

al majdal

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BADIL Resource Center for Palestinian Residency and Refugee Rights



**Oslo is Dead:
Alternative
Approaches to
Achieve
Durable Solutions**

BADIL is a Palestinian human rights organization established in 1998, dedicated to defending and promoting the rights of Palestinian refugees and internally displaced persons (IDPs), regardless of their geographic location, according to the frameworks of international humanitarian, human rights and refugee law. BADIL is one of the leading and respected resources on historic and contemporary forcible transfer and the Palestinian refugee and IDP issue.

BADIL has special consultative status through a partnership framework with UN ECOSOC, allowing it and its partners to engage regularly and assertively with all UN mechanisms. BADIL works to engage and empower Palestinian and international civil society to advance a rights-based solution according to international law.

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Cover photo: Yasser Arafat and Yitzhak Rabin receive the Nobel Peace Prize for signing the Oslo agreement in Washington. 13 September 1993.

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Oslo is Dead: *Alternative Approaches to Achieve Durable Solutions*

by *BADIL Staff*

Israeli Prime Minister Benjamin Netanyahu talks as he visits a construction site in the Israeli colony of Har Homa in East Jerusalem, a day ahead of parliamentary elections. Netanyahu is seeking his third consecutive term as premier, his fourth overall. 16 March 2015 (© ASSOCIATED PRESS)



Palestinian refugees and Internally Displaced Persons (IDPs) worldwide suffer from a grave ‘protection gap’, which refers to the lack of protection they are entitled to in accordance to international law. Individual states bear the primary responsibility for protecting the rights of their citizens and those subject to their authority and jurisdiction. In light of Israel’s failure to afford this protection to Palestinian refugees, the international community has an obligation to protect the rights of Palestinians, in particular the right to self-determination and the right of Palestinian refugees and IDPs to reparation (repatriation/return to their homes of origin, property restitution, compensation and non-repetition).

The international community, through the United Nations, nevertheless, has largely failed to meet its obligations towards the Palestinian people for reasons primarily resulting from the lack of political will among powerful western states. Despite the gravity of the policies and practices implemented by Israel, which have resulted in the mass forcible transfer of Palestinians spanning decades, no UN agency or other authoritative body has been designated as primarily responsible for their protection or the pursuit of durable solutions. The United Nations Conciliation Commission for Palestine (UNCCP), the agency that was created for such purpose, has been inoperative for over six decades,

leaving Palestinian refugees de facto without international protection. The United Nations Relief and Works Agency (UNRWA) is mandated to provide humanitarian assistance for Palestinian refugees, which is a necessary intervention and one of the core pillars of international protection, but it can only be a temporary measure aimed at alleviating suffering and cannot be considered a substitute for a comprehensive political solution.

The Oslo Accords marked the beginning of the Oslo peace process in 1993, which aimed at achieving permanent peace between Palestinians and Israelis and finding a durable solution to the plight of Palestinian refugees. However, in the several rounds of negotiations that took place during this process the refugee question was left off of the table, and refugees were neither given a chance to participate nor were their rights or the protection gap addressed. Instead, Palestine witnessed a ‘peace process’ stretching 24 years that brought little positive change in practice. This could stem from the fact that the resolution of the refugee issue is the keystone for any successful peace process seeking a just and durable solution in the Middle East. Thus, from the moment it was decided to postpone or ignore the refugee question in the negotiations, the Oslo roadmap was set to fail.

It is in such a context that this issue of al-Majdal magazine comes to explore a range of different paths Palestinians could follow to achieve durable solutions to the refugee issue, and more generally, to the ongoing Israeli policies of forced population transfer, colonization and apartheid. In March 2015 BADIL surveyed over 3,000 Palestinian refugees in the West Bank, the Gaza Strip, Jordan and Lebanon to examine the perceptions of Palestinian refugees residing in UNRWA camps regarding the protection they receive and the protection they are entitled to, including durable solutions.¹ BADIL explored how the protection gap affects Palestinian refugees, with the aim to reinforce advocacy efforts in emphasizing the lack of an international agency mandated to provide such protection. When asked about their preferred paths to achieve a durable solution to the Palestinian refugee issue, the participants marked the BDS movement, Security Council sanctions and the International Criminal Court (ICC) as their top choices. It is interesting that despite the failure and lack of political will among international duty bearers to take effective measures to address the protection gap, these results show that the refugees still have significant expectations of the international community to bring about change to the current situation.

But when analyzing the potential of international duty bearers to provide effective protection to Palestinian refugees, there are two questions that require our attention. First of all, do international duty-bearers – states, UN agencies – recognize the existence of the protection gap of Palestinian refugees? And, secondly, in the cases where such a gap is recognized – whether fully or partially – what steps have been taken to address it? These questions are important as in the past years UNRWA has issued statements highlighting some aspect of the protection gap, such as the shortage of humanitarian assistance, or the legal discrimination suffered by Palestinian refugees in Lebanon. The same is true for the United Nations High Commissioner for Refugees (UNHCR) or some of the host states of Palestinian refugees, especially now in the context of the ongoing conflict in Syria, which has highlighted the lack of protection suffered by Palestinian refugees when trying

¹ For more details about the questionnaire and results of other questions, please see the BADIL Survey 2013-2015: <http://www.badil.org/phocadownloadpap/badil-new/publications/survey/Survey2013-2015-en.pdf>

to flee to neighboring countries. Nevertheless, what is clear, especially in the light of the ongoing displacement and lack of protection of Palestinian refugees, is that no measure has been taken to address these gaps and other gaps in protection.

Addressing this completely unacceptable and unsustainable state of affairs therefore represents a matter of great urgency and it can only be realized through the application of concerted pressure by the international community through all available channels. These joint efforts should be based on adopting and supporting rights-based durable solutions as a long-term strategy; developing mechanisms and taking effective measures to bring Israel into compliance with international law; ensuring effective protection of Palestinian refugees, IDPs and those at risk of forcible transfer in Palestine and host countries; and including the Palestinian refugee and IDP communities' participation and engagement in the process of identifying protection gaps, ensuring effective protection, and crafting durable solutions.

It is in connection to this last recommendation that this issue of *al-Majdal* starts by analyzing the results of the most recent Survey carried out by BADIL, in an attempt to bring refugee voices back to the fore. The magazine begins with an article that provides an overview of the main paths to solving the refugee issue chosen by Palestinian refugees living in UNRWA camps. These results offer unique information about how refugees themselves want to proceed to close this protection gap and achieve a durable solution to their plight. The article is followed by five articles that analyze each one of the main options chosen by refugees. The first article, written by Bangani Ngeleza and Adri Nieuwhof, focuses on the BDS movement in South Africa and how it evolved from a minority grassroots campaign to gaining the support of the international community. Professor Joseph Schechla writes about the Security Council, its lack of effectiveness historically to bring about peace and justice and the problematic of its lack of neutrality brings for the Palestinian case. Following is an article focused on another international mechanism, the ICC, written by Dr Valentina Azarova. The article analyzes the main obstacles Palestinians will face when bringing their claims to this court. Simon Reynolds provides a legal analysis on the use of different forms of resistance by Palestinians and their legitimacy according to international law. Finally, Jamil Hilal explores the need to build representative Palestinian institutions, focusing on the Palestine Liberation Organization (PLO).

As the results analyzed in this issue show, Palestinian refugees are demanding that the international community take sound steps to isolate and pressure Israel to be accountable and ensure Palestinian refugees the protection they are entitled to. They have already pointed at some of their preferred channels through which to realize their rights, which is why this call should be used to bring about effective measures on the ground and bridge the ongoing 'protection gap' suffered by Palestinian refugees. The UN (mainly through UNRWA and UNHCR), states, and other duty bearers should make the fulfillment of Palestinian rights and ensuring protection a priority of the highest order.

Paths to Durable Solutions Chosen by Palestinian Refugees

by Ezees Silwady*



BDS activists call on elected officials to Stop Blocking New Yorkers from boycotting Israel and its human rights abuses, December 2013 (Source: psifcbds.wordpress.com)

In BADIL's Survey of Palestinian Refugees and Internally Displaced Persons 2013-2015, a questionnaire was conducted to examine the perceptions of Palestinian refugees residing in UNRWA camps with regards to their knowledge of international protection and their preferred paths to durable solutions. Specifically, this article analyzes the results of one of the most significant questions of the questionnaire: what are the three most important pathways to achieve durable solutions for the Palestinian refugees? The questionnaire was completed by Palestinian refugees in the Gaza Strip, the West Bank, Jordan and Lebanon, who were given ten options to choose from (see table below). This article examines the overall results in all the areas, the results of each area separately and provides possible interpretations for the variations.

Measure for achieving durable solutions	Percentage* of Palestinian refugees selecting the measure
Supporting the BDS Movement	51%
Security Council sanctions on Israel	50.8%
The International Criminal Court	42.4%
Using other forms of resistance	41.8%
Reforming the PLO	39.3%
Expanding the mandate of UNRWA	24.9%
Convening an international conference	16.3%
Continue with the negotiations track	16.2%
Reactivating the UNCCP	11.3%
Other	5.8%

* These numbers were calculated by summing the responses for all the regions and dividing by the total number of Palestinian refugees surveyed.

Taking the overall results first, several interesting outcomes appeared concerning refugee views towards the various means to achieve a permanent solution to their plight. Half of those surveyed selected the Boycott, Divestment and Sanctions (BDS) movement and the imposition of United Nations Security Council (UNSC) sanctions on Israel. Given the recent significant successes of the Palestinian BDS campaign it can be deduced that there is a high level of positive expectations for further success. The support of the BDS movement also may reflect an inclination to generate genuine political will through mobilizing civil society to influence decision makers and duty bearers such as the UNSC. Calling for UNSC sanctions may stem from a belief in international responsibility toward the ongoing refugee plight, and the necessity of the UNSC to act according to its obligations. However, the selection of these two pathways implies other important dimensions: the success of BDS and UNSC sanctions which took place in other countries such as the banning of the apartheid regime in South Africa and intervention in former Yugoslavia - mainly in the case of Serbia; and that refugees recognize that in order for Israel to come into compliance with international law, international pressure must be exerted to hold it accountable. In other words, this could be attributed to refugees' belief that international intervention is required to overcome the imbalance of power which makes just peace unachievable.

Furthermore, 42.4 percent of refugees chose using the ICC as one of their preferred options. While this could be a direct reflection of the recent accession of Palestine to the ICC, it demonstrates once again their belief that international intervention is necessary to hold Israel accountable. Only 16.2 percent of those surveyed chose continuing with the negotiations track - making this path the second to last preferred path – which probably stems from the lack of trust in this track because of its failure to end Palestinian daily humanitarian suffering and to realize their fundamental rights. Moreover, only 11.3 percent chose reactivating the United Nations Conciliation Commission on Palestine (UNCCP), which is the agency specifically mandated to pursue protection for Palestinian refugees, including durable solutions, as one of their three top preferences. This low percentage is probably derived from the prolonged inaction of UNCCP, which ceased to operate since the early 1950s. Additionally, a significant number of Palestinian refugees (64 percent in Jordan, 42 percent in the Gaza Strip and 38 percent in the West Bank) were unaware of the existence of the UNCCP.

The Gaza Strip

On the regional level, there is variation regarding the most desirable path to a permanent solution for Palestinian refugees. In the Gaza Strip, 55.6 percent and 52.8 percent of the refugees surveyed said that putting sanctions on Israel by the UNSC and supporting the BDS movement, respectively, were two of their top three preferred pathways. This orientation towards sanctions and BDS was discussed above. Nevertheless, 43 percent of those did not choose BDS as the top choice, but as an alternative. This may be due to the fact that this movement does not provide a quick solution; it is a long-term commitment and strategy. As BDS aims to drive Israel to comply with international law and Palestinian rights in the long-term, Palestinian refugees in the Gaza Strip require and therefore seek more urgent and direct political action, and humanitarian and economic assistance to improve their current dire living conditions. As such, reforming the PLO and/or the imposition of UNSC sanctions on Israel were first choices. This might also be because Palestinians believe that the main path to achieve durable solutions necessarily requires the combination of strong and direct engagement by Palestinians themselves and the intervention of states – as in the case of reforming

the PLO and UNSC sanctions – while the efforts of international civil society, such as supporting and joining BDS movement, should be complementary to these actions.

With regard to choosing the expansion of UNRWA’s mandate, only 19.9 percent of those surveyed in the Gaza Strip chose it as one of their three preferences. This is perhaps because of refugees’ realization that UNRWA may not be the proper body able to provide protection and to lead to durable solutions for refugees even if it expands its mandate, especially because they witnessed its inability to compel Israel to fulfill its humanitarian obligations. Regarding reforming the PLO, 44.1 percent chose it as one of their three preferences and this may be an expression of the need for a national unified body more expansive than the Palestinian Authority (PA) which includes the development of a unified national vision and strategy for the future. Notably, this perspective prevails among youth: a little over half of the refugees supporting this option were aged between 18 and 29 years, while only 19.9 percent were aged 45 and above. This could be because the older generation may have a personal interest in their current socio-economic position within the PLO, and therefore are not motivated to reform and change this situation. On the other hand, the younger generation recognizes the need for and seeks change/reform of the PLO assumedly with the intent to participate in this reform.



Palestinian refugees comprise three quarters of the population of the Gaza Strip. (© palestinephotobank.com)

9.8 percent of those surveyed stated that using other forms of resistance is their first preference for durable solutions; more than half of those who chose this option as their first choice were aged between 18 and 29, while only 22.4 percent were aged 45 and above. This might be a result of the recent three Israeli wars on the Gaza Strip, which had devastating consequences for its residents and once again highlighted the complacency of international duty bearers and states to hold Israel accountable and stop the suffering. As such the youth may have lost faith in traditional and official mechanisms of justice and accountability.

First preference for achieving a permanent solution for the refugee issue in the Gaza Strip:

Measure for achieving durable solutions	Percentage of Palestinian refugees selecting the measure
Reforming the PLO	20.1%
Security Council sanctions on Israel	16.7%
The International Criminal Court	16.3%
Expanding the mandate of UNRWA	12.4%
Supporting the BDS Movement	9.8%
Using other forms of resistance	9.8%
Reactivating the UNCCP	5.1%
Continue with the negotiations track	4.8%
Convening an international conference	4.2%

The West Bank

In the West Bank, those surveyed responded differently than those in the Gaza Strip. More than half of those surveyed in the West Bank chose UNSC sanctions on Israel as one of their

three preferences for achieving a permanent solution to the refugee issue. This orientation is consistent with the previous analysis on the historic successes of sanctions in other countries and the need for international intervention.

Following a similar trend to that seen in the Gaza Strip, refugees in the West Bank see the BDS campaign as complementary to other paths, as only 2.5 percent of those surveyed answered that supporting the BDS is their first preference for durable solutions, while 43.1 percent chose it as their second and third preference.

