



OPEN FORUM

STRATEGIZING PALESTINE

The idea for an open forum section in the Journal of Palestine Studies on the topic of strategy arose independently from two sources. Israeli activist and analyst Jeff Halper suggested the need for a forward-looking examination of Palestinian options for the future. Simultaneously, the two of us, both members of JPS's Editorial Committee, and Institute for Palestine Studies senior fellow Nadia Hijab, had organized a series of discussions among a group of academics and activists, primarily in the United States, about strategies for achieving Palestinian rights. We were insistent that the discussions take into account all three major segments of the Palestinian people: refugees of the diaspora, those in the occupied territories, and the Palestinian citizens of Israel. We believed that JPS was an appropriate forum in which to continue and develop this discussion. Accordingly, we were invited to guest edit this open forum.

Our strategy discussions began in the aftermath of the virtually unanimous advisory opinion of the International Court of Justice (ICJ) of 9 July 2004, that Israel's "separation wall" (the term used by the ICJ) was illegal and must be dismantled. The decision was a stunning victory for the Palestinians and was one of their most significant achievements in international diplomacy for decades.

At the same time, it was all too apparent that the leadership of the Palestinian Authority (PA) was not capable of taking advantage of this important milestone, and that conditions for Palestinians on the ground were moving rapidly from bad to worse. After five years of the al-Aqsa intifada, the Palestinian people were as far as ever from achieving their fundamental rights. Given political alignments prevailing in both the United States and Israel, there appeared to be no reasonable possibility of negotiations that could lead to a just, and therefore durable, peace in the Middle East. Israel, with explicit U.S. backing, had retreated considerably even from the far-from-satisfactory (for the Palestinians) positions it had taken at Camp David and Taba and was charting a path of unilateral actions that threatened to entrench de facto Israeli control over much, if not all, of the West Bank. Nor was there any realistic prospect of meaningful political change on the horizon in the United States or Israel to alter these trends. In the face of all this, the secular nationalist leadership that had led the struggle for Palestinian rights for over thirty years appeared bereft of a strategic vision that could account for these bitter realities. Its sole response to Israel's relentless colonization of the West Bank was repeated and impotent calls to return to the "road map to peace."

Some of us believed that these circumstances demanded a fundamental reevaluation of long-term strategies to realize Palestinian rights. Should

the Palestinian leadership decline to participate in negotiations brokered by Israel's friend and ally, the United States? If not, were there techniques, positions, or other means that Palestinians could employ within the framework of negotiations that could yield better results? Had the moment for a two-state solution passed and, if so, what stance should be taken toward possible political frameworks for the realization of Palestinian rights? Was there any moral or political justification for compromising the fundamental rights of Palestinian refugees, forced into exile in 1948 and 1967? What role should the Palestinian citizens of Israel play in the struggle for our rights as one people? How should the Palestinian movement interact with other struggles, inside and outside historic Palestine—including with progressive, non-Zionist elements within Israel? These were some of the important questions it seemed necessary to ask, debate, and—ultimately—resolve.

Various members of this group met on two occasions: in March 2005 in Washington, DC, and in the San Francisco Bay Area in June 2005. (A report from the first of these meetings was published as a special document in the autumn 2005 issue of JPS.) Some of the contributing authors to this issue were participants in one or the other of these meetings.

The essays that follow engage some of the questions enumerated above and some additional ones. We present them as steps in the direction of what will hopefully develop as an ongoing discussion concerning the future of the Palestinian struggle. The primary purpose of this issue is to contribute to a rethinking of Palestinian political culture and strategies by evaluating the promise and limitations of mobilizing initiatives that lie largely outside the formal political sphere.

We begin with an assessment by Omar Dajani of the PA's negotiation strategy (or lack thereof) and what changes need to take place if and when serious negotiations resume in the future. Dajani also considers how negotiations need to interface with Palestinian political and civil society institutions.

Jeff Halper contrasts the articulated strategic vision of Israel's leadership with the Palestinians' mostly implicit strategy of sumud/resistance, negotiations, and attrition. Palestinians, he argues, must add to this repertory a campaign of proactive advocacy based on a firm linkage between local civil society and international solidarity movements.

Omar Barghouti advocates a program of boycotts, divestment, and sanctions led by a growing international network of civil society organizations and specifically linked with a unitary state solution to the Palestinian-Israeli conflict.

Marwan Dalal examines the opportunities and limitations of litigation within the Israeli legal system.

Jamil Dakwar surveys future arenas of activism for the Palestinian communities in Israel and connections to broader struggle for Palestinian rights.

Ghada Talbami details the status of Palestinian refugees, primarily in the Arab countries closest to Palestine, and suggests the creation of an organization to advocate for refugee rights, possibly under the auspices of the Arab League.

Jaleb Bisbarat discusses the necessary elements for a successful public relations campaign in support of Palestinian rights in the United States—an undertaking the Palestinian leadership has never prioritized, to the great detriment of Palestinian interests.

Saree Makdisi reviews the significance of narrative and advocates mining the rich legacy of the late Edward Said.

These contributions grapple explicitly or implicitly with one of the most fundamental questions of the Palestinian-Israeli conflict: Who speaks for the Palestinians? The virtual demise of the PLO following the signing of the Oslo accords, the absence of a body that effectively represents all three segments of the Palestinian population and, not least, the stunning victory of Hamas in the Palestinian Legislative Council (PLC) elections of January 2006, give added urgency to this question. Most of the contributions were conceived in advance of Hamas's victory. Although revised, they cannot fully grapple with the new Palestinian political landscape. Many new questions loom, but among the most salient are: How is it that the only effective challenge to the nepotism, corruption, and ineptitude of the old guard Fatah leadership has come from Hamas? Has secularism been permanently eclipsed within the Palestinian movement? If so, what does this imply for Palestinians or their supporters who have embraced secularism, either in nationalist or humanist variants?

We hope these essays will be followed, in the pages of this journal and elsewhere, with probing, honest, and mutually respectful debate of these important issues.

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PREPARING FOR THE INEVITABLE NEGOTIATION

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In his 1991 letter of assurances to the Palestinians prior to the Madrid Peace Conference, then-secretary of state James Baker III explained, "It has long been [the United States's] position that only direct negotiations based on UN Security Council Resolutions 242 and 338 can produce a real peace."¹ Fifteen years after Madrid, however, the process of negotiations itself is being increasingly challenged as an efficacious means of achieving Palestinians' national goals. A

¹"United States Secretary of State James Baker's Letter of Assurance to the Palestinians (18 October 1991)," in M. Cherif Bassiouni, ed., *Documents on the Arab-Israeli Conflict: The Palestinians and the Israeli-Palestinian Peace Process*, vol. 2 (Ardsey, NY: Transnational Publishers, 2005), p. 881.

number of factors have prompted this reassessment: Israel's paltry offerings at Camp David after years of talks with the PLO; unconstrained Israeli actions to predetermine the outcome of a final settlement unilaterally, particularly with the construction of settlements, settler bypass roads, and the separation wall in the West Bank; the popular view, championed by Hamas, that Israel's withdrawal from the Gaza Strip represents a "victory for armed resistance"²; the prospects, buoyed by the ICJ's advisory opinion on the separation wall, for taking legal and diplomatic action against Israel through international institutions; and concerns about the extent to which the Palestinians' official leadership is sufficiently competent, disinterested, and representative to serve Palestinian interests capably in negotiations.

To be sure, none of these factors eliminates the ultimate necessity of negotiations: Israel's political and military strength, and the relative frailty of international enforcement mechanisms, are realities that are unlikely to change in the foreseeable future.³ Moreover, as South Africa's experience made clear, negotiations will be necessary even if the Palestinian national movement were to be recast as a civil rights struggle in the framework of a one-state solution. These factors do, however, oblige us to rethink our national strategy in light of our unproductive experience with negotiations during the Oslo process. That effort, I submit, should involve more than simply a reassessment of past negotiating positions and tactics. We must also undertake to remedy the dysfunctions both in our public institutions and in the negotiating process that have hindered our capacity to achieve our national goals.

Reconstituting the Palestinian National Movement

As variously articulated, Palestinians' goals are as disparate as the Palestinian population is dispersed: an end to Israel's occupation of the West Bank and Gaza Strip and the establishment of a viable, democratic state, with Jerusalem as its capital; an end to the political and economic disenfranchisement of Palestinian refugees; the realization of refugees' right of return to Israel; the achievement of equal rights for Palestinian citizens of Israel; and the establishment of a single state, secular or Islamic, in Mandate Palestine. The pursuit of each of these objectives presents costs. In view of prevailing attitudes in Israel, insistence upon refugee return, for example, is likely to foreclose the achievement in the medium term of a peace agreement capable of delivering benefits to residents of the occupied territory; similarly, a decision to use violence may propel

²In polls conducted on the eve of Israel's withdrawal from the Gaza Strip, 84 percent of Palestinian respondents in the occupied territory regarded the withdrawal as "a victory for armed resistance." Palestinian Center for Policy and Survey Research, poll no. 17, available at www.pcpsr.org.

³Indeed, notwithstanding their rhetoric about the efficacy of violence (however it is characterized), even Hamas officials have declined to rule out a negotiated accommodation with Israel, if not a negotiated peace. See Arnon Regular, "Hamas Candidate Speaks of Future Talks with Israel," *Ha'Aretz*, 15 January 2006.

forward a separation strategy built on Israeli withdrawal from Palestinian areas, but it is likely to undermine efforts to persuade Israel to open its borders to Palestinian laborers or refugees, to allow Palestinian access to shared spaces such as Jerusalem, or to extend equal treatment to its Palestinian minority. Simply put, we must recognize that the costs of each of these choices would not be borne equally by all segments of the Palestinian population.

If we intend to allocate these costs fairly, we must come to terms with the fact that the identity and interests of Palestinians are plural. Palestinian refugees in the camps of Lebanon and in the suburbs of Washington, DC, are not similarly situated, even if they all champion the right of return; the same can be said of Palestinian residents of Jerusalem, Tulkarm, and Um al-Fahm, even though all consider themselves Palestinian. We must respond to this reality not by ignoring the differences in our circumstances, but by developing a forum within which different interests can be debated openly, reconciled when possible, and prioritized when necessary. No Palestinian institution currently offers such a forum or possesses the legitimacy necessary to make the difficult choices that a renewed negotiations process is certain to require.

In response to Hamas's sweeping victory in PLC elections in January, Mahmud Abbas has called for an effort to re-energize the PLO. The proposal warrants careful consideration, quite apart from the politics apparently motivating it. It is the PLO, not the PA, that possesses international legal competence to negotiate on behalf of the Palestinian people,⁴ which may itself make it a sensible address for foreign relations and national decision-making. If the PLO is to play these roles effectively, however, Palestinians must address the fiction that, as currently configured, it is a representative institution. We should give urgent consideration to options for reforming and revitalizing its organs, with particular focus on democratic models that are feasible in view of our geographic dispersal and other national allegiances. In that context, while there may have been good reasons for blurring the roles of the PA and PLO during the Oslo period, the legitimacy of future negotiations will be bolstered by clearer functional separation between the two, if only to make clear that the institution negotiating for Palestinians represents all Palestinians, not just residents of the occupied territories. Accordingly, while the efforts described below by Professor Talhami to organize Palestinian refugee communities around the world should continue, it is critical that they be linked to a national framework in which refugee interests may be assessed in relation to other interests. Similarly, an effort to re-energize the PLO should not be conceived as a means to make an end-run around Hamas's control over the PA. Hamas has become too influential a participant in the Palestinian national movement to make circumventing it feasible or advisable. Indeed, one important lesson that should be

⁴See generally Omar M. Dajani, "Stalled between Seasons: The International Legal Status of Palestine during the Interim Period," *Denver Journal of International Law and Policy* 26, no. 1 (September 1997), pp. 72-73.

drawn from the Oslo process is that failure to address our internal differences responsibly leaves us vulnerable to their exploitation by others.

The revitalization of the Palestinian national movement is likely not only to help define a strategy for negotiations, but also to improve our performance in them. Many of the problematic patterns of Palestinian negotiating behavior that became evident during the Oslo process emerged from structural flaws in Palestinian political institutions. Indeed, Palestinian negotiators' passivity, lack of preparation, and lack of strategy arose to some extent from the way in which Palestinian institutions were configured. Negotiators arrived at the table without fully elaborated fallback positions in part because they had lacked an opportunity to discuss the contours of necessary compromises prior to the negotiating sessions. To the extent that such forums existed—Chairman Arafat and Abu Mazin occasionally convened “Palestinian leadership” meetings at which such discussion was to occur—they were occasions for grandstanding, not sober deliberation. Although these dynamics are not unique to Palestinian politics, the lack of clear channels of authority as a result of the delays in elections, the blurring of the lines between the PA and the PLO, and institutional corruption made Palestinian politics particularly competitive—and a particularly inhospitable setting for dispassionate policy analysis.⁵ They also increased the vulnerability of Palestinian negotiators to manipulation by their Israeli and American counterparts. The recent dramatic changes in the Palestinian political landscape provide an opportunity, long overdue, to address these problems, an enterprise that we should pursue inclusively and responsibly.

