, Syria, and Egypt while denying the very possibility of human and political rights in Israel/Palestine. Hence, the President’s agenda for establishing a solution based on two-states side-by-side begins and ends with security for Israel.<sup>(25)</sup>

## So where is Palestine on the Hill?

Palestinians on Capitol Hill are somewhere between Israel on the one hand and Syria and Iran on the other. In both uncertain locations, Palestinians and Palestine are derivative actors. For the issue of Palestine as a player to emerge as an active agent, a highly improbable goal at this political juncture, activists must pierce Israel’s impeccable shield. This piercing requires concerted attention to congressional advocacy.

U.S.-based advocates are disillusioned with the U.S. government and its potential to be a conduit for change. However, circumventing the politics of Congress and the U.S. Administration will bear only ephemeral gains. The recent failure of litigation strategies demonstrates this much.

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**The Ninth Circuit Court of Appeals found that despite the plaintiffs' evidence against Caterpillar, the case was non-justiciable because the U.S. government paid for Caterpillar sales to Israel.**

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U.S. federal courts dismissed *Corrie, et. al. v. Caterpillar*, a class action law suit against Caterpillar bulldozers for civil money damages on counts of wrongful death, racketeering, and crimes against humanity among other charges, on political grounds. The Ninth Circuit Court of Appeals found that despite the plaintiffs' evidence against Caterpillar, the case was non-justiciable because the U.S. government paid for Caterpillar sales to Israel.<sup>(26)</sup> The U.S. Administration's implication in the alleged violations thus renders the case non-justiciable. The evidentiary and legal strength of *Corrie's* claim is undermined by U.S. statute and case law which prohibits judicial intervention in matters subject to the exclusive jurisdiction of the executive. Adjudicating *Corrie's* claim on its merits requires a political shift or a legislative amendment.

Congressional intervention even works to limit the boycott, divestment, and sanctions (BDS) movement in the U.S. Any potential success for the BDS movement can be easily reversed by legislation deeming such economic measures illegal. Success on the BDS front necessitates at the very least Congressional neutrality. At present, Congress is so biased, that achieving its neutrality could in fact be a victory.

Dismissing the role of Congress in the furthering of Palestinian human rights is short-sighted and ineffective. Focusing exclusively on Congressional advocacy is no better. Success on the Hill is contingent on the strength of grassroots, media, and legal advocacy. Effecting change in Middle East foreign policy and in the lives of Palestinians requires the careful balance and coordination of these complimentary strategies.

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### **Endnotes**

- (1) To assess the status of Palestine on the Hill, I chose to examine the hearings held by the Senate Foreign Relations Committee and the House Committee on Foreign Affairs Subcommittee on the Middle East and South Asia. I also examined magazines circulated on a weekly or daily basis to all Hill staffers to gain a better sense of attitudes towards Palestine on the Hill.
- (2) Congress limited the use of funds that would directly or indirectly support combat activities in the region.
- (3) The Marshall plan, or "The Economic Cooperation Act of 1948" was agreed to by a vote of 329 to 74.
- (4) Legislation to increase economic sanctions against Apartheid South Africa was enacted over President Reagan's veto.
- (5) Mark, Clyde R. *Israel: U.S. Foreign Assistance*, Congressional Research Services, Last updated April 26, 2005.
- (6) Keinon, Herb, Israel, US try to maintain military edge, *Jerusalem Post*, August 16, 2007 available at <http://www.jpost.com/servlet/Satellite?pagename=JPost%2FJPArticle%2FShowFull&cid=1186557469491>
- (7) *Id.*
- (8) *Id.* In 2004, Congress reduced Israel's aid package by 0.59% without any notable citation.
- (9) Mark at IB85066, There were reports in February 2001 and the summer 2002, that the U.S. government was investigating the use of Apache and Cobra helicopters to conduct targeted assassinations of Palestinian leaders.
- (10) Senate Committee on Foreign Relations, "Hearing on Regional Diplomatic Strategy in Iraq," Opening

- statement for Senator Richard Lugar. January 17, 2007.
- <sup>(11)</sup> Robinson, Linda, *Reaching Out to Iran and Syria*, National Journal September 29, 2007.
- <sup>(12)</sup> Senate Committee on Foreign Relations, “The Changing Face of Terror: A Post 9/11 Assessment” Testimony of Ambassador Henry A. Crumpton, Coordinator for Counterterrorism, U.S. Department of State. June 13, 2006.
- <sup>(13)</sup> Syria Accountability Act of 2003, (S. 982). The Act makes one specific reference to the impact of Syria’s support, namely that as a result of Syria’s continued occupation of Lebanon, “much of southern Lebanon is under the control of Hizbollah, which continues to attack Israeli positions and allows Iranian Revolutionary Guards and other militant groups to operate freely in the area, destabilizing the entire region.”
- <sup>(14)</sup> Kosterlitz, Julie, *Squeezing Iran*, National Journal, September 1, 2007: 23.
- <sup>(15)</sup> Graham-Silverman, Adam, “With Sanctions Legislation, House, Senate Continue Tough Talk Against Iran,” CQ Today September 26, 2007. Representative Tom Lantos, Chairman of the House Foreign Affairs Committee introduced what is considered the toughest bills in a series of such measures. HR 1400 which had 326 co-sponsors and passed by a vote of 379-16 would ban all imports from Iran and expands curbs on exports. The Senate has its own bill that would impose criminal penalties of up to \$1 million and a jail term of twenty years on companies doing business with Iran.
- <sup>(16)</sup> Kosterlitz, Julie, *Squeezing Iran*, National Journal, September 1, 2007: 23.
- <sup>(17)</sup> Testimony of Ambassador Henry A. Crumpton *supra* at note 12.
- <sup>(18)</sup> Subcommittee on the Middle East and South Asia, Committee on Foreign Affairs House of Representatives, Hearing on “U.S. Assistance to the Palestinians,” May 23, 2007.
- <sup>(19)</sup> *Id.* Question asked by Representative Gary Ackerman, May 23, 2007: 22.
- <sup>(20)</sup> Senate Committee on Foreign Relations, *Hearing on Lebanon*, Opening statement of Senator Richard Lugar, September 13, 2006.
- <sup>(21)</sup> *Id.* During the Senate Foreign Relations Committee hearing on Lebanon, Senator Lugar expressed that the hearing’s purpose was to “assess whether Hezbollah and its Secretary General, Hasan Nasrallah, gained popularity in the region notwithstanding the suffering they brought on the Lebanese people.” Not only does Senator Lugar’s statement absolve Israel of any responsibility for the harm caused to Lebanon and its people but it also treats Hezbollah as an alien element to Lebanon.
- <sup>(22)</sup> Subcommittee on the Middle East and South Asia, Committee on Foreign Affairs, House of Representatives, Hearing *Two Sides of the Same Coin: Jewish and Palestinian Refugees*, May 8, 2007.
- <sup>(23)</sup> *Id.*
- <sup>(24)</sup> Subcommittee on the Middle East and South Asia, Committee on Foreign Affairs House of Representatives, Hearing on “U.S. Assistance to the Palestinians,” May 23, 2007. Representative Mike Pence (D-IN).
- <sup>(25)</sup> *Id.* Lieutenant General Keith Dayton, US Security Coordinator to Israel and the Occupied Territories on President Bush’s 3 goals for establishing two states side by side:
4. Improving the security at the Gaza crossings, particularly at Karni crossing, to advance the goals of the Agreement on the Movement and Access and boost Palestinian economic development while addressing Israeli security concerns;
  5. Improving the capabilities of the Abbas-controlled Presidential Guard to help them protect the President and VIPs, manage security at the crossings, and respond to urgent security situations;
  6. *Working with the Office of the President to establish a capacity for security service oversight, reform, and strategic planning.*

## Palestinian refugee and IDP rights at the Human Rights Council of the OHCHR and the Executive Committee meeting of the UNHCR

### *Badil Report*

Badil Resource Center submitted two statements to the sixth session of the Human Rights Council, held in Geneva between 10-28 September 2007.



*Badil side-meeting at the UN Human Rights Council entitled "The Question of Palestinian Refugees and Internally Displaced Persons -60 Years of Nakba- Time for a Rights-based Solution to the Largest and Most Protracted Refugee Case in the World", 28 September 2007. (©BADIL)*

**I**n its first statement, Badil emphasized the lack of protection of Palestinian refugees in Lebanon, who have bore the brunt of the conflict in Nahr al-Bared camp. During the conflict in Nahr el-Bared camp, which began on 20 May 2007, dozens of civilians were killed and 6,083 Palestinian refugee families (over 30,000 persons) internally displaced. This latest displacement highlights the vulnerability of Palestinian refugees in exile in Lebanon, Iraq and elsewhere and the forced multiple displacements of these stateless refugees.

The camp has also sustained extensive damage. Badil believes that the reconstruction of Nahr el-Bared should be done in consultation with the residents of the camp and based on respect for their status and rights as Palestinian refugees.

Badil called upon the Human Rights Council to follow the situation of internally displaced Palestinian refugees in Lebanon in order to ensure that their rights are protected, including their right to return to their homes of origin.

Badil also recommended that the Council commission a special study on the occasion of the 60th anniversary of the Universal Declaration for Human Rights and the 60th commemoration of the Nakba in May 2008 on the obstacles to the return of Palestinian refugees to their homes of origin and property restitution.

In its second statement, Badil highlighted the dire humanitarian and economic situation



### Amnesty International denounces systematic discrimination of Palestinian refugees in Lebanon

Amnesty International (AI) published a new report on the systematic discrimination faced by Palestinian refugees in Lebanon. AI denounces the “appalling social and economic conditions” and “ghettoization” of Palestinian refugees in Lebanon. AI found that Palestinians are being denied their basic rights, including the right to housing, work, health, education, registration and identification document, and freedom of movement. AI encourages the government of Lebanon to take concrete actions to address the marginalization of Palestinian refugees and recommends that the “continuing restrictions on Palestinian refugees, which effectively renders them the status of second class residents, continue to be little short of a scandal and they should be lifted without further procrastination or delay.”



