

**ISRAELI VIOLATIONS OF HUMAN RIGHTS AND
INTERNATIONAL HUMANITARIAN LAW IN THE
OCCUPIED PALESTINIAN TERRITORIES:**

A PAPER BY JEFF HALPER TO THE EUROPEAN PARLIAMENT

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I would like to begin my presentation by talking about "sides." There is a perception -- indeed, an expectation -- that Israelis and Palestinians will be on separate, conflicting and irreconcilable "sides" of what is called the "Israeli-Palestinian Conflict." There is a committee of the European Parliament that liasons with the Palestinian "side," and another that liasons with the Israeli "side." I would like to declare at the outset that I do not locate myself on either of those "sides." For me, as an Israeli Jew, "sides" mean something different altogether. I am on the "side" of Israelis and Palestinians who seek a just peace that addresses Palestinian rights of self-determination as well as Israeli concerns of security and regional integration. I am on the "side" that stands for equality, human rights, democracy, peaceful co-existence and regional economic development. To be sure, there is another "side," those Israelis and Palestinians that advocate exclusivity, conflict, a win-lose mentality and continued injustice and suffering. That is the way the "sides" divide, not Palestinian-Israeli.

In terms of resolving the conflict, there is yet another meaning to "sides" -- that of two equal parties coming together to resolve their grievances and perceived causes of injustice. Here some kind of symmetry is supposed, of two parties that consider each other legitimate parties to negotiations -- "sides." It took the Palestinians until 1988 to formally recognize the fact, if not the full legitimacy, of the Israeli "side," which they did in their dec-

laration of independence in Algiers. They did so again in the Oslo Declaration of Principles of 1993, where by recognizing Israel as within the 1967 borders, the PLO conceded not only the 56% of the land partitioned to the Jewish state by the UN in 1947, but also the additional 22% conquered from the prospective Palestinian state -- 78% altogether. In return, Israel did not recognize the right of self-determination of the Palestinian people. In the Oslo Accords it agreed only to negotiate "final status issues" with the PLO, without committing itself to any particular outcome, including the establishment in the end of a viable, sovereign Palestinian state.

Understanding this is crucial for comprehending Israel's unilateral "giving" certain concessions to Palestinians, presenting its positions in a "take-it-or-leave-it" manner, or declaring the results of certain rounds of negotiations as "null and void." It explains why Israel continues to reinforce an occupation whose every element, including the systematic demolition of 9000 Palestinian homes since 1967, violates international humanitarian law, and particularly the Fourth Geneva Convention. It explains the absolute impunity by which Israel invades Palestinian cities, imposes a permanent closure that impoverishes millions of people or imprisons an entire people behind barbed wire, checkpoints and walls "so high that even the birds cannot fly over them," in the words of a prominent Israeli military historian. For neither Israel nor its pre-state Yishuv nor the Zionist movement as a whole has ever recognized the Palestinians as a distinct people with national or even individual rights and holding legitimate claims to the country. Israeli Jews view Palestinians as merely ?Arabs,? an undifferentiated part of an Arab mass that might just as well live in one of the "other" 22 Arab countries as in "ours." From the point of view of legitimacy there is only one "side" in the view of Israeli Jews, themselves as the only nation in the country, exclusive holders of exclusive claims to it (a right that extends to all Jews whether or not they live in Israel or have citizenship there). This exclusive right extends to the entire country, including the Occupied Territories. There is no other "side," only a mass of intractable "Arabs" with which we must deal in one way or another. This is the source of

Israeli human rights violations in both the Occupied Territories and within Israel itself. This is the source of the impunity. There is no symmetry, no "two sides."

The issue of symmetry -- or a fundamental lack of symmetry -- must also be recognized at the outset. There are no two "sides" from the point of view of power, of the ability to resolve the conflict equitably -- and even of responsibility. We often speak of "two sides," each of which must "stop the violence" or which is "equally guilty" of perpetuating the conflict. But this ignores the fundamental imbalance of the situation. One "side," Israel, is an internationally recognized state with one of the most powerful military forces in the world (including 200-300 nuclear warheads, making it the world's fifth largest nuclear nation) and an economy more than 20 times larger than that of the Palestinians. And it is the occupier. The other "side" is a fragmented, stateless, impoverished, vulnerable and traumatized people (70% of which are refugees or displaced persons) possessing no sovereignty and only a lightly armed militia. And it is occupied - - or exiled. The Palestinians, moreover, are in a situation of resisting colonization -- a right recognized in international law -- which differentiates their use of "violence"-as-resistance to Israel's "violence"-as-repression, the latter a violation of the right of self-determination. While Palestinians must also be held accountable for their actions, including the use of terrorism, their situation is qualitatively different from that of the Israelis whose use of state terror and systematic violations of human rights (in making its occupation permanent) involve a much greater degree of choice.

From here I would like to make one other fundamental point: the Israeli Occupation is not simply a reaction to terrorism or a means of self-defense, but is an expression of a pro-active policy of de facto annexation that began immediately after the 1967 war. It is a goal in and of itself, which has generated over the years a high degree of suffering, violence and human rights violations. Israel tries to deflect attention from this fact by presenting its military actions and policies of repression as mere reactions to "Palestinian violence and intransigence." In this way it has made the Occupation disappear from the discourse. This presentation rests on the fundamental proposition that the Occupation is an outcome of conscious Israeli policy of controlling the entire "Land of Israel" from the Jordan to the Mediterranean. Nothing illustrates this better than the construction of more than 200 Israeli settlements -- 44 in the year

and a half of Sharon's premiership alone. It is the Occupation and its role in preventing the Palestinians from realizing their right of self-determination that is the source of the conflict, not Palestinian resistance.