Strengthening Palestinian Self-Government

An assessment of the utility and structure of Palestinian self-government in the occupied territory should be among the first tasks of a revitalized national movement. The institutions established under the Oslo agreements were not designed to be permanent, and they reflect their transitional mandate, as evidenced most clearly by the seven-year delay leading up to this year's elections. In the near term, there are three primary choices with regard to self-government: (1) dissolve the PA; (2) declare statehood either within “provisional” borders, as suggested in the road map, or within the entire occupied territory, including East Jerusalem, with a new government to supplant the PA; or (3) continue efforts to strengthen PA institutions.

As negotiating strategies, each of these options involves trade-offs. Dissolving the PA presents advantages: it may raise the costs to Israel of failing to conclude a peace deal by obliging it to reassume responsibility for the economic welfare of the Palestinian population, eliminate the fiction of parity between Israel and the PA that has distorted international perceptions of the

⁵For more detail, see Omar M. Dajani, “Surviving Opportunities: Palestinian Negotiating Behavior in Peace Talks with Israel,” in *Israeli-Palestinian Negotiating Styles: A Cross-Cultural Study* (Washington: United States Institute of Peace Press, 2005).

conflict, and help recast the Palestinian-Israeli conflict as a civil rights struggle rather than a border dispute. These advantages, however, must be weighed against important countervailing factors. First, given Israelis' increasing attraction to unilateral separation, it is by no means clear that Israel would take on responsibility for the Palestinian population if the PA ceased to exist, and the international community has proven reluctant to pressure Israel to meet even its current obligations. Second, PA salaries remain a primary source of income for Palestinians in the occupied territories. Although the dissolution of the PA may place greater pressure on Israel, it could also hasten Palestinians' impoverishment and political fragmentation, particularly since some may perceive it as an attempt to disempower Hamas. Indeed, after striving for many decades to build national institutions, we should be cautious about pulling them down.

Conversely, the effect of a declaration of statehood—even with borders coextensive with the Green Line—is likely to be incremental rather than transformative. It may yield more explicit international recognition of Palestinian sovereignty within 1967 borders, somewhat greater access to international institutions, an ability to invoke the right of self-defense if Palestine's territorial integrity is threatened, and an opportunity to address some of the needs of Palestinian refugees while a permanent solution to their problem is pending. Declaring statehood, however, may simply serve to deflect attention from the issues in real contention—borders, settlements, Jerusalem, refugees, and water—and focus it on what is no longer in contention, i.e., Palestinian statehood. In addition, because the political balance of power within a Palestinian state will be shaped by the circumstances that led to its birth, a failure to end the occupation prior to declaring statehood could yield a radicalized Palestinian government, which in turn could increase the difficulty of securing even the limited benefits of international recognition of and support for the state.

Although our third option—working to develop the PA's political institutions and service delivery capacities—is an unsatisfying proposition in many respects, it may be the best strategy for the immediate term, if pursued in tandem with efforts to revitalize the PLO. To be sure, the establishment of the PA so far has yielded only limited benefits, both as a result of the crippling effect of Israel's continuing military occupation and closures and as a result of Palestinian corruption and mismanagement. Even so, while the viability and independence of a future Palestinian state will rest in part on the contours of its borders and the sovereign powers it assumes, they also will rest on the strength of its national institutions. Even in the context of military occupation, the PA presents Palestinians with an opportunity to build structures for resolving internal disputes politically, to build a coherent legal infrastructure for future economic and political development, to educate children pursuant to a curriculum designed by Palestinians, and to develop a civil service that, unlike Israel's so-called "civil administration," puts Palestinians' interests first. Indeed, whatever one thinks about the results of January's elections, the manner in which they were carried out says much about what Palestinians can achieve in even the worst of circumstances.

Using International Law and Institutions Wisely

The Declaration of Principles left little doubt as to the approach to conflict resolution it embodied: the agreement set the parties on a path toward peace and reconciliation “through the *agreed political* process”⁶—not, by implication, through a legal solution imposed by others. Although a broad cross-section of the international community undertook to articulate parameters to guide the Palestinian-Israeli peace process within the UN General Assembly, Israel and the United States refused to join in. Indeed, from the beginning, the United States declined to constrain the outcome of the peace process in any way other than to insist that it be negotiated bilaterally, promising to “accept any outcome agreed by the parties,” and declining to support “a competing or parallel process” in the United Nations.⁷ This unconstrained bilateralism served neither Palestinians nor the peace process well. Lacking agreed parameters for the negotiations, the parties commenced permanent status negotiations with wildly divergent positions and—at least as far as the Palestinians were concerned—little notion of what they could expect the process ultimately to deliver. The consequence was time-consuming, highly politicized positional bargaining without reference to a commonly accepted body of legal norms or other standards.

Our experience during the Oslo process offers a number of important lessons. First, Palestinians have little to gain from entering a bilateral negotiations process unless authoritative members of the international community—necessarily including, but not exclusively, the United States—provide clear assurances regarding both the impermissibility of attempts to prejudice further the outcome of peace talks and the broad parameters of a final settlement. Deciding whether to participate in a new negotiation process is one of the levers of influence Palestinians have over that process, and we should not squander that leverage on vague promises of statehood and viability.

Second, where possible, we should urge more explicit linkage between internationally defined parameters for a permanent settlement and international legal norms. Making that linkage would promote both predictability and flexibility: on the one hand, many international norms are sufficiently developed to help fill in gaps in internationally defined parameters and resolve disputes about them; on the other hand, international law is not so rigid that it deprives the parties of the ability to tailor a resolution of the conflict to their own needs. For example, a clear recognition by the international community that the Fourth Geneva Convention is to inform resolution of territorial issues would go a long way toward resolving disputes of the kind that emerged from the Clinton ideas (such as whether the contiguity of Palestinian villages in the West Bank would trump the contiguity of Israeli settlements there), while at the

⁶Palestinian-Israeli Declaration of Principles on Interim Self-Government Arrangements, preamble (emphasis added).

⁷James Baker’s Letter of Assurance to the Palestinians (18 October 1991).

same time giving the parties considerable discretion to fashion a compromise that suits them both. In this regard, while Article 49 of the convention clearly prohibits settlement construction in occupied territory, it does not prescribe what should be done with the settlements, leaving open the possibility of land exchange, leasing, or other equitable solutions. Simply put, while international law does not provide all of the answers, it can—and should—provide some of them.

Third, we must continue to pursue nonviolent means in international forums of increasing the costs to Israel of noncompliance with international norms. Israelis' assessment of the value of a negotiated settlement with Palestinians will turn to a great extent on the costs and benefits of the alternatives. Although litigation in the ICJ and national courts, enforcement of the terms of the EU-Israel Association Agreement, and sanctions and divestment campaigns will not obviate the ultimate need to negotiate with Israel, they could both hasten the Israelis' return to the table and moderate the positions they take when they get there. That said, a final point bears emphasis: in an international system in which enforcement is more often the exception than the rule, we should not lose sight of the importance of persuasion. In diplomacy and public relations, invoking legal norms is not enough; we must also explain them—why they are fair and how they are responsive to the interests not only of Palestinians, but also of Israelis and the broader international community.

Conclusion

At this unpromising moment in our history, Palestinians are faced with manifold obstacles to the realization of our national aspirations and basic rights. Many of these obstacles—U.S. hegemony, Israeli military supremacy, the impotence of international institutions—were not of our creation and are beyond our capacity, in the short term, to change. What we can do, however, is to ensure that when we negotiate again—and we will—we are represented by institutions that have the legitimacy and the capacity to serve our needs.

A STRATEGY WITHIN A NON-STRATEGY: *SUMUD*, RESISTANCE, ATTRITION, AND ADVOCACY

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Strategizing Israel

Say what you will about Ariel Sharon, he was a man of grand (if often disastrous) vision. Looking back almost thirty years to the time when, in 1977, he became the head of the Ministerial Committee on Settlements in the Begin government, one can discern three phases of his strategy that would guarantee Israeli control over Palestine-Israel.

(1) *Creating irreversible “facts on the ground.”* The strategy of using “facts on the ground” to determine the final borders of Israel goes back, of course, a century, to the very beginnings of Zionism. In its current form, in which Labor is just as complicit and proactive as Likud/Kadima, the creation of strategic and irreversible “facts”—settlements, closure, massive land expropriations and house demolitions, the consolidation of a “Greater” Israeli Jerusalem, confining Palestinians to dozens of “cantons,” establishing Israeli control over Palestinian water and other resources, construction of the “separation barrier,” imposing a Kafkaesque system of administration, planning, laws, and military controls—have all resulted in a “matrix of control” that has fundamentally reconfigured the country, allowing for a Palestinian Bantustan to emerge, while foreclosing a *viable and truly sovereign* Palestinian state.

(2) *U.S. approval.* In order to secure permanent Israeli control, the “facts on the ground” had to be legitimized as permanent political facts. For this, Sharon turned to Israel’s patron, the United States, which obliged. In April 2004, the Bush administration formally recognized Israel’s settlement blocs—euphemistically called “major population centers”—thus unilaterally removing a strategic 20 percent of the West Bank and “East” Jerusalem from the area defined as “occupied.” This American-sanctioned Israeli annexation of the settlement blocs, fatally undermining the “two-state solution,” was subsequently approved almost unanimously by Congress: in the House by a vote of 407-9, in the Senate by 95-3.

(3) *Unilaterally declaring permanent borders.* The final phase in strategizing Israel—the phase that would end the conflict in Israel’s favor—was conceived by Sharon and has been publicly adopted as the agenda of the next Israeli government by his successor, Ehud Olmert. Hamas domination of the PA eliminates the PA as a “partner for peace,” thus justifying a unilateral *coup de grace*: declaring the route of the wall the permanent border of Israel, thereby annexing Israel’s major settlement blocs and creating a truncated Palestinian state. Sharon (now Olmert) would then declare the end of the occupation and the end of conflict. This remains the agenda after the March elections, although whether Olmert has the clout to pull it off, as Sharon would have been able to, remains to be seen.

Non-Strategizing Palestine

What, by contrast, is the Palestinians’ strategy? One is hard-pressed to define it. Still, it would be wrong to deny that the Palestinians as a people—as distinct from the Palestinian Authority—do not have a strategy at all. It might be considered a kind of default strategy, verging on a non-strategy. It is certainly not consciously formulated. But the collective reaction to occupation, comprised of three main elements—*sumud*/resistance, negotiation, and attrition—has effectively prevented the Israeli military and colonial machine from defeating them.

(1) *Sumud/resistance.* Despite the flight of many middle-class Palestinians, one cannot but be impressed by the steadfastness (*sumud*) and resistance to

occupation on the part of the peasants, working classes, and *petite bourgeoisie*—resistance that takes the form of daily coping, an insistence on carrying on one’s life and a refusal to be cowed, as well as active and intentional forms of struggle. Be it intifada, evading checkpoints, tax revolts, or merely posing a “demographic threat,” Israel has not succeeded either in driving or “transferring” Palestinians out of the country or even in routinizing its control of them.

(2) *Negotiations.* The common-sensical conclusion to a strategy of self-determination would seem to be negotiations, which have been the Palestinians’ preferred route since Arafat approached Kissinger way back in 1973. For negotiations to work, however, there has to be a semblance of a level playing field. Israel’s military might, its matrix of “facts” on the ground, the absolute backing it receives from the United States, and the failure of the international community to apply norms of human rights and international law have all eliminated negotiations as an option. At this stage, as the Oslo process showed, negotiations can only be a cover for Israeli dictates. Negotiations cannot succeed until the Israel government is disabused of the idea that it can “win,” or until the international community decides that the conflict is too unjust and destabilizing to be allowed to continue.

(3) *Attrition.* A Palestinian strategy of liberation, then, requires yet another element: attrition. The Israelis believe they can prevail. In their view, Palestinian resistance can be reduced to manageable proportions, and, by employing a multiplex strategy of selective “disengagement,” an ever-thickening matrix of control, repression, and skillful international diplomacy, Israel can maintain the status quo indefinitely. Eventually—Likud, Labor, and Kadima all agree—the Palestinians can be induced to accept a ministate, a kind of “soft” apartheid regime. Yet, in fact, the cost of maintaining a huge military presence in the occupied territories, the polarization the occupation causes within Israeli society, and the increasing toll on Israel’s image incurred by its ever-harsh violations of human rights are increasingly difficult for Israel to sustain. Attrition also has its international dimension. The regional and global destabilization caused by the conflict may ultimately lead to demands that Israel try finally to reach a just peace.