*Nahr el-Bared refugee camp, Lebanon. (Source: <http://nahrelbared.net>)*

Amnesty notes that for 60 years, “the international community has excluded Palestinians from the international system set up to protect refugees” and that “Israel and the international community have also failed to find an adequate, durable and sustainable solution, consistent with international law.” The organization further calls upon the international community to “make all necessary efforts to find a durable solution for Palestinian refugees that fully respects and protects their human rights, including their right to return.”

For more, read Lebanon: Exiled and suffering: Palestinian refugees in Lebanon, Amnesty International, 17 October 2007. Available at: <http://www.amnestyusa.org/document.php?lang=e&id=ENGMDE180102007>

in the occupied Gaza Strip since the hermetic closure of the territory in June. As a result of this crisis, that could have been averted through the opening of borders, 1.5 million Palestinians in the Gaza Strip, most of whom are 1948 refugees, are today nearly 100% dependent on international humanitarian assistance. Badil called on all actors not to allow political considerations to jeopardize the fundamental rights of Palestinians, especially of those living in the occupied Gaza Strip.

The statement also alerted the Council to the growing number of internally displaced persons in the OPT, which by the end of 2006 was estimated at 115,000 persons, and to the recent displacement of the al Hadidiya community in the Jordan Valley.

Badil called upon members of the Council to consider urging state members of the UN to take measures such as economic sanctions and diplomatic boycott against Israel for its breach of international law and non-implementation of UN Resolutions, as well as the advisory opinion of the International Court of Justice on The Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory.

Between 1-5 October, Badil attended the NGO Consultations and the 58<sup>th</sup> Executive Committee (Excom) meeting of UNHCR. In two NGO statements, one on the general

debate and the other on internal protection, over 270 NGOs reminded state members of Excom that “Palestinian refugees and internally displaced persons (IDPs) constitute the largest and longest-standing unresolved caseload of refugees and displaced persons in the world today” and “urge the international community to increase efforts to find voluntary durable solutions to their plight [...], including local integration, resettlement and voluntary repatriation.”

The critical situation of Palestinian refugees in and from Iraq was also the subject of great concern. NGOs recognized the generosity of Syria and Jordan, who are hosting thousands of refugees from Iraq, and called upon states to pursue their efforts to ensure that the approximately 13,000 Palestinian refugees “in al-Tanf, al-Walid, and al-Hul camps on the border with, and inside, Syria...are provided with temporary protection, and access to durable solutions, including local integration, resettlement, and voluntary repatriation.” NGOs recommended that “in cooperation with UNHCR, all Palestinian refugees from Iraq should be registered with the UN Relief and Works Agency as a matter of high priority.” A special request was also made to UN country teams to mobilize and to Resident Coordinators and the Humanitarian Coordinator in Iraq to make their response to “the needs of Iraqi and Palestinian refugees a top priority.”

- 2008 -

### 60<sup>th</sup> Anniversary of the Universal Declaration of Human Rights and UN General Assembly Resolution 194 (III)

Everyone has the right to leave any country, including his own, and to return to his country.  
Article 13 (2), Universal Declaration of Human Rights, 10 December 1948.

The General Assembly “Resolves that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible.” Paragraph 11, UNGA Resolution 194, 11 December 1948.



General view of the UN Secretary Council meeting on the question of Palestine, New York, April 1948. ((©) UN Archives)

In the fall of 1948 as the UN grappled with the humanitarian and political catastrophe in the Middle East, members of the General Assembly’s Third Committee found themselves finalizing the universal declaration of human rights before the end of the year, while trying to balance the ‘abstract discussion of human rights’<sup>(1)</sup> with the urgency of ‘saving human lives’<sup>(2)</sup> far away in Palestine. Describing the crisis in the Middle East from Beirut, the UN’s director of relief, Sir Raphael Cilento, compared the situation of Palestinian refugees to some ‘100,000,000 destitute Americans’ suddenly having to rely on ‘outside help’.<sup>(3)</sup>

On 20 October the British representative (Mr. Davies) proposed that the Committee temporarily suspend discussion of the draft declaration and give priority to the refugee crisis. The Saudi representative (Mr. Baroodi), who would later be instrumental in drafting provisions covering the status of Palestinian refugees under the 1951 Conven-

tion Relating to the Status of Refugees, drew attention to the dire situation in Palestine and in the neighboring Arab states, pointing out that the refugees 'could not take advantage of the protection that the International Refugee Organization' afforded to other refugees. 'It would be useless for the Committee to devote its time to the drafting of a declaration of human rights', continued Baroody, 'while at the same time allowing thousands of human beings to perish'.<sup>(4)</sup> The Committee agreed and decided to devote part of its time to the development of a humanitarian action plan.

Two weeks later, the situation in the Middle East once again 'prompted discussions' among Third Committee members. According to Mary Ann Glendon's account of the drafting of the Universal Declaration of Human Rights, these discussions led to 'significant changes' in the text of the declaration itself.<sup>(5)</sup> Wrapping up discussion on article 13 concerning the right to leave any country, including one's own, the Third Committee approved by a vote of 33 to none (with 8 abstentions) a Lebanese motion to 'strengthen' that right by adding 'the assurance of the right to return'.<sup>(6)</sup>

Another month would pass before the UN General Assembly put its stamp of approval on the Universal Declaration of Human Rights on 10 December 1948. The following day, 11 December 1948, a majority of the Assembly's member states adopted Resolution 194 (III) setting out a framework for a negotiated solution to the conflict in Palestine in general, and Palestinian refugees in particular.<sup>(7)</sup> Reflecting the views of those states that had voted in favor of the resolution, the Australian representative (Mr. Hood) characterized Resolution 194 (III) as a 'practical and realistic'<sup>(8)</sup> solution to the conflict.

#### Endnotes

(1) Mr. Abadi (Iraq), UN GAOR, 3rd Sess., 3rd Comm., 108th Mtg., Oct. 20, 1948, 195.

(2) Mr. Watt (Australia), UN GAOR, 3rd Sess., 3rd Comm., 109th Mtg., Oct. 20, 1948, 206.

(3) 'UN relief supplies on way to Palestine refugee camps', United Nations Press Release, PAL/322, Oct. 1, 1948.

(4) Mr. Baroody (Saudi Arabia), *supra* n. 2, 209. The French delegate (Mr. Grumbach) expressed similar concerns about the International Refugee Organization. *Id.*, 211.

(5) Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001), 153.

(6) Mr. Azkoul (Lebanon), UN GAOR, 3rd Sess., 3rd Comm., 120th Mtg., Nov. 2, 1948, 316.

(7) See, GA Res. 194 (III), UN GAOR, 3rd Sess., UN Doc. A/RES/194 (1948), para. 11. For the UNCCP interpretation of Resolution 194 (III) see, UNCCP, Analysis of paragraph 11 of the General Assembly's Resolution of 11 December 1948, working paper prepared by the Secretariat, UN Doc. A/AC.25/W.45 (1950).

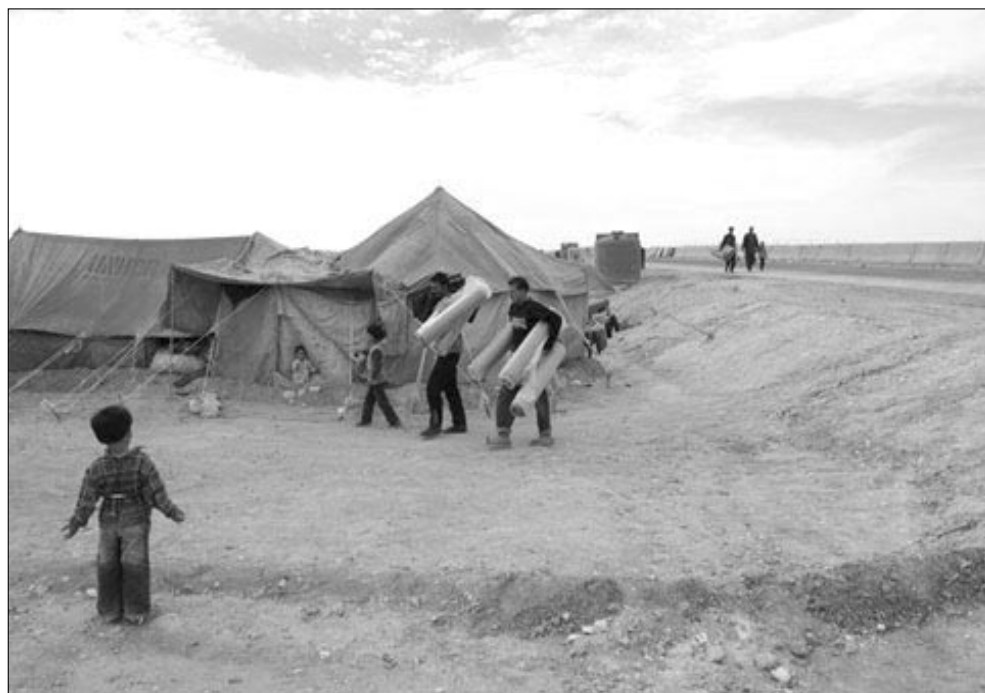
(8) Mr. Hood (Australia), UN GAOR, 3rd Sess., 184th Plenary Mtg., Dec. 11, 1948, 936. See also, comments of Mr. McNeil (United Kingdom) referring to the resolution as a 'reasonable, just and workable solution'. *Id.*, 948.

## When solutions are not solutions Palestinian Refugees stranded in and fleeing from Iraq

By Karine Mac Allister

*It is to everyone's dishonour that these human beings are still rotting in Al Tanf, in Al Walid, in Ruweished and -worst of all – in Baghdad where one or more is being murdered virtually every day.* Rupert Colville, “Shame, How the world has turned its back on the Palestinian refugees in Iraq”, *Refugees*, No. 146, issue 2, 2007, p. 24.