Palestinian refugee Kamela Safi, 90, holds the keys of her home in the village of Beit Nabala as she sits in her house in the West Bank refugee camp of Jalazon. 17 May 2015 (© MEM)



One of the variations between the West Bank and the Gaza Strip is that 32.5 percent of those surveyed in the West Bank chose expanding the mandate of UNRWA as their first preference, in contrast to 19.9 percent in the Gaza Strip. This implies that Palestinian refugees in the West Bank believe that after expanding its mandate, UNRWA could and would have the ability and desire to achieve a permanent solution for the refugee issue. Another variation between the Gaza Strip and West Bank results is that only 1.7 percent answered that reforming the PLO is their first preference. Because of the overwhelming presence of the PA in the West Bank, Palestinian refugees there might not differentiate between the PA and the PLO, and as a result, do not support the reform of either. Therefore the question that must be postulated is why. Is it because they have lost faith in both institutions or because they are satisfied with the role of the PA/PLO in the West Bank? This can be answered by the questionnaire result that only three percent of those surveyed in the West Bank (4.8 percent in the Gaza Strip) chose negotiations as their first preference for durable solutions for the Palestinian refugee issue. As such this is refugees' expression of the lack of trust in the negotiations track and those spearheading it, as after 24 years of peace process no progress has been made and Israel has continued to expand its colonial enterprise.

Jordan

In Jordan, in contrast to both the West Bank and Gaza Strip, Palestinian refugees selected other forms of resistance as the first preference, with 37.6 percent of those surveyed indicating this option. This may refer to the fact that refugees in Jordan, not living under direct Israeli occupation have not experienced armed conflict with Israel, the catastrophic consequences of wars and Israeli assaults and the ongoing Israeli policies of oppression and suppression. The second most popular preference in Jordan was UNSC sanctions on Israel; chosen by 17.5 percent.

On the other hand, only 0.4 percent of those surveyed in Jordan chose reactivating the UNCCP. This comes as no surprise since 44.3 percent of surveyed participants claimed to have no knowledge of the UNCCP. Further, it could refer to the fact the UNCCP, which was specifically created to provide Palestinian refugees with effective protection, has been inactive since 1952. The table in this page indicates the most popular preferences among refugees in Jordan.

As for supporting the BDS movement, only six percent of those surveyed in Jordan chose it as their first preference, while 52.4 percent chose it as their second and third preference. Palestinian refugees in Jordan seem to follow a similar trend to those in the oPt; they believe in supporting the BDS movement as a complement to other paths.

Lebanon

Palestinian refugees in Lebanon did not have consensus in their choices but rather exhibited a fairly even spread of selection of different solutions: 16.4 percent choosing UNSC sanctions on Israel, 15.6 percent going to the ICC, 15.4 percent expanding the mandate of UNRWA, 13.4 percent using other forms of resistance and 12.7 percent supporting the BDS movement. This could indicate a lack of a united vision among the Palestinian refugees in Lebanon. In other words, Palestinian refugees do not have a coherent and collective opinion on their preferred avenue for achieving a permanent solution for the refugee issue. This might be the result of the lack of a united and coherent Palestinian agenda, which is the responsibility of the Palestinian political parties and the PLO.

Unlike the Palestinian refugees in Jordan, less refugees chose other forms of resistance in Lebanon, as only 13.4 percent chose it as their first preference. This is most likely for the same reason that only 9.8 percent of Palestinian refugees in the Gaza Strip chose it as their first preference; because refugees in these areas are still suffering the consequences of the wars and armed conflict of the past two decades.

Similar to the other three areas, Palestinian refugees in Lebanon showed little hope

Measure for achieving durable solutions	Percentage of Palestinian refugees selecting the measure
Using other forms of resistance	73.9%
Supporting the BDS Movement	58.4%
Security Council sanctions on Israel	43.3%
Reforming the PLO	37.2%
The International Criminal Court	22.9%
Other	20.5%
Convening an international conference	18%
Continue with the negotiations track	14.1%
Expanding the mandate of UNRWA	10.8%
Reactivating the UNCCP	0.9%



Protest against UNRWA's decision of reducing support to refugees in the field of healthcare in front of UNRWA in Beirut, Lebanon, January 2016 (© MEM)

in the continuation of negotiations, as only 3.2 percent chose it as their first preference. This again refers to the lack of trust in the Israeli-Palestinian negotiations because of the lack of any successful outcome in the last 24 years.

Conclusion

In sum, BADIL posed this question of choosing the most important avenues for achieving permanent solution for the Palestinian refugee issue to the refugees themselves in the Gaza Strip, the West Bank, Jordan and Lebanon. Recognizing that it is essential to know their position in this regard, as this is the main issue affecting Palestinian refugees. After analyzing the answers of this question, several common outcomes are shared between the four surveyed areas. Refugees generally seek effective international intervention as a means to achieve durable solutions, whether through UNSC sanctions on Israel, ICC decisions or successful outcomes from the BDS movement. Furthermore, using other forms of resistance is one of the most preferred avenues by refugees, as it was the most popular first preference among those surveyed. The answers of those surveyed also showed a lack of trust in the current negotiations track and very few chose it as an effective path to resolution of the Palestinian refugee issue.

While there seems to be strong preferences for international intervention of some sort in multiple locations, there was also a lack of a singular unified choice or preference among Palestinian refugees. This may be because of the lack of a unified Palestinian national strategy or lack of coordination between the areas, which is mainly due to the fragmentation on the political and geopolitical levels. This situation might have led to the variety of opinions regarding many core issues such as the protection received by refugees and the preferred avenues to achieve their rights.

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End apartheid, freedom and equality for all

by Bangani Ngeleza* and Adri Nieuwhof**

BDS was the first preferred pathway chosen by Palestinian refugees (51%); see p.5



Palestinian activists protest on 10 March, ahead of the Israeli Apartheid Week from 11-17 March 2013, in South Africa. (© AFP/Getty)

Liberation movements in South Africa set the agenda with an overall goal to end apartheid and achieve freedom and equality for all. This goal and vision is encapsulated in the Freedom Charter which was adopted in 1955 at a people's congress held in Kliptown near Johannesburg.¹ The adoption of the Freedom Charter followed months of wide scale consultation by volunteers who crisscrossed the country asking people about the kind of South Africa they would want to live in.² Since then, liberation movements, civil society and solidarity groups steered in the same direction to realize the overall goal.

Prior to the adoption of the Freedom Charter, the African National Congress (ANC) and the South African Indian Congress launched a non-violent "Campaign of Defiance against Unjust Laws" in June 1952. Over 8,000 people of all racial origins joined the protests risking arrest over violation of discriminatory laws and regulations.³ The protest caught the attention of Asian-African member states of the United Nations General Assembly (UNGA), who put the question of racist apartheid policies in South Africa on the agenda. The UNGA established a commission to study the situation resulting in the adoption of UNGA resolution 820 (IX) on apartheid in December 1954.⁴

1 Congress of the People. June 26, 1955. Freedom Charter. Available at: <http://www.anc.org.za/show.php?id=72> [Accessed February 11, 2016].

2 African National Congress, The Freedom Charter, 26 June 1955. See: <http://www.anc.org.za/show.php?id=72>

3 ANC (1987). The Defiance Campaign in South Africa, Recalled. London: Asian Times. June 26, 1987. Available at: <http://www.anc.org.za/show.php?id=8817> [Accessed February 12, 2016].

4 UN General Assembly. December 14, 1954. The Question of Race Conflict in South Africa Resulting from the Policies of the Government of the Union of South Africa. Available at: <http://www.un.org/documents/ga/res/9/ares9.htm> [Accessed February 12, 2016].

South Africa's racial policies were also strongly condemned by Asian and African nations at the 1955 Bandung conference which aimed to mobilize forces to promote peace. The participating countries were dissatisfied with the reluctance of the Western powers to consult them on matters concerning Asia and Africa.⁵ South African liberation movement leaders, Moses Kotane and Maulvi I.A. Cachalia, addressed the conference based on a 32 page memorandum which set out the vicious effects of apartheid policies.⁶ They also met Prime Minister Nehru of India and President Nasser of Egypt who introduced them to the other state leaders at the conference.⁷ From then on the struggle against apartheid received increasing support in Asia and Africa.

Inside South Africa, grassroots mass mobilization against apartheid laws was sustained by organizations such as the ANC, the Pan African Congress and the South African Indian Congress. On 21 March 1960, a peaceful demonstration against the pass laws⁸ turned violent when the police shot at African demonstrators in Sharpeville, killing 69 men, women and children and wounding around 200 people.⁹

The massacre sparked worldwide attention, and African and Asian member states called for an urgent meeting of the Security Council.¹⁰ One month later, in April 1960, the Security Council adopted resolution 134 deploring the policies and actions of the South African Government which had caused the loss of life of so many Africans.¹¹ In this first action on South Africa, the Security Council called upon the country to abandon its policies of apartheid and racial discrimination. This resolution represented a significant breakthrough and laid the ground for future UN actions.

The resolution also gave momentum to the Boycott, Divestment and Sanctions (BDS) movement

5 The Ministry of Foreign Affairs, Republic of Indonesia (Ed.). *Asia-Africa speak from Bandung*. Djakarta: 1955, pp. 161-169. Available at: http://franke.uchicago.edu/Final_Communique_Bandung_1955.pdf [Accessed February 12, 2016].

6 Du Bois, W. E. B. (1955). *Memorandum on the Bandung conference*. Du Bois Papers (MS 312). Special Collections and University Archives, University of Massachusetts Amherst Libraries.

7 Of importance in the meeting between Cochalia, Kotane, Nehru and Nasser, was the fact that Nehru provided Cochalia and Kotane with Indian travel documents, necessary for participating in the Bandung Conference – after the South African Government having refused them passports. Nasser on his side sympathized with the cause of the ANC representatives and declare Egypt's support of the fight against apartheid and for national liberation in South Africa. See: <https://www.marxists.org/subject/africa/bunting-brian/kotane/ch12.htm>

8 The Sharpeville Massacre refers to a demonstration that took place on March 21, 1960, at a police station in the South African township of Sharpeville in Transvaal (today a part of Gauteng). Protestors gathered to react against the Pass Laws, an instrument used by the Afrikaner government to severely curtail people's freedom of movement and to control and contain the number of black residents in urban districts. After protesting a crowd of about 5,000 to 7,000 people took on to the police station, where subsequently the police opened the fire at the crowd, killing 69 people. Today, the 21st of March is celebrated as a public holiday in honor of human rights and to commemorate the Sharpeville massacre.

9 See: <http://overcomingapartheid.msu.edu/multimedia.php?id=65-259-E>, http://www.southafrica.info/about/history/sharpeville.htm#Vr2Wv_l96Uk and ANC (1993). *Statement at the meeting of the Special Committee in Observance of the International Day for the Elimination of Racial Discrimination (Sharpeville Day)*. Press Statement. March 22, 1993. Available at: <http://www.anc.org.za/show.php?id=4879> [Accessed February 12, 2016].

10 Johnson, S. (1989). *South Africa: No Turning Back*. Bloomington and Indianapolis: Indiana University Press. p. 305.

11 UN Security Council. April 1, 1960. *Resolution 134 on the Question Relating to the Situation in the Union of South Africa.S/RES/134*. Available at: <http://www.un.org/en/sc/documents/resolutions/1960.shtml> [Accessed February 12, 2016].

against apartheid.¹² By June 1960, boycotts of South African goods were implemented in many countries; and independent African States called for sanctions against South Africa at a conference held in Addis Ababa that same month.¹³

Three years later, apartheid was declared a crime against humanity by the UNGA in Resolution 2202 (XXI).¹⁴ Less than a decade later, in 1974, South Africa was suspended by the General Assembly from participating in its work due to international opposition to the policy of apartheid¹⁵; further the Security Council endorsed the UNGA's position that apartheid is a crime against humanity in resolution 556 of 1984.¹⁶

ANC calls for punitive measures after decades of dialogue

In 1959, ANC president Chief Albert Luthuli publicly called for a boycott of South Africa. He told his audience in the UK, "...non-white South Africans have responded to attacks on them by sending deputations and submitted petitions to the authorities... When these approaches were unsuccessful, they turned to passive resistance and then boycott".¹⁷

From this point onwards, the ANC sent delegations to address the international community on the need to isolate the apartheid regime. The call for international pressure through boycotts, divestment and sanctions became an important pillar of the ANC's struggle for democracy.¹⁸

In response to Chief Luthuli's call, a Boycott Movement was founded at a meeting of South African exiles and their supporters in London on 26 June 1959.¹⁹ Julius Nyerere, president of Tanzania, who participated in the meeting, said "We are not asking you, the British people, for anything special. We are just asking you to withdraw your support from apartheid by not buying South African goods".²⁰ The boycott attracted widespread support from students, trade unions and the political parties.

12 Reddy, E. S. (1965). Notes on the origins of the movement for sanctions against South Africa. Geo Cities, Online. Available at: http://www.geocities.ws/enugareddy/southafrica/1965-Notes_on_the_Origin_of_the_Movement_for_Sanctions_against_Apartheid.pdf [Accessed February 12, 2016].

13 See: <http://www.sahistory.org.za/dated-event/independent-african-states-resolve-impose-sanctions-against-south-africa>

14 UN General Assembly. December 16, 1966. Resolution 2202 A (XXI) on the Policies of Apartheid of the Government of the Republic of South Africa. Available at: <http://www.un.org/documents/ga/res/21/ares21.htm> [Accessed February 12, 2016].

15 International opposition to South Africa apartheid can be deduced amongst others in the fact that the UN condemned the racial policies of the South African Government annually, as contrary to articles 55 and 56 of the UN Charter. See: <http://legal.un.org/avl/ha/cspca/cspca.html>

16 UN Security Council. October 23, 1984. Resolution 556 on South Africa. S/RES/558. Available at: <http://www.un.org/en/sc/documents/resolutions/1984.shtml> [Accessed February 12, 2016].

17 Ngeleza, B. & Nieuwhof, A. (2006). African National Congress: An Inspiration for Palestinians. Electronic Intifada. Online. Available at: <https://electronicintifada.net/content/african-national-congress-inspiration-palestinians/5921> [Accessed: February 12, 2016].

18 Ngeleza, B. & Nieuwhof, A. (2006). African National Congress: An Inspiration for Palestinians. Electronic Intifada. Online. Available at: <https://electronicintifada.net/content/african-national-congress-inspiration-palestinians/5921> [Accessed: February 12, 2016].

19 On the foundation of the boycott movement, see: <http://aamarchives.org/history/boycott-movement/79-history/123-the-boycott-movement.html>

20 Ngeleza, B. & Nieuwhof, A. (2006). African National Congress: An Inspiration for Palestinians. Electronic Intifada. Online. Available at: <https://electronicintifada.net/content/african-national-congress-inspiration-palestinians/5921> [Accessed: February 12, 2016].

Activists accused the UK government and Israeli arms company Elbit Systems of running scared from a court case that would have put their collusion with Israeli war crimes on trial. 10 June 2014.
 (@ LondonPalestineAction)



After the 1960 Sharpeville massacre²¹ it was decided to intensify efforts beyond a consumer boycott, and this is how the London based Anti-Apartheid Movement (AAM) was born. The group would coordinate the anti-apartheid work and keep South Africa's apartheid policy in the forefront. The total isolation of apartheid South Africa, including economic sanctions, became the focus of the campaign.²² At the time, the UK was the largest foreign investor in South Africa, and the government was reluctant to sever ties.²³

Arms embargo

The UN Special Committee against Apartheid (Special Committee) was established in 1962.²⁴ The General Assembly called for measures against the South African government in Resolution 1761, including to break off diplomatic relations, to close ports to all vessels flying the South African flag, to boycott all South African goods, to refrain from exporting goods to South Africa, and to refuse landing and passage facilities to all South African aircraft.²⁵

21 See reference 8.

22 Forward to Freedom, The Boycott Movement, n.d. Available at: <http://www.aamarchives.org/history/boycott-movement.html>

23 Allen D, Anti-Apartheid Movement, British Isles, chapter of Nauright J. & Parrish C, (2012), Sports Around the World: History, Culture, and Practice. Available at: <https://books.google.ps/books?id=IkLYDgTnMxEC&pg=RA1-PA16&lpg=RA1-PA16&dq=1960+United+Kingdom+was+South+Africa%27s+largest+foreign+investor&source=bl&ots=6SC2RHxohp&sig=E0jrfDJl7M4Zf-VUL3pVm8L6aow&hl=en&sa=X&ved=0ahUKEwiUoanK6sTLAhVM1RoKHdgWBcAQ6AEIGTAA#v=onepage&q=1960%20United%20Kingdom%20was%20South%20Africa's%20largest%20foreign%20investor&f=false> [Accessed March 16, 2016].