Strategizing and Advocating Palestine: The Role of Palestinian and International Civil Society

Yet *sumud*, resistance, and attrition, effective though they are in preventing Israel from successfully imposing its apartheid regime, in themselves constitute no program for the future and are unable to counter effectively Israeli strategic initiatives. In the end, they must be superseded by thought-out strategy, policy, and negotiations. “Strategizing Palestine” requires a fourth element: a campaign of advocacy designed to mobilize civil society in a way that is coherent, compelling, proactive, and assertive, and which consequently endows Palestinian civil society organizations with a mandate and vision to deal with Israel. Though governments are the bodies that finally determine the political

settlement, unless the Palestinians mobilize international civil society, their only solid ally, they will find it difficult, if not impossible, to achieve their national goals.

At a minimum, I would suggest the following elements of any attempt to “strategize” Palestine:

(1) *Resuscitating the PLO as a Palestinian “Jewish Agency.”* A place to begin might be to adopt the suggestion of Omar Barghouti in this issue of *JPS* that the PLO resuscitate and reinvent itself, becoming the authoritative agency representing the three sectors of Palestinian civil society—refugees and the diaspora communities, Palestinian citizens of Israel, and Palestinians under occupation. It would be a kind of Jewish Agency, which the Zionists used so effectively during the pre-1948 “state-on-the-way” period. The PA cannot go it alone, and if it was not engaged with its international supporters when Fatah was in control, its isolation (both external and self-imposed) is all the more complete under Hamas. The PLO is an inclusive and appropriate framework for strategizing Palestine and could be as effective in engaging with international civil society as the Jewish Agency continues to be under the aegis of the Israeli government.

If resuscitating the PLO proves unworkable, the PA should be urged at a minimum to appoint a full and high-ranking Minister for Civil Society Coordination, whose first task would be to revive the International Coordinating Committee on Palestine (ICCP) that functioned until the start of the Oslo process. If even this proves unworkable, it would be incumbent on PNGO, the Palestinian umbrella of “inside” NGOs and the only existing civil society framework up to the task, to become more inclusive and more strategic than it has been up to now. Such a reconceptualization would require a fundamental reassessment of the notion of “normalization” that today prevents many Palestinian organizations from cooperating with their Israeli counterparts, no matter how much the Israeli groups support the Palestinians’ national agenda.

(2) *Articulating the end-game.* Unlike in the South African struggle against apartheid where the ANC provided a clear end-game around which both local and global forces could mobilize (“one man, one vote”), the PA has not given its international supporters a clear goal—another crucial omission that a civil society PLO could address. Its advocacy of a two-state solution seems almost desultory. It seldom presents its vision of the future with passion or conviction, seldom addresses the fundamental question of whether it is still attainable after forty years of Israel’s creating massive “facts” on the ground, and tends to leave supporters of the Palestinian cause with the feeling that the two-state solution is a kind of “default” solution that no one, including the PA, takes seriously. The end-game under Hamas leadership is even more ambiguous.

At a time when “solutions” are both many and vague, but also at a time in which supporters of Palestinian self-determination must be given direction, it may be more useful to concentrate on the essential elements of *any* solution acceptable to Palestinians. These minimal yet essential elements would include (a) national expression for both the Palestinian and Israeli peoples;

(b) economic viability for all parties; (c) conformity with standards of human rights, with international law, and with fundamental UN resolutions—in particular 194 (right of return), 242 (land for peace), and 338 (negotiated settlement); (d) a just resolution of the refugee issue, including Israeli acknowledgement of the refugees' right of return and of its role in creating the refugee issue; and (e) addressing the security concerns of all the parties of the region (“guaranteeing the territorial inviolability and political independence of every state in the area,” as specified in UN resolution 242).

(3) *Reframing the conflict.* Over the years Israel has succeeded in framing the Israel/Palestine discourse, reducing advocates of Palestinian rights to a defensive, disjointed, and less-than-convincing rebuttal. Three elements have been central to the Israel framing: (a) Israel as a democratic, Western, peace-seeking victim of Palestinian terrorism; (b) the complete removal of the term “occupation” from the public debate; and hence (c) the reduction of the entire conflict to an issue of Israel’s security.

What is lacking is not counter-information or counter-arguments, but an entire Palestinian reframing that places the various arguments and facts into a coherent conceptual framework. Such a reframing would emphasize (a) the Palestinian right to self-determination as embedded in human rights and UN resolutions; (b) Palestinian and Arab overtures toward peace with Israel, including the Palestinians’ readiness to accept far-reaching compromises (such as renouncing political claims to some 80 percent of historic Palestine) and the Saudi initiative; (c) the portrayal of Israel as the strong party in the conflict rather than the victim, a switch that would legitimize demands that Israel be held accountable for its actions under international law and UN resolutions; (d) Israel’s occupation policies (especially its settlement enterprise) as a proactive policy of claiming and controlling the entire country, unrelated to security; (e) Israel’s unwillingness to accept a viable and sovereign Palestinian state as the primary obstacle to peace; (f) the negative impact of the conflict on American interests and global stability (including the “war on terror”); and (g) the *political* nature of the conflict, thus contesting the American and Israeli attempt to mystify the conflict as a “clash of civilizations.”

Such a reframing is critical to countering American/Israel hegemony over the popular discourse, as Jaleh Bisharat and Saree Makdisi also make clear in this issue. Indeed, alternative framings are needed for different audiences. The one presented above is a political and human rights reframing, which is fine for university groups but not suitable, perhaps, for more conservative groups. I would suggest an American reframing (à la Jaleh Bisharat’s suggestion, though I’m not sure that words like “oppression” and “apartheid” resonate with the average American). We should also formulate a Christian reframing (mainstream and evangelical), a Jewish reframing, even a women’s reframing.

(4) *A proactive campaign of advocacy.* Once we turn to advocacy itself, we find yet another crucial arena where Israel has established (or more accurately, has been allowed to establish) unrivaled hegemony. This is perplexing, if not exasperating, given fundamental shifts in global public opinion in the

Palestinians' direction. According to an EU poll, for example, 60 percent of Europeans believe that Israel is the world's greatest threat to peace, and Israel's oppressive policies, highlighted by the wall, have made its policies transparent even to the mainstream press abroad. The Great Palestinian Mystery is why, when justice is so clearly and visibly on the Palestinian side, does not the Palestinian leadership, together with Palestinian organizations at home and in the diaspora, mount an effective campaign on their own behalf? Bright spots of Palestinian advocacy such as the Electronic Intifada are just that: bright spots. They do not add up to a coherent strategy of advocacy.

Current action-oriented campaigns—divestment, Caterpillar, house demolitions, olive tree planting and harvesting, the wall, human rights monitoring, initiating legal proceedings, and more—should be accompanied by a limited number of focused “big picture” meta-campaigns. I have in mind three fundamental informational campaigns. First, a campaign to clearly expose what happened to the Palestinians as a people, placing them within a context of human rights and decolonization. Second, a campaign aimed at critically viewing the occupation as a whole, with a special emphasis on Israel's proactive policies of conquest and control that have little if anything to do with security. Finally, a campaign is needed to explain the rise of Hamas (in the wake of the January elections in particular), in the context of the religious, political, socioeconomic, and cultural diversity of the Palestinian people.

In light of Ehud Olmert's “convergence plan,” however, a plan he has promised to carry out during the last year and a half of Bush's administration, an urgent anti-apartheid campaign is also called for. Such an action-oriented meta-campaign, in response to the declared Israeli intention of unilaterally and permanently institutionalizing its control over the occupied territories, would focus on (1) preventing the imposition of an actual regime of permanent apartheid; (2) continued insistence on a complete end to the occupation; and (3) rejection out of hand of any attempt to impose a “solution” unilaterally.

(5) *A campaign of noncooperation and resistance “on the ground.”* If international campaigns of advocacy, lobbying and pressure provide crucial support for resistance “on the ground,” the latter provide legitimization and focus for distant international efforts. A nonviolent campaign for national liberation would encompass two main elements: noncooperation designed to protest occupation policies and practices and to gum up the works; and actual resistance. The former could take various forms: refusal to carry Israeli-issued IDs; refusal to use Israeli currency; refusal to pay Israeli taxes (such as happened in the Bayt Sahur tax revolt of 1987 that was brutally suppressed by the Israeli authorities); a boycott of Israeli goods, including foodstuffs; a boycott of Israeli courts by Palestinian lawyers and their clients; and other measures strategically aimed at the moral and coercive pillars of the occupation. Acts of resistance would mean peacefully confronting the Israeli army and the major expressions of occupation (such as is being done today in Bil'in by Palestinian farmers, young Israeli activists, and internationals); or defying Israeli prohibitions on Palestinian campaigning in East Jerusalem by large-scale and

demonstrative gatherings. Mubarak Awad has even suggested the dramatic step of refugees burning the camps in Lebanon, then launching a mass march home to Palestine/Israel. In the ultimate action of resistance and attrition, to which the current international campaign of starving the PA lends justification, the PA asks the international relief agencies to leave the country, then resigns, throwing the occupation squarely back onto Israel's shoulders, a burden it could not withstand.

Any campaign of nonviolent resistance would carry mortal risks to Palestinians and their supporters on the ground. A *sine qua non* for a successful campaign of this sort is the ability to mobilize international support for those resisting.

The setting of national goals, establishing appropriate frameworks and formulating an effective strategy are the responsibility of the Palestinians themselves. Both Israeli and international civil societies are limited to support roles; advocacy for a solution to the conflict requires authoritative Palestinian guidance. Only close cooperation among Palestinian, Israeli, and international civil societies, coordinated and actively supported by the Palestinian national leadership, will give the *samidun*, the steadfast, the ability to sustain their struggle and eventually to prevail.

PUTTING PALESTINE BACK ON THE MAP: BOYCOTT AS CIVIL RESISTANCE

OMAR BARGHOUTI

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For too long, nonviolence has had a bad name among Palestinians, for two main reasons: First, most of those advocating it support a minimal set of Palestinian rights, usually excluding or diluting the internationally recognized right of Palestinian refugees to repatriation and compensation. Second, Palestinian nonviolent campaigns were often funded, if not directed, by Western organizations, governmental or otherwise, with their own political agendas that conflicted with the *publicly* espoused Palestinian national agenda, particularly as concerns the right of return. This entrenched association between nonviolence and a *minimalist* political program made nonviolence an object of suspicion and antipathy among most Palestinians, particularly since armed resistance has been largely linked to a *maximalist* political program.

I, for one, beg to differ with this general characterization. While I firmly advocate nonviolent forms of struggle such as boycott, divestment, and sanctions to attain Palestinian goals, I just as decisively support a unitary state based on justice and comprehensive equality as the solution to the Palestinian-Israeli conflict. To my mind, in a struggle for equal humanity and emancipation from oppression, the correlation between means and ends, and the decisive effect of the former on the outcome and durability of the latter, are indisputable. If Israel is a settler-colonial state, then its replacement must be a

secular, democratic state, offering unequivocal equality in citizenship, individual, and communal rights *both* to Palestinians (refugees included) *and* to Israeli Jews. Only such a state can *ethically* reconcile the ostensibly irreconcilable: the inalienable, UN-sanctioned rights of the indigenous people of Palestine to self-determination, repatriation, and equality in accordance with international law and the *acquired* and internationally recognized rights of *Israeli* Jews to coexist—as equals, not as colonial masters—in the land of Palestine.

From Oslo to Durban: The Stirrings of BDS

Starting with the collapse of the Soviet Union and the premature end of the first Palestinian intifada—through the launching of the Madrid-Oslo “peace process”—the question of Palestine has been progressively marginalized, if not relegated to a mere nuisance factor, by the powers that be in the new unipolar world. The UN General Assembly’s 1991 repeal, under U.S. pressure, of its 1975 “Zionism is Racism” resolution removed a major obstacle to Zionist and Israeli rehabilitation in the international community. This was followed by formal recognition of Israel by the PLO under the Oslo accords, which furthered the transformation of Israel’s image from that of a colonial and inherently exclusivist state into a *normal* state engaged in a territorial dispute. After the establishment of the Palestinian Authority, primarily to relieve Israel’s colonial burdens in the West Bank and Gaza, Israel embarked on an ambitious public relations campaign in Africa, Asia, Latin America, and the Arab world, establishing diplomatic ties and opening new markets for its growing industries. Former sworn enemies suddenly warmed up to Israel, importing from it billions of dollars worth of military hardware and other goods, and, convinced that the road to Congress passed through Tel Aviv, wooing it politically. Meanwhile, the election of George W. Bush as president of the United States and the rise of his neoconservative associates (erstwhile advisors to the far-right Israeli leader Benjamin Netanyahu) brought Zionist influence in the White House to unprecedented heights, finally matching its decades-old, almost unparalleled influence on Capitol Hill.