The fact that Palestinian refugees and many other Iraqi refugees resort to underground and dangerous ways to seek safety is telling of the level and quality of protection afforded.



*Palestinian refugees stuck between Iraq and Syria, al-Walid camp. May 2007. (©IRIN)*

In Baghdad, horror reports continued to emerge, as more Palestinians flee abduction, hostage-taking, torture and killing.<sup>(1)</sup> Palestinian refugees are persecuted by Iraqi forces and the occupying power (also known as the Multi-National Force) on suspicion of involvement with alleged Sunni insurgents. Most Palestinian refugees detained by Iraqi or US occupation forces have not been charged with any offences or taken to court. Lawyers of Palestinian refugees have also been threatened and, in some instances, killed.<sup>(2)</sup> Palestinian refugees are also targeted by Shi'a political and religious groups, such as the group of Muqtada al-Sadr (Mahdi army) and the Supreme Council for the Islamic Revolution in Iraq (Badr organization), who resent the treatment Palestinians received under Saddam's regime. Neither the Iraqi government nor the US-led occupying forces are able or willing to protect Palestinian refugees.

UNHCR is particularly concerned that Palestinian refugees as well as Iranian Ahwazi refugees “are increasingly targeted and becoming inaccessible in the centre and south.”<sup>(3)</sup> Under these conditions, the provision of basic assistance and protection inside the country becomes practically impossible.

Moreover, since 2004, most Palestinian refugees have been unable to enter Jordan and Syria, and have been stranded in camps along the borders and more recently, in the al Walid camp, three kilometres away from the Syrian border. As of October 2007, their number had swelled to over 1,600 persons. The situation in the al Walid camp is appalling: people lack water and food; there is no medical or psychological treatment (the nearest hospital is four hours away and the journey is dangerous); refugees are subjected to attacks and intimidation by armed groups; children are forced into prostitution by local sheikhs and girls and women are sexually harassed; tents are overcrowded; the area is infested with scorpions and venomous snakes (over 70 persons have been bitten); temperature can rise to 50°C in summer; and UNHCR has only limited access to the camp, sometimes only once a month because of security concerns.

Al Tanf camp, while in a relatively better situation, still offers precarious living conditions. Three fires since the beginning of the year have devastated the camp, including one on 9 October, which injured 25 people and destroyed 53 tents housing 11 families. The fire also destroyed all that remained of the refugees' personal documents and possessions. According to UNHCR, this latest fire "just added to an increasing atmosphere of despair and desperation at the camp."<sup>(4)</sup>

Some Palestinian refugees who have attempted to enter Jordan and Syria with forged passports have been sent back to Iraq, in violation of the principle of *non-refoulement*.<sup>(5)</sup> Allegations of forced return by the International Organizations for Migration (IOM) of Palestinian refugees from Lebanon to Iraq have also been raised.<sup>(6)</sup>

Those who have managed to flee have reportedly used smuggling rings to reach European and Asian countries. But human smuggling is dangerous; thirteen bodies, most likely of Palestinian refugees from Iraq, were recovered on the coast of Italy after their boats, carrying at least 127 persons in search of safety, had broken apart.<sup>(7)</sup> It is also very costly: a journey from Turkey to a European country can cost between US\$8,000-10,000. Palestinian refugees reaching countries without any assistance and protection from UNHCR or an international organization are often left in limbo in cultures and societies they know little about, and without legal status and the means to support themselves.<sup>(8)</sup> The fact that Palestinian refugees and many other Iraqi refugees resort to underground and dangerous ways to seek safety is telling of the level and quality of protection afforded.

UNHCR's assistance and protection activities are limited not only because of security constraints in Iraq, but also because of a lack of funding. As violence in Iraq worsens, "the mass displacement of Iraqis that was feared in 2003 is now occurring — but without the international concern that it deserves."<sup>(9)</sup> For instance, of the over 2.2 million persons displaced outside Iraq, UNHCR has only been able to register approximately 177,000 in Syria and Jordan as of October 2007.<sup>(10)</sup> The whereabouts of most Palestinian refugees from Iraq are unknown to the Agency.

Meanwhile, UNHCR recognizes and is looking at all possible durable and temporary solutions. The Agency is mainly focussing on temporary protection and relocation as these are considered the most feasible options at the moment. Few countries, however, are willing to offer temporary protection or relocate Palestinian refugees. Fewer still are willing to pressure Israel to allow the refugees to return to their homes of origin. The UN, including UNHCR, and the vast majority

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**The search for temporary protection and durable solutions should involve the refugees; they should be informed, consulted and their wishes respected.**

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of international NGOs recognize that Palestinian refugees have a right to return to their homes of origin. Yet, political will among states to implement this right is lacking.

For its part, Israel may have agreed to allow some 31 Palestinian refugees to enter the occupied West Bank. This, however, would not constitute the exercise of one's right to return, as the refugees mainly originate from what is now Israel. The details of the Israeli offer are unclear, but it seems that the refugees entering the occupied West Bank would be asked to relinquish all claims of return and restitution. If this is true, Israel's offer would violate the fundamental rights of these refugees.

Some countries, such as Syria, Jordan, Brazil and Canada have generously agreed to take in Palestinian refugees and Chile (100 persons) and other European countries have said they are also willing to welcome Palestinian refugees, but none have expressed their willingness to welcome all or most Palestinian refugees from Iraq. Refugees relocated to Brazil in September and October have been settled in Sao Paulo state and Rio Grande do Sul and received rented accommodation, furniture and material assistance for up to 24 months. A network of volunteers and local communities has also been established to provide moral support and facilitate integration.

Sudan's President, Omar Bashir, offered in October 2007 to take in Palestinian refugees stranded on the border with Syria, although the details of the offer are still sketchy. This has, however, already been rejected by Palestinian refugees from the al Tanf camp, who argue that Sudan is not a sustainable option, because it has itself generated over 2.5 million refugees and the government is guilty of gross violations of human and humanitarian law. Refugees at the al Walid camp have not yet expressed their opinion, but they too appeared reluctant to go to Sudan.

In many ways, Sudan is neither safe nor able to accommodate the refugees, as more conflict between the government and rebel groups is expected and resources are inadequate to meet the needs of the refugees, many of whom are vulnerable and need medical assistance. Because of the various sanctions against the government, it is very difficult for international aid agencies to operate in areas of the country controlled by the government of Sudan. Getting NGOs to assist UNHCR operations to benefit these Palestinians will be almost impossible in Sudan, whereas it would be welcomed in other countries. It might also be difficult for UNHCR to access and protect the refugees would the situation further deteriorate. Moreover, Sudan is not a party to the 1951 Convention relating to the status of Refugees and the legal status of Palestinian refugees in Sudan is not clear, thus making their stay in Sudan wholly at the whim of the government.

Another and perhaps more promising solution might be found in Yemen. Indeed, Yemen has informally indicated its willingness to admit Palestinian refugees from Iraq into its territory as a temporary protection and/or *en route* to other destinations, i.e., evacuation point. This option is likely to be accepted by most refugees and would allow UNHCR and other organizations to have access to the refugees, especially those who are vulnerable and with severe needs. Yemen, however, requires the financial and logistical support of UNHCR and a formal request from the Palestine Liberation Organization (PLO) in order to open its border. According to available information, the PLO has not yet approached the government of Yemen. It is hoped that in the near future, Palestinian refugees from Iraq will be able to seek safety in Yemen.

In all cases, the search for temporary protection and durable solutions should involve the refugees; they should be informed, consulted and their wishes respected.

### Very partial data on Palestinian refugees in and fleeing Iraq

In 2003, there were between 34,000 and 90,000 Palestinian refugees in Iraq. Their exact number and current whereabouts are unknown. (see "Searching for Solutions for Palestinian Refugees Stuck in and Fleeing Iraq", al Majdal, issue No.33, Spring 2007).

<b>Syria:</b>	up to 2,500-3,000 persons in the country.
<b>al Hol camp</b>	(Syria): 310 persons.
<b>Iraq:</b>	between 12,000-13,000 persons.
<b>al Walid camp</b>	(Iraq): 1,600 persons.
<b>al Tanf camp</b>	(Iraq-Syrian border): 437 persons.
<b>Jordan:</b>	389 persons who have a Jordanian spouse, but the number is probably higher.
<b>Ruweished camp:</b>	Closed as of October 2007.
<b>Lebanon:</b>	300-400 persons.
<b>Turkey:</b>	Probably a few hundred.
<b>India:</b>	100 persons (unclear).
<b>Canada:</b>	74 persons (54 persons from Ruweished camp and 20 through private sponsorship).
<b>Brazil:</b>	108 persons from Ruweished camp.
<b>New Zealand:</b>	22 persons from Ruweished camp.
<b>Italy:</b>	At least 110 persons.
<b>Norway:</b>	Two families for medical cases, possibly around 16 persons.
<b>Spain:</b>	6 persons.
<b>Greece:</b>	Probably a few dozen.
<b>Sweden:</b>	Probably a few dozen.
<b>Thailand:</b>	Few cases.