24 UN, The United Nations: Partner in the Struggle against Apartheid, n.d., <http://www.un.org/en/events/mandeladay/apartheid.shtml>

25 UN General Assembly. November 6, 1962. Resolution 1761 on the Policies of Apartheid in the Government of the Republic of South Africa. Available at: <http://www.un.org/documents/ga/res/17/ares17.htm> [Accessed February 15, 2016].

The ANC and PAC advocated for an arms embargo as a first step, and following this call, the Special Committee against Apartheid recommended the Security Council to adopt such arms embargo.²⁶ It further suggested an effective oil embargo as a second step.²⁷ The Security Council decided in favor of a voluntary arms embargo by calling upon states to cease the sale and shipment of arms, ammunition and military vehicles to South Africa in Resolution 181 of August 1963²⁸, three years after the Sharpeville massacre.

The Soweto uprising in June 1976 fired up the anti-apartheid movement when the apartheid police shot tear gas and live bullets at students protesting the inferior education system reserved for black students.²⁹ Many students were killed and injured.³⁰ Solidarity groups stepped up their efforts to boycott the apartheid regime and broadened the basis for governments to act. Disturbed by the extent of the brutal oppression, the Security Council imposed a mandatory arms embargo against South Africa in November of 1977.³¹

In December 1984, the UN Security Council further requested states to cease any imports of arms, ammunition and military vehicles from South Africa in Resolution 558, though this was not mandatory.³² Again, the decision was taken in response to the increasing violence against the mass resistance of the black population.

Oil embargo

An oil embargo was high on the ANC's priority list of punitive measures because South Africa was completely dependent on oil imports.³³ The General Assembly called for an oil embargo in November 1963 in a resolution which addressed South Africa's illegal

26 Rauschnig, D.; Wesbrock, K. and Lailach, M. (1997). Key Resolutions of the United Nations General Assembly 1946-1996. Cambridge: Cambridge University Press, p. 414. See as well: <http://www.un.org/en/events/mandeladay/apartheid.shtml>

27 UN Intergovernmental Group to Monitor the Supply and Shipping of Oil and Petroleum Products to South Africa. November 5, 1987. Report of the Intergovernmental Group to Monitor the Supply and Shipping of Petroleum Products to South Africa. A/42/45. Available at: <http://hdl.handle.net/11176/61034> [Accessed February 15, 2016]. And: UN General Assembly. January 27, 1982. Resolution 36/172G on an Oil embargo against South Africa. A/RES/36/172G. Available at: <http://hdl.handle.net/11176/149190> [Accessed February 15, 2016].

28 UN Security Council. August 7, 1963. Resolution 181 on the question relating to the policies of apartheid of the government of the Republic of South Africa. S/5386. Available at: http://www.sipri.org/databases/embargoes/un_arms_embargoes/south-africa-non-mandatory/un-security-council-resolution-181-1963/view [Accessed February 15, 2016].

29 See: <http://www.sahistory.org.za/topic/june-16-soweto-youth-uprising>, And: <http://overcomingapartheid.msu.edu/sidebar.php?id=65-258-3>

30 Records of the number of people killed vary according to source. Official figures (that can be questioned since it is assumed that the police tried to cover up the number of people who died) tell of 23 people killed on the first day of protest, while some reports tell of at least 200 killed (<http://www.sahistory.org.za/topic/june-16-soweto-youth-uprising>).

31 UN Security Council. November 4, 1977. Resolution 418 on an arms embargo on South Africa. Available at: http://www.sipri.org/databases/embargoes/un_arms_embargoes/south_africa/un-security-council-resolution-418-1977 [Accessed February 15, 2016].

32 UN Security Council. December 13, 1984. Resolution 558 on imports of arms, ammunition and military vehicles from South Africa. Available at: http://www.sipri.org/databases/embargoes/un_arms_embargoes/south_africa/un-security-council-resolution-558-1984 [Accessed February 15, 2016].

33 Study Commission on US Policy towards Southern Africa (1981). South Africa: Time Running Out: The Report of the Study Commission on US Policy towards Southern Africa. California: University of California Press. Pp. 139-140.

occupation of Namibia.³⁴ It was the first of many efforts by the UN to enact effective oil sanctions against apartheid.

In the early 1970s Iran was the major supplier of crude oil to South Africa. But Iran cut off South Africa after the fall of the Shah in 1978.³⁵

The General Assembly repeated a call for a voluntary international oil embargo against South Africa in 1987 again, this time based on the country's apartheid policies³⁶. However, efforts by African countries for a mandatory oil embargo in the Security Council failed due to a veto of the United States and the United Kingdom.³⁷

As oil was fueling the apartheid economy, campaigns for an oil embargo were organized in several Western countries. Shell was a major target in the Netherlands being an Anglo-Dutch company with a presence in South Africa making profits at the expense of the black population.³⁸ The Dutch Shipping Research Bureau was founded to monitor oil deliveries to South Africa by two solidarity groups in 1981.³⁹ In its yearly reports, boycott breakers were exposed. The bureau cooperated closely with the ANC and UN bodies.⁴⁰

Due to the oil embargo, South Africa's oil import costs more than doubled. "Between 1973 and 1984 the Republic of South Africa had to pay R22 billion (over 1.3 billion dollars) more than it would have normally spent," apartheid president P.W. Botha told a Namibian newspaper in 1986.⁴¹

34 UN General Assembly. November 13, 1963. Resolution 1899 (XVIII) on the question of Namibia. Available at: <http://www.un.org/documents/ga/res/18/ares18.htm> [Accessed February 15, 2016].

35 Arab oil producers in October 1973 decided to embargo the supply of their oil to South Africa. Iran stopped taking part in the embargo because of the Shah's decision to make up South Africa's deficit in oil with Iranian supply. The revolution in 1979 re-activated Iranian embargo on South Africa, as the new government under Ayatollah Khomeini decided to stop export to South Africa. Study Commission on US Policy towards Southern Africa (1981). South Africa: Time Running Out: The Report of the Study Commission on US Policy towards Southern Africa. California: University of California Press. Pp. 139-140. See as well: <http://www.heritage.org/research/reports/1979/02/the-iranian-oil-crisis>, And: <http://www.anc.org.za/show.php?id=4967>

36 UN General Assembly. November 20, 1987. Resolution 42/23 on policies of apartheid of the government of South Africa. A/RES/42/23 Available at: <http://www.un.org/documents/ga/res/42/a42r023.htm> [Accessed February 15, 2016].

37 UN Department of Political Affairs (2000). Repertoire of the Practice of the Security Council: Supplement 1985-1988. New York: UN. p. 94.

38 Nieuwhof, A. and Ngeleza, B. (2004). Sanctions against apartheid South Africa should inspire the Palestinian people. Online. Electronic Intifada. Available at: <https://electronicintifada.net/content/sanctions-against-apartheid-south-africa-should-inspire-palestinian-people/5366> [Accessed February 15, 2016].

39 <http://africanactivist.msu.edu/organization.php?name=Shipping+Research+Bureau>

40 One tangible effect of cooperation between the Research Shipping Bureau and the UN consolidated in UN General Assembly resolutions in support of an oil embargo and in the 1986 creation of the Intergovernmental Group to Monitor the Supply and Shipping of Oil and Petroleum Products to South Africa. The Research Shipping Bureau played a key role in providing information to the Intergovernmental Group to Monitor the Supply and Shipping of Oil and Petroleum Products to South Africa. (<http://africanactivist.msu.edu/organization.php?name=Shipping+Research+Bureau>)

41 Bosgra, S. (2008). From Jan van Riebeeck to solidarity with the struggle: the Netherlands, South Africa and Apartheid. p. 59. Available at: <https://socialhistory.org/sites/default/files/docs/collections/sadet.pdf> [Accessed February 15, 2016].

Sports boycott

All types of sport in apartheid South Africa were segregated by race. Only white sports bodies were represented in international sports organizations including the International Olympic Committee (IOC). As a result, only white South Africans played for their country at the Olympics.⁴²

In the 1950's, South African sportsmen fought against racism in sport by pushing for international recognition of non-racial South African sports bodies. The demand for equality in sports followed from the Freedom Charter which called

for equality for all. The non-racial sportsmen founded the South African Non-Racial Olympic Committee which cooperated closely with the ANC representation in London and the anti-apartheid movement.⁴³ South Africa was formally expelled from the IOC in 1970 after years of lobbying.⁴⁴

Anti-apartheid groups, African and Asian countries and the UN dealt out severe blows to apartheid sport. In 1968, the General Assembly had called on states and organizations "to suspend cultural, educational, sporting and other exchanges with the racist regime and with organizations or institutions in South Africa which practice apartheid".⁴⁵ Rugby tours to Britain and Australia in 1969 and 1971 were met with mass demonstrations.⁴⁶ The Australian Air Force had to transport the South African team because of trade union actions.⁴⁷ The State of Queensland declared a state of emergency during one of the tours.⁴⁸ A rugby tour of New Zealand was canceled because of public opposition and a threat by India and African countries to boycott the Commonwealth Games in Christchurch in 1974.⁴⁹

In 1980, the Special Committee against Apartheid initiated a "Register of Sports Contacts



Activist shows Israeli soldiers the red card, 24 April 2015 (© MEMO)

42 Ibrahim, Y. M. (1991). Olympics Committee Ends Its Ban On Participation By South Africa. New York Times. July 10, 1991. Available at: <http://www.nytimes.com/1991/07/10/sports/olympics-olympics-committee-ends-its-ban-on-participation-by-south-africa.html> [Accessed February 15, 2016].

43 See: <http://africanactivist.msu.edu/organization.php?name=South+African+Non-Racial+Olympic+Committee;> And: <http://www.srsa.gov.za/pebble.asp?reid=1781>

44 Mail & Guardian (2007). Apartheid: the Political Influence of Sport. Available at: <http://mg.co.za/article/2007-01-16-apartheid-the-political-influence-of-sport> [Accessed February 15, 2016].

45 Stokke, O. and Widstrand, G. C. (1973). The UN-OAU Conference on Southern Africa, Oslo 9-14 April, 1973: Papers and Documents. Uppsala: Scandinavian Institute of African Studies. p. 235.

46 Iverdale, J. (2006). Remembering bitter Springboks tour that paved a way for change. The Telegraph. September 26, 2006.

47 See: <http://scnc.ukzn.ac.za/doc/SPORT/SPORTRAM.htm>; And: <http://www.anc.org.za/show.php?id=6895>

48 The Age. July 14, 1971. Springboks: State of Emergency Declared. And: Wanna, J. & Arklay, T. (2010). The Eyes Have It: The History of the Queensland Parliament 1957-1989. Acton: ANU Press. p. 440.

49 US Department of State. Bureau of African Affairs (1981). AF Press Clips. p.5.

with South Africa" listing sportsmen who participated in events in South Africa.⁵⁰ Several governments prohibited the boycott violators from playing in their countries. Those who profited from apartheid, and showed contempt for the majority of the South African people, they said, would not be allowed to make money in their countries.⁵¹

When awareness of apartheid increased, more countries undertook action against the sportsmen on the UN Registers. Hundreds of local authorities in Britain and other Western countries denied them use of their sports facilities.⁵²

South Africa was expelled from most international sports bodies by 1980.⁵³ The UN international Convention against Apartheid in Sports of 1985 was adopted after years of preparation.⁵⁴ It provided for action against those continuing to play with apartheid.⁵⁵

London protest urges Shakespeare's Globe Theatre to cancel a performance, 26 March 2016 (© inmind.com)



Cultural boycott

The cultural boycott of South Africa was initiated by artists and their unions in the UK, Ireland and the US in the 1960s. The South African regime responded with window dressing initiatives to deceive world public opinion. It gave permission, for example, to some mixed performances in a few theaters.

The General Assembly took a stand in favor of the cultural boycott in December 1980.⁵⁶ The Special Committee decided to publish a list of entertainers who had performed in apartheid South Africa.⁵⁷

50 Special Committee (1981). Register of Sports Contacts with South Africa. And: Powers, R. (2011). Protest, Power and Change: An Encyclopedia of Nonviolent Action from ACT-UP to Women's Suffrage. New York: Routledge. p. 512.

51 Field, R. & Kidd, B. (2011). Forty Years of Sport and Social Change, 1968-2008: To Remember Is To Resist. Oxon: Routledge. p. 80.

52 ANC (1988). United Nations, India and Boycott of Apartheid Sport. Paper presented at the seminar of the Sports Authority of India and the Arjuna Awardees Association, New Delhi, July 28-29, 1988. Published as a pamphlet. Available at: <http://www.anc.org.za/show.php?id=6895> [Accessed February 15, 2016].

53 See: <http://scnc.ukzn.ac.za/doc/SPORT/SPORTRAM.htm>

54 UN General Assembly. December 10, 1985. Resolution 40/64 adopting the International Convention against Apartheid in Sports. Available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%201500/volume-1500-I-25822-English.pdf> [Accessed February 15, 2016].

55 Measures include (articles 6 and 7 of the Convention): refusal of financial assistance to sports bodies and individual sportsmen; restriction of access to national sports facilities; non-enforceability of sports contracts; denial and withdrawal of national honours or awards. Other than that, states that are party to the convention deny visas and/or entry to representatives of sports bodies, teams and individual sportsmen representing a country practising apartheid.

56 Reddy, E. (1984). Statement by Enuga S. Reddy, Director of UN Centre Against Apartheid at a Press Briefing. January 11, 1984. London. Available at: <http://www.anc.org.za/show.php?id=6847> [Accessed February 15, 2016].

57 UN Centre Against Apartheid (1984). Register of Entertainers, Actors and Others Who Have Performed in Apartheid South Africa. New York: UN Centre Against Apartheid, Notes and Documents.

The Special Committee wanted to persuade artists to stop entertaining apartheid, to stop profiting from apartheid money and to stop serving the propaganda purposes of the apartheid regime. Black organizations in South Africa supported the cultural boycott with protests against foreign entertainers who defied the boycott.



Canadian students endorsed boycotting Israel. 24 February 2016 (© Tamara Khandaker)

Conclusions

The fight against apartheid in South Africa was guided by a clear strategy of the liberation movements as laid down in the Freedom Charter. The overall goal was to end apartheid and achieve freedom and equality for all. During the struggle, the overall goal was broken down into specific BDS sub-goals to hold the South African apartheid regime to account. For this purpose, the South African liberation movements cooperated with UN bodies and solidarity groups around the world to achieve its BDS targets.

Many Palestinians support the call for BDS activism against Israel until it will respect international law and the rights of the Palestinians. The challenge for the Palestinians is to reflect on the question whether the Palestinian Liberation Organization can play a leading role, like the South African movements, at both national and international levels.

