

## **BADIL Occasional Bulletin No. 22**

November 2004

### **Resolution 181: A state for some, occupation for others**

*This Bulletin aims to provide a brief overview of issues related to Palestinian Refugee Rights*

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**(November 29 is the anniversary of the adoption of General Assembly Resolution 181 which recommended the partition of Palestine and also the International Day in Solidarity with the Palestinian People.)**

Fifty-seven years ago the United Nations recommended that Palestine be split into two states, one Arab and the other Jewish (General Assembly Resolution 181).

The Plan said that each state should adopt a constitution as a condition for international recognition. In the meantime there were to be two provisional governments during a transitional period. The governments were to be elected by one person, one vote.

Since then, the country and the region have been racked by almost continuous violence, including several wars. Two years ago, the United Nations Security Council reaffirmed the vision of two states, Israel and Palestine (Resolution 1397). And yet military occupation and violence has continued.

The UN Special Envoy to the Middle East Peace Process Terje Larsen says that the two-state solution is the only viable way out of the conflict. US President George Bush says that America seeks "a democratic, independent and viable state for the Palestinian people." But he also says that America is "committed to the security of Israel as a Jewish state."

For the last two years President Bush has been saying that he supports a Palestinian state but in those two years:

- Israel began building a wall in the West Bank that the International Court of Justice says will prevent Palestinians from exercising their right to self-determination;
- Israel has established 51 new settlement outposts in the West Bank;
- settlements in Gaza have expanded by 190,000 sq. meters in late 2004 even though Israel says it will disengage from Gaza and
- the United States reneged on its decision to monitor settlement activity.

The Palestinians officially accepted a two-state compromise in 1988. Today a two-state solution is seen by most international observers as being the most practical or viable solution to the conflict. But if this vision is as practical and viable as everyone says it is, why has it caused so much conflict and taken so long to implement?

#### **Two demographic states?**

The 1947 UN Partition Plan for Palestine recommended the establishment of two democratic states in Palestine, one Arab and the other Jewish. The Arab state was never established. During the 1948 war, Israel occupied far more of Palestine than it was allotted under the Plan. Jordan occupied and later annexed the West Bank and eastern Jerusalem; Egypt administered the Gaza Strip. But Israel occupied both of these areas during the 1967 war.

Israel says that the UN Partition Plan recognized Israel as a Jewish state. Israel's High Court (Ben-Shalom vs. Central Election Committee) states that the Jewish character of the state is defined by three inter-related components: 1) that the Jews form the majority of the state; 2) that the Jews are entitled to preferential treatment such as the Law of Return; and 3) that a reciprocal relationship exists between the state and the Jews outside of Israel.

The UN never defined what it meant by a Jewish state, but the Partition Plan itself provides some good indicators. The population of the Jewish state in the plan, which covered 56 per cent of Palestine, had almost the same number of Jews and Palestinian Arabs. UN officials said it was impossible to create two viable states along strictly ethnic and religious lines because of the dispersion of the population throughout the country. On the ground, the Jewish state in the Partition Plan was a binational entity.

But the UN plan did put immigration under the control of the government of each state. Massive Jewish immigration was the only legitimate means under the UN plan to change the demographic balance in the Jewish state. In fact in 1950 Israel adopted the Law of Return under which any Jew in the world can acquire Israeli citizenship. A million Jewish immigrants came to the country during the first decade after Israel was established in 1948.

Israel's current Jewish majority came about with immigration but mainly because of the mass displacement and expulsion of Palestinians, 85 per cent of them, from within its boundaries during the 1948 war.

The UN seemed to be concerned about population balance. The Plan stated that "no Jew shall be permitted to establish residence in the area of the proposed Arab State, and no Arab shall be permitted to establish residence in the area of the proposed Jewish State, except by special leave" during the UN-supervised transition period. In other words there was to be no demographic change in the immediate period after the emergence of the two states.

The city of Jerusalem was to be put under UN administration under the Partition Plan. The Plan also said that "Palestinian citizens residing in Palestine outside the City of Jerusalem, as well as Arabs and Jews who, not holding Palestinian citizenship, reside in Palestine outside the City of Jerusalem shall, upon the recognition of independence, become citizens of the State in which they are resident and enjoy full civil and political rights." After one year, Jews and their families living in the Arab state could choose to become citizens of the Jewish state and vis-a-versa.

In other words, every Palestinian Arab who was a resident of the area of the Jewish state on the day of partition (29 November 1947) should also be a citizen of Israel. But in 1952 Israel adopted another law (Nationality Law) which prevents all Palestinian refugees who lived in villages in towns that became part of the territory of Israel from being citizens of the state.

### **This land is your land, this land is my land**

The Partition Plan recommended that a Jewish state be established on 56 per cent of the land of Palestine. Palestinians held ownership rights to about 90 per cent of the land in historic Palestine. The Partition Plan also accorded each state full control over matters of land regulation. But it said the right to individual property ownership should be constitutionally protected.