But in September 2000, after years of a “quiet” Israeli occupation and the enormous growth of its colonies in the occupied territories, the second Palestinian intifada broke out. As the uprising intensified, Israel’s brutal attempts to crush it, through means described by Amnesty International and other human rights organizations as amounting to war crimes, reopened—at least in intellectual circles—long forgotten questions about whether a just peace can indeed be achieved with an exclusivist, ethnocentric, and expansionist Zionist state. It was against this background that the UN World Conference against Racism in Durban in 2001 revived the 1975 debate on Zionism. Although, as expected, the official assembly failed to adopt a specific resolution on Zionism due to direct threats from the United States, the NGO Forum condemned it as a form of racism and apartheid, expressing the views of thousands of civil society representatives from across the globe, whose struggle against all forms of racism, including anti-Semitism, is mostly informed by humanist and democratic

principles. Despite the official West's unwillingness to hold Israel to account, Durban confirmed that grassroots support, even in the West, for the justness of the Palestinian cause was still robust, if not yet channeled into effective forms of solidarity.

With the new intifada, boycott and sanctions were in the air. Campaigns calling for divestment from companies supporting Israel's occupation, for instance, spread across American campuses. The impromptu nature of these early efforts soon gave way to greater coordination at a national level, culminating in the establishment of the Palestine Solidarity Movement. Across the Atlantic, particularly in the United Kingdom, calls for various forms of boycott against Israel started to be heard among intellectuals and trade unionists. These efforts intensified with the massive Israeli military reoccupation of Palestinian cities in spring 2002, with all the destruction and casualties it left behind.

By 2004, academic associations, trade unions, and solidarity organizations in the United States and Europe calling for boycott had been joined by mainstream churches, which began to study divestment and other forms of boycott of Israel, similar in nature to those applied to South Africa during apartheid rule. The most significant development at that stage was the precedent-setting July 2004 decision of the Presbyterian Church (U.S.A.) which called, in a resolution adopted by a 431 to 62 vote, for "a process of phased selective divestment in multinational corporations doing business in Israel." Unlike similar declarations adopted by student and faculty groups, the Presbyterian move could not be dismissed as "symbolic" or lacking potential economic consequences. Indeed, it inspired other Christian denominations to consider halting their investments in Israel as well.

A development of signal importance for these efforts was the historic Advisory Opinion issued by the ICJ at The Hague on 9 July 2004, condemning as illegal both Israel's wall and the colonies built on occupied Palestinian land. Ironically, the PLO scored this momentous victory at a time when it was least prepared to build on it. A similar advisory opinion by the ICJ in 1971, denouncing South Africa's occupation of Namibia, had triggered what became the world's largest and most concerted campaign of boycotts and sanctions directed against the apartheid regime, eventually contributing to its demise. Though the ICJ ruling on the wall did not prompt similar reaction, chiefly due to Palestinian structural and political powerlessness, it did fuel a revival of principled opposition to Israeli oppression around the world.

About the time of the ICJ ruling, the Palestinian Campaign for the Academic and Cultural Boycott of Israel (PACBI), formed in April 2004, issued a statement of principles endorsed by some sixty unions, organizations, and associations in the occupied territories urging the international community to boycott all Israeli academic and cultural *institutions* as a "contribution to the struggle to end Israel's occupation, colonization, and system of apartheid."⁸ This call

⁸PACBI's 2004 Call for Boycott can be found at www.pacbi.org.

was amplified on the first anniversary of the ICJ ruling, when more than 170 Palestinian civil society organizations and unions, including the main political parties, issued a call for boycott, divestment, and sanctions (BDS) against Israel “until it fully complies with international law.” After fifteen years of the so-called “peace process,” Palestinian civil society reclaimed the agenda, articulating Palestinian demands as part of the international struggle for justice long obscured by deceptive “negotiations.” In a noteworthy precedent, the BDS call was issued by representatives of the three segments of the Palestinian people—the refugees, the Palestinian citizens of Israel, and those under occupation. It also directly “invited” conscientious Israelis to support its demands. The Palestinian boycott movement succeeded in setting new parameters and clearer goals for the growing international support network, sparking, or giving credence to, boycott and divestment campaigns in several countries.

In an example that illustrates both the possibilities of such campaigns and the challenges they face, pro-justice British academics, in coordination with PACBI, won a decision by their Association of University Teachers (AUT) in April 2005 to boycott two Israeli academic institutions for their complicity in perpetuating Israel’s oppression of the Palestinians. In just over a month, however, after intense pressures—amounting to naked bullying at times—were brought to bear by Israel and the Zionist lobbies in the United Kingdom and the United States, the motion was rescinded. Despite the sobering setback, the AUT boycott remains a remarkable achievement: shattering the taboo of Israel’s invincibility by proving that it *can* indeed be *boycotted*. At the same time, the rapid suppression of the AUT boycott shows what pro-boycott activists can expect in terms of intimidation, character assassination, misinformation, and the like. And while the virulence of the Zionist response to the AUT motion shows the vulnerability of Israel and the Zionist movement to the claims of justice and equal humanity embodied in the BDS form of resistance, it also shows the Zionist determination to suppress debate at all costs and to crush any effort, however modest. Nonetheless, the movement continues undaunted, and several more mainstream churches in the United States and the United Kingdom have followed the Presbyterian example in putting selective divestment on their agendas, representing an encouraging breach in the metaphoric wall, so to speak, of relatively uncontested Zionist political sway in the West.

A Palestinian “ANC”?

A genuine concern raised by solidarity groups in the West regarding the calls for boycott has been the conspicuous absence of an *official* Palestinian body behind them. “Where is your ANC?” is a difficult and often sincere question that faced Palestinian boycott activists everywhere. The PLO, in total disarray for years, has remained silent. The PA, with its circumscribed mandate and the constraints imposed upon it by the Oslo accords, is *inherently* incapable of supporting any effective resistance strategy, especially one that evokes injustices beyond the 1967 occupation. Indeed, with rare exceptions, the PA’s role has actually been detrimental to civil society efforts to isolate Israel.

As for “unofficial” Palestinian bodies, not all of them supported the July 2005 BDS call. A number of Palestinian NGOs, ever attentive to donor sensitivities, declined, some citing as “too radical” the clause on the right of refugee return (“as stipulated in UN Resolution 194”), while others, bowing to pressure by their European partners, feared that the term “boycott” would invite charges of anti-Semitism. At the same time, the largest Palestinian political factions, with their predominant focus on armed struggle, seem unable to recognize the indispensable role of civil resistance. Either by inertia or reluctance to evaluate critically their programs in light of a changed international situation, these forces became addicted to the military model of fighting the occupation, ignoring the troubling moral questions raised by certain indiscriminate forms of that resistance and its failure to achieve positive ends. The absence of “official” Palestinian support for BDS, coupled with the conflicting agendas and messages in the nonofficial Palestinian body politic, has not helped to advance the BDS movement.

In order to realize Palestinian aspirations for freedom and equality and to pose a real challenge to Israel’s dual strategy of, on the one hand, fragmenting, ghettoizing, and dispossessing Palestinians, and, on the other hand, reducing the conflict to a dispute over a partial set of Palestinian rights, the PLO must be resuscitated and remodeled to embody the claims, creative energies, and national frameworks of the three main segments of the Palestinian people. The PLO’s grassroots organizations need to be built from the bottom up with mass participation, and they must be ruled by unfettered democracy and proportional representation.

Ironically, Hamas’s victory in the January 2006 Palestinian legislative elections could serve as a catalyst to the above described processes of structural democratization and political reform crucially needed to put mass Palestinian resistance and international support for it back on track. This will require intensive efforts by secular and progressive forces to help guide these processes to make them as inclusive as possible. It will also require a well-planned transfer of power from the PA back to a *rejuvenated* PLO. For various legal and practical reasons, the PA cannot be responsibly dismantled overnight, but a newly reconstituted, democratic PLO could gradually wean it from the ill-conceived pretense of representing “the Palestinians,” as well as from its proxy role in Israel’s occupation policies. Only thus can the Palestinian people as a whole recover its unity and collective will to resist, and—in Mahmud Darwish’s phrase—to “besiege its siege” in which the “peace process” has incarcerated it.

In parallel, the entire Palestinian conceptual framework and strategy of resistance must be thoroughly and critically reassessed and transformed into a progressive action program capable of connecting the Palestinian struggle with the international social movement. The most effective and morally sound strategy for achieving these objectives is one based on gradual, diverse, context-sensitive, and sustainable campaigns of BDS—political, economic, professional, academic, cultural, athletic, and so on—aimed at bringing about Israel’s

comprehensive and unequivocal compliance with international law and universal human rights. In this latter regard, it is important to emphasize that it is not just Israel's military occupation and denial of refugee rights that must be challenged, but the wider Zionist system of racist exclusivism. Jews have stood in the front lines of the struggle for civil rights, democracy, equality before the law, and separation between church and state in many countries, and it should be untenable for Israel's unabashedly ethnocentric laws and its reduction of Palestinians to *relative* humans, whether in the occupied territories or within Israel itself, to be defended. Ultimately, then, successful nonviolent resistance requires transcending the choking and fatally ill-conceived two-state paradigm, and animating the struggle for equality and against Zionist racism wherever it is found.

I am aware that reducing Palestinian demands to ending the occupation seems like the easiest and most pragmatic path to take, but I firmly believe that it is ethically and politically unwise to succumb to the temptation. The indisputable Palestinian claim to equal humanity should be the primary slogan raised, because it lays the proper moral and political foundation for effectively addressing the myriad injustices against all three segments of the Palestinian people. It is also based on universal values that resonate with people the world over. On the one hand, while coalescing with diverse political forces is necessary to make this direction prevail, caution should be exercised in alliances with "soft" Zionists lest they assume the leadership of the BDS movement in the West, lowering the ceiling of its demands beyond recognition. On the other hand, principled Jewish voices—whether organizations or intellectuals consistently supporting a just peace—in the United States, Europe, and even Israel have courageously supported various forms of boycott, and this helps shield the nascent boycott movement from the charges of anti-Semitism and the intellectual terror associated with them.

Besides the need to extend the struggle beyond ending the occupation, two other pertinent points in connection with BDS initiatives bear emphasizing. First, they should be guided by the principles of inclusion, diversity, gradualness, and sustainability. They must also be flexibly designed to reflect realities in various contexts. Second, although the West, owing to its overwhelming political and economic power as well as its decisive role in perpetuating Israel's colonial domination, remains the main battleground for this nonviolent resistance, the rest of the world should not be ignored. The movement should reach China, India, Malaysia, South Africa, Brazil, and Russia, among other states which seek to challenge the West's monopoly on power. It is worth noting that Zionist influence in those states remains significantly weaker than in the West.

Future Vision

If oppressors can afford a measure of what Henry Kissinger has called "constructive ambiguity," the oppressed certainly cannot. Failure to spell out the end-game adversely affects our ability to sway international public opinion in our favor. For the Palestinian BDS movement to be most influential and capable

of mobilizing international public opinion, as its South African predecessor was, it needs to define its ultimate objectives, its vision for a future of justice, peace, and reconciliation. To that end, the secular-democratic state solution offers a true chance for the *ethical decolonization* of Palestine, turning Palestinians not into oppressors of their current oppressors, but “restorers of the humanity of both,” to cite Paulo Freire. This *new* Palestine should primarily facilitate the return of and compensation for the Palestinian refugees, avoiding the infliction of any unnecessary or unjust suffering on the Jewish community in the country. It should also grant full, equal citizenship rights to Palestinian Arabs, *refugees* included, and Israeli Jews, recognizing, legitimizing, and even nourishing the respective cultural, religious, and ethnic particularities and traditions of each community as well as equal civil rights.

Putting Palestine back on the map thus offers the Jews in Palestine a real chance finally to enjoy normalcy, as equal humans in a truly *promising* land, not a false Promised Land.

CHOICES OF LAW, FRAGMENTS OF HISTORY: ON LITIGATING IN THE ISRAELI LEGAL SYSTEM

MARWAN DALAL

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In contrast to the American legal system, the Israeli legal system lacks the myth of constitutionalism. The founding fathers of the Jewish state were interested in nationalist ideology, not in the ideals of the Enlightenment. Shimon Peres, a student of David Ben-Gurion, once said in a television interview that the task of Zionism was to transform the Jew from a “Man of the Book” into a “Man of the Land.” The understanding of law by Israel’s founders was very directed: to secure recognition from the existing superpowers of the ambitious project to rule in the densely Arab-populated Palestine. Law in the State of Israel, then, was never, for the founding fathers and ruling elites, an agenda in and of itself. Internationally, law was essentially a nuisance that had to be dealt with through creative diplomacy. There is no doubt that with developments in international law in recent years, particularly through the jurisprudence of universal jurisdiction, Israel will have to take law and rights more seriously than it has in the past.