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Note: In writing the article the authors have substantially drawn from the archives of the ANC which contains invaluable contributions by Enuga Reddy, Director of the Special Committee against Apartheid. <http://www.anc.org.za/>

Security Council Sanctions on Israel?

by Prof. Joseph Schechla*

UNSC sanctions on Israel was the second most preferred pathway chosen by Palestinian refugees (50.8%); see p.5

Statement by Ambassador Dr. Riyad Mansour before the United Nations Security Council Open Debate on the Situation in the Middle East, including the Palestine Question, 22 July 2014 (© palestineun.org).



These are dark days for those suffering the loss of country and means of subsistence, displacement, the denial of self-determination and other human rights that accompany the breakdown of peace and security. These days are gravely disappointing also for those seeking a UN Security Council (SC) that fulfills its UN Charter-based mandate to bear the “primary responsibility for the maintenance of international peace and security.”¹ In light of the current conflict in Syria, for example, any evaluation of the SC’s performance would not be favorable. Even UN Secretary General Ban Ki-moon has admitted that the SC is failing because of great power divisions that have prevented effective action to end the loss of hundreds of thousands of lives and driven the biggest refugee exodus in generations.²

How is it that the UN body that bears the primary responsibility to uphold the peace-and-security pillar of the UN system is so ineffective? That is the question behind an unceasing debate over needed SC reform. However, in the context of the particular crimes of the self-acclaimed “Islamic State” in Iraq and al-Sham (ISIS) the ineffectiveness of the SC forms a pattern.

1 Charter of the United Nations, Article 24, at: <https://treaties.un.org/doc/Publication/CTC/uncharter.pdf>.

2 Chris McGreal, “UN Security Council is failing Syria, Ban Ki-moon admits,” *The Guardian* (7 September 2015), at: <http://www.theguardian.com/world/2015/sep/07/un-security-council-is-failing-syria-ban-ki-moon>.

In the Palestine-Israel conflict, the crisis of diminishing expectations of the SC extends over decades. The SC's lack of integrity in upholding international law and world order is at least one traceable reason for the wider region's consequent lack of peace and security, and for present-day ISIS daring to adapt the long-established model of Israel's impunity for population transfer and its associated crimes.

The Sanctions Regime

The SC has several remedial measures at its disposal, in addition to its authority to call on UN Members and other states to take effective measures, either individually or jointly, to correct an illegal situation. One of the effective measures at the SC's disposal is the imposition of sanctions. Currently, the SC maintains 15 sanctions regimes, while all but two of them coincide with other overt diplomatic initiatives, including direct negotiations. None affects Israel.

The basis for UN sanctions under international law derives from Chapter VII of the UN Charter. Article 41 covers enforcement measures not involving armed force. Although it does not explicitly refer to "sanctions" by name, Article 41 contains an illustrative list of specific sanctioning measures.³ The SC may decide which measures are to be taken to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These include complete or partial interruption of economic relations, rail, sea, air, postal, telegraphic, radio, and other means of communication, the severance of diplomatic relations and trade embargoes. The same article allows for other non-sanction measures, such as establishing an international tribunal, as in the case of the former Yugoslavia, or a compensation fund, such as the UN Compensation Commission after Iraq's invasion of Kuwait.

The UN Charter allows more flexibility than its predecessor in the League of Nations. That earlier system enabled sanctions only in the case of interstate war, and permitted only comprehensive diplomatic and economic sanctions.⁴

The SC imposed voluntary sanctions for the first time against the apartheid regimes of South Africa, in 1963, and Southern Rhodesia, in 1965. Both of these sanctions regimes became mandatory for all states in 1977⁵ and 1968,⁶ respectively. The Council had imposed comprehensive sanctions on Rhodesia after its white-minority Unilateral Declaration of Independence, and on South Africa for its apartheid system, regional military aggression and pursuit of nuclear weapons capability.

The 1990s saw a series of sanctions regimes imposed on Iraq,⁷ parties to the war in the former

3 "The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations."

4 Farral, J. M. (2007). *United Nations Sanctions and the Rule of Law*. New York: Cambridge University Press. Pp. 53-56.

5 S/RES/418 4 November 1977, at: [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/418\(1977\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/418(1977)).

6 S/RES/253, 29 May 1968, at: [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/253\(1968\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/253(1968)).

7 S/RES/661, 6 August 1990, at: <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/575/11/IMG/NR057511.pdf?OpenElement>.

Yugoslavia,⁸ post-coup Haiti⁹ (1993–94), Somalia¹⁰ (1992–present), Liberia¹¹ (1992–2001), former Yugoslavia¹² (1993–96), Angola¹³ (1993–2002), Rwanda¹⁴ (1994–2008), Sierra Leone¹⁵ (1997–2010) and Kosovo¹⁶ (1998–2001).

The SC has evolved to apply targeted sanctions, rather than comprehensive sanctions, which had proved to cause adverse humanitarian impacts. The sanctions regimes involve countermeasures that generally seek at least one of five purposeful objectives: conflict resolution, democratization, nonproliferation, counterterrorism and the protection of civilians (including human rights).¹⁷

SC sanctions regimes in the new millennium mainly have sought the last three purposes. Toward nonproliferation, the SC has adopted four major resolutions since 2006 that impose and strengthen sanctions on North Korea for continuing to develop its nuclear weapons program and call on Pyongyang to dismantle its nuclear program “in a complete, verifiable, and irreversible manner” and refrain from ballistic missile tests.¹⁸ In 2006, the SC imposed sanctions after Iran refused to suspend its uranium enrichment program,¹⁹ but the SC lifted most measures on 16 January 2016 in the wake of the P5+1 agreement with Iran.²⁰

In an effort to break the chain linking the armed conflict and the illicit trade in conflict minerals, a subsequent resolution extending the ban and instituted a certification-of-origin regime was

8 S/RES/713, 25 September 1991, at: <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/596/49/IMG/NR059649.pdf?OpenElement>.

9 S/RES/841, 16 June 1993, at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N93/354/58/IMG/N9335458.pdf?OpenElement>.

10 S/RES/751, 24 April 1992, at: [http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/751\(1992\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/751(1992)).

11 S/RES/788, 19 November 1992, at: [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/788\(1992\); S/RES/1306, 5 July 2000, at: http://unipsil.unmissions.org/portals/unipsil/media/documents/scores/SCRes_1306_2000.pdf](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/788(1992); S/RES/1306, 5 July 2000, at: http://unipsil.unmissions.org/portals/unipsil/media/documents/scores/SCRes_1306_2000.pdf).

12 S/RES/820, 17 April 1993, at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N93/222/97/IMG/N9322297.pdf?OpenElement>.

13 S/RES/864, 15 September 1993, at: [http://daccess-ods.un.org/access.nsf/Get?Open&DS=S/RES/864%20\(1993\)&Lang=E&Area=UNDOC](http://daccess-ods.un.org/access.nsf/Get?Open&DS=S/RES/864%20(1993)&Lang=E&Area=UNDOC).

14 S/RES/918, 1993, 17 May 1994, at: [http://daccess-ods.un.org/access.nsf/Get?Open&DS=S/RES/918%20\(1994\)&Lang=E&Area=UNDOC](http://daccess-ods.un.org/access.nsf/Get?Open&DS=S/RES/918%20(1994)&Lang=E&Area=UNDOC).

15 The situation in Sierra Leone,” S/RES/1132, 8 October 1997, at: [http://daccess-ods.un.org/access.nsf/Get?Open&DS=S/RES/1132%20\(1997\)&Lang=E&Area=UNDOC](http://daccess-ods.un.org/access.nsf/Get?Open&DS=S/RES/1132%20(1997)&Lang=E&Area=UNDOC).

16 S/RES/1203, 31, March 1998, at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N98/090/23/PDF/N9809023.pdf?OpenElement>.

17 UN Security Council (2013). UN Sanctions. Special Research Report. p. 2 Available at: http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/special_research_report_sanctions_2013.pdf [Accessed February 16, 2016].

18 S/RES/1718, 14 October 2006, at: [http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1718%202006%29; S/RES/1874, 12 June 2009, at: http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2087%282013%29; S/RES/2087, 22 January 2013, at: http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2087%282013%29; S/RES/2094, 7 March 2013, at: http://www.un.org/Docs/journal/asp/ws.asp?m=S/RES/2094\(2013\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1718%202006%29; S/RES/1874, 12 June 2009, at: http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2087%282013%29; S/RES/2087, 22 January 2013, at: http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2087%282013%29; S/RES/2094, 7 March 2013, at: http://www.un.org/Docs/journal/asp/ws.asp?m=S/RES/2094(2013)).

19 S/RES/1696, 31 July 2006, at: https://www.iaea.org/sites/default/files/unsc_res1696-2006.pdf.

20 The SC’s receipt of a favorable International Atomic Energy Agency report automatically terminated seven previous U.N. resolutions, which are now replaced by S/RES/2231, 20 July 2015, which carries over some restrictions, at: http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2231.pdf.

issued.²¹ Since the late 2000s, the SC also adopted a series of resolutions²² that established an arms embargo and targeted sanctions to halt the illegal exploitation of natural resources in the country that was fueling conflicts and related human rights violations, killings, the use of child soldiers and sexual violence in Africa's Great Lakes region.

In early 2011, responding to the violence and use of force against civilians in the Libyan Arab Jamahiriya, the SC established a Committee to monitor implementation of an arms embargo, asset freeze and targeted travel ban.²³ More recently, the SC resolved to thwart ISIS as a terrorist organization with a series of measures.²⁴ The most-recent one is most explicit about the measures required of all states to remedy that illegal situation. In fact, the SC has cited at least 243 individuals and 74 entities on the ISIS and al-Qaeda sanctions list.²⁵

Double Standards

The SC sanctions regimes have become well institutionalized, diversified and targeted through more than 50 years of operation. The SC has grounded effective measures in the domestic, individual, collective and extraterritorial obligations of states under international law, humanitarian law, criminal law and peremptory norms of customary international law, including the duty of non-recognition of an illegal situation created by the illegal use of force or other serious breaches of jus cogens.²⁶ Legal and judicial mechanisms no less than the International Law Commission²⁷ and the International Court of Justice (ICJ) have reaffirmed

21 Security Council resolution 1385 (2001), 19 December 2001, at: <http://www.worldlii.org/int/other/UNSC/2001/51.pdf>.

22 S/RES/2198 (2015), 29 January 2015; S/RES/2136 (2014), 30 January 2014; S/RES/2078 (2012), 28 November 2012; S/RES/2021 (2011), 29 November 2011; S/RES/1952 (2010), 29 November 2010; S/RES/1896 (2009), 30 November 2009; S/RES/1857 (2008), 22 December 2008; S/RES/1807 (2008), 31 March 2008; S/RES/1804 (2008), 13 March 2008; S/RES/1771 (2007), 10 August 2007; S/RES/1768 (2007), 31 July 2007; S/RES/1698 (2006), 31 July 2006; S/RES/1596 (2005), 18 April 2005; S/RES/1552 (2004), 27 July 2004; S/RES/1533 (2004), 12 March 2004; S/RES/1493 (2003), 28 July 2003.

23 S/RES/1970 26 February 2011, at: <http://www.refworld.org/docid/4d6ce9742.html>.

24 S/RES/2199, 12 February 2015, at: http://www.securitycouncilreport.org/atf/cf/%7B65BF9F9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2199.pdf; S/RES/2249, 20 November 2015, at: http://www.securitycouncilreport.org/atf/cf/%7B65BF9F9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2249.pdf; and S/RES/2253, 17 December 2015, at: http://www.securitycouncilreport.org/atf/cf/%7B65BF9F9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2253.pdf.

25 See for the sanctions list: https://www.un.org/sc/suborg/en/sanctions/1267/aq_sanctions_list

26 Stefan Talmon, "The Duty Not to 'Recognize as Lawful' a Situation Created by the Illegal Use of Force or Other Serious Breaches of a Jus Cogens Obligation: An Obligation without Real Substance?" in Christian Tomuschat and Jean-Marc Thouvenin, eds., *The Fundamental Rules of the International Legal Order. Jus Cogens and Obligations Erga Omnes* (Leiden: Martinus Nijhoff, 2005), at: <http://users.ox.ac.uk/~sann2029/6.%20Talmon%2099-126.pdf>; Enrico Milano, "The doctrine(s) of non-recognition: theoretical underpinnings and policy implications in dealing with de facto regimes," at: http://www.esil-sedi.eu/fichiers/en/Agora_Milano_060.pdf; Werner Meng, "Stimson Doctrine," in Rudolf Bernhardt, ed., *Encyclopedia of Public International Law*, Vol., No. IV (1982), 690; and David Turns, "The Stimson Doctrine of Non-Recognition: Its Historical Genesis and Influence on Contemporary International Law," *Chinese Journal of International Law*, Vol. 2, No. 1 (2003), at: 105–43; Marcel Kohen, "La contribución de América Latina al desarrollo progresivo del Derecho Internacional en materia territorial," *Anuario de derecho internacional*. XVII, 57–78, at: http://dadun.unav.edu/bitstream/10171/22094/1/ADI_XVII_2001_04.pdf; Martin Dawidowicz, "The Obligation of Non-recognition of an Unlawful Situation," in James Crawford, Alain Pellet and Simon Olleson, eds., *The Law of International Responsibility* (Oxford: Oxford University Press, 2010), at: [http://www.lalive.ch/data/publications/OUP_Chapter_\(2010\).pdf](http://www.lalive.ch/data/publications/OUP_Chapter_(2010).pdf).

27 Report of the International Law Commission, 53rd Session, GAOR, 56th Session, Supp. No. 10 (A/56/10), 2001, pp. 283-284, paras. 4,5.

these obligations of states, dating back to the “Namibia Doctrine,” whereby the ICJ advised that the

“development of international law in regard to non-self-governing territories, as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to all of them” and that “the termination of the Mandate and the declaration of the illegality of South Africa’s presence in Namibia are opposable to all States in the sense of barring erga omnes the legality of a situation which is maintained in violation of international law...”²⁸

British MPs voted in favour of the UK recognising Palestine by an unexpectedly large majority of 262 after a five-hour Commons debate, October 2014. (Source: al-Ayyam).



In the case of the Palestine question, the United Nations bears a “permanent responsibility towards the question of Palestine until the question is resolved in all its aspects in a satisfactory manner in accordance with international legitimacy.”²⁹ Despite the UN’s overarching responsibility to uphold Palestinian self-determination, international law and world order, nearly 70 years of failure have discredited the organization, undermined the faith of generations in the rule of law, cost untold fortunes and persecuted an entire people. Within this greater problematic is the particular incompetence of the Security Council, in its present form, to respond with effective measures to remedy the ongoing crimes of population transfer, institutionalized material discrimination (apartheid) against Palestine’s indigenous people, the foundational breach of uti possidetis iuris (the international law principle prohibiting partition and recolonization of a people’s territory/self-determination unit) and the litany of gross violations of human rights.

²⁸ Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970) (Advisory Opinion) [1970] ICJ Rep. 16, para. 52.

²⁹ “Committee on the Exercise of the Inalienable Rights of the Palestinian People,” A/RES/70/12, 2 December 2015, at: <https://unispal.un.org/DPA/DPR/UNISPAL.NSF/47D4E277B48D9D3685256DDC00612265/F2EA91B32BB0309985257F11005E27FA>.