"No expropriation of land owned by an Arab in the Jewish State (or by a Jew in the Arab State) shall be allowed except for public purposes." When expropriation was necessary for public purposes, the Plan said that full compensation for the property should be fixed by the Supreme Court and shall be paid before dispossession.

But Israel adopted many laws, including the Absentees Property Law, to expropriate Palestinian property and transfer it to the state. This law also applies to Palestinians who are citizens of Israel today but who had temporarily left their villages during the war in 1948. Israel also confiscates land for public purpose, but often only to serve the Jewish population of the country.

The 1960 Basic Law: Israel Lands says that all land held by the state and the Jewish National Fund, the body set up to purchase lands for Jewish settlement "shall not be transferred either by sale or in any other manner." Today Israel says that 93 per cent of the land is held by the state for the inalienable use of the Jewish people in Israel and elsewhere. This law means that Palestinians have not been able to repossess their lands.

Israel did not compensate the owners previous to dispossession. It did set up a Custodian's Office for refugee property but then transferred the property to the state. The state paid money to the Custodian which was supposed to be held in an account until the refugee situation was resolved. During final status talks between Israel and the PLO, however, Israel said that the fund was empty.

### **Equality before the law specified but not realized**

The UN Partition Plan also said that each state should adopt a constitution as a condition for international recognition of independence. The Plan even specified what should go into the constitution. This included guarantees "to all persons equal and non-discriminatory rights in civil, political, economic and religious matters and the enjoyment of human rights and fundamental freedoms, including freedom of religion, language, speech and publication, education, assembly and association."

Each state was also supposed to make a declaration to the United Nations that it would uphold freedom of conscience and the free exercise of all forms of worship, non-discrimination, and equal protection before the law. "The stipulations contained in the declaration are recognized as fundamental laws of the State and no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action prevail over them."

The UN explained that because "there will be an ethnic minority element in the population...it is important, in the interest of orderly society, and for the well-being of all Palestinians, that full safeguards be ensured for the rights of all." The Plan also said that any member of the UN had the right to raise concerns about any infraction or danger of infraction of any of these stipulations, and the General Assembly could make recommendations as it deemed proper.

But Israel never adopted a constitution. It does have a number of 'Basic Laws', which it describes as a constitution in progress. The 1992 Basic Law: Human Dignity and Freedom, empowers the Supreme Court to overturn Knesset laws that are incompatible with the right to dignity, life, freedom, privacy, property and the right to leave and enter the country. But there is no fundamental right to equality.

This 1992 Basic Law does not provide for equality because religious political parties insisted upon maintaining the status quo between the State and religion and the majority sought to protect the character of the state as a Jewish state. Inclusion of a general article on equality was regarded as an obstacle to the passage of the law. This means that Palestinians cannot effectively challenge laws on nationality and property as discriminatory.

Under another Basic Law: the Knesset (Israeli Parliament), political parties and candidates that advocate that Israel be a state of all its citizens rather than a Jewish state may be disqualified from participating in elections.

### **The rule of law missing for Palestinians**

If there were disputes or disagreements about the declaration that each state was supposed to make before it was granted independence, the UN said that any dispute could be referred, at the request of either party, to the International Court of Justice (ICJ), unless the parties agree to another mode of settlement.

Some states tried to obtain an advisory opinion from the ICJ about whether the UN Plan itself was legal. They felt that any UN decision on the issue of Palestine should be consistent with international law. These states submitted a draft resolution with eight questions for the court concerning Palestinian rights, the legal status of the Balfour Declaration and the Mandate, as well as the legal authority of the UN to recommend and enforce future arrangements in Palestine without the democratic consent of the majority of its inhabitants. The General Assembly did not support this draft resolution.

Fifty-seven years later, the International Court of Justice delivered a non-binding advisory opinion on the question of Palestine and the wall being constructed in the West Bank. The Court said that Israel must cease construction of the wall and dismantle sections located in the occupied territories forthwith; repeal or render ineffective all related legislative and regulatory acts; compensate for damage caused; and, return Palestinian property or provide compensation if restitution is not possible.

The Court also recommended that states should neither recognize the wall nor provide aid or assistance to maintain the circumstances created by its construction; prevent any impediment, created by the wall's construction, to the exercise of the right of the Palestinian people to self-determination; and, ensure Israel's compliance with international humanitarian law. It called on the UN to consider what further action was needed to end the illegal situation caused by the wall's construction. (See: [BADIL Bulletin 20: International Court Rules Against Israel's Wall](#))

### **Solution or source of conflict?**

When Israel declared its establishment it said that it was "ready to cooperate with the organs and representatives of the United Nations in the implementation of the Resolution of the Assembly of November 29, 1947, and will take steps to bring about the Economic Union over the whole of Palestine." But it still has not implemented the main provisions of the Partition Plan relating to citizenship, property rights and equality before the law.

Maybe a two-state solution to the conflict is a practical and viable solution but only if the rule of law is respected. Implementation of the 2004 ICJ ruling on the wall will be a test case in this regard.

Even so, there is the possibility that partition and a two-state solution, especially along ethnic and religious lines, is the actual source of conflict and violence. After nearly six decades of trying partition, this cannot be easily dismissed.

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