In this short essay I will explore the potential, and many limitations, of litigating Palestinian human and civil rights in the Israeli legal system. I do this by examining three distinct, yet interconnected, categories of Palestinians: Palestinian displaced, Palestinians under military occupation, and Palestinian citizens of Israel.

Return and Property

The concept of Palestinian return is understood in Israel not in historical or legal terms, but apocalyptically. The denial of Israel’s responsibility for what

happened to the Palestinians in 1948 persists among Israel's elites and broad public opinion alike. The dilemma posed both by the actual project of return and by the *right* to return is conveniently turned into an existential threat. Great efforts are made to demonstrate not only that return to areas inside the Green Line is not feasible, but that there is no such thing as a *right* of return for Palestinian refugees. Some Israelis go so far as to turn the Palestinian demand for this right on its head, demanding Palestinian acknowledgment of the historical right of the Jewish people in Palestine as a precondition for any agreement with them. Thus, according to former head of Mossad, Ephrayim Halevi, "If [the Palestinians] want a Palestinian state in the 1967 borders, we should demand [their] relinquishing the right of return. Further: what we should demand from the Palestinians is their recognition of Zionism's legitimacy. Not the fact of Zionism, rather its legitimacy."⁹

Israeli law, basing itself on ahistorical biblical notions of Jewish presence in what came to be Palestine, recognizes only the Jewish right to return to the geographic area Jews had inhabited thousands of years earlier. Similarly, religious affiliation in Israel crucially affects citizenship status, with citizenship virtually automatic for Jews from the outside and withheld from non-Jews with established ties to the land—a fact that clearly undermines the claim made by the High Court of Israel's former chief justice, Meir Shamgar, that the Jewishness of Israel is the same as the Frenchness of France.

In Israel, the right of return is denied not only to Palestinians outside Israel's borders, but even to those inside, that is to say, to those Palestinians forced to leave their homes during or after the 1948 war but who remained inside the new state, becoming citizens. Yet the High Court of Israel had in effect created a right of return for this particular category in the early 1950s, when it ruled that the Israeli military's "temporary expulsion" in 1948 of the residents of the village of Iqrit was illegal. In 1995, after waging a long struggle to have the court's ruling implemented, the villagers finally managed to obtain the government's approval for their claims. Needless to say, their struggle was not part of the Palestinian national liberation movement. Rather, it relied on the citizenship status of the residents and the fact that they had a High Court of Israel decision favoring their claim.

Ultimately, though, the state was unable to tolerate even this very limited and specific application of return. When no action was taken allowing the villagers to return, the Iqrit case was resubmitted to the High Court in the late 1990s. But by the time the court was ready to deliver a decision in 2003, Ariel Sharon was prime minister. An affidavit in his name was submitted to the court asking that it not allow the villagers to return. His main argument was that such a move would be a strategic error, with damaging implications for the issue of refugee return in the final status negotiations between the Palestinians and Israel. The court approved Sharon's position, though it added its hope that a

⁹Ari Shavit, "Smiley Stopped Smiling," *Ha'Aretz*, 5 September 2003.

change in political situation might lead the government to find it appropriate to reach a different decision.¹⁰

The fate of property belonging to refugee and displaced Palestinians, which was controlled by the Custodian of Absentee Property created under the 1950 Absentees' Property Law, was similarly "put on hold" in an earlier (April 1994) High Court ruling, this time until the conclusion of negotiations between Israel and the Arab countries. The case dealt with the request of Israeli land dealers to free up property then under the control of the custodian, and which they had purchased from the legal owners. The court rejected the petition, and its extraordinary ruling made explicit that holding property for the original owners was not the custodian's task. Rather, the ruling stated, the purpose of the Absentees' Property law is

to fulfill the state's interests in these property: the ability to use it for the advancement and the development of the country, while preventing an absentee under the law from using this property, as well as to possess this property (or its value) until political settlements are reached with the neighboring countries, which will determine the fate of this property on the basis of reciprocity.¹¹

Occupation and International Law

The official Israeli position with regard to its 1967 conquest of the West Bank (including East Jerusalem) and Gaza is that it is not an occupation, because these territories were not seized from a *state*. Notwithstanding, after the Israeli military's redeployment from Gaza, Israel has tirelessly sought international recognition for its "end of occupation in Gaza."

Legal challenges to Israel's occupation policies against the Palestinian civilian population are as old as the occupation itself. Under international law, belligerent occupation is understood to be temporary and of short duration. The fact is, however, that Israel's 1967 occupation continues and is increasingly entrenched. The dominant response in Israel to the legal challenges against the occupation has been rejection. The military courts, established in the wake of the occupation to prosecute Palestinian resisters, were a parody of due process and accepted legal procedures, while the dominant role of the High Court of Israel has been to rubber stamp with domestic legitimacy even the most egregious actions of the occupation.¹²

¹⁰H.C. 840/97 Aouni Sbeit et al. v. The Government of Israel et al. 47 (4) Piskei Din 803.

¹¹H.C. 4713/93 Ze'ev Golan et al. v. The Special Committee According to Article 29 of the 1950 Absentees' Property Law et al. 48 (2) Piskei Din 638, 644.

¹²See David Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories* (Albany: State University of New York Press, 2002); and Barak Cohen, "Democracy and the Mis-Rule of Law: The Israeli Legal System's Failure to Prevent

In the last few years, however, Israel has been faced with new challenges on the international legal front. The most dramatic of these was the ICJ's 9 July 2004 advisory opinion on the separation wall, which hit the Israeli legal system (more than the political system) with a veritable effect of "shock and awe." It was the unfolding deliberations in the ICJ that prompted domestic litigation against the wall, with legal challenges brought by Palestinian villagers whose lands were affected. A week before the ICJ delivered its opinion, the High Court of Israel ruled on a 40-km segment of the wall in the Jerusalem area, recommending some modification in routing so as to lessen the hardship on the affected villagers, even while affirming the wall to be legal. This exercise in anticipatory damage control did not succeed in changing the ICJ's advisory opinion, which ruled the wall to be illegal and called for its immediate dismantlement. Ultimately, the High Court endorsed the official Israeli position rejecting the ICJ's opinion on the rather problematic grounds of (a) the temporary nature of the wall and (b) absolute military necessity. Neither argument is difficult to refute. With regard to the wall's "temporary nature," Israeli officials now acknowledge openly, almost on a daily basis, that the wall's path is the future Palestinian-Israeli border in the West Bank. As for the second argument, absolute military necessity is traditionally invoked to rationalize immediate military action in order to confront an imminent threat, and is thus hardly applicable in this case: construction of the wall is certainly not an immediate action, and it is very doubtful that the construction fits the definition of a military operation.

Another significant development that has made the Israeli legal establishment take international legal challenges more seriously is the upsurge in lawsuits and complaints lodged against Israeli military commanders in recent years in various parts of the world using the principle of universal jurisdiction. The first of these was the interesting but failed complaint in June 2001 in Belgium against Ariel Sharon for his responsibility for the Sabra and Shatila massacres in September 1982 in Lebanon.¹³ Next were complaints in England in October 2002 against former Israeli chief of staff and defense minister Shaul Mofaz, who, according to media reports, was asked to leave London to avoid a potential arrest warrant against him. More recently, a British arrest warrant was issued in September 2005 against former Israeli General Doron Almog on the basis of a complaint concerning his responsibility, inter alia, for unlawful killings and extensive home demolitions in Gaza during the al-Aqsa intifada. Around the same time, two civil law suits were brought to court in Washington, DC, the first, in November 2005, against former Israeli chief of staff Moshe Ya'alon for

Torture in the Occupied Territories," *Indiana International and Comparative Law Review* 12, no. 1 (2001), p. 75.

¹³See Yuval Shany and Keren R. Michaeli, "The Case against Ariel Sharon: Revisiting the Doctrine of Command Responsibility," *NYU Journal of International Law and Politics* 34 (2002), p. 797; Damien Vandermeersch, "Prosecuting International Crimes in Belgium," *Journal of International Criminal Justice* 3, no. 2 (May 2005), pp. 400–21.

his role (as chief of military intelligence) in the 1996 bombing of civilians in Qana, Lebanon, and the second in December 2005 against Avi Dichter, former head of the Israeli General Security Service (Shin Bet), for his responsibility in the bombing of a densely populated residential neighborhood in Gaza in July 2002.

The importance of these legal developments cannot be underestimated. Their effect is reaching High Court justices and creating concern in the Justice Ministry and the attorney general's office, which represents state officials charged with human rights abuses. Some lawyers arguing in the domestic arena are now emphasizing the international law dimension of the violations against their clients, suggesting other avenues for seeking redress; the international legal activism has thus created what can be called a "jurisprudence of deterrence." The state, aware that outside legal authorities could use universal jurisdiction mechanisms against Israeli perpetrators of breaches of international law not held accountable in Israel, will have to treat allegations in domestic cases seriously. Thus, despite the fact that Israel, like the United States, consistently refuses to ratify the Rome Statute establishing the International Criminal Court (ICC), the enforcement of international law through domestic jurisdiction mechanisms can become as effective as if Israel had given the ICC jurisdiction to deal with such cases.

Equality and Superiority

Litigating for equality in Israel by Palestinian citizens is a relatively new phenomenon. The framework for such litigation is Israeli citizenship. Since Israeli law does not acknowledge collective rights for the Palestinian minority (apart from some religious rights, in keeping with Israel's foundations as a sectarian state), legal claims in court are usually based on administrative and constitutional law arguments as made and interpreted by the High Court of Israel.

A case that caused a significant uproar among Israeli legal and nonlegal elites in 2002 was one that called for all signs in towns in which both Arab and Jews reside to be written in Arabic as well as Hebrew. Up to that time, signs were in Hebrew only. In a two-to-one decision, the High Court accepted the demand of the petitioners, though in the same decision all three judges reaffirmed the superior status of Hebrew as a matter not merely of fact but of law. The resentment among the Jewish population caused by this case seems unwarranted, not only because of the court's clear preservation of Hebrew as a superior language, but also because the Arabic on the signs will be no more than an exact transliteration of the Hebrew names: "Herzl Street," for example, will simply appear in Arabic letters, and there is no question of return to the original pre-1948 names.

A number of major elite organizations in Israel were disturbed by this limited court decision. For example, the Israeli Democracy Institute (IDI), a main promoter of a written constitution for Israel (which to date has not adopted one), held that the court should not have pronounced on this issue, since it is

up to the Knesset to decide the status of the languages when it adopts a constitution. The IDI's proposed draft accords the Arabic language an even lower status than the High Court ruling. In the IDI draft, "Hebrew is the language of the state," whereas "Arabic is an official language," and "its usage by official bodies of the state will be regulated by or according to law."

Several motives can be read into the IDI's vigorous advocacy of a constitution founded more on Israeli Jewish consensus than on liberal democratic principles. The first is to use the process to reconcile disputing groups within the Jewish majority, mainly secular and religious nationalists, exacerbated by the settlement issue and the disengagement from Gaza. The second is the perception that the High Court is acting too liberally and that a supreme document like the constitution would constrain its supposed liberal judicial activism by outlining its limits. The recruitment of former chief justice Shamgar to head the campaign for advocating such a constitution makes this purpose more evident.

The current drive is not the first attempt to create a constitution in Israel, but it is certainly the most serious one to date, considering the immense resources, financial and symbolic, put to the task of advocating it. All the attempts have failed so far mainly because of the internal Jewish debate over the status of religion in society, especially with regard to issues of equality and the rights of women. The IDI's proposed constitution has the best chance to pass in the Knesset because it aims at the lowest common denominator in Israeli Jewish society. Indeed, its main purpose is to formulate an Israel attractive to its Jewish citizenry only and to ratify the state's special relationship with the Jewish citizens of other countries. It is essentially based on ideas and principles that are far from the enlightened ideals enshrined explicitly in the South African constitution or in the Canadian one. In adopting such a constitution, Israel may argue, particularly to foreign audiences, its official transformation to a constitutional democracy. Domestically, however, it will simply open a new phase of struggle against Israeli discrimination, racism, and domination.