Many observers—and the actual voting record—have shown that the principal obstacle to the SC applying effective remedies to the illegality brought about by Israel is the United States of America’s veto privilege.³⁰ Protecting Israel from critical resolutions at the SC has long been a central pillar of USA foreign policy. The tables have started to turn in recent years with the deterioration of relations between the U.S. President Barack Obama Administration and Israel’s Benjamin Netanyahu government. The protective shield is being questioned at the White House as part of a broader review of US relations with Israel.³¹ However, no effective policy shift is yet manifest.

Consequently, the diplomatically hamstrung SC never has subjected the offending state to the available sanctions regime that was designed to correct the illegal situations arising from conflict, tyranny, illicit weapons proliferation, terrorism and the persecution of civilians (including violations of their human rights). Only once, in 1980, did the SC succeed to “[call] upon all States not to provide Israel with any assistance to be used specifically in connection with [its illegal] settlements in the occupied territories.”³²

Two years later, the UN General Assembly (GA) also reminded UN Member states of the illegality of recognizing or cooperating with the illegal situation in Palestine when it condemned the annexation of Palestinian territory by Israel and further deplored:

any political, economic, financial, military and technological support to Israel that encourages Israel to commit acts of aggression and to consolidate and perpetuate its occupation and annexation of occupied Arab territories...³³

In doing so, the GA has reiterated its call to “all Member States” to apply specific measures to:

- (a) refrain from supplying Israel with any weapons and related equipment and to suspend any military assistance that Israel receives from them;
- (b) refrain from acquiring any weapons or military equipment from Israel;
- (c) suspend economic, financial and technological assistance to and cooperation with Israel;
- (d) sever diplomatic, trade and cultural relations with Israel...³⁴

Thus, the SC retains an institutional memory of prior legal obligations that the ICJ also imparted in its own 2004 Advisory Opinion on the construction of a wall in the occupied Palestinian territory, reiterating that the illegal situation has resulted in “an obligation not to

30 Donald Neff, “An Updated List of Vetoes Cast by the United States to Shield Israel from Criticism by the U.N. Security Council,” *Washington Report of Middle East Affairs* (May/June 2005), p. 14, at: <http://www.wrmea.org/2005-may-june/an-updated-list-of-vetoes-cast-by-the-united-states-to-shield-israel-from-criticism-by-the-u-n-security-council.html>; “U.N. Security Council: U.S. Vetoes of Resolutions Critical to Israel (1972 - Present),” *Jewish Virtual Library* (2011), at: <http://www.jewishvirtuallibrary.org/jsource/UN/usvetoes.html>; Nick Bryant, “US raises prospect of Israel UN isolation,” *BBC News* (1 April 2015), at: <http://www.bbc.com/news/world-middle-east-32117501>.

31 Goldberg, J. (2014). *The Crisis in U.S.-Israel Relations is Officially Here*. *The Atlantic*. October 28, 2014. Available at: <http://www.theatlantic.com/international/archive/2014/10/the-crisis-in-us-israel-relations-is-officially-here/382031/> [Accessed February 16, 2016].

32 S/RES/465 (1980), 1 March 1980, para. 7, at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/5AA254A1C8F8B1CB852560E50075D7D5>.

33 General Assembly, “The situation in the Middle East,” A/37/123 (1982), 16 December 1982, at: <http://www.un.org/documents/ga/res/37/a37r123.htm>.

34 *Ibid.*, para. 13.

render aid or assistance in maintaining the situation created by such construction”. The ICJ reminded that, in the context of war and occupation, The Hague Convention and the four Geneva Conventions “incorporate obligations essentially of an erga omnes character”; that is, binding on all.³⁵

The obligation of non-recognition, noncooperation or non-transaction with parties to the illegal situation is self-executing in the sense that such erga omnes obligations are axiomatic and do not require SC resolutions for states to exercise this extraterritorial duty. However, the SC is

Graffiti on the Wall in Bethlehem, Lady Liberty weeping over Palestine. 2015. © BADIL.



specially mandated to articulate, monitor and operationalize these obligations as the UN body “primary responsibility for the maintenance of international peace and security.”³⁶

Mercifully, the failed and now greatly discredited SC is not the only actor in the field of international relations. It is notable that local authorities are conscientiously acting on their erga omnes obligations as part of legally bound states. To wit, a local authorities’ forum in Canoas RS, Brazil in 2012 declared that

“...Brazilian local governments...commit to responsible investment by avoiding contracting with parties that support or benefit from occupation, or violate related prohibitions under international law.”³⁷

35 ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, General List 131, 9 July 2004, at: <http://www.icj-cij.org/docket/files/84/6949.pdf><http://www.icj-cij.org/docket/files/131/1671.pdf>.

36 UN General Assembly. November 3, 1950. Resolution 377 (V) "Uniting for Peace". A/RES/5/377. Available at: <http://www.un-documents.net/a5r377.htm> [Accessed February 16, 2016].

37 "Local Authorities Forum—Free Palestine Statement," Canoas RS, Brazil, 27 November 2012, article 6, at: <http://www.hlrn.org/img/documents/final%20statement%20LAF.pdf>.

In December 2014, another gathering of local governments reiterated their pledge to fulfill that same *erga omnes* obligation:

“Local governments...commit to responsible investment by not contracting with parties and not twinning with cities that support or benefit from occupation, or violate related prohibitions under international law.”³⁸

The proliferation of such examples, including the citizens’ boycott, divestment and sanctions initiatives, promises to “connect the dots” and form a movement that raises the call to the “primarily responsible” parties to apply effective measures to enforce the law that they are supposed to uphold. For the SC to overcome its selective application and double standards, however, will require fundamental reform, including nothing short of replacing the veto privilege with a more-democratic order within the SC and/or a seismic shift in a U.S. foreign policy that enables and protects gross violators of the law.

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³⁸ “Olive Declaration,” International Conference of Seville in Support of Palestinian Rights, organized by FondoAndaluz de Municipios para la SolidaridadInternacional (FAMSI), United Cities and Local Government (UCLG) and the UN Committee on the Exercise of the Inalienable Rights of the Palestinian People (CEIRPP), 2–3 December 2014, at: <http://www.hlrn.org/img/documents/olivedeclaration.pdf>.

The ICC and the ‘Situation in Palestine’: Political Sensibilities and Procedural Hurdles

*Dr. Valentina Azarova**

The ICC was the third most preferred pathway chosen by Palestinian refugees (42.4%); see p.5

Palestinian Foreign Minister Riyad al-Maliki and Palestinian Ambassador to the Netherlands Nabil Abuznaid visit the International Criminal Court in August 2014 (Martijn Beekman/AFP/Getty Images)



The Israel/Palestine context has long needed a game-changing moment. Since early 2015, when Palestine’s years-long struggle to trigger the International Criminal Court (ICC) jurisdiction came to fruition, the question is whether the Court’s potential role will fit the bill. In BADIL’s survey of refugees living in UNRWA camps in Jordan, Lebanon, the West Bank and Gaza about their three preferred channels to bring about a ‘durable solution’ to the conflict, 43 percent listed the ICC – a third place finish, behind the options of Security Council sanctions and supporting the BDS movement.

This apparent hesitance or at least lukewarm enthusiasm for the ICC’s potential is not misplaced. It is important to have an accurate understanding of the preliminary examination of the ‘situation in Palestine’, in view of the challenges to ICC action: its ability to face up to political pressure; its problematic professional track record, which has not inspired public confidence; and the procedural and substantive hurdles the prosecutor must overcome to bring forward a criminal case.

Political sensibilities

As with any international institution, the ICC is a political animal: dependent for legitimacy on its proponents and susceptible to the whims of its state donors and supporters. Although the

status quo of unquestioned Israeli impunity has begun to improve since Israel's 2014 offensive on Gaza, other countries evidently still feel the need to keep the ICC's work on Palestine at bay in the name of finding a political solution. Even the European Union, which has otherwise become fully cognizant of Israel's unwillingness to apply international law in good faith -- for instance, in defining its territorial boundaries -- previously tried to dissuade Palestine from joining the Court, and continues to encourage Israeli domestic proceedings regarding potential war crimes rather than acknowledging Israeli impunity and pushing for an ICC investigation.

As critics of the ICC's work often point out, its track record so far reflects a preoccupation with African cases and an apparent reluctance to open investigations concerning Western officials and their allies. In short, it is highly sensible to high political stakes, which are embedded in the Rome Statute (which gives the Security Council the mandate to request investigations, such as into African cases), and in the ICC's particular institutional function in the international system. The ICC's Office of the Prosecutor (OTP) has vigorously defended its impartiality, but the Court cannot be fully insulated from political pressure nor can it carry out its functions without political support; not least because it relies on state parties to carry out arrest warrants.

If the ICC's work on the situation in Palestine hinges on the Office of the Prosecutor's ability to put aside politics, it also requires Prosecutor Bensouda's office to obtain the facts necessary to substantiate complex legal issues. Certain allegations, particularly war crimes, may appear black and white, but crimes against humanity, such as persecution and apartheid (which has no precedent), have particularly high evidentiary thresholds. The politically-sensible need to uphold the court's impartiality by rigorously applying existing procedural requirements -- through the Prosecutor's presentation of watertight cases based on expert analysis and a sound body of fact -- means that even open-and-shut cases of international crimes are likely to take time before materializing in arrest warrants.

Procedural hurdles matter

The OTP applies rigorous criteria to assess the viability of certain cases, including its own ability to access necessary information about specific acts. In all cases, the OTP must weigh the resources required to investigate a case, as well as the feasibility of taking a case through to the investigation and prosecution stages -- such as identifying specific perpetrators and accomplices, including decision-makers and commanders.¹ That assessment will include the likelihood of Israeli non-cooperation and denial of investigators' access to Palestinian territory.²

While the Court's temporal jurisdiction could go back as early as 1 July 2002, when its treaty

1 As part of phase two of the preliminary examination, the Office of the Prosecutor is presently reviewing jurisdictional issues, subject matter and potential crimes. A preliminary examination consists of four phases:

- 1) Acceptance of the declaration and temporal scope;
- 2) Review of jurisdictional issues, subject matter and potential crimes under the Rome Statute;
- 3) Review of admissibility and jurisdiction related issues, including complementarity in terms of existing investigations or proceedings in relevant domestic jurisdictions; and
- 4) Decision to open an investigation.

2 An OTP trip to Gaza was announced in early 2015 but later reportedly shelved, due to resource considerations and the unlikelihood of access being granted.

came into force, on Palestine, the OTP has said that its work could not reach back before November 2012, when the United Nations General Assembly ‘recognized’ Palestine’s statehood through upgrade in its observer status. In fact, the temporal scope of the OTP’s ‘preliminary examination’ is, at least for now, limited by Palestine’s Article 12(3) declaration triggering the ad hoc jurisdiction of the Court, submitted in January 2015, which requested jurisdiction onwards from 13 June 2014.

That being the case, the fundamental right of return of Palestine refugees would certainly not fall under the ICC’s material jurisdiction, although more recent acts of forcible transfer and systematic government-sanctioned displacement of Palestinian communities certainly would. An open-ended question in this respect, as well as in the case of settlements, concerns the temporal scope and continuity of certain violations (e.g. does the violation continue for as long as the community remains displaced).

It is in part because of the difficulty of investigating and prosecuting the specific cases that it considers to make up the ‘situation in Palestine’, that experts do not expect the OTP will rush to open an investigation. The OTP is not bound by any particular timeframe to move beyond the current, ‘preliminary examination’ stage of the proceedings, and some speculate that it may take three, eight, or even ten (as has been the case with other situations) to even decide whether it wishes to investigate international crimes from the situation in Palestine and which these would be.³

The preliminary examination is bound to be fraught. Once it reaches the third stage of the examination, for instance, the OTP will conduct an assessment of admissibility issues, including complementarity – the conformity of Israeli domestic proceedings to the international duty to investigate and prosecute.⁴ This is bound to become a food fight with Israel unless managed professionally. Israel’s domestic proceedings have thus far consistently lacked transparency, impartiality and independence, and shielded both high-level decision-makers and military officials from accountability.⁵ Yet, since the 2014 Gaza war, Israeli authorities have announced their intention to undertake unprecedented investigations of decision-making processes by the highest echelons, directed explicitly at heading off the ICC’s jurisdiction.⁶

Adding to the likely delay, Prosecutor Bensouda has made clear that her preliminary examination is considering the situation in its highly-complex entirety: both Palestinian and Israeli violations, in both the West Bank and Gaza Strip. Yet, in this regard, it should be recalled that the ICC’s remit is of a limited scope: when and if the OTP ultimately decides to investigate, it will investigate only those most responsible for the most serious crimes, addressing the most exceptional incidents,

3 See generally, V Azarova, *Palestine’s Day in Court?*, Al-Shabaka, April 2015 <https://al-shabaka.org/briefs/palestines-day-in-court-the-unexpected-effects-of-icc-action/>.

4 A composite test based not only on international human rights law, but also international humanitarian and criminal law.

5 V Azarova, S Weill, *Israel’s Unwillingness?* *International Criminal Law Review* 12 (2012) available at https://www.academia.edu/13251771/Israel_s_Unwillingness_Follow-Up_Investigations_to_the_UN_Gaza_Conflict_Fact-Finding_Mission_Report.

6 On 20 January 2015, Israel’s State Comptroller, Judge Shapira, stated: “According to principles of international law when a State exercises its authority to objectively investigate accusations regarding violations of the laws of armed conflict, this will preclude examination of said accusations by external international tribunals (such as the International Criminal Court in The Hague)”; The State Comptroller Investigation of Operation ‘TzukEitan’ – Protective Edge, State Comptroller official site, <http://www.mevaker.gov.il/he/publication/Articles/Pages/2015.1.20-Tzuk-Eltan.aspx>.

in light of their gravity, basis in policy, and the impact of certain cases on the dynamic of the conflict.⁷

That being said, the OTP's very desire to substantiate its impartiality and uphold the integrity of its work may come at the cost of issuing a timely decision. For instance, if Palestine were to submit a state referral under Article 14 (as opposed to the article 12 declaration that triggered the preliminary examination), the Prosecutor's office would not need approval from the Pre-Trial Chamber to open an investigation, potentially hastening the process. Yet the OTP reportedly discouraged Palestine from submitting a referral, out of a belief that the Pre-Trial Chamber's stamp of approval is important for its impartiality;⁸ as it means there will be heightened scrutiny of both prima facie evidence and the assessment of the likelihood of success in taking the case forward.⁹



Palestinians warm themselves by a fire as they sit in a makeshift shelter outside their home, that witnesses said was destroyed by Israeli shelling during a 50-day war, in Gaza. Photo- 17 January 2015 (©Reuters)

Principled political support

Civil society should be aware of these shortcomings in its engagements with the ICC. While it is too early to know whether the Prosecutor's office will engage in foot-dragging in the face of political obstruction, civil society should adopt a supportive and coherent approach to interactions with the Prosecutor's office to monitor and redress either prospective external pressures or procedural obstacles. Such exchanges should carefully consider and seize opportunities to influence the OTP's prosecutorial strategy, both in terms of her choice of cases, as well as her intention to examine the situation in its entirety before proceeding with any investigations. The latter may prove an unreasonably burdensome task that might come at the expense of the operationalization of the court's deterrent role – presenting civil society with an opportunity to argue for a 'batched' or 'sequential' approach to investigations.

Moreover, since it is often the case that opponents of international justice for Israel used the well-known tactic of seeking to undermine the facts documented by blaming the partisanship of the rights group,¹⁰ civil society should not limit its contributions to the court's work to factual submissions:

7 See, V Azarova, Palestine's Day in Court?, Al-Shabaka, April 2015 <https://al-shabaka.org/briefs/palestines-day-in-court-the-unexpected-effects-of-icc-action/>.