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#### Endnotes

- (1) See Amnesty International, "Iraq: human rights abuses against Palestinian refugees," AI Index: MDE 14/030/2007, October 2007, pp. 7-13.
- (2) UN Assistance Mission for Iraq (UNAMI), Human Rights Report, 1 April- 30 June 2007, pp. 13-14.
- (3) UNHCR, "Iraq: Al Tanf fire highlight precarious condition of Palestinian refugees", summary of what was said by UNHCR spokesperson, Jennifer Pagonis, Press Briefing, 9 October 2007, Geneva.
- (4) UNHCR Global Appeal 2007, Iraq, p. 198.
- (5) See Amnesty International, "Iraq: human rights abuses against Palestinian refugees," AI Index: MDE 14/030/2007, October 2007, p. 9. This has also been confirmed during an interview with a Palestinian refugee from Iraq.
- (6) Until 2005, UNHCR worked with the IOM to return Palestinian refugees to Iraq, but has since stopped. Discussion during session on the Middle East and North Africa (MENA) at the UNHCR NGO Consultations in Geneva, 26-28 September.
- (7) "13 Palestinians found dead after boat sinks off near Italy", AFP in Daily Star, 29 October 2007.
- (8) See Zafarul Islam Khan, "Palestinian Diaspora in India", *islamonline*, New Delhi.
- (9) UNHCR Global Appeal 2007, Iraq, p. 198.
- (10) See Ron Redmond, "Iraq: Pressure on safe havens inside and outside fuels fears of increased internal displacement", summary of what was said by UNHCR spokesperson Ron Redmond, press briefing, 23 October 2007, Geneva.

## One Year After: Update on the Situation in Al Aqaba and Yanoun Villages

By Anne Paq

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With all his effort, Al Aqaba is far from dying, on the contrary it appears stronger every year and his villagers are more determined than ever that nobody would push them away from these beautiful landscapes.

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*Olive picking in Yanoun, Nablus, October 2007. (©Anne Paq)*

When I was asked to go back to two villages I had visited last year to write an article on the situation in al Aqaba and Yanoun, I was very pleased. I have been impressed by Yanoun and Al Aqaba; these villages that have resisted years of harassment and attempts to erase them from the map.

Yanoun is located next to Nablus, and is surrounded by the settlement of Itamar. As a result of repeated attacks, all the residents of Yanoun were forced to leave in 2002. They all came back after a permanent international presence had been established. Since then, the villagers have stood together against the continuous threat of the settlers.

Al Aqaba, and its charismatic mayor, Sami Sadek, stands as another outstanding example of resistance against displacement. Located next to the Jordan valley, close to Tubas, the village lies in a very strategic location. Over the years, the pressure from the Israeli army has increased. The Israeli soldiers had been training around the village and even inside, provoking many injuries. The mayor was himself shot and subsequently became disabled. Most houses and structures, including the mosque, the kindergarten, and the health clinic received demolition orders. Over the years, many families left the village. But Sami decided that he would not let his beautiful village die. He convinced some families to come back, managed to get funding from various organizations and governments to help build infrastructure, submitted petitions to the court, and mobilized a network of support from all over the world. With all his effort, Al Aqaba is far from dying, on the contrary it appears stronger every year and his villagers are more determined



than ever that nobody would push them away from these beautiful landscapes. I went there for the first time four years ago. Since that time, I have seen the development of a new paved road, clinic, kindergarten, and new greenhouses, as well as a mosque whose minaret is one of the highest in the West Bank and can be seen from far as a symbol of determination.

I was eager to go back and discover what had happened during this year. Unfortunately, as in most places in Palestine, the situation on the ground is moving in one direction only; the Palestinians are increasingly squeezed into a territory on which they have less and less control and that shrinks every year.

### Still the spirit of resistance remains in these villages.

In Yanoun, I easily found Adnan, one of the members of the local council. He was picking olives on his land with his wife and son. Every year the olive harvest season is tensed because it usually entails more attacks from the settlers. The villagers cannot have access to most of their lands, in particular to the ones located next to the settlement. Last year, they were able to harvest only after some coordination between the Palestinian Authority and the Israeli army was arranged, but only for 5 days. The harvest requires at least one month. This year there has been no coordination so far, so the villagers do not know what to expect. The Israeli army that is supposed to protect them from the settlers in this critical time drive quickly through the village once a day. As an international from the Ecumenical Accompaniment Programme in Palestine and Israel



Eviction order given to the family of Ahmad Na'im in Yanoun, Nablus. (©Karin Brown, EAPPI)

(EAPPI) who stays in Yanoun put it: “if the settlers call the army, the soldiers are there in 5 minutes, if the Palestinians do, it takes them 3 hours”.

Since the last olive harvest, the saddest news was about Mohammad Hamdan Bani-Jaberm a sheep-keeper from the nearby village of Aqraba who had been stabbed to death. He was found on the lands of Yanoun, not far from the settlement. It is highly probable that the settlers did it, but the investigation never led anywhere. The settlers continue to come regularly down to the village, always heavily armed. The week before our visit, they set up a checkpoint on the road together with the soldiers. Adnan also told me the story of Ahmad Na'im and his family who received an eviction order from the army. The family lives in a tent and uses caves for several months of the year to house their goats. They stay in a very strategic location that dominates the surrounding

Unfortunately, as in most places in Palestine, the situation on the ground is moving in one direction only; the Palestinians are increasingly squeezed into a territory on which they have less and less control and that shrinks every year.

The number of demolition orders has gone up to thirty-two, with six new this year.

valleys and hills, and has some water sources, or in other words the perfect location to expand or start a settlement.

As we moved on closer to the village, we saw people peacefully harvesting the olives, together with the internationals. However, there were far less people than last year, probably because of the poor quality of the olives. The international team of the ecumenical accompaniers had just arrived about two weeks before and already witnessed at least two incidents. In the first one, the settlers came down and stole olives from trees belonging to the village. Another time, a group of Israelis came to the village in four-wheel drive vehicles, driving around noisily, arguing that they were doing some tourism in what they considered a “free place” where consent from the population was not needed.

We wished them good luck for the olive harvest, and moved on to Al Aqaba village. As we drove inside Al Aqaba, we noticed some new infrastructure, a new wall and a bus stop. Sami was waiting for us under a tree next to the clinic and the new sign that says “Welcome to Aqaba”. The situation in Al Aqaba has not changed dramatically. The court

### The Olive Harvest in Yanoun

There is an air of anticipation building in the village of Yanoun, as all gather outside of their homes in the early morning waiting for the military to make their presence known. This morning is scheduled to be the first of four days designated for olive picking in the groves above Upper Yanoun- where the village's olive trees touch the border of Itemar settlement and are thus out of bounds for the majority of the year. The Israeli military is required to be present during this time to offer protection for the villagers picking olives by warding off the harassment of the settlers.

No clear signal is given, no direct conversation is had, no explicit directions, neither written nor verbal are provided. It is a matter of waiting and guessing as to when the farmers and their families are permitted to ascend into the controversial groves. For fear of settler attacks, the farmers do not normally venture into these groves to tend to their trees or plough their fields. This means that hundreds upon hundreds of olive trees are left uncared for throughout the majority of the year- new growth fills out the body of the trees not allowing the olives enough sunlight, thick undergrowth covers the base of the trees and grass grows high in the unploughed fields, sapping water from the trees and causing the olives to be underdeveloped.

Repeat this scenario over some years, and the yield from the olive trees is dramatically impacted. An area of trees that used to produce fifty bags of olives, now only gives five to ten bags. A tree that used to produce a gallon of oil, now only gives a quarter. This year is widely thought of as an off-season, but the majority of the trees in Yanoun are in especially bad shape.



*Ecumenical Accompanier picking olives with the women in Yanoun, Nablus. October 2007. (©Anne Paq)*

Once the signal is given by Rashed, the mayor of Yanoun, the families begin the trek to the upper groves along paths well known and well worn from years past. An excitement and energy is widespread as the villagers reach the expansive valley filled with olive trees that they have not seen since last year's harvest. Tarps are laid out, brush is quickly cut back, olives are hurriedly picked, branches are roughly pruned, picked olives are immediately sorted and put in sacs and with no time for idle conversation the family moves to the next tree. The time crunch is apparent as they have only four days to pick what used to take twenty.

decisions concerning the demolition orders have once again been postponed. The number of demolition orders has gone up to thirty-two, with six new this year. The army is still coming to the village from time to time. Still Sami stands firm against intimidation. He proudly announced to us that another family came back this year to Al Aqaba. We then visited the family that I visited last year, still living in shacks. They are very poor and they also know that any new house in Al Aqaba would be destroyed, therefore they do not want to build a house. The only change was that the plastic on the roof had been replaced by zinc sheets. They always live in fear of being expelled. It is especially hard on the woman, who stays most of the time alone as her husband works in the next village.

**They always live in fear of being expelled. It is especially hard on the woman, who stays most of the time alone as her husband works in the next village.**

On our way out of the village, we decided to try to go through the checkpoint of Tayassir which is known to be a very difficult one. It is one of the entrance points to the Jordan valley, which has been *de facto* annexed to Israel. Lost in the middle of nowhere, the checkpoint is quite impressive with its structures of concrete and turnstiles, and a high military tower. It contrasts with the beautiful surrounding environment. Foreign passports in hand, the soldiers let us walk through without problems. However our driver and his

Around midday a heavily armed settler approaches, dumps over a fifty kilo bag of olives representing a morning's work, and confronts Hani- telling him that he has gone too far, crossed a line too close to the settlement, and is not allowed to pick olives from these trees. Three Israeli soldiers join the settler, higher military and police authorities are called in, and discussions ensue about rights and access, but it is clear as the chaotic situation develops that the settler has the upper hand. With the forbidden areas never clearly defined by the military, Hani and the others were picking olives from trees belonging to their families without regard for their proximity to unmarked outer border of the settlement's outpost.



*Settlers who claimed to be showing his land to friends, Yanoun, Nablus. (©Karin Brown, EAPPI)*

After an hour's time, having been held under threat of arrest for his transgression, Hani is finally told to leave the area. He is given five minutes to descend from the upper olive groves and is not to return the next day. Complicating the situation is the presence of five international Ecumenical Accompaniers and an Israeli activist, who are threatened by the Israeli police with arrest and deportation if they remain picking olives alongside the families of Yanoun. Apparently, unannounced to the internationals or the mayor of Yanoun, this upper olive grove had been declared a 'closed military zone' for the duration of the olive harvest, which in effect means that Palestinians, security forces, and permanent residents (accounting for the settlers) are allowed access, while Israelis and, by default, internationals are not.