UNDERCLASS CITIZENS: PALESTINIANS IN ISRAEL

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Since its establishment in 1948, Israel's official policy toward its Palestinian citizens has shifted from full control and repression through military rule imposed for the first 18 years of Israel's existence, to a post-1966 policy of institutional containment that deals with the Palestinians as a security and demographic threat to the Zionist character of the state and to Jewish majority rule. While formally citizens, the Palestinians have been treated, at best, as second-class citizens allowed to enjoy leftover scraps of Jewish democracy. Yet despite this inferior status, Israel presents its treatment of the Palestinian minority as

being exemplary by comparing their situation to that of other minorities in the Middle East.

The Palestinians in Israel have always considered themselves an integral part of the Palestinian people and have struggled politically to achieve two main goals: full and equal citizenship in the supremacist Zionist state established on the ruins of their homeland; and a just solution to the Palestinian question in the form of the creation of an independent, viable, and democratic Palestinian state in the territories Israel occupied in 1967.

Recent political developments and the unfolding reality on the ground in the occupied Palestinian territories and inside Israel demand closer attention to a significant but ignored segment of the Palestinian people who were not included in the Oslo negotiations and the agreements signed between Israel and the PLO in the early and mid-1990s. This essay will discuss the present and future challenges facing the Palestinians in Israel and their status and role in any future bilateral agreement or unilateral arrangements between Israel and the Palestinians.

Oslo and the Vulnerability of the Palestinian Minority

There is no doubt that the Oslo political process not only failed to realize the Palestinian dream of liberation and self-determination, but has also further fragmented the Palestinians both territorially and politically. For the Palestinians in Israel, Oslo exposed the fragility of their status as conditional citizens to be treated equally when it is in the Jewish majority's self-interest. Moreover, over the last decade—and especially since the outbreak of the second intifada in 2000—the Palestinians in Israel have come to realize that they are caught between the hammer of Israeli political and security plans in the occupied territories and the anvil of institutional racism and Jewish supremacy inside the Green Line. In fact, Israeli policies over the last five years have in many ways equated Palestinians on both sides of the Green Line by subjecting them to the same security rationale, albeit differing in scope and viciousness. Israel's treatment of its Palestinian citizens as enemies, more explicit in recent years, further underscores their vulnerability as citizens and raises many questions regarding their future within the Jewish state.

The Oslo agreements directly concern only the Palestinians of the occupied territories; in principle, any political bargain or settlement between Israel and the Palestinians of the West Bank and Gaza has no bearing on the future political and legal status of Israel's Palestinian citizens. In fact, however, there is no doubt that their situation is very much affected by whatever deal is reached (or—what would be worse—by whatever “solution” is imposed by unilateral Israeli steps). Their vulnerability as citizens in the Jewish state, and the potential consequences that any arrangements concerning the occupied territories would have for their future rights, are exemplified by U.S. President George W. Bush's 14 April 2004 letter of assurances to Israeli prime minister Ariel Sharon concerning the Gaza disengagement plan. The main purpose of Bush's letter was to reiterate the U.S. government's strong commitment to Israel's security

and well-being, and more directly its support for Sharon's unilateral actions in the occupied territories. But unlike in the case of the Oslo accords, the Bush letter includes almost unconditional American support for several explicit and implicit Israeli plans that directly affect the Palestinians in Israel.

First, the president, on behalf of the United States, expresses strong commitment to "Israel's security and well-being as a Jewish state"; the explicit reference to Israel "as a Jewish state" in effect confirms the second-class citizenship of the Palestinians. Second, the president endorses Israel's plans to "bring new opportunities to the Negev and the Galilee," which means pressing forward with Israel's longtime policies of breaking up "Arab concentrations" in those areas. Third, the president's letter does not rule out the option of an exchange of populations and lands involving the "triangle," a heavily Arab populated area in the center of Israel and close to the 1967 Green Line, and Jewish settlement areas on the other side of the Green Line, an idea that has been endorsed by Likud and Labor leaders alike. That such an idea could even be contemplated provides an additional example of just how disenfranchised the Palestinians in Israel are.

Thus, the Palestinians in Israel are not officially part of the political bargain, but they continue to be part of the overall Palestinian security and demographic "problem." They are citizens with a right to vote and economic benefits, which suits Israel's diplomatic and international reputation, but they are treated as subjects without recourse or defenses when their land is required for "security" reasons or when their family units are considered a threat to Israel's Jewish majority. In this regard, the three above-mentioned elements implicit in the Bush-Sharon exchanges of April 2004 are indivisible and closely intertwined, because land and demography have always been crucial elements to the success of the Zionist movement and ultimately to the creation of Israel. A simple formula has guided Zionists over the years and continues to drive many Israeli policies: achieving and maintaining Jewish dominance over Palestine requires actions and policies aimed at pushing the maximum number of Palestinians into the minimum amount of territory (preferably not under direct Israeli control). This is why the agricultural lands of the Palestinians who remained in Israel have been systematically confiscated, hemming them into their villages; this is also why Palestinian lands in the West Bank have been and continue to be expropriated, their villages cut off from each other by settlements and imprisoned behind walls and barriers. Palestinian existence anywhere in Mandatory Palestine, it seems, is a threat to Israel's security as a Jewish state.

Ever since the founders of Israel called upon the "Arab inhabitants of the State of Israel to preserve peace and participate in the upbuilding of the State," those citizens have witnessed the establishment only of Jewish towns built, along with modern industrial zones, parks, and universities, largely on their own confiscated lands. They have also witnessed numerous "development plans" which aim at further "Judaization" of the Galilee in order to secure a Jewish majority in a region where Palestinians have predominated; the idea, apparently, is to forestall any possibility of calls for self-government as has been the case

with the Albanians in Kosovo or the Kurds in northern Iraq. And while countless Israeli towns have been created, not a single new Palestinian locality has been authorized or built, except for the so-called Bedouin townships in the Negev whose primary purpose is to corral the Bedouin population into small areas so as to dispossess them of their lands. These confiscated lands are made available for Jewish towns and cities as well as industrial zones and military practice areas, including the Dimona nuclear plant.

Ever since Israel granted citizenship to the Palestinian minority and promised to “ensure complete equality of social and political rights to all [Israel’s] inhabitants,” it has treated them as a fifth column and constantly questioned their loyalty, as if it were the Palestinians who had uprooted Jews from their lands, forced them to live in “unrecognized villages,” or positioned snipers to shoot at them during street demonstrations. One can even say that official racism toward the Palestinian citizens has worsened and become more institutionalized over the years. While the position of Special Advisor for Arab Affairs, which up to the 1970s assisted the General Security Services in monitoring and controlling the native Palestinian community, was eliminated, this role has been taken over by the National Security Council, which advises the government on how to coopt Arab Palestinians and how to control their natural birth and political behavior. The enactment of several pieces of discriminatory and racist legislation in the last few years has further undermined the Palestinians’ legal status as citizens and placed them in a gray area of “conditional citizenship,” making the possibility of the above mentioned population exchange between Palestinian citizens of Israel in the triangle and Jewish settlers in the occupied territories easier to justify and implement. Discussion of the population exchange underscores the fact that the Palestinian minority should no longer be regarded as an internal Israeli affair but rather as a significant cause closely tied to any future solution between Israel and the Palestinians in the occupied territories.

Struggling on Two Fronts

While Israel’s policies toward its Palestinian citizens have to some extent succeeded in fragmenting and disenfranchising the community, the policies have utterly failed to distort the Palestinian sense of national belonging and political goals. But notwithstanding consensus on core issues, and at a time when the Palestinians in general feel increasingly vulnerable, they are more divided than ever on how to proceed and lack any semblance of a proactive plan of action. Meanwhile, Israel stands as one coherent political entity with a clear affirmative political vision based on a broad consensus. This consensus can be summed up by the term “new Zionism,” embodied in the former Israeli prime minister Yitzhak Rabin, who initiated and led the Oslo process, and more recently in Ariel Sharon’s new political party Kadima and his Gaza disengagement plan. This essentially hawkish consensus is based on physical separation from the Palestinians in order to maintain a Jewish democracy and supremacy on close to 90 percent of historical Palestine.

Yet despite political subordination and internal divisions, the Palestinians in Israel *do* have the potential to seriously challenge the “new Zionism.” In order to do so, however, they need a clear vision, an effective political strategy, and unified leadership. In recent years, Palestinian political activism has revolved mainly around parliamentary representation in the Knesset. This has been significantly curtailed by recent amendments to Israel’s Basic Laws, further deepening the political marginalization of Palestinian citizens and their elected leadership. Nevertheless, and despite increasing misgivings regarding the effectiveness of Arab MKs, Palestinian representation in the Knesset remains one of the most prominent venues for political mobilization. Perhaps more important, it remains the only major source of financial support for Arab political parties.

Palestinian efforts to reframe and reorganize their political agenda in Israel in light of the new realities of the Oslo era began more than a decade ago. Indeed, Oslo, by making clear that their political fate was to be separate from that of their brothers across the Green Line, forced the Palestinians in Israel to develop an inward-looking political strategy centered on the struggle for equal rights within the confines of Israel itself. The demand for national collective rights and for the transformation of Israel from an ethnically defined state into a state for all of its citizens has become a mainstream political platform within the community. The only way the existing undemocratic and xenophobic Israeli centers of power can be challenged is by offering a new model of binational coexistence built on the premises of equality, peace, and justice. This model has the potential of gaining international support because it provides the necessary basic human rights protections for everyone. This is the *de facto* political project that guides most Palestinians in Israel, but it has not yet gained significant support among Jewish Israelis, notwithstanding lip service paid even by political parties such as Labor and Kadima to their own version of “equality” within the framework of a Zionist state. In fact, the majority of Israelis still prefer the Zionist nature of the state and are not willing to give up their privileges in exchange for long-lasting peace and true coexistence. Still, a successful struggle for authentic equal rights—essentially binationalism—requires mobilizing Israeli society and creating space for Palestinian-Israeli cooperation and reconciliation. Palestinian civil society in Israel should spearhead this effort and create more opportunities for joint work to benefit both communities in various ways. Such efforts in and of themselves would stand against Israel’s racist structure.

But the Palestinian citizens, as mentioned, are not concerned solely about their status within Israel. They are also part of the Palestinian people as a whole. And given the new reality in the occupied territories, what role, if any, should they play in an effort to influence a future Israeli-Palestinian settlement, negotiated or imposed? Do they constitute a separate polity, and how can they, as Palestinians, exercise their fundamental right to self-determination? It is clear that the Palestinian citizens should be part of any rebuilding and restructuring of the overall Palestinian polity through strengthening Palestinian civil society. For

example, the mandates of NGOs should not be limited by political boundaries unilaterally drawn by Israel or western donors. Political and social movements, which under Israeli law are less restricted than Palestinian parties, should be able to resist political fragmentation and offer a cohesive agenda on common issues like the wall/barrier in the West Bank, restrictions on movement, and the rights of Palestinian refugees and the internally displaced.

Even if the Palestinians in the West Bank and Gaza one day achieve some form of political independence in what will be called a Palestinian state, it will still be vital to maintain and strengthen the political, economic, and cultural relationship and coordination between Palestinian communities. Given the new political reality after Hamas's recent electoral victory, it is essential to reorganize and institutionalize relations among all segments of the Palestinian people in order to block attempts to compromise Palestinian rights and stand against Israeli and U.S. pressures to delegitimize the elected institutions of the Palestinians. The elected political leadership of the Palestinians in Israel should play an active role in assisting the Palestinian leadership in the West Bank and Gaza to overcome future political disputes and crises. Appropriate forums need to be created to respond to the new Middle East order that will ultimately affect the Palestinian question overall, including the Palestinians in Israel. In this regard, no legitimate final status agreements can be reached without the consent of all affected Palestinian communities through a democratic process of referendum.

The parallel struggles of the Palestinians in Israel—for their own rights and for the rights of their brothers in the territories—are closely intertwined. In struggling for equal rights, they are not merely a bridge for peace, but the hope for peace, because their successful struggle for equal citizenship would be the only guarantee for a sustainable future reconciliation and peaceful coexistence between the two peoples. If a binational model of equal rights can be achieved within Israel itself, it could ultimately serve as the pilot model for any prospective binational solution between the Israelis and Palestinians in the territories. This would not be possible without moral, political, and financial support from other nations and from foreign governments interested in the success of this model. In fact, there are already a few initiatives that foreshadow this model, such as the nonviolent civil mobilization against the construction of the wall on Palestinian lands in West Bank villages such as in Bil'in and the mobilization in the Negev against Israel's longstanding policy of uprooting Arab Bedouins from their traditional lands.