8 Yet, a state referral would give Palestine a right to appeal a decision of the OTP not to open an investigation on any grounds. Without a referral, Palestine has no right of appeal, and the PTC can only decide to review an OTP decision not to investigate if the decision was based on considerations of interests of justice or gravity (and in the latter case, the PTC may not annul the OTP's decision, but only request the OTP to review it).

9 Since 1 April 2016 Palestine can submit a state referral as state party to the Statute under its Article 14; meaning that investigation does not require PTC approval. The OTP, some experts have noted, is interested in getting a stamp of approval from the PTC.

10 The Goldstone report, for instance, was criticized for using documentation collected by Palestinian human rights groups to substantiate some of its conclusions.

Palestinian protest against land confiscation and building of Israeli colonies. Bethlehem, March 2015. (© BADIL).



expert opinions by way of Article 15 submissions, not only by sympathetic law professors, but especially by experienced ICC practitioners and defense counsel, could provide the OTP's situation analysis team with crucial support when making the case to open certain investigations. Advocates reported

that the Prosecutor herself has signaled the importance of such contributions.

To ensure political safe space for the court's work, civil society should also seek the support of third party states and international actors – including by analyzing and activating the self-defined commitments of third parties to the Court's role and recently also to accountability in the specific Israel/Palestine context.¹¹ Indeed, the systematic nature of Israel's violations of international law, including apparent international crimes, and their embeddedness in Israeli legal and administrative practice, have triggered ongoing revisions of EU-Israeli relations public and private.¹² Those engaged in inter-state relations with Israel should be mindful of opportunities to urge and potentially leverage Israeli cooperation with the Court, with both Israel's and the international community's best interests in mind.

Civil society should carefully take stock of the EU's positions on Israeli practices, domestic proceedings and the importance of accountability. Despite continuing to prioritise Israeli domestic proceedings, apparently in hope that Israeli authorities live up to their obligations under the principle of complementarity, the EU and its member states should be made aware of the unsustainable nature of this position given the unlikelihood of Israeli conduct fulfilling international standards, which comes at the expense of ensuring both EU's and Israel's respect for international law. Instead, civil society interventions should further and develop the EU's specific, principled positions on the non-conformity of Israeli domestic proceedings with international standards, and the inadequacy of Israeli cooperation with the Court.

The EU and member states also have a relatively developed set of commitments (including financial) to the role of the court (especially amid ongoing conflict and persisting violations); despite maintaining a significant margin of appreciation in choosing the measures by which

¹¹ "The EU believes that compliance with international humanitarian law and international human rights law by states and non-state actors, including accountability, is a cornerstone for peace and security in the region"; Foreign Affairs Council, Council of the EU, July 2015 <http://www.consilium.europa.eu/en/press/press-releases/2015/07/20-fac-mepp-conclusions/>.

¹² European Council for Foreign Relations, EU Differentiation and Israeli Settlements (June 2015) www.ecfr.eu/publications/summary/eu_differentiation_and_israeli_settlements3076.

to pursue these commitments.¹³ Indeed, the EU's own legal needs to uphold its public policy require it to protect the legal orders of its member states from the effects of Israeli unlawful acts – including those of transnational criminal acts on domestic law.¹⁴

Cynics like former Prosecutor Moreno-Ocampo¹⁵ have sought to politicize the court's role and characterize its procedures as insurmountable hurdles to the prosecution of Israelis for certain crimes. But to shield perpetrators of the most obvious cases of persisting international crimes (e.g. Israel's unlawful appropriation of land and transfer of civilians into occupied territory, while forcibly transferring Palestinian communities) would be to do away with the Court's very reason for being. Ultimately, the EU and its member states should be pushed to avoid the politicisation of the Court in the Israel/Palestine context, as in any other, so as to vigorously defend the Court's professional standing, independence and integrity.

Since the need to protect the integrity of the Court's function of rendering the basic service of justice to all peoples without discrimination is as great a need and value for Palestinians and their allies – who could certainly do more by way of dissemination and outreach to bolster the court's professional role – as it is for the international community of states and international actors,¹⁶ a cautious, measured and rigorously professional approach by the Court and its proponents is needed to counter the vast political pressure and divisive argumentation that is and will continue to be associated with the Court's work on the situation in Palestine.

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13 The EU's July 2015 FAC conclusions on the MEPP, incorporated a commitment to accountability: "The EU believes that compliance with international humanitarian law and international human rights law by states and non-state actors, including accountability, is a cornerstone for peace and security in the region." <http://www.consilium.europa.eu/en/press/press-releases/2015/07/20-fac-mepp-conclusions/>. See also, EU's 2011 Council decision (which are legally binding on the EU and its Member States) on the ICC and its related Action Plan which sees the ICC as "an essential means of promoting respect for international humanitarian law and human rights...as well as contributing to the preservation of peace"; Action Plan to follow-up on the Decision on the International Criminal Court, Political and Security Committee, Council of the European Union, July 2011 <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2012080%202011%20INIT>.

14 V Azarova, ICC action and the domestic effects of transnational criminality, open Global Rights, 16 June 2015 <https://www.opendemocracy.net/openglobalrights/valentina-azarov/icc-action-and-domestic-effects-of-transnational-criminality>.

15 Whose recent public lecture at the Hebrew University was titled 'Learning from Reality: International and foreign courts' Interventions in the Israel/Palestine Conflict', 14 December 2015 http://law.huji.ac.il/eng/mess.asp?cat=1038&news_id=28570&in=1038. During which he was quoted as saying that "Israel's High Court is highly respected internationally" and that anyone prosecuting Israelis regarding settlement activity might be incapable of proving criminal intent if those Israelis explained that they honestly believed their actions were legal once ratified by the country's top court; Jonah Jeremy, Former ICC prosecutor: High Court approval could save settlements from war crime label, JPost, 12 October 2015 <http://www.jpost.com/Arab-Israeli-Conflict/Former-ICC-prosecutor-High-Court-approval-could-save-settlements-from-war-crime-label-436967>.

16 See, for instance, Martijn Groenleer, The United States, the European Union, and the International Criminal Court: Similar values, different interests?, *International Journal of Constitutional Law* 13(4) (2015) 923-944.

Using other forms of resistance

*Simon Reynolds**

Other forms of resistance was the fourth most preferred pathway chosen by Palestinian refugees (41.8%); see p.5

Surely, few observers can claim to be surprised by the call from Palestinian refugees for a rethink as to the ways in which a permanent solution to the refugee crisis is to be achieved?



The Separation and Annexation Wall near Ramallah 2013
(© RWBADL)

It is, of course, true that formal, legal frameworks exist which could adequately address the Israel-Palestine crisis, and its attendant mass, forced displacement of Palestinians; displacement evident both within the boundaries of Historic Palestine and beyond. Indeed, the total combined population of Palestinian refugees and IDPs now stands at some 7.9 million, representing the single largest refugee population on the planet.¹ Such frameworks are constructed from assorted instruments of international law, including treaty, statute and UN resolutions.² The common characteristic of such instruments is their focus on the respect for and protection of human rights, and in adopting such a focus, these essential

universal principles are elevated above the muddled and treacherous waters of political expediency. Yet, in the case of Palestinian displacement, these frameworks continue to be abused or, more commonly, neglected altogether by international power brokers.³

- 1 BADIL (2015). Survey of Palestinian Refugees and Internally Displaced Persons, 2013-2015. Bethlehem, Palestine: BADIL Resource Center for Palestinian Residency and Refugee Rights. Available at: <http://www.badil.org/en/publication/survey-of-refugees.html> [Accessed February 1, 2016].
- 2 See amongst others: International Red Cross Committee. August 12, 1949. Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva. Available at: <https://www.icrc.org/ihl/INTRO/380> [Accessed February 2, 2016]. International Red Cross Committee. October 18, 1907. Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague. Available at: <https://www.icrc.org/ihl/INTRO/195> [Accessed February 2, 2016]; UN General Assembly. December 4, 2012. Resolution 67/19: Status of Palestine in the United Nations, UN Doc. A/RES/67/19; UN General Assembly. January 30, 2001. Resolution 55/153 on the Nationality of Natural Persons in Relation to the Succession of States. A/RES/55/153. Available at: <http://www.unhcr.org/42bc068d2.pdf> [Accessed February 2, 2016]; UN General Assembly. 1974. Resolution 2336; UN General Assembly. July 4, 1967. Resolution 2252 (ES-V): Humanitarian Assistance, UN Doc. A/RES/2252 (ES-V). Available at: [http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/2252%20\(ES-V\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/2252%20(ES-V)) [Accessed February 1, 2016]; UN General Assembly December 16, 1966. "International Covenant on Civil and Political Rights, A/RES/2200(XXI)[A-C]. Available at: <http://www.un-documents.net/icescr.htm> [Accessed February 1, 2016]; UN General Assembly. December 21, 1965. International Convention on the Elimination of All Forms of Racial Discrimination. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx> [Accessed February 1, 2016]; UN General Assembly. December 11, 1948. Resolution 194(III): Palestine: Progress Report of the United Nations Mediator, UN Doc. A/RES/194(III). Available at: [http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/194\(III\)&Lang=E&Area=RESOLUTION](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/194(III)&Lang=E&Area=RESOLUTION) [Accessed February 1, 2016]; UN General Assembly. December 10, 1948. Universal Declaration of Human Rights. Available at: <http://www.un.org/en/documents/udhr/index.shtml#a16> [Accessed February 1, 2016]; UN General Assembly. November 29, 1947. Resolution 181 On the Report of the Ad Hoc Committee on the Palestinian Question. A/RES/181(II). Available at: [http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/181\(II\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/181(II)) [Accessed February 1, 2016].
- 3 See for example Richard Falk's open letter of February 6, 2016 in response of Ban Ki Moon's statement on January 26, 2016 in the UN Security Council: <http://www.middleeasteye.net/columns/open-letter-ban-ki-moon-264475500> [Accessed February 9, 2016].

Chief among these abject failures is the continued refusal of the international community to actively pursue the implementation of UN resolutions which call for the return of Palestinian refugees to the homes from which they were forcibly displaced during the 1948 and 1967 Wars.⁴ Not only does this serve to perpetuate the suffering of the displaced and the continued denial of their fundamental rights, but it also sets an ugly and dangerous precedent. Each additional day of Palestinian exile further highlights a tacit acceptance by the international community of the concept of conquest by force, and contributes to a steady, incremental undermining of the relevance of international law.

As an attempted substitute for the proper application of existing legal frameworks, came the Oslo Accords⁵; the child of extensive political wrangling which afforded primacy to the strategic goals of Israel and its benefactors at the expense of the Palestinian people and their inalienable right to self-determination.⁶ The result was an agreement which served only to entrench Israeli domination of Palestinian space, fracturing the West Bank into an archipelago of disparate Bantustans and facilitating Israel's continued colonization of Area C, with the number of Jewish-Israeli settlers/colonizers inside the occupied Palestinian territory (oPt) now numbering greatly

4 Abdelrazek, A. (2012). 'Israeli Violation of UN Resolution 194 (III) and Others Pertaining to Palestinian Refugee Property.' *Palestine-Israel Journal of Politics Economics and Culture*. Online. Available at: <http://www.pij.org/details.php?id=1220> [Accessed February 9, 2016]; Hammond, J. R. (2010). 'Rogue State: Israeli Violations of U.N. Security Council Resolutions.' *Foreign Policy Journal*. Online. Available at: <http://www.foreignpolicyjournal.com/2010/01/27/rogue-state-israeli-violations-of-u-n-security-council-resolutions/> [Accessed February 9, 2016]; Rizvi, H. (2009). 'Israel ignores UN Security Council Resolution'. *Electronic Intifada*. Online. Available at: <https://electronicintifada.net/content/israel-ignores-un-security-council-resolution/7950> [Accessed February 9, 2016].

5 Declaration of Principles on Interim Self-Government Arrangements ("Oslo Agreement"), September 13, 1993. Available at: <http://www.refworld.org/docid/3de5e96e4.html> [accessed February 9, 2016]; Interim Agreement on the West Bank and on the Gaza Strip ("Oslo II Agreement"), September 28, 1995. Available at: <http://www.refworld.org/docid/3de5ebbc0.html> [Accessed February 9, 2016]; UN Security Council. October 22, 1973. Resolution 338 on a cease-fire in the Middle-East. S/RES/338. [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/338\(1973\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/338(1973)) [Accessed February 10, 2016]; UN Security Council. November 22, 1967. Resolution 242 on the Middle East. S/RES/242. Available at: [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/242\(1967\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/242(1967)) [Accessed February 10, 2016].

The Oslo Accords are often mentioned in the frame of the 'Oslo process'. This indicates the period in the run to the agreement between the Palestine Liberation Organization (PLO) and Israel in 1993, the Gaza-Jericho Agreement in 1994 and the second interim agreement in 1995. This process used to be applauded as a means to achieve a peace-treaty based on the UN Security Council Resolutions 242 and 338 – a concept that does not cover the subsequent realities, since Israel never recognized a core prerequisite of the negotiations, which is the right of the Palestinian people to self-determination. Palestinian youth that grew up under the Israeli non-implementation of negotiated provisions and ongoing compartmentation of the West Bank – that comes with colony expansion and forced transfer of people as well as denial of the right of return and other basic human rights – are indicated with the term "peace process generation" or "Oslo generation".

6 One of Israel's strategic goals with the Oslo Agreements consists out of the concept of separation: "to free Israel from policing Palestinian population centers while maintaining settlements in the West Bank and Gaza Strip – consolidation of the occupation in a different way."

- Weinberger, P. E. (2006). *Co-opting the PLO: A Critical Reconstruction of the Oslo Accords, 1993-1995*. Lanham: Lexington Books. p. 22.

The interim status of the Agreements serves "to freeze Israel's post-1967 status quo (occupation, settlements) and to establish them as defining norms."

- Weinberger, P. E. (2006). *Co-opting the PLO: A Critical Reconstruction of the Oslo Accords, 1993-1995*. Lanham: Lexington Books. p. 22.

in excess of half a million.⁷ Far from bestowing upon Israel a temporary, custodial role over occupied territory, Oslo has in fact allowed Israeli authorities to actively pursue a demonstrably colonialist agenda; to assume de facto sovereignty over Area C and steadily remove from this land all Palestinian presence.⁸

To this end, complete control is achieved and maintained by Israel's sprawling 'security' apparatus, manifested in fixed and 'flying' checkpoints; an extensive and discriminatory permit regime⁹, and the regular use of extreme physical and psychological violence against the Palestinian populace. It is an entirely punitive system, and quality of life has been eroded so grievously by these political agreements that, for many Palestinians, the Oslo Accords have come to represent a second Nakba.¹⁰

Given this landscape of inequality and despair, and the best efforts of the international community to reduce Palestinians to mere spectators as their land and rights are wrestled from them, it is inevitable that, from the aggrieved, will come concerted calls for an alternative; for grassroots change; for popular resistance.