With no option we, the Ecumenical Accompaniers, follow Hani down towards Yanoun, escaping arrest and abandoning the work that continued in and around the olive trees. The families continued to pick, prune, and collect olives for the next three days, free of further harassment. The settlers are apparently satisfied in having effectively curtailed the access, aid, and accompaniment that internationals and Israelis were able to provide the Palestinians of Yanoun during the most controversial and anxiety ridden part of the olive harvest.

*Karin Brown, Yanoun  
EAPPI, Team 24*

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The Jordan valley has thus become out of reach for Palestinians. This was only confirmed by the next checkpoint that we attempted to pass, in Hamra. We were told that beyond this point “this is Israel” and that a Palestinian from Bethlehem needs a special permit to be able to go to this area.

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*House in Al Aqaba village, discussion with the women. Al Aqaba, October 2007. (©Anne Paq)*

West Bank ID from Bethlehem could not pass. When we asked why, the soldiers simply replied that “these are the rules”. Only Palestinians who reside in the Jordan valley can go through. The Jordan valley has thus become out of reach for Palestinians. This was only confirmed by the next checkpoint that we attempted to pass, in Hamra. We were told that beyond this point “this is Israel” and that a Palestinian from Bethlehem needs a special permit to be able to go to this area. It was not the time to make a presentation of international law and geography but still we pointed out that beyond this point it is still considered as the West Bank and that the Jordan valley is still an occupied territory according to international law.

Earlier during the day, we were also prevented from going through Huwwara checkpoint to get to Nablus. We thus had to take a roundabout way dozens of kilometres long to reach our destination, basically going West and North to go East. In total, we went through a dozen of checkpoints, could not go through three checkpoints and it took us four hours to go from Al Aqaba to Bethlehem, although they appear on the map to be only around 100 kilometres apart.

The day was difficult, however definitely worthwhile. If anybody has doubts about the Palestinians’ spirit of resistance of Palestinians and their willingness to stay despite the worsening situation, one should take the journey through Palestinian villages and talk to people like Haj Sami. It will definitely give you the urge and reason to stand by their side.

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*Anne Paq is a photographer and the coordinator of a photo and video project at al-Rowwad center in Aida refugee camp. (Site internet: [www.tourbillonphoto.com](http://www.tourbillonphoto.com)), (New Blog: <http://chroniquespalestine.blogspot.com/>)*

### Ongoing internal displacement in the OPT



*Qassa village displacement : Border Police and villagers moving sheep, 29 Oct 2007. (©OCHA opt)*

Between September and October 2007, 17 housing units in the occupied West Bank and Gaza Strip were destroyed. In total, 51 Palestinians were reported displaced. In addition to these home demolitions, the Qassa community was displaced by the Israeli army.

On 29 October, the army of Israel forcibly displaced 25 families from Qassa, a small village located between the Wall and the armistice line (Green Line) in the southern Hebron district. People were physically removed and dumped at Tarqumia checkpoint. Twenty-one of the 25 families are registered refugees with UNRWA. In total, 18 tents and shacks were bulldozed, displacing over 180 persons, including at least 47 school-age children. The community was displaced to Idhna village located on the 'other side' of the Wall, where some families also have homes. One of the main impacts on the community, apart from being displaced, is that they will have no or limited access to grazing land for their livestock, the main source of their livelihood, and will have to purchase expensive fodder for their animals, threatening their economic viability.

The Qassa community has been displaced by the Wall and its associated regime, which was found illegal by the International Court of Justice because it affects the demographic composition of the OPT and violates the right to self-determination of the Palestinian people. Home demolition and eviction also lead to forced displacement and amount to forcible population transfer, a war crime and crime against humanity according to the Rome Statute of the International Criminal Court.



*Qassa village displacement : remains of a house, 29 Oct 2007. (©OCHA opt)*

## REVIEW : NEWLY AVAILABLE WOMEN'S VOICE ARCHIVE

By Isabelle Humphries

While including links to the author's thoughts and reflections, unlike traditional written texts in which short interview clips are all too often submerged in academic theory, *Voices* allows the audience to actively listen themselves.



Hajji Aysha introducing Palestinian embroidery, her own dresses, 1999. (©Leena Saraste)

### VOICES: PALESTINIAN WOMEN NARRATE DISPLACEMENT

*I had my head on somebody's lap, and I remember looking at the stars. The world seemed so big – like leaving your home which is small and structured, and going into the big wide world. It was very scary. But at the same time, as a little child, even then, looking at the sky and the stars, I was wondering what was going to happen.*

*Suad Andraos – exiled as a child from Jaffa*

Suad Andraos and her two sisters Leila and Widad are three of seventy women (and a number of men) voicing their displacement across hours of recording directly accessible on a new internet voice archive. From 90 year old Hajjah Rafiqqa Sleimi in the ground floor of the Jerusalem Old City home where Jewish settlers squat on the top floors, to Umm Muhammad who ran from 1948 Beersheba under gunfire, able to save her children by tying their arms around her neck, these displaced voices form an invaluable new national archive.

The project emerged from recordings made by Rosemary Sayigh during several visits to different regions of historic Palestine between 1998 and 2000. Having done much to promote oral history methodology in studies of Palestinian history and politics in earlier works based in the Lebanese camps, with this project the author addresses women displaced but remaining in historic Palestine.

As explored by several authors in *Al-Majdal's* recent special issue (32), oral history methodology enables the voices of women, rural and refugee communities, all those marginalised by written histories of military and political elites, to become central to an understanding of Palestinian

community history. With this latest work, an 'e-book' seemed the most appropriate forum to present these voices, both allowing an audience to listen to and engage with the narrative, and forming a permanent national archive. While including links to the author's thoughts and reflections, unlike traditional written texts in which short interview clips are all too often submerged in academic theory, *Voices* allows the audience to actively listen themselves.

## DEFINING DISPLACEMENT

The Jews [settlers] came and threw me out. They threw me out and put me in the middle of the house [courtyard] for seven days. I found this room. I swept it and I stayed in it...I repaired it, I whitewashed it, I took out the tiles. I fixed it and I stayed in it...

...The Jews threw me out, they threw me out twice. But I stayed. And I am sitting here firmly on top of their hearts. Here I am.

Hajjah Rafiqah Sleimi in her home besieged by settlers in the Old City of Jerusalem

*What is displacement (Arabic: tahweel, tahjeer)?* How many forms can it take? In a detailed introduction Sayigh explains that she searched for speakers who had been displaced in one of several ways – through expulsion, deportation, home demolition, imprisonment – but she allows the speakers to define the concept for themselves. Although the recordings were made before the latest phase of Israeli repressive measures, (sadly) the stories are not dated – there is something timeless about these accounts of displacement. Umm Kassem al-Azrak of Aida Camp has moved 30 times since exile from her village - her house was destroyed when her daughter was imprisoned, three sons were also imprisoned and a daughter-in-law killed. Suhayla of Bir 'Ona and Hajjah Aysha Aqel of Sheikh Jarrah describe their constant struggle and fears of housing demolition. Na'ima al-Helou of Jabaliya camp describes regular imprisonment which Sayigh terms 'the most extreme type of coercive displacement'. These stories could be from any decade of Israeli occupation.

A key strength of this project is its inclusive nature - women have been selected from very different geographic regions, and various educational, political and class backgrounds. A notable inclusion is two groups often sidelined - Palestinian women living inside Israel, the part of Palestine occupied in 1948, and Palestinian Bedouin women. All too often academics and activists alike, for political reasons or lack of awareness and communication, have difficulties with inclusion of Palestinian women today living with Israeli citizenship. Owing to their marginal status to central Palestinian politics and difficulty of access to unrecognized villages, the lives of Bedouin women are too often excluded, or set aside as a 'separate' category. In the *Voices* archive, these women fit seamlessly alongside others of the West Bank, Gaza and Jerusalem as an integral part of the Palestinian nation.

*I had come to the conclusion that displacement was the defining experience of the Palestinian people in modern times. The aim of the voice archive would be to offer evidence of different forms and contexts; how women have experienced displacement; how they narrate it; how they integrate displacement into larger narratives of 'destiny'; and how their stories differ from those of men.*

Rosemary Sayigh

*Introduction to the Voice Archive:*

*Why Palestinians? Why Displacement? Why Women?*

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**Umm Kassem al-Azrak of Aida Camp has moved 30 times since exile from her village - her house was destroyed when her daughter was imprisoned, three sons were also imprisoned and a daughter-in-law killed.**

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**Na'ima al-Helou of Jabaliya camp describes regular imprisonment which Sayigh terms 'the most extreme type of coercive displacement'.**

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She describes how in early days ‘most exiles covered their wounds with silence’, and that despite marriage into a Palestinian family, it was many years before she became aware of the depth of the rupture and devastation caused by 1948 - ‘Looking back, I realize also that I didn’t have the right questions; and if you don’t ask the right questions, people are not going to tell you.’

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## PROVIDING CONTEXT

When engaging with the voices of the archive, take time for the author’s introduction which not only details the genesis of this particular project, but critically reflects on the development of her own thought process and the powerful influence of four Palestinian women exiled in Lebanon, including the memory of her own mother-in-law from the northern Galilee village of al-Bassa.

Because of these women, I could never have approached Palestinian women simply as victims, whether of Israeli aggression or Arab societal patriarchy. Nor could I view them as in need of ‘empowerment’ from Western women.