What flows from all of this is an Israeli attitude of impunity towards Palestinian human rights and a disregard even a rejection of international humanitarian law as applying to either Palestinians or to the situation of occupation. Virtually all of Israel's occupation of Palestinian lands violates human rights conventions and especially the Fourth Geneva Convention that forbids an occupying power from making its presence a permanent one. Thus:

-- Article 3 prohibits "outrages upon personal dignity, in particular humiliating and degrading treatment," a routine element of Palestinian life under Israel's occupation.

-- Article 32 forbids assassinations, and any brutalization of the civilian population, including their treatment at checkpoints and in "security searches."

-- Article 33 prohibiting pillage would obtain to Israel's extensive use of West Bank and Gazan water resources, especially as they are denied the local population. It also prohibits the use of collective punishment, as represented by the imposition of closure, curfew, house demolitions and many other routine actions of the Occupation Authorities.

-- Article 39 stipulates: "Protected persons [residents of occupied lands] who, as a result of the war, have lost their gainful employment, shall be granted the opportunity to find paid employment." It thereby prohibits the imposition a permanent "closure" on the Occupied Territories, such as Israel has done since 1993.

-- Article 49 forbids deportations and any "forcible transfers," which would include such common practices as revoking Jerusalem IDs or banning Palestinians from returning from work, study or travel abroad. It also stipulates that "The Occupying Power shall not transfer parts of its own civilian population into territories it occupies" a clear ban on settlements.

-- Article 53 reads: "Any destruction by the Occupying Power of real or



personal property belonging individually or collectively to private persons?is prohibited." Under this provision the practice of demolishing

Palestinian houses is banned, but so is the wholesale destruction of the Palestinian infrastructure (including its civil society institutions and records in Ramallah) destroyed in the reoccupation of March-April 2002..

-- Article 64 forbids changes in the local legal system that, among other

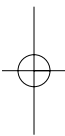
things, alienate the local population from its land and property, as Israel has done through massive land expropriations.

-- Article 146 holds accountable individuals who have committed ?grave

breaches? of the Convention. According to Article 147, this includes many acts routinely practiced under the Occupation, such as willful killing, torture or inhuman treatment, willfully causing great suffering or serious injury, unlawful deportation, taking of hostages and extensive destruction and appropriation of property. Israeli courts have thus far failed to charge or prosecute Israeli officials, military personnel or police who have committed such acts.

-- The PLO also bears a measure of responsibility for the violations of its own people's rights under the Fourth Geneva Convention. According to Article 8, the PLO had no right in the Oslo Agreements to abrogate their rights and suspend the applicability of the Convention, since ?Protected persons may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention.? Had international humanitarian law been the basis of the Oslo peace process rather than power-negotiations, the Occupation would have ended and the conditions for a just peace would have been established, since virtually every element of Israel?s occupation violates a provision of the Fourth Geneva Convention.

And this is perhaps the most important point. The International humanitarian law provides a map for the equitable resolution of the Israeli-Palestinian "conflict." By guaranteeing the collective rights of both peoples to self-determination and prohibiting occupation and the perpetuation of refugee status, it leaves only the details of an agreement to be worked out by negotiations. Boundaries, the just



resolution of the refugee issue based on the Right of Return and individual choice and the other "final status issues" can be resolved only if they are addressed in the context of human rights and international humanitarian law -- and not as mere by-products of power. Nothing is being asked of Israel that is not asked of any other country -- accountability under covenants of human rights formulated and adopted by the international community, which Israel pledged to respect as a condition for its creation by the UN and upon which Israel itself has signed.

As it is, Israel refuses to abide by international law and treats both the Palestinians under its control and the international community attempting to intervene with absolute impunity. The refusal of the international community to intervene makes it complicit in the violations of human rights and war crimes that Israel is committing in the Occupied Territories. The European Union and this very Parliament has emerged in our time as a hopeful sign of a new age of lowered boundaries and great economic integration for the benefit of all its member nations. International humanitarian law has also emerged since World War II as a hopeful sign of a world based on justice and equality rather than power and dominance. If the new political and economic form that is it the EU is not founded firmly on the new notion of universal rights and justice, then it will remain an interesting but finally localized experiment in technical cooperation among states, with no implications for a truly better world.

The Occupation poses a bold challenge to the international community, whether to its elected representatives as in this chamber or to the civil society as represented by the NGOs and faith-based organizations testifying before you today. In an era of global transparency, of mass media, instantaneous news coverage and the internet, can a new Berlin Wall be built that locks millions of Palestinians behind massive fortifications, Israel's \$100 million "security fence?" Decades after the end of colonialism and a decade after the end of South African apartheid, will the international community actually sit passively by while a new apartheid regime arises before our very eyes? And in a world in which the ideal of human rights has gained wide acceptance, could an entire people be imprisoned in dozens of tiny, impoverished islands, denied its fundamental right of self-determination? Until we all act according to the ideals and rules we ourselves have created, the answer will remain blowing in the wind.



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