Palestinians run to take cover after Israeli forces fire tear gas during clashes at the main entrance of Bethlehem. December 2015 (©Mousa Alshaer/AFP)



Perhaps the most obvious example is the recent increase in the number of youth protests throughout the oPt. This increase highlights a growing sense of alienation and disenfranchisement among Palestinians. Indeed, the majority of those who take to the streets to protest and face-off against the might of the Middle East's most formidable military belong to the 'Oslo generation', with their future prospects strangled and suffocated from birth by the pervasive reach of Israel's occupation. In protesting, however, they are empowered and afforded a degree of agency.¹¹

7 http://thecepr.org/index.php?option=com_content&view=article&id=115:illegal-israeli-settlements&catid=6:issues-and-briefings&Itemid=34 [Accessed February 10, 2016]; <https://www.oxfam.org/sites/www.oxfam.org/files/oxfam-oslo-20-factsheet.pdf>

8 http://thecepr.org/index.php?option=com_content&view=article&id=115:illegal-israeli-settlements&catid=6:issues-and-briefings&Itemid=34; <https://www.oxfam.org/sites/www.oxfam.org/files/oxfam-oslo-20-factsheet.pdf>; <https://www.washingtonpost.com/news/worldviews/wp/2014/12/22/map-the-spread-of-israeli-settlements-in-the-west-bank/>; <https://www.globalpolicy.org/security-council/index-of-countries-on-the-security-council-agenda/israel-palestine-and-the-occupied-territories/land-and-settlement-issues.html>

9 Alqasis, A. and al Azza, N. (2015), Forced Population Transfer: the Case of Palestine. Installment of a Permit Regime, Working Paper No. 18, BADIL Resource Center for Palestinian Residency and Refugee Rights, Palestine, 87p.

10 Bishara, M. (2015). The Rise of the Oslo Generation. Al-Jazeera. Online. Available at: <http://www.aljazeera.com/indepth/opinion/2015/10/rise-oslo-generation-151014053013360.html> [Accessed February 10, 2016].

11 Arab World for Research & Development (2015). Current Protest: An Online Study of Palestinian Youth. Available at: <https://www.jewishvirtuallibrary.org/jsourc/images/palyouth.pdf> [Accessed February 10, 2016].

The same can be said of recent attacks by Palestinians directed at Israelis. Such attacks cannot – despite the attempts of Israeli politicians – be in any way divorced from the horrendous suffering inflicted upon the occupied Palestinian populace over a period spanning some seven decades. Rather, these attacks are the natural result of a severe and prolonged deprivation of human rights, coupled with an absence of any effective legal recourse. Indeed, such cause and effect – and the legitimacy of armed resistance in specific scenarios of belligerent occupation - finds recognition in resolutions issued by the United Nations. For instance, General Assembly Resolution A/RES/3246 (XXIX) of 29 November 1974 “[r]eaffirms the legitimacy of the peoples’ struggle for liberation from colonial and foreign domination and alien subjugation by all available means, including armed struggle.”¹²

This provision is, of course, conditional, with any act required to be conducted in adherence with International Humanitarian Law if it is to qualify as a form of legitimate armed resistance. It is also to be noted that UN resolutions are not legally binding per se, though they should be considered as reflecting the dominant legal rationale among sovereign states.

What becomes clear, then, is that armed struggle is, if performed in accordance with the laws of warfare, a legitimate option for the Palestinian people to exercise in their resistance of Israel’s colonialist project (a point conspicuous by its absence from both the dominant political discourse and international media coverage regarding the situation inside the oPt). However, such acts are undertaken largely on account of there being no effective alternative, and those Palestinians who engage in direct confrontation with the occupying power do so in the knowledge that the price they may pay for such agency is extremely high.¹³ In October and November 2015¹⁴, more than 100 Palestinians have been killed by the Israeli military or paramilitary police units, with lethal force having become deployed so commonly that leading human rights groups have raised concerns that such practices form part of an Israeli policy of extrajudicial execution.¹⁵ And, yet, this confrontation continues.

Such resistance is, therefore, indicative of both desperation and hope; ‘desperation’ insofar as young men and women, feeling abandoned by the international community and the Palestinian political leadership¹⁶, continue to engage in forms of resistance which may result in their own death or maiming, and ‘hope’ insofar as such acts demonstrate an enduring and powerful collective will on behalf of Palestinians to reject ‘victim’ status, as well as a refusal to accept

12 UN General Assembly. November 29, 1974. Resolution 3246 (XXIX) on the importance of the universal realization of the right of peoples to self determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights. A/RES/3246. Available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/1ce874ab1832a53e852570bb006dfaf6/c867ee1dbf29a6e5852568c6006b2f0c?OpenDocument> [Accessed February 10, 2016].

13 Arab World for Research & Development (2015). Current Protest: An Online Study of Palestinian Youth. Available at: <https://www.jewishvirtuallibrary.org/jsourc/images/palyouth.pdf> [Accessed February 10, 2016]; <http://www.jonathan-cook.net/category/occupied-territories/protests/>;

14 Anadolu Agency, Israel kills more than 100 Palestinians since October, 27 November 2015, <http://www.dailysabah.com/world/2015/11/27/israel-kills-more-than-100-palestinians-since-october>

15 <https://www.amnesty.org/en/latest/news/2015/11/israel-opt-investigate-apparent-extrajudicial-execution-at-hebron-hospital/>; <https://www.amnesty.org/en/latest/news/2015/10/israeli-forces-must-end-pattern-of-unlawful-killings-in-west-bank/>; <http://mondoweiss.net/2015/10/extrajudicial-killings-palestinians/>; <http://www.presstv.ir/Detail/2015/12/05/440389/Sweden-Margot-Wallstrom-extrajudicial-executions-Palestinians>

16 BADIL (2015). Survey of Palestinian Refugees and Internally Displaced Persons, 2013-2015. Bethlehem, Palestine: BADIL Resource Center for Palestinian Residency and Refugee Rights. Available at: <http://www.badil.org/en/publication/survey-of-refugees.html> [Accessed February 1, 2016].

their exile as a permanent phenomenon. It is truly remarkable, given the duration of this exile, as well as the physical separation which exists between the Oslo generation and their ancestral lands and communities – a separation now emphatically embodied by eight vertical meters of concrete and hundreds of miles of tumbling razor wire - that this attachment remains unbroken. Nor is this attachment monopolized by Palestinian youth, or manifested solely in physical confrontation. Even the briefest period spent inside the oPt will expose the visitor to a broad and innovative range of grassroots, popular resistance efforts - led and backed by a broad cross-section of Palestinian society - which seek to maintain and foster mental links to the homeland; to raise awareness of the inalienable right of Palestinians to return to their homes from which they have been forcibly displaced, and to pursue the realization of this right. Efforts such as these are to be encouraged, and alternative pathways to a durable solution – whatever form they may take – must be born of, and driven by, the Palestinian people. Indeed, the fortitude and innovation required to develop such pathways have always been resources of great natural abundance inside the oPt.

However, today, the rich potential of these reserves remains unrealized. This can be explained to a large degree by the absence of dynamic, principled leadership at the national level, resulting in a failure to interweave these separate strands of resistance into a single thread¹⁷. At present, Palestine possesses the requisite components, but lacks the leadership to manufacture the end product. What is urgently required is the marriage of this resistance culture with political direction, and the onus must be on the Palestinian Liberation Organization and the Palestinian Authority to take the lead on such an undertaking.

Yet, any push for action on the domestic front must operate in conjunction with a concerted application of pressure on the international community to fulfill their legal and moral obligations, and it speaks volumes that Palestinian refugees are now forced to consider alternative forms of resistance in the pursuit of a durable solution to their collective, protracted exile. This is a decision which has been made on their behalf by the insistence of third party states and other influential, external actors to support a long-defunct ‘peace’ process rather than seek to realize, via existing, purpose-built legal frameworks, those fundamental rights to which Palestinians are entitled.

Ultimately, popular resistance can – and should – play a key role in the pursuit of a durable solution to the Palestinian refugee crisis, but fostering of this collective will must be considered as a supplement, rather than a substitute, to the enforcing of third party obligations – and the protection of human rights - at the international level. Failure to do so is to place the burden of a solution upon the shoulders of the victims themselves, and to perpetuate the world’s longest-standing refugee crisis and its associated suffering.

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¹⁷ BADIL (2015). Survey of Palestinian Refugees and Internally Displaced Persons, 2013-2015. Bethlehem, Palestine: BADIL Resource Center for Palestinian Residency and Refugee Rights. Available at: <http://www.badil.org/en/publication/survey-of-refugees.html> [Accessed February 1, 2016].

The imperative of building Palestinian representative institutions

Jamil Hilal*

Reforming the PLO was the fifth most preferred pathway chosen by Palestinian refugees (39.3%); see p.5



Palestinians demanding the reform and reactivation of the PLO. Ramallah, July 2014 (source: al-ayyam)

What should we Palestinians, as a people, do to better equip ourselves in the struggle for our freedom and self-determination given the continuing Nakba inflicted on us by the settler colonial and racist state? The urgent need for rebuilding representative and democratized Palestinian institutions to lead the struggle for collective rights¹ stands out. National institutions have been systematically undermined, particularly since the early 1990s², and the institutions of the Palestinian Authority (PA) have collapsed separating the Gaza Strip (GS) from the West Bank (WB) since mid-2007.

There is a general consensus among Palestinians, that their institutions need rebuilding³; this

- 1 Collective rights call for the fulfillment of entitlements of a community as a whole. This differs from the international human rights treaties approach in that the majority of provisions therein are concerned with individual entitlements to rights. Collective rights are called upon whenever the fulfillment of one's individual rights are so interwoven with the recognition of the community of which the individual is a member, that recognition of the collective rights is a prerequisite to recognition of the individual rights.
- 2 See for example the strategy behind the Oslo Agreements, which resulted in Israel sub-contracting the PA in order for policing Palestinian communities – while maintaining the status quo. Weinberger, P. E. (2006). Co-opting the PLO: A Critical Reconstruction of the Oslo Accords, 1993-1995. Lanham: Lexington Books. p. 22. Declaration of Principles on Interim Self-Government Arrangements ("Oslo Agreement"), September 13, 1993. Available at: <http://www.refworld.org/docid/3de5e96e4.html> [accessed February 9, 2016]. and Interim Agreement on the West Bank and on the Gaza Strip ("Oslo II Agreement"), September 28, 1995. Available at: <http://www.refworld.org/docid/3de5ebbc0.html> [Accessed February 9, 2016].
- 3 BADIL (2015). Survey of Palestinian Refugees and Internally Displaced Persons, 2013-2015. Bethlehem, Palestine: BADIL Resource Center for Palestinian Residency and Refugee Rights, pp. 118-120. Available at: <http://www.badil.org/en/publication/survey-of-refugees.html> [Accessed February 1, 2016].

applies to the Palestine Liberation Organization (PLO), to the PA, to mass organizations, professional organizations and local public institutions. The PLO - as the unifying national framework for the myriad political and ideological factions and outlooks that inhabit the Palestinian political field has - been emptied of any vitality. The elevation of the PA over the PLO happened under the mistaken belief that the newly established self-governing authority is the nub of a forthcoming sovereign Palestinian state. Priority was given to building the edifice of the PA which, by the Oslo accords, denies any role to Palestinians outside the WB and GS and excludes them from being represented by the PA and from participation in national affairs.

It is no secret that the Palestinian National Council (PNC) has not met - contrary to what is stipulated in its charter⁴ - since the early 1990s, and many of its responsibilities have been allocated to the PA - whose powers do not exceed a self-governing administrative authority on parts of the WB and the GS. The WB was portioned by the Oslo Accords into different areas (A, B, and C), the largest being C, which comprises more than 60 percent of the WB, remains under total Israel control, together with East Jerusalem which was annexed in 1967 and enlarged to cover 28 villages surrounding the city. The PA was maneuvered and cajoled⁵ to make the continuing colonial occupation profitable and to safeguard its security.

The issue of national representation cannot be addressed simply by reviving the PLO as it was before the 1990s. It needs to be rebuilt as an organization on a new basis with a new structure and mandate. The new institutions of the PLO (particularly the PNC) have to promote active participation and involvement of all the Palestinian people, inside and outside historic Palestine. It has to absorb the positive aspects of the existing PLO, overcome its shortcomings, and take into account the changes (local, regional and international) that have taken place in the last three decades. The following have to be at the center of attention in the rebuilding of Palestinian institutions and bodies.

First, each of the Palestinian communities (in the WB, GS, in 1948, Jordan, Syria and Lebanon, the Gulf, Europe, the Americas and elsewhere) need to elect or choose its representatives to the PNC as the national umbrella institution acting as the parliament of all Palestinians empowered to elect a national leadership (an Executive Committee) accountable to it. Should a community find itself unable, for objective reasons, to elect its representatives by free and open voting, it will be required to find other ways to democratically do so. This process applies to mass organizations (women, workers, youth...), professional organizations (teachers, lawyers, engineers, doctors, writers, journalists...) and local bodies (municipalities, local councils and popular committees in camps). A proportional representational electoral system seems advisable to ensure all political parties and movements are adequately represented at national or community levels.⁶

Second, it is important not to confine the process to the election or selection to the PNC

4 Palestinian National Charter: Resolutions of the Palestine National Council. July 1-17, 1968. Available at: http://avalon.law.yale.edu/20th_century/plocov.asp [Accessed February 11, 2016].

5 One of Israel's strategic goals with the Oslo Agreements and the creation of the PA exactly consisted out of the sub-contracting the task of policing the Palestinian population to the PA. Weinberger, P. E. (2006). *Co-opting the PLO: A Critical Reconstruction of the Oslo Accords, 1993-1995*. Lanham: Lexington Books. p. 22.

6 Other than the majority-based electoral system, a proportional representational system encompasses that like-minded voters should be able to elect representatives in proportion to their number. Examples of countries using proportional representation are, amongst others: Australia, Belgium, Denmark, Germany and Greece. See: http://www.fairvote.org/proportional_representation#what_is_fair_voting

members from each community. It is as important to apply the process to mass organizations and professional organizations, at the level of each community, to be complemented by the formation of effective and autonomous organizations at the national level (Palestinians from different communities). This process is essential for opening the way to the participation of the rank and file in each of the Palestinian communities in the national issues through political parties and through trade unions, professional syndicates and social movements.



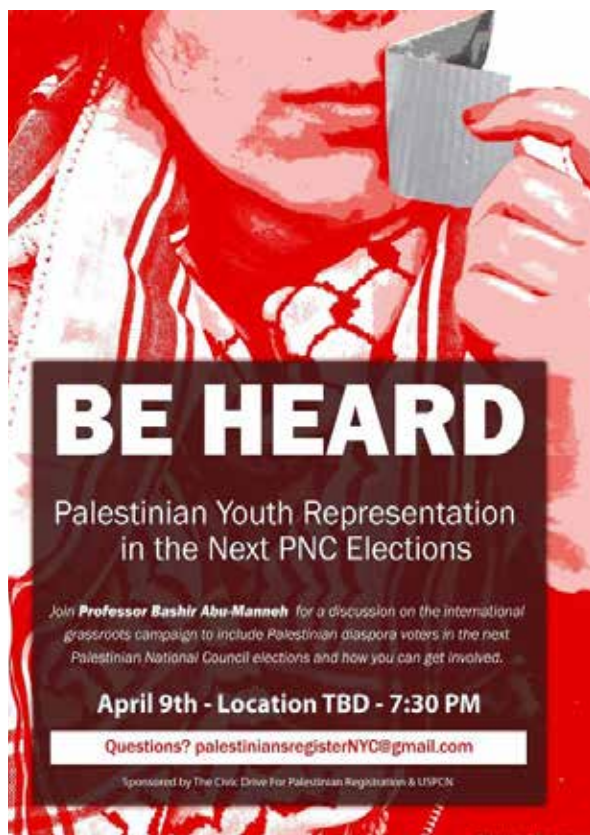
Palestinian activist holds a sticker supporting direct elections to the Palestine National Council (Source: pncregcampaign.org)

Third, Palestinians need to be aware of the dangers of diminishing democracy to its procedural aspects (i.e. to holding regular free and fair general elections). This dims the values that genuine democracy entails the most important - of which are freedom, equality and social justice. Besides, holding general elections needs to be put in its socio-political context. In the Palestinian context of settler colonialism and military occupation general elections require a consensus among Palestinians as to aims of the undertaking of general elections, the conditions under which they are held, and on how to use the results. This was not adhered to in the legislative elections held in 2006 and the disastrous political consequences that followed. General elections in sovereign states are held to decide which political party governs and which forms the opposition. This does not necessarily apply in societies under military colonial occupation where a coalition of all forces is needed to face the colonial occupier.