*Sayigh’s personal reflections begin with her own arrival in Beirut less than a decade after the Nakba, having married into a family exiled from Tiberias. She describes how in early days ‘most exiles covered their wounds with silence’, and that despite marriage into a Palestinian family, it was many years before she became aware of the depth of the rupture and devastation caused by 1948 - ‘Looking back, I realize also that I didn’t have the right questions; and if you don’t ask the right questions, people are not going to tell you.’*

Registering at the university in the early 1970s to study anthropology, the author began to stay in Dbeyeh camp with Umm Joseph, a cousin of her late mother-in-law. Some 15 kilometres north of Beirut in a predominantly Maronite area, Dbeyeh camp was to be destroyed by Lebanese militia in the civil war. It was here in Dbeyeh, while initially perceiving such stays as ‘field research’, that Sayigh sees herself as beginning to understand the lived experience of the Nakba and the ways that loss of land and home had ruptured lives of Palestinian villagers – a history that the geo-social separation between the urban middle class of Beirut and the rural camps had allowed her to remain ignorant of. ‘I just sat and listened to stories of the peasant past and refugee



Hajji Aysha Aqel and her husband, June 1999. (©Leena Saraste)



present. At the time I thought of this as 'participant/observation'; later I realized it was just a beginning of living with Palestinians.'

Sayigh's insightful work since the 1970s has included important anthropological and sociological observations, contributing to an understanding of gender relations, child upbringing and refugee lifestyle. Yet crucially, her work is never divorced from the political context. How would it be possible to reflect upon the social position and vulnerabilities of Palestinian women without understanding the context of displacement in which they live? How could one truly understand the lives of Palestinian women without a grasp on the social and political devastation caused by the 1948 *Nakba* and continually since that time? How could this possibly be a political sphere which is somehow separate from social relations? The author voices her own anger at the academic trend of considering changes and development in Palestinian women's lives purely through a paradigm of progressive modernization, without considering the context of decades of upheaval that the national community has undergone through this time.

In short this new archive is an invaluable source for national, activist and academic purposes. Illustrated by well chosen photographs both of speakers themselves and the surroundings in which they live, the site is easy to find one's way around, even for those not proficient in new media. Recordings can be downloaded at the click of a button without complicated installation processes. While the vast majority of interviews are in Arabic, the archive remains useful for those with poor or no Arabic – the Andraos sisters of Jaffa and Marie Sarraf of Gaza City chose to speak in English. Sayigh also includes Australian Jean Calder, who has three adopted Palestinian children and recorded in her Gaza home – (earlier having been deported from Lebanon)- demonstrating the author's belief that being Palestinian can also be a political as well as biological choice. Opening paragraphs to all interviews are also translated into English.

The beauty of an e-book is that it can be continually added to – the author is working on further text on life in each of the four geographic areas from which the speakers come. Bookmark the site now: <http://almashriq.hiof.no/palestine/300/301/voices/index.html>

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*Isabelle Humphries - currently completing doctoral research regarding Palestinian internally displaced refugees. Contact [isabellebh2004@yahoo.co.uk](mailto:isabellebh2004@yahoo.co.uk)*

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**I had come to the conclusion that displacement was the defining experience of the Palestinian people in modern times.**

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## BDS Update

### Mid-July to Mid-November 2007

#### New BDS tools

##### **New BDS Guide from Stop the Wall and War on Want: Towards a Global Movement for Palestine: A Framework for Today's Anti-Apartheid Activism**

August 2007, OPT - The report considers the scope for the development of a global BDS activism strategy in accordance with the goals set out by Palestinians in their BDS calls.

You can download the BDS guide from:

<http://stopthewall.org/news/boycot.shtml>

[http://www.waronwant.org/Latest Research for Download+8247.twl](http://www.waronwant.org/Latest+Research+for+Download+8247.twl)

##### **New Report by the Alternative Information Center: The Case for Academic Boycott against Israel**

August 2007, OPT – This report is an initial compilation of facts documenting the discriminatory practices implemented by the Israeli academic system, as well as this system's active and ongoing involvement in the occupation of the Palestinian territories.

To access the report, see: [http://www.alternativenews.org/images/stories/downloads/other/The\\_Case\\_for\\_Academic\\_Boycott\\_against\\_Israel.pdf](http://www.alternativenews.org/images/stories/downloads/other/The_Case_for_Academic_Boycott_against_Israel.pdf)

##### **New Survey: BDS: An International Campaign on Behalf of Palestinian Human Rights and a Just and Viable Peace in Israel-Palestine**

August 2007, US - This is a survey of diverse approaches to ethical economic engagement adopted by groups and individuals worldwide and is an ongoing review by the Palestine-Israel Action Group (PIAG). For more, see: <http://www.quakerpi.org/QAction/ECON-SURVEY-Version2.html>

#### BDS campaigns

##### **UK- Protesters Occupy UK warehouse of Israeli State Exporter**

July 16, 2008 - A group of Palestine solidarity protesters entered the main UK warehouse of Israeli company Carmel Agrexco in Uxbridge, Middlesex. Their action aims to end Israel's breach of International law and abuse of human rights in the occupied territories of Palestine.

Report on Carmel's Involvement in the Jordan Valley:

<http://www.indymedia.org.uk/en/2005/09/322537.html>

War on Want's Report - "Profiting from the Occupation":

<http://www.waronwant.org/?lid=12671>

##### **US Lutherans consider Israel boycott**

August, US - The Evangelical Lutheran Church in America (ELCA), which has almost five million members in the US, took a step toward a partial boycott of Israeli goods at its Churchwide Assembly. According to Bishop Christopher Epting, the presiding bishop's deputy for ecumenical and interfaith relations, the assembly urged "consideration of refusing

to buy goods or invest in activities taking place in Israeli settlements, and a review of other economic options."

### **Fair Play for the Palestinians: Kick Israeli Apartheid Out of Football**

August-September 2007- The campaign which aims to have the Israeli National Football team suspended from international matches gathered pace. On Saturday 8 September 2007, around 250 supporters of Palestinian human rights gathered to protest at Wembley stadium for the England-Israel qualifying match for the Euro 2008 competition. Thousands of supporters from around the world have now signed the petition asking for Fair Play for the Palestinians and to Kick Israeli Apartheid out of Football. To sign the petition: <http://www.palestinecampaign.org/petition.asp?PetitionID=4>

### **Boycotting El Al – Israel's main airline company for its systematic discrimination of Palestinian citizens of Israel.**

The Committee for Safeguarding Freedoms, a subcommittee of the Higher Arab Monitoring Committee may include passenger boycotts against El Al for its discriminatory treatment of Palestinian citizens of Israel at the airport.

### **BDS Success: Campaign against One Voice Due to Grassroots Mobilization**

October 2007, OPT - The Palestinian Campaign for the Academic and Cultural Boycott of Israel (PACBI) and all its partners, individuals and organizations active in art, culture and human rights, regard the cancellation of the Jericho-Tel Aviv event, planned by "One Voice" to take place on October 18th, as a substantial accomplishment for the Palestinian boycott movement.

One voice is an organization who's platform among other things that supports: the annexation of the settlement blocs and the recognition of Israeli sovereignty over Jewish "areas"(meaning settlements) in Jerusalem. The PACBI statement can be read at: [http://www.pacbi.org/press\\_releases\\_more.php?id=612\\_0\\_4\\_0\\_C](http://www.pacbi.org/press_releases_more.php?id=612_0_4_0_C)

### **Two French companies are brought to trial by the PLO for their involvement in the light-railway project in occupied East Jerusalem**

October 2007, France - The Palestine Liberation Organisation (PLO) has begun action against two prominent French companies (Alstom and Veolia Transport) in an attempt to stop work on the light-railway project in occupied East Jerusalem. When it begins operating in 2010, the railway will stretch for eight and a half miles through West and East Jerusalem. The PLO argues that the railway will breach the fourth Geneva convention by providing infrastructure to Jewish settlements on occupied land. A key section of the line will run into East Jerusalem, linking Jewish settlements to the city centre. "This tram will constitute at least an element in the expansion of the colonisation of East Jerusalem by the state of Israel," the Palestinian delegation said in a statement.

### **Scottish Charity KKL Scotland Challenged**

October 2007, Scotland - The Scottish Palestine Solidarity Campaign has sent a letter to the Office of the Scottish Charity Regulator to request that they review the charity registration recently given to KKL-Scotland in relation to KKL-Scotland's link with KKL-JNF in Israel and Israel's discriminatory land policy. For more, see Scottish Palestine Solidarity Campaign: [www.scottishpsc.org.uk](http://www.scottishpsc.org.uk)

**Scottish Palestine Solidarity Campaign urges Edinburgh City Councillors to vote in support of a motion calling for the cancellation of the Council's contract with Eden Springs UK Ltd**

November 2007, Scotland - Eden Springs UK Ltd is ultimately owned by Eden Springs Ltd or Mayanot Eden in Israel. Scottish Palestine Solidarity Campaign has a campaign calling for a boycott of this company based on the activities of Mayanot Eden in the Golan Heights and related to the theft of water resources by Israel. For more see: [www.scottishpsc.org.uk](http://www.scottishpsc.org.uk)

**Palestinian Rights Protest at the opening of diamond mogul Lev Leviev's Madison Avenue jewellery store**

Over 100 well-dressed New Yorkers attending the opening of diamond mogul Lev Leviev's Madison Avenue jewellery store appeared stunned to find their evening derailed by a noisy protest against Leviev's construction of illegal West Bank settlements. Gala attendees set down their champagne glasses to view the signs and Palestinian flags, and hear protesters' chants. 30 New York City human rights activists chanted, "You're glitz, you're glam, you're building on Palestinian land", and "All your diamonds cannot hide, your support for Apartheid." Protesters called on New York City's upscale residents to boycott Leviev's diamonds.

Lev Leviev is one of Israel's richest men. He built his enormous fortune trading in diamonds with Apartheid-era South Africa. His company now buys diamonds from the repressive Angolan government. Leviev uses profits from diamond sales to fuel the conflict in Palestine and Israel by funding the construction of suburban developments for Israeli settlers on occupied Palestinian land in the West Bank, undermining the prospects for Middle East peace, and threatening farmers' ability to survive and remain in their homes. Leviev's diamonds are "conflict diamonds" in a broad sense of the term, funding repression in Angola and violations of international law in Palestine.