THE REFUGEE QUESTION

GHADA HASHEM TALHAMI

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The refugee issue epitomizes the human cost of the Palestinian-Israeli conflict and, not surprisingly, its most complex and irresolvable aspect. For most

Palestinians, whether camp dwellers or members of the Arab bourgeoisie, it has become the core issue of their national identity and the defining symbol of their powerlessness and statelessness, evoking powerful emotions. Yet significantly, this core issue has never assumed its rightful place at the negotiating table. Israel has managed so far to make refugee marginalization a precondition for its participation in peace negotiations. But new dangers facing the refugee community in several countries, coupled with the unlikelihood of any resumption of peace talks, give the refugee issue new urgency. Like it or not, there can be no real peace in the region without a just resolution of the refugee question.

The Palestinian National Movement and the Refugees

Any serious consideration of the refugee issue comes up against the fact that it has never benefited from systematic strategic thinking or articulation. Even after the PLO successfully resurrected Palestinian national identity, the refugee issue remained ill-defined. The PLO came into being in 1964 as a national liberation movement dedicated to the restoration of the rights of its main political constituency, namely the refugees, yet for some years the organization did not elaborate on the right of return: Neither its 1964 nor its 1968 charters even mentions it. This can be explained by the exclusive focus at the time on liberating all Palestine and the assumption that return would be a natural consequence of this. Following the 1967 war, the refugee issue was highlighted in UN Security Council Resolution 242, which called for “a just settlement of the refugee problem” (the word “Palestinian” appears nowhere in the resolution) as part of a general Middle East settlement, with no mention of the right of return enshrined in earlier UN resolutions. Indeed, for the framers of the famed resolution, the intention was clearly to ignore the existence of a *Palestinian* question as such and to reduce it by implication to a “refugee problem” of a strictly technical nature—i.e., resettlement of the refugees in the host countries or elsewhere. The PLO adamantly rejected the resolution’s depoliticizing, “humanitarian” approach from the outset, but it was not until the mid-1970s, when it began to move toward acceptance of a negotiated settlement and the two-state solution, that it began to give special emphasis to the right of return per se. From then on, the right of return was at the top of the national agenda, and the Palestinian case was increasingly articulated in terms of what came to be known at the UN as “the inalienable rights of the Palestinian people”: the right to self-determination, sovereignty (independent statehood), and—very prominently—the right of return.

But as soon as the prospect of engaging in a Middle East peace conference loomed on the horizon in the early 1990s, the PLO began to move toward acceptance of an *individual* right of return, even while still verbally espousing the *collective* right of refugee return as expressed in its own as well as various UN General Assembly resolutions. In the face of Israel’s adamant refusal to consider any implementation of return within its own boundaries, PLO ranks became divided between pragmatists, who acceded to the notion of refugee settlement in the future Palestinian state, and those who insisted on the right

of the refugees to the site of their original homes in Israel. The 1993 Oslo agreement pushed discussion of the refugee issue to the “final status” phase, but as negotiations for that phase approached, the disarray within the Palestinian position became apparent. Although officially insisting on the “absolute” right of return as defined by the UNGA, the Palestine Authority, reinforced by a host of academics who frequented reconciliation conferences in the United States and elsewhere, began floating various proposals that might be acceptable to Israel. The best known result of the “back channel” explorations was an unofficial plan, the so called “Beilin-Abu Mazin paper” on final status issues, that was worked out in 1996 between the PLO’s Mahmud Abbas, the future president of the PA, and Israel’s Yossi Beilin, under which the only refugee return would be to the future Palestinian state. Clearly, this was the direction in which the PA was moving, and indeed, this was the essence of the refugee negotiations as reported both at Camp David in 2000 and at Taba in 2001. After the collapse of the official “peace process,” the so-called Geneva Accord reached in October 2003 by Beilin and the PA’s Yasir ‘Abid Rabbuh, which though unofficial had the full backing of the PA, follows the same pattern: While acknowledging the legitimacy of the UN resolutions on refugees, the document emphasized the refugees’ right to compensation and made any return to Israel subject to its “sovereign discretion.” In other words, any return to Israel would involve at most token numbers (40,000 was the highest figure mentioned, unofficially, by Israeli negotiators at Taba, and these to be spread over five years).

Grass Roots and Varying Agendas

Meanwhile, even as the peace process was eroding the internationally recognized right of return, the situation of the refugee communities, especially in the “host countries” bordering Israel, was becoming more precarious as a consequence both of the removal of the PLO military divisions from the main refugee centers and of the diversion of humanitarian aid to the West Bank and Gaza post-Oslo. Starting with the Madrid process, and especially with the marginalization of the PLO following the creation of the PA, the feeling of neglect within the refugee communities intensified. There were also growing fears that the PA was using the refugee card as a weapon in the battle for Palestinian statehood. The result was the emergence in the early 1990s of a number of grass-roots refugee organizations in the Palestinian territories and in the diaspora in order to redefine and articulate the right of return. Aidun, which spoke for the refugee communities in Lebanon, was established in 1990. In Israel itself, the Committee for the Defense of the Rights of the Displaced was founded in 1992. After convening high-visibility conferences, organizations such as BADIL and the Refugee Studies Center at al-Quds Open University emerged a few years later. Beyond the Arab region, al-Awda coalition developed in the late 1990s, mainly in the United States, and refugee research centers appeared in, among other places, Britain and Canada. There was a Palestinian Return Center in London and al-Adalah Palestinian Center in Sweden. Importantly, the Palestine Right of Return Coalition was officially established in 2001, comprising

numerous groups from the Middle East, Europe, and North America. Large refugee conferences representing a wide array of organizations have been held in London, Berlin, and Vienna, with a fourth conference scheduled to convene in May 2006 at Malmo, Sweden.

Despite the increasing attention to the refugee issue and the proliferation of refugee rights groups, there is little consensus regarding the preferred strategy for achieving refugee rights, especially the right of return. Indeed, there is not even a consensus on implementation of that right. In principle, all Palestinians, including the “pragmatist” elements of the PLO and the PA (whose refugee department participated in most of the popular refugee conferences), would have wanted the full implementation of the UNGA Resolution 194 calling for the return of all refugees to their homes inside Israel. The dilemma was, and is, between what is seen as desirable and what is seen as “possible.”

A further complication in articulating a position acceptable to all segments of the Palestinian population is the contrasting conditions of the refugees in their various areas of settlement. The largest refugee communities are in the Arab world, mostly in camps operated by UNRWA in the West Bank, Gaza, and the countries bordering on Israel (Lebanon, Syria, and Jordan), with smaller communities elsewhere in the Arab world and in Europe and the West. There are also almost 250,000 “internal refugees” in Israel itself. These are Palestinians displaced from their homes and villages in 1948 who remained in the country but were not allowed to return to their homes or villages. In addition to their geographical dispersal, the refugees have widely differing situations, ranging from highly assimilated successful members of the societies in which they live—in Arab countries and the West—to impoverished communities under direct and immediate threat.

Among the worst situations is that of the refugee community in Lebanon, which is in constant tension with the authorities, increasingly impoverished by UNRWA cutbacks, and whose members are banned from holding professional jobs and live under the control of various Palestinian militant factions inside the camps and under the watchful eyes of the Lebanese authorities posted outside. Perhaps even more threatened is the far smaller refugee community in Iraq (about 45,000, though the new government has been greatly exaggerating its numbers to create a sense of threat among the Iraqi public), now being scapegoated simply because it had enjoyed the protection of the Ba’th regime. Accused of collaborating with the former rulers, these Palestinians have been evicted from their homes in Mosul and in Baghdad’s poorest neighborhoods; most have been removed to makeshift camps along the Jordanian border. While the Syrian refugee community, at least as large as that in Lebanon, has one of the better situations among the exiled refugee communities, its security (like that of the refugee community in Iraq) is also tied to the regime, and any destabilization of the Damascus government could place it in a similarly threatened situation. The largest Palestinian refugee community is in Jordan, where its situation is mixed: Although enfranchised and naturalized after Jordan’s annexation of the West Bank in 1948, Palestinians have had their share of political insecurity

over the years (most dramatically during the 1970 Jordanian civil war and its aftermath). Furthermore, Amman's unilateral political disengagement from the West Bank in 1988 raised fears of loss of citizenship rights. Indeed, following the Jordanian separation decree, West Bank Palestinians saw their citizenship status reduced to "temporary residents" with two-year passports used for travel documents.

Some Thoughts on the Future

What is to be done, then, given the precarious security situation of certain refugee communities, the absence of a unified Palestinian position, the lack of a single representative organization to speak on behalf of the disparate communities (especially in the camps), and the possibility of foreclosing this issue altogether with the prospect, even likelihood, of a settlement unilaterally imposed by Israel? The absence of consensus about what the Palestinians should push for remains a serious obstacle to the formulation of any coherent strategy. The one issue on which there has been agreement up to the present is the need to rely on the strength and durability of international law in advancing the refugee case. Though disappointing in the past, it remains the legal bedrock of the issue: UNGA Resolution 194 unequivocally establishing the refugees' right of return and compensation continues to be reaffirmed every year in a number of annual UN resolutions. But while international law has sustained Palestinian claims all these years, the election of a Hamas government could complicate the case, as Hamas's ideological premises derive not from the principles of international law but from Islamic principles. It would be a calamity if the new Hamas government—if it succeeds in holding on to the reins of power—downplays the importance of the UN's responsibilities, not only because it would result in the reduction of material aid, but also because it would erode the international organization's contractual commitment to the physical survival of the refugees.

The Palestinian refugee issue has never been simply a "Palestinian problem," and more than ever before there is need for a supra refugee organization or a higher council that can deal with the political dimensions of the problem. Such a body could not be under the aegis of the UN, which historically has been tasked with the humanitarian dimensions. Given that the refugee issue is also an Arab problem, with the great majority of the refugees outside Mandatory Palestine living in the Arab world, the most logical sponsor of this organization would be the Arab League, the only remaining body at least theoretically capable of adopting pan-Arab policies. It also would make sense for the new refugee body to be headquartered in an Arab country far from the conflict area, such as the United Arab Emirates. It would be within this body, where the various right of return organizations would also be represented, that a single and clear position could be hammered out and aligned with the PA and broad Arab consensus. Whatever the league's past record on Palestine, such an office would have a stature and legitimacy, and if well staffed and adequately funded could have greater impact than the league's Arab Information Offices in the past. Part of the refugee office's function would be to carry out lobbying activities on

behalf of the refugee communities, including with the U.S. Congress. For this purpose, however, a national Arab-American arm could be set up. Overall, a refugee council should be empowered to act as the lobby's governing board in order to shield it from the bureaucratic and factional hazards of the Arab League and its member states.

There is no question that the establishment of a pan-Arab supra refugee body would encounter enormous difficulties and require determination, efforts, and resources. But with no realistic prospect of Palestinian-Israeli negotiations on the horizon, and with Israel wanting normalization with the Arab world, such a development would seem to have the greatest chance of moving the refugee issue forward and saving it from total marginalization.

PALESTINE AND MAIN STREET, U.S.A.: TRANSFORMING AMERICAN PUBLIC OPINION

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After decades of Israeli colonization, underwritten by the United States, Palestinians have realized that American public opinion is a pivotal factor in the struggle for justice in Palestine. One experienced U.S. Senate staffer estimated that only about 15 percent of the members of Congress are ardent Zionists, while 5 percent support Palestinian rights. The remaining 80 percent, she estimated, range between mildly and greatly irritated at the constant pressure to support Israel and, with constituent support, would gladly chart a more independent course.¹⁴ Thus, a significant shift in public opinion could have a decisive influence on congressional behavior, and ultimately, on U.S. policy toward the Palestinians.

Polls consistently demonstrate that American public opinion toward Palestine/Israel is already more even-handed than U.S. foreign policy. Yet Americans' current motivation to act is low. The challenge, therefore, is to transform Americans' views in such a way as to lead them to different action—as voters, consumers, and participants in public debate.

The Current Situation

American public opinion is not a blank slate. For decades, Israel's U.S. supporters have analyzed and exploited facets of American ideology that are amenable to Zionism. They have created ample infrastructure designed to promote pro-Israel themes, circulate negative images of Arabs, and silence narratives sympathetic to Palestinians. In other words, Israel's U.S. supporters have been more clever and more aggressive competitors than those seeking justice for Palestinians.

¹⁴Interview with author, 16 July 2004.

Over the course of two generations, through sheer hard work, they rose to influential positions on Capitol Hill, in the media, and in business. As a result, they have achieved “insider” status, with legions of columnists, editors, owners, and decision makers able to advance a Zionist agenda with far greater ease than supporters of Palestine, who today largely try to influence media coverage as “outsiders.”

In addition, Israel supporters analyzed their situation and wrote—actually wrote—strategic plans for how to advance their interests. They encouraged a virtually unmatched culture of giving and volunteerism. Zionists have also reached fellow Americans through narratives. They have churned out countless books, plays, movies, works of art, and more that connect Americans with the Zionist perspective.