What is needed is a new form of politics that engages the action of grassroots organizations, of political parties, civil society organizations, social movements and other social formations present in the various Palestinian communities inside and outside historic Palestine. An elitist view of politics is disastrous for a national liberation movement as the last three or so decades have shown. What unifies Palestinians in their diverse communities is the inescapable reality of their dispossession, repression, discrimination, besiegement, and the denial of their historic and other rights.

Fourth, what precedes suggests that each Palestinian community has to draw democratically its strategy informed by its specific situation, while its role within the national strategy will be informed by discussions of its representatives in national institutions or through national referendums should there be a need for such measures. Diverse specific strategies are accepted because of the diverse conditions that Palestinian communities labor under. Thus the 1948 Palestinians (with Israeli nationality) will need a different strategy than that appropriate for the GS, and the WB requires a different strategy from that of Palestinians in camps in Jordan or in Lebanon or in Syria or those in Europe and the Americas. Strategies will remain open to

Poster promoting Palestinian youth representation in the elections to the Palestine National Council. (Source: pncregcampaign.org)



modifications as decided by each community and subject to changes according to the circumstances. National struggle, international solidarity, and coordinated events will of course call for unified activities inside and outside historic Palestine.

Democratically created national institutions will be required to represent the rights and interests of all Palestinians regionally and internationally and act in their name in international specialized agencies (the International Criminal Court, UNESCO, etc.). This applies to national mass and professional organizations as well as social movements (like BDS) as they seek, among other tasks and roles, to tighten international isolation on Israel and impose sanctions on it. In this effort the cultural field (through photos, movies, videos, novels short stories, paintings, songs, articles, lectures, poetry, journalism and other forms) pursues to keep alive the Palestinian historic narrative, Palestinian patriotism and to expose the various ongoing forms of repression, discrimination and ethnic cleansing Palestine.

Fifth, there is a need to re-examine the Palestinian national charter⁷ to capture the emerging consensus among the various Palestinian communities (as expressed in various documents and common understandings, e.g. the National Charter of 1968, the 1988 Declaration of Independence,⁸ the call for the BDS campaign in 2005,⁹ the 2007 Haifa Declaration,¹⁰ the Palestinian prisoners document of May 2006¹¹). Drawbacks and shortcomings of each existing instrument are to be evaluated as well as the circumstances in which drafting of these took place. The aim is to formulate a comprehensive guiding document that will be adopted as a binding instrument by the newly democratically formed PNC. The new charter needs to highlight the Palestinian historic narrative. It also needs to specify clearly the functions of the PA and to reaffirm its accountability to the PLO, being one of its branches (if it is to be retained).

7 Palestinian National Charter: Resolutions of the Palestine National Council. July 1-17, 1968. Available at: http://avalon.law.yale.edu/20th_century/plcov.asp [Accessed February 11, 2016].

8 Palestinian Declaration of Independence. November 15, 1988. Available at: <http://nad-plo.org/userfiles/file/Document/declaration%20of%20independence%20En.pdf> [Accessed February 11, 2016].

9 <https://bdsmovement.net/bdsintro>

10 Haifa Declaration. May 15, 2007. Available at: <http://mada-research.org/en/files/2007/09/haifaenglish.pdf> [Accessed February 11, 2016].

11 National Conciliation Document of the Prisoners. May 11, 2006. Available at: <http://www.palestinianbasiclaw.org/downloads/The-National-Conciliation-Document-of-the-Prisoners-11-May-2006.pdf> [Accessed February 11, 2016].

Re-building of Palestinian institutions with a clear vision of their tasks and responsibilities asks for recognition of the precious heritage of diversity (political, ideological, organizational and ideological) that featured the Palestinian national movement (including the PLO), as well as its secular tradition that protected Palestinians from sectarianism and pernicious forms of “politicization” of religion or “sanctification” of politics. Re-building of the PLO on democratic and representative bases has to steer clear of its known pitfalls and defects - particularly the “quota” system, patronage, corruption, bureaucracy, excessive militarization, dependency on external aid, and the absence of leadership accountability.

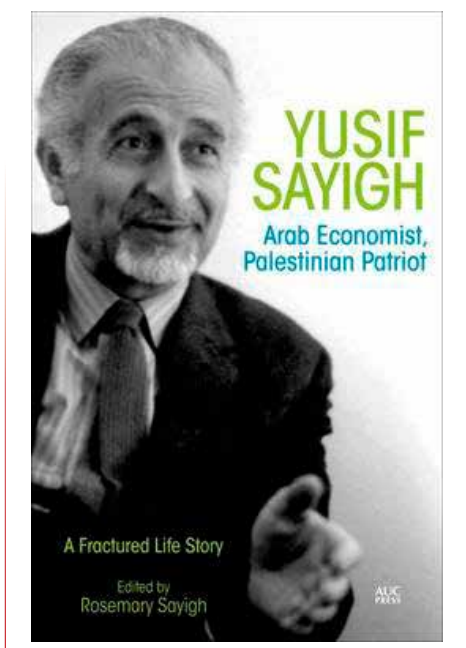
The existing fragmentation of Palestinians into isolated, disconnected and highly vulnerable communities and their subjection to the ongoing apartheid system enforced by Israel will continue unless we, Palestinians, rebuild urgently our representative institutions to exemplify values of freedom, equality and justice - to continue the fight for our rights, all our rights. Without democratic representative institutions where political and other differences and discords are settled and historic compromises are made between the major Palestinian political currents (as happened among Palestinians in the 1948 area), leaders of Fatah and Hamas will continue signing agreements in Arab capitals without the intention or ability to implement them.

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Book Review

“Yusif Sayigh: Arab Economist, Palestinian Patriot; a Fractured Life Story” Edited by Rosemary Sayigh (2015)

by Ingrid Jaradat Gassner



Yusif Sayigh (1916 – 2014) is widely known as an expert on Arab economic development, as former Director of the Economic Research Institute and Chairman of the Economics Department at the American University of Beirut (AUB), and for his work with the Palestinian Liberation Organization (PLO) on strategic planning of resistance and economic development, including creation of PEDRA (Palestine Economic Development and Reconstruction Agency, later PECDAR). Compiled and edited by Rosemary Sayigh, anthropologist and Yusif’s partner in life for more than five decades, with the compassion for people and the ordinary that is characteristic of her oral history work,¹ the memoirs of Yusif Sayigh are, however, more than just another biography of a public figure.

The trajectory of childhood and youth that emerges from the memoirs, for example, is a strong reminder of the freedom of movement and mobility that was quite common even for a village boy in historic Palestine which, despite all arbitrary Western colonial redesign, was still part of Bilad al-Sham (Greater Syria).

From Kharbata (Syria) where the Sayigh family had set up home and the father, a pastor, ran his parish, we follow Yusif back to his village of birth, al-Bassa (Palestine), to boarding school in Sidon (Lebanon), to Beirut, where Yusif attends university and the entire family obtains Lebanese citizenship simply because a family visit coincides with a call for registration, and on to Tiberias (Palestine), Tikrit (Iraq) and Jerusalem (Palestine) for work that is to help finance his brothers’ education, political activism, and professional engagement in Arab economic resistance against the Zionist colonization of Palestine.

Yusif’s stories of boyhood and family life also show vividly that early 20th century Palestinian society was not homogeneously stagnant, conservative and caught up in poverty and religious traditions. There is Yusif’s mother protecting her children from the father’s rigid Protestant discipline, and there is the story of her courageous decision to pack up the family in the absence of her husband, and flee the barren Syrian Kharbata during the 1923 Druze uprising against French colonialism, in order to return to al-Bassa, escape poverty and secure modern education for her children. Through Yusif’s fond and detailed memories, al-Bassa, the village on Palestine’s fertile northern Mediterranean coast and its community of Muslims and Christians, is revived as a place of liberal social traditions, fruit and tobacco plantations and first adventures in sexuality and romance.

¹ Rosemary Sayigh, *From Peasants to Revolutionaries* (1979), and, *Too Many Enemies* (1994), representing milestones in oral history work about the experience of Palestinian refugees exiled in Lebanon.

Stories recounted about university studies at the AUB (1934 – 38) convey the intensity of intellectual debate between “Arab nationalist” and “(Greater) Syrian nationalists” about the preferred post-colonial order for the Arab world. We find Yusif engaged in discussion with admired leaders of both of these competing streams of political thought, becoming politicized, and eventually joining the Syrian Social Nationalist Party (SSNP), because of the party’s secular vision and praxis of resistance against colonial rule. Through chapters 5 to 8, we follow Yusif’s involvement with the SSNP and its leader Antun Saadeh, which eventually ends in frustration with secret political parties and their un-transparent mode of action that would keep him from joining another political party for the remainder of his life.

The Nakba has the Sayigh family seek refuge in Beirut. Yusif himself is captured together with other young men in Jerusalem in May 1948 by a Zionist militia. The chapter entitled “Prisoner of War”, is a rare and vivid testimony of hunger and summary executions in Israeli make-shift detention camps, of Yusif’s pleas for protected prisoner of war status for Palestinian civilians like himself and his companions, and of relief at the appearance of the International Red Cross.² Striking in hindsight is the manner in which Yusif recounts his deportation from Jerusalem in the spring of 1949: it is a story of release from Israeli detention and of reunion with friends, comrades, colleagues and family, first in eastern Jerusalem, then in Amman and Beirut. Is it because this deportation, which would turn into permanent exile, is too painful to be remembered? Or is it at that time simply not a memorable incident for the prisoner who, released into the Bilad al-Sham of his youth, would immediately resume political and academic engagement for a better post-colonial Arab world that included Palestine?

As pointed out by the editor, there are also many questions younger generations would want to pose to Dr. Yusif about his work with the PLO, beginning with the first session of the Palestinian National Council (PNC) in the early 1960s and lasting until shortly after the signing of the Oslo accords in the mid-1990s. The stories recounted in chapter 12 show the Palestinian scholar working relentlessly – and ultimately failing - to insert strategic planning and transparency into what he calls an “unorganized Palestinian resistance movement”, or, later, to overcome narrow partisan interests for the benefit of a scientific economic development plan for the Palestinian state. The principle that politics is to create the conditions for Arab, including Palestinian, post-colonial economic development, and that economic development involves social justice, had been constants in Yusif Sayigh’s work as an economist since his first notable book, *Bread with Dignity* (1961). An overview of the academic achievements and legacy of this pioneer scholar and teacher of economics in the Arab world is provided by the editor in the final chapter of the book.

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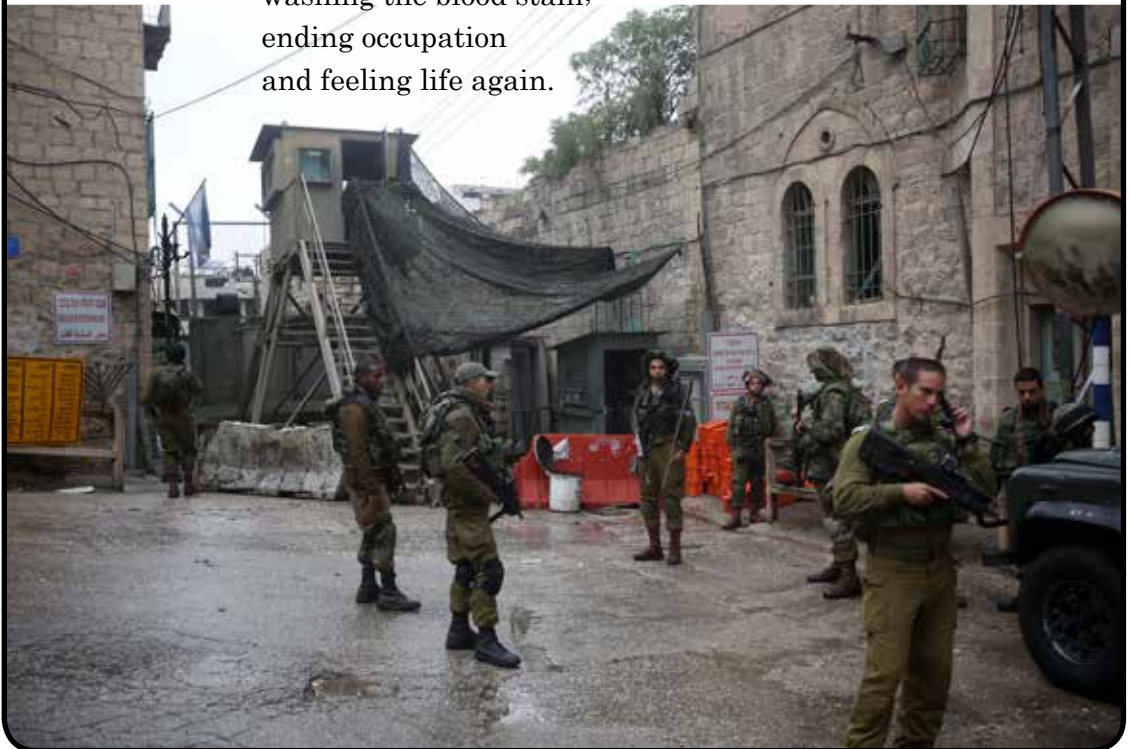
New edition, Too Many Enemies, published by Al-Mashriq. Click here to order

2 For a recent study featuring Yusif Sayigh’s and similar first-hand accounts and reflecting critically on the role of the ICRC, see: Salman Abu Sitta and Terry Rempel, “The ICRC and the Detention of Palestinian Civilians in Israel’s 1948 POW/Labor Camps during the 1948 War”, *Journal of Palestine Studies* Vol. XLIII, No. 4 (Summer 2014).

I wish some heavy rain

Poem by Arwa Abu Haikal, from the Old City of Hebron

I wish some heavy rain
to wash the blood stain;
to rest and calm my fears
and Tal Rumeida's pain.
My dream is peace and justice
and ending that chain
of murdering, killing, shooting.
Can you tell me what we gain?
Hatred breeds more hatred.
Love can end the pain.
I dream of sunshine coming to meet the rain;
to spread that love around despite what has remained.
Do you know what has remained?
Barriers, borders, walls;
killing, shooting and drones.
And that dream again
occupying my brain;
the dream of heavy rain
washing the blood stain;
ending occupation
and feeling life again.



al-Majdal is BADIL's biannual English magazine produced with inputs from Palestinian and international civil society on issues concerning Palestine with a focus on the concerns, rights and situation of Palestinian refugees and IDPs. The magazine aims to increase public awareness and provide a venue for discussion and debate on these issues.

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ABOUT THE MEANING OF AL-MAJDAL

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

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

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