For more info: Adalah-NY: The Coalition for Justice in the Middle East: [www.mideastjustice.org](http://www.mideastjustice.org)

## UNITED NATIONS INTERNATIONAL CONFERENCE OF CIVIL SOCIETY IN SUPPORT OF THE PALESTINIAN PEOPLE

### INTERNATIONAL COORDINATING NETWORK ON PALESTINE

European Parliament, Brussels  
August 30-31 2007

*Realizing the inalienable rights of the Palestinian People:  
60 years is enough! End the dispossession; bring the refugees home!*

### PLAN OF ACTION

Israeli occupation and apartheid, backed by international support and acquiescence, continue to deny the Palestinian people their inalienable rights, including the rights of self-determination and return. While the humanitarian, political and social conditions inside the Occupied Palestinian Territory continue to deteriorate, especially in the occupied and besieged Gaza Strip, while Palestinian refugees around the world remain unable to exercise their internationally-mandated right of return, and while Palestinians inside Israel continue to face institutionalized discrimination, we recognize and remain committed to our global obligation to work to realize those rights.

As we civil society organizations convene again to take up that obligation, we continue to anchor our work within the principles of human rights, international law, the United Nations Charter and resolutions, and with a commitment to internationalism, a just peace, and the belief that the UN remains central to ending the occupation.

We meet in the sober recognition that international diplomacy has failed to achieve the Palestinians' inalienable rights. Primarily because of U.S. support for Israeli occupation and apartheid policies, and because Europe, the United Nations and other international actors have failed to adequately challenge that support, diplomatic efforts including the Quartet and the so-called "Roadmap to Peace" have failed. We do not believe further diplomatic efforts within these inadequate frameworks, including the plans for a limited November 2007 meeting in which the United Nations and the European Union will be allowed to play only a marginal role, are any more likely to succeed.

Nevertheless, the role of parliaments and parliamentarians remains crucial to any future diplomatic success, and we commit ourselves to work closely with our own national and regional parliaments towards this end. We will particularly focus our parliamentary work on pressing governments to make good on their obligations to implement the 4th Geneva Convention and other aspects of international law. We continue to believe that international support for Palestinian rights remains a fundamental obligation of civil society organizations around the world. We also recognize our obligations to work towards the reassertion of United Nations centrality in Palestine-related diplomacy.

Palestinian democracy has been undermined, primarily by the crippling U.S.- and Israeli-led economic and political sanctions imposed on the Palestinians, resulting in an escalated humanitarian crisis, particularly in Gaza.

On the 29 November 1947, the UNGA passed Resolution 181, the Partition Resolution, which divided Palestine into a 'Jewish state' and an 'Arab state'; giving 55% of the land to the former and 45% to the latter. In three months time, on the 29 November, when festivals will be held in Israel to celebrate Resolution 181, we must protest the land theft that followed. Five and half months later, on the 15 May 2008, when Israel celebrates its founding, we must loudly and vociferously shout out our rejection of 60 years of dispossession and expulsion. We must say to the world that "Enough is enough!"

Israeli policies towards Palestinians in Israel and the Occupied Palestinian Territory constitute violations of the United Nations International Covenant Against the Crime of Apartheid. We will work to identify those violations and to bring to justice all perpetrators of that crime. We also commit ourselves and our organizations to continuing to work for the implementation and enforcement of the three-year-old Advisory Opinion of the International Court of Justice that held Israel's Apartheid Wall, and its entire settlement project in the Occupied Palestinian Territory, to be illegal. We recognize special urgency in regard to the Wall, because its encircling of Palestinian towns and cities in the most massive Israeli land-grab since 1967, is close to complete, and we renew our call on the United Nations, especially the General Assembly, to work for full implementation of its ICJ opinion.

We meet in the halls of the European Parliament, in the capital of Europe, on the eve of the 60th anniversary of the Palestinian *nakba*, or catastrophe, that resulted in the creation of the State of Israel. That continuing catastrophe, with its dispossession and loss of lands for hundreds of thousands of Palestinians and the disempowerment of tens of thousands more, set the conditions for today's political, economic and humanitarian crises. We recognize the particular responsibility of Europe in the origins of that crisis, as it was the response to European anti-Semitism and ultimately the Holocaust against European Jews that led to Europe's decision to support a solution to the "Jewish Question" that was taken at the expense of the Palestinian people. In acknowledgement of that stark reality, we call on Europe and the United Nations to join with civil society in recognizing 2008 as a year to commemorate the *Nakba* and to commit to reverse its losses.

We are committed to creating a new reality in the Middle East, for all its peoples: a reality based on justice, equality, human rights and international law; a reality that ends the occupation; and a reality that realizes, finally, the inalienable rights of the Palestinian people, including the right to self-determination and return, and the right to establish an independent, sovereign Palestinian state with its capital in Jerusalem.

We demand an immediate end to the isolation of Gaza. We call for the immediate release of Palestinian parliamentarians and cabinet ministers illegally kidnapped by Israeli occupation forces. We also call on Palestinians to move towards a renewal of political unity within the Occupied Palestinian Territory, and for immediate international recognition of such a reunified Palestinian polity. We support our Palestinian civil society counterparts, and we remain very concerned about the threat to democracy posed by the recent banning of 103 non-governmental organizations.

We thus make the following call:

### Call to Action

We condemn the U.S.-Israeli led international boycott of the Palestinian people, and we will respond, following the call of Palestinian civil society in 2005, by strengthening our global campaign of boycotts, divestment and sanctions (BDS) as a non-violent effort against Israeli occupation, Apartheid and oppression.

We condemn Israeli policies of exclusivism and discrimination against Palestinians, and we commit ourselves to a campaign identifying and opposing Israeli policies as violations of the International Covenant Against the Crime of Apartheid.

We condemn the current U.S.-controlled diplomatic efforts as a politically-driven manipulation, and we will respond by working to expand and strengthen the role of the United Nations and global civil society. With our colleagues in the European Coordinating Committee on Palestine and others in global civil society, with the United Nations, with parliaments and parliamentarians as well as organizations such as the Council of Europe and the European Union, we will join efforts to demand that governments work to meet their obligations under the 4th Geneva Convention and under other relevant aspects of international law in respect of Israeli violations. We recognize the specific obligations imposed on all signatories to the 4th Geneva Convention to implement the ICJ Advisory Opinion.

We reject the claim that at a time of internal Palestinian division and crisis that the international community and global civil society must simply stand aside, and we reassert our renewed commitment to work for justice, equality and human rights. We call on the international community to respect the results of Palestinian democracy.

We call on the European Union to organize a fact-finding mission to investigate Israeli violations of the International Covenant Against the Crime of Apartheid and other international laws in its treatment of the Palestinians living inside Israel, as well as its violations of the 4<sup>th</sup> Geneva Conventions in Israel's isolation campaign against the 1.5 million people of the Gaza Strip.

We condemn the rising triumphalism that marks so much of U.S., Israeli and European celebration of Israel's independence, and we are building a campaign of education and mobilization to mark 2008 as a year to commemorate Palestinian dispossession and expulsion, and a year committed to reversing those 60-year-old losses. In particular we call on the United Nations, the European Union and the Non-Aligned Movement to mark November 29, 2007 as an international day to commemorate the 1947 Partition Resolution and its consequences.

Finally, we commit ourselves, and call on global civil society, to join Palestinian communities inside Israel, in exile and the Occupied Palestinian Territory in mobilizing for a year of educational and campaigning work beginning on November 29, 2007. That year will include May 15, 2008, as a day of global mobilization to commemorate the *Nakba*, and the continuing dispossession and denial of Palestinian rights.

## **Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law**

**Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005**

*The General Assembly,*

*Guided* by the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights, other relevant human rights instruments and the Vienna Declaration and Programme of Action,

*Affirming* the importance of addressing the question of remedies and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law in a systematic and thorough way at the national and international levels,

*Recognizing* that, in honouring the victims' right to benefit from remedies and reparation, the international community keeps faith with the plight of victims, survivors and future human generations and reaffirms international law in the field,

*Recalling* the adoption of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law by the Commission on Human Rights in its resolution 2005/35 of 19 April 2005 and by the Economic and Social Council in its resolution 2005/30 of 25 July 2005, in which the Council recommended to the General Assembly that it adopt the Basic Principles and Guidelines,

1. *Adopts* the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law annexed to the present resolution;
2. *Recommends* that States take the Basic Principles and Guidelines into account, promote respect thereof and bring them to the attention of members of the executive bodies of government, in particular law enforcement officials and military and security forces, legislative bodies, the judiciary, victims and their representatives, human rights defenders and lawyers, the media and the public in general;
3. *Requests* the Secretary-General to take steps to ensure the widest possible dissemination of the Basic Principles and Guidelines in all the official languages of the United Nations, including by transmitting them to Governments and intergovernmental and non-governmental organizations and by including the Basic Principles and Guidelines in the United Nations publication entitled *Human Rights: A Compilation of International Instruments*.

*64<sup>th</sup> plenary meeting  
16 December 2005*



## Annex

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

### Preamble

*The General Assembly,*

*Recalling* the provisions providing a right to a remedy for victims of violations of international human rights law found in numerous international instruments, in particular article 8 of the Universal Declaration of Human Rights, 1 article 2 of the International Covenant on Civil and Political Rights, 2 article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and article 39 of the Convention on the Rights of the Child, and of international humanitarian law as found in article 3 of the Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV), article 91 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, and articles 68 and 75 of the Rome Statute of the International Criminal Court,

*Recalling* the provisions providing a right to a remedy for victims of violations of international human rights found in regional conventions, in particular article 7 of the African Charter on Human and Peoples' Rights, article 25 of the American Convention on Human Rights, and article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms,

*Recalling* the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power emanating from the deliberations of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and General Assembly resolution 40/34 of 29 November 1985 by which the Assembly adopted the text recommended by the Congress,

*Reaffirming* the principles enunciated in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, including that victims should be treated with compassion and respect for their dignity, have their right to access to justice and redress mechanisms fully respected, and that the establishment, strengthening and expansion of national funds for compensation to victims should be encouraged, together with the expeditious development of appropriate rights and remedies for victims,

*Noting* that the Rome Statute of the International Criminal Court requires the establishment of "principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation", requires the Assembly of States Parties to establish a trust fund for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims, and mandates the Court "to protect the safety, physical and psychological well-being, dignity and privacy of victims" and to permit the participation of victims at all "stages of the proceedings determined to be appropriate by the Court",

*Affirming* that the Basic Principles and Guidelines contained herein are directed at gross violations of international human rights law and serious violations of international humanitarian law which, by their very grave nature, constitute an affront to human dignity,

*Emphasizing* that the Basic Principles and Guidelines contained herein do not entail new international or domestic legal obligations but identify mechanisms, modalities, procedures and methods for the

implementation of existing legal obligations under international human rights law and international humanitarian law which are complementary though different as to their norms,

*Recalling* that international law contains the obligation to prosecute perpetrators of certain international crimes in accordance with international obligations of States and the requirements of national law or as provided for in the applicable statutes of international judicial organs, and that the duty to prosecute reinforces the international legal obligations to be carried out in accordance with national legal requirements and procedures and supports the concept of complementarity,

*Noting* that contemporary forms of victimization, while essentially directed against persons, may nevertheless also be directed against groups of persons who are targeted collectively,

*Recognizing* that, in honouring the victims' right to benefit from remedies and reparation, the international community keeps faith with the plight of victims, survivors and future human generations and reaffirms the international legal principles of accountability, justice and the rule of law,

*Convinced* that, in adopting a victim-oriented perspective, the international community affirms its human solidarity with victims of violations of international law, including violations of international human rights law and international humanitarian law, as well as with humanity at large, in accordance with the following Basic Principles and Guidelines,

*Adopts* the following Basic Principles and Guidelines:

**I. Obligation to respect, ensure respect for and implement international human rights law and international humanitarian law**

1. The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law emanates from:
  - (a) Treaties to which a State is a party;
  - (b) Customary international law;
  - (c) The domestic law of each State.
2. If they have not already done so, States shall, as required under international law, ensure that their domestic law is consistent with their international legal obligations by:
  - (a) Incorporating norms of international human rights law and international humanitarian law into their domestic law, or otherwise implementing them in their domestic legal system;
  - (b) Adopting appropriate and effective legislative and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice;
  - (c) Making available adequate, effective, prompt and appropriate remedies, including reparation, as defined below;
  - (d) Ensuring that their domestic law provides at least the same level of protection for victims as that required by their international obligations.

**II. Scope of the obligation**

3. The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to:
  - (a) Take appropriate legislative and administrative and other appropriate measures to prevent violations;
  - (b) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law;
  - (c) Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, as described below, irrespective of who may ultimately be the bearer of responsibility for the violation; and

(d) Provide effective remedies to victims, including reparation, as described below.

### **III. Gross violations of international human rights law and serious violations of international humanitarian law that constitute crimes under international law**

4. In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him. Moreover, in these cases, States should, in accordance with international law, cooperate with one another and assist international judicial organs competent in the investigation and prosecution of these violations.
5. To that end, where so provided in an applicable treaty or under other international law obligations, States shall incorporate or otherwise implement within their domestic law appropriate provisions for universal jurisdiction. Moreover, where it is so provided for in an applicable treaty or other international legal obligations, States should facilitate extradition or surrender offenders to other States and to appropriate international judicial bodies and provide judicial assistance and other forms of cooperation in the pursuit of international justice, including assistance to, and protection of, victims and witnesses, consistent with international human rights legal standards and subject to international legal requirements such as those relating to the prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment.

### **IV. Statutes of limitations**

6. Where so provided for in an applicable treaty or contained in other international legal obligations, statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law.
7. Domestic statutes of limitations for other types of violations that do not constitute crimes under international law, including those time limitations applicable to civil claims and other procedures, should not be unduly restrictive.

### **V. Victims of gross violations of international human rights law and serious violations of international humanitarian law**

8. For purposes of the present document, victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.
9. A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim.

### **VI. Treatment of victims**

10. Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.

### **VII. Victims' right to remedies**

11. Remedies for gross violations of international human rights law and serious violations of international

humanitarian law include the victim's right to the following as provided for under international law:

- (a) Equal and effective access to justice;
- (b) Adequate, effective and prompt reparation for harm suffered;
- (c) Access to relevant information concerning violations and reparation mechanisms.

#### **VIII. Access to justice**

12. A victim of a gross violation of international human rights law or of a serious violation of international humanitarian law shall have equal access to an effective judicial remedy as provided for under international law. Other remedies available to the victim include access to administrative and other bodies, as well as mechanisms, modalities and proceedings conducted in accordance with domestic law. Obligations arising under international law to secure the right to access justice and fair and impartial proceedings shall be reflected in domestic laws. To that end, States should:
  - (a) Disseminate, through public and private mechanisms, information about all available remedies for gross violations of international human rights law and serious violations of international humanitarian law;
  - (b) Take measures to minimize the inconvenience to victims and their representatives, protect against unlawful interference with their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during and after judicial, administrative, or other proceedings that affect the interests of victims;
  - (c) Provide proper assistance to victims seeking access to justice;
  - (d) Make available all appropriate legal, diplomatic and consular means to ensure that victims can exercise their rights to remedy for gross violations of international human rights law or serious violations of international humanitarian law.
13. In addition to individual access to justice, States should endeavour to develop procedures to allow groups of victims to present claims for reparation and to receive reparation, as appropriate.
14. An adequate, effective and prompt remedy for gross violations of international human rights law or serious violations of international humanitarian law should include all available and appropriate international processes in which a person may have legal standing and should be without prejudice to any other domestic remedies.

#### **IX. Reparation for harm suffered**

15. Adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law. In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.
16. States should endeavour to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.
17. States shall, with respect to claims by victims, enforce domestic judgements for reparation against individuals or entities liable for the harm suffered and endeavour to enforce valid foreign legal judgements for reparation in accordance with domestic law and international legal obligations. To that end, States should provide under their domestic laws effective mechanisms for the enforcement of reparation judgements.
18. In accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the

circumstances of each case, be provided with full and effective reparation, as laid out in principles 19 to 23, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

19. *Restitution* should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.
20. *Compensation* should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:
  - (a) Physical or mental harm;
  - (b) Lost opportunities, including employment, education and social benefits;
  - (c) Material damages and loss of earnings, including loss of earning potential;
  - (d) Moral damage;
  - (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.
21. *Rehabilitation* should include medical and psychological care as well as legal and social services.
22. *Satisfaction* should include, where applicable, any or all of the following:
  - (a) Effective measures aimed at the cessation of continuing violations;
  - (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;
  - (c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;
  - (d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;
  - (e) Public apology, including acknowledgement of the facts and acceptance of responsibility;
  - (f) Judicial and administrative sanctions against persons liable for the violations;
  - (g) Commemorations and tributes to the victims;
  - (h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.
23. *Guarantees of non-repetition* should include, where applicable, any or all of the following measures, which will also contribute to prevention:
  - (a) Ensuring effective civilian control of military and security forces;
  - (b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;
  - (c) Strengthening the independence of the judiciary;
  - (d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;
  - (e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;
  - (f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;
  - (g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution;

(h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.

**X. Access to relevant information concerning violations and reparation mechanisms**

24. States should develop means of informing the general public and, in particular, victims of gross violations of international human rights law and serious violations of international humanitarian law of the rights and remedies addressed by these Basic Principles and Guidelines and of all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access. Moreover, victims and their representatives should be entitled to seek and obtain information on the causes leading to their victimization and on the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law and to learn the truth in regard to these violations.

**XI. Non-discrimination**

25. The application and interpretation of these Basic Principles and Guidelines must be consistent with international human rights law and international humanitarian law and be without any discrimination of any kind or on any ground, without exception.

**XII. Non-derogation**

26. Nothing in these Basic Principles and Guidelines shall be construed as restricting or derogating from any rights or obligations arising under domestic and international law. In particular, it is understood that the present Basic Principles and Guidelines are without prejudice to the right to a remedy and reparation for victims of all violations of international human rights law and international humanitarian law. It is further understood that these Basic Principles and Guidelines are without prejudice to special rules of international law.

**XIII. Rights of others**

27. Nothing in this document is to be construed as derogating from internationally or nationally protected rights of others, in particular the right of an accused person to benefit from applicable standards of due process.

Resolution 217A (III).

Resolution 2200 A (XXI), annex.

A/CONF.157/24 (Part I), chap. III.

See *Official Records of the Economic and Social Council, 2005, Supplement No. 3 and corrigendum (E/2005/23 and Corr.1)*, chap. II, sect. A.

Resolution 2106 A (XX), annex.

United Nations, *Treaty Series*, vol. 1465, No. 24841.

*Ibid.*, vol. 1577, No. 27531.

See Carnegie Endowment for International Peace, *The Hague Conventions and Declarations of 1899 and 1907* (New York, Oxford University Press, 1915).

United Nations, *Treaty Series*, vol. 1125, No. 17512.

*Official Records of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June–17 July 1998*, vol. I: *Final documents* (United Nations publication, Sales No. E.02.I.5), sect. A.

United Nations, *Treaty Series*, vol. 1520, No. 26363.

*Ibid.*, vol. 1144, No. 17955.

*Ibid.*, vol. 213, No. 2889.



*Remnants of al-Majdal*

Source: [www.palestineremembered.com](http://www.palestineremembered.com)

## About the meaning of al-Majdal

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

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

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

1948 – 2008: 60 Years of the Palestinian *Nakba*

Survey of  
Palestinian Refugees  
and  
Internally Displaced Persons  
2006 - 2007



BADIL Resource Center  
for Palestinian Residency & Refugee Rights



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