The good news is that the Palestinian struggle can also tap wellsprings of American values, such as justice and equality. There is ample room to improve the dismal media coverage in the United States. The bad news is that while supporters of Palestinian rights have a better “product,” pro-Israel media advocates have, in addition to their insider status, better “marketing.” Their “marketing department” is staffed with hundreds of full time and trained media professionals.

Pro-Israel messaging is tightly coordinated and based on periodic research studies to determine how Americans perceive Israel and the Palestinians and what kind of pro-Israel messages they respond to. Zionists are instructed to emphasize themes that dehumanize Palestinians, depict Palestinian women as oppressed, and link Israelis with Americans. Top messages include “They teach their children to hate,” “Arab women enjoy more freedom in Israel than anywhere in the Arab world,” and “Israel and the United States are united in the war against terror.” The recent Hamas victory provides fresh opportunities for Zionists to frame the Palestinians as inherently violent people who support “terror.”

The United Jewish Communities Web site lists no fewer than 40 think tanks, research institutes, public relations firms, news sources, and other organizations that contribute to pro-Israel media advocacy in the United States.¹⁵ Readers may be aware that the American Israel Public Affairs Committee (AIPAC), with 165 employees and an estimated annual budget of \$33 million,¹⁶ engages in media work in addition to lobbying. One senior editor at United Press International (UPI) described his experience as follows:

I get useful, quotable information from AIPAC at least once a week. When the International Court of Justice ruling came down [calling Israel’s separation wall illegal], AIPAC had a

¹⁵See www.ujc.org/content_display.html?ArticleID=56726#think.

¹⁶Thomas Edsall and Molly Moore, “Pro-Israel Lobby Has Strong Voice,” *Washington Post*, 5 September 2004, p. A10.

press release and condemnations from Senators in my e-mail inbox within seconds. They do this consistently. I saw nothing from the Palestinians.

Another example is the Middle East Media Research Institute (MEMRI). This organization takes the offensive, painting Arabs in a negative light, by selecting the most inflammatory anti-Israel and anti-U.S. reports from the Arab media and translating—as well as mistranslating—those reports for use by the American press. Founded in 1998 by two Israelis, MEMRI had grown to a staff of over 30 by 2002.¹⁷

A third example is HonestReporting.com, which was founded in 2000 and now has 140,000 activists on its e-mail list. Describing itself as “one of the world’s largest media watch groups,” its Web site boasted the following:

HonestReporting has succeeded in shaking up the media and putting them on alert. Correspondents and editors now think twice before releasing stories. . . . In June 2002, major editorial changes occurred at CNN which greatly shifted public perception of the Arab-Israel conflict. . . . HonestReporting was cited in the *New York Times* as playing a role in this shift, and the *Jerusalem Post* reported that “HonestReporting.com readers sent up to 6,000 e-mails a day to CNN executives, effectively paralyzing their internal e-mail system.”¹⁸

In contrast, supporters of Palestinian rights have virtually no meaningful infrastructure for focused public relations (PR). Palestinians must invest their dollars in organizations that employ savvy PR professionals on their behalf. Even then, with fewer resources for the foreseeable future, Palestinians need to work smarter. The first step is to identify compelling messaging.

Reframing the Messaging

In the fall of 2004—in my capacity as a communications consultant on behalf of Adam Smith International to the Negotiation Support Unit in Ramallah—I worked with the market research firm Genesis Research on a low-budget but rare project to explore non-Jewish and non-Arab Americans’ perceptions of Israel and the Palestinians. The findings were surprising. We discovered, for example, that respondents knew virtually nothing about the conflict, believed the military gap between Israel and the Palestinians to be narrow, and were disturbed at how occupation hurts Palestinian children. They were not aware that the United States is very involved in the conflict and were angered to

¹⁷Yigal Carmon, “Media Organization Rebuts Accusation of Selective Journalism,” *Guardian*, 21 August 2003.

¹⁸From www.honestreporting.com. This citation, which has since been removed, was originally accessed by the author in October 2004.

discover that terrorism against Americans may be related to U.S. support of Israel.

Respondents were surprised that 8 to 10 percent of Palestinians are Christian, and some said they felt more connected to the Palestinians after learning this. Images of Palestinians were mostly negative, but so were images of Israel; there was little admiration for Israel. We also found that people responded to language that ties to the American experience. They could not define or relate to terms like “Zionism” or “colonialism.” On the other hand, the concept of *equal rights* was a bedrock value, and respondents were stunned by the disparity in rights between Jews and non-Jews, which significantly altered their perceptions. “Discrimination,” “segregation,” and “equal rights” are meaningful words in the American discourse.

Reviewing the full set of results, it becomes clear that supporters of Palestinian rights should reframe their messaging. While at a tactical level the reasons for the recent Hamas victory should be explained, developments like these should not change the high-level reframing. The Palestinian narrative transcends particular governments and short-term political developments. It reflects a larger theme, and one that proactively emphasizes the Palestinian condition, historically, today, and into the foreseeable future. Reframed messages that Palestinians need to stress include the following:

- Palestinian Christian and Muslim Arabs live under *a kind of apartheid*, where *superior rights* are granted to Jewish people while Christians and Muslims are *oppressed*.
- The Palestinians are fighting for *freedom* and *equal rights*. Israeli *military occupation* hurts Palestinian women and children, but it also hurts ordinary Israelis, who are drawn into a conflict most of them don't want.
- Americans play a critical role. The Israeli military occupation and apartheid rule would not be possible without massive financial, military, and diplomatic support from America. Israel has one of the most powerful militaries in the world. The Palestinians have no military.

What's the Strategy?

Public relations expertise is a learned skill. A successful strategy relies on experienced PR professionals who understand how to frame a compelling story, pitch it effectively to the media, and follow through relentlessly until the story is run or aired. They are also excellent writers, emphasizing accuracy and clarity. They demonstrate high levels of integrity and responsiveness. They build trusted relationships with journalists by anticipating and providing what they need in a timely, useful fashion. They know how to identify and train effective spokespersons, who in turn need to be crisp and eloquent in English and to have a thorough understanding of American culture. Spokespersons

need to be well-prepared, likeable, punctual, and well-groomed. As to the PR campaigns themselves, they must be based on research and tested messaging that resonates with Americans.

The requirements described above are baseline and do not guarantee success. Because Zionist “competitors” have a multi-decade and well-financed head start, and because their strategy has relied on the dehumanization of the Palestinians, a four-phase plan is suggested here:

Step 1: Humanize. This step is critical. Zionist organizations instruct their supporters to say “Palestinians teach their children to hate,” and they have been successful in conveying this message, partly because they have been largely unchallenged. In addition, our research showed that narrative and individual anecdotes had far more emotive power than statements of fact or history.

An example of a new messaging campaign was conducted by a new San Francisco media organization, the Institute for Middle East Understanding (IMEU). Entitled “Christmas in Bethlehem,” it had a modest goal: to communicate that Bethlehem is a Palestinian town, surrounded by a wall, with people “like us.” The IMEU placed four stories in the mainstream media over Christmas 2005 weekend. A Bethlehem-born woman was profiled on TV newscasts and in the *San Francisco Chronicle*. Another Bethlehem family was described in the *San Jose Mercury News*, along with three photographs. A full-page photo essay depicting Bethlehem at Christmastime also ran in the *San Francisco Chronicle*. The Palestinians spoke of peace, love, and family, creating the seeds of a connection and refuting the idea that “they teach their children to hate.”

Step 2: Educate. Of course, humanizing is not enough. Key facts must then be conveyed, in a way that causes Americans to say “In their position, I’d feel the same.” Our research showed that the most compelling concept was “equal rights,” with 100 percent of respondents agreeing with the statement “Palestinians and Israelis who inhabit the same land should have equal rights.”

These are the facts that respondents found the most disturbing: (a) “Palestinians under Israeli rule experience pervasive discrimination in their daily lives”; (b) “A Jew from anywhere in the world can become an Israeli citizen. However, Palestinian Christians and Muslims do not have the right to return to their former homes and homeland from which they were expelled in 1948”; and (c) “A recent United Nations report concluded that there is an ‘apartheid regime’ in the West Bank and Gaza ‘worse than the one that existed in South Africa.’”

Premeditated harm to children was also upsetting to Americans. The following statements drew angry reactions: (a) “Palestinian children have a particularly difficult time getting to school. On the way, they routinely confront teargas, harassment, delays, and gunfire—from Israeli soldiers”; and (b) “Israel has jailed more than 2,000 Palestinian children aged 12 to 18 in the last 4 years. Human rights groups report that these children commonly suffer physical abuse amounting to torture.”

Step 3: Motivate. For many Americans, a distant tragedy does not alter how they vote, spend money, or otherwise behave. For them, Palestine needs to be tied to their self-interest. This means that Americans must learn that Israel's brutal treatment of the Palestinians would not be possible without relentless unconditional American financial and diplomatic support. They must be made to understand, primarily through publicizing existing opinion polls, that the top reason for Arab and Muslim anger at the United States—indeed a motivator of terrorism—is U.S. support for Israel.

Step 4: Penetrate. The sustainable, long-term strategy for change is to earn positions of influence in the media. As “insiders,” supporters of Palestinian rights will participate in deciding what stories are run and the prominence they are given. Young Arab-Americans must be encouraged to enter journalism. When the number of Arab reporters, editors, and producers begins to approach the number of Zionists in such positions, the words and the stories will slowly change.

But that is not enough. Americans absorb a great deal through culture and personal interaction. Palestinians must proactively showcase their best. Through Palestinian-inspired art, film, rap music, and poignant personal writing—and through consciously sharing a proud Palestinian identity and food and culture with friends and colleagues—Americans will begin to connect with the Palestinians. They will begin to question and to care and ultimately to act.

Exploiting the Internet

The Internet provides new opportunities both to reach and to act as journalists. Work that was previously prohibitively expensive can now be performed at lower cost. Because “ownership” is wide open, the Internet also provides new avenues for exposing the truth. However, Israel is one of the most technologically advanced countries in the world, and the Palestinians must work diligently to understand and exploit the Internet.

The Internet is the topic of a much longer paper; the following is meant merely to touch on three high-level elements of a successful strategy:

1. *Create compelling content.* Content-oriented Web sites are successful when they have a clean design, relevant information for a defined target audience, and frequent updates. Blogs—both diary and photo blogs—allow citizen journalists to record their perspectives in a human voice. Internet animations, with a crisp message, can reach millions. An example of a spectacularly successful animation can be viewed at www.thematrix.com.
2. *Attract traffic.* Sites should be designed with search engine optimization in mind. When a user types a term into Google, it uses a set of algorithms to determine how to rank order the links that result. Our Web designers need to know such basics as what addresses to assign to Web pages and how to embed and present keywords. Sites and blogs can increase traffic by promoting links to other relevant sites and by signing visitors up for e-mail alerts.

3. *Develop and nurture effective e-mail lists.* Consider the following scenario: Israel dismantles a costly settlement outpost that lacks strategic value while it expands on prime Palestinian land. Journalists are inundated with information from Zionist organizations and conclude that this is a generous step toward peace. Imagine the difference if an e-mail went out to thousands of journalists, with comments from respected Palestinian experts, complete with contact information for interviews. Effective e-mail management follows key rules:
- a) Target and assemble the correct audience. Total list size is unimportant: what matters is *the number of people in your target set who might do something differently.*
 - b) Deliver an incentive to sign up. For journalists it might be access to unique information and sources that will make their work easier.
 - c) Pay attention to frequency and relevance. Overly frequent, irrelevant, or inaccurate e-mails cause people to ignore missives.
 - d) Make the subject line compelling. “Action Alert” will not garner the same e-mail open rate as “ABC Airs Shocking Segment: Act Now”
 - e) Ensure the e-mail copy is short and has a singular message. Research any call to action meticulously.
 - f) Monitor response. Review open rates, click rates, and other meaningful measures. Revise campaigns according to what produces results.

Conclusion

There is ample opportunity to improve coverage of Palestine and the Palestinians in the American media. Success, however, relies on several factors: the funds required to assemble a sustainable infrastructure, experienced fulltime PR professionals to do the work, a smart Internet strategy, and messaging that Americans understand and find compelling. We are decades behind our “competition” and need to work smarter and harder through the four phases: humanize, educate, motivate, and penetrate. But we have one key asset: the truth. And when that truth unfolds, Americans will be moved and shocked and motivated into action on behalf of justice—for both the Palestinians and for themselves.

“INTELLECTUAL WARFARE” AND THE QUESTION OF PALESTINE

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“We are not Red Indians,” Yasir Arafat declared on more than one occasion, a statement as surprising for its unsympathetic dismissal of an indigenous people with whom one would have thought a Palestinian leader would find common cause as for its blindness to the reality that—thanks in part to the leadership of Arafat—the Palestinians may yet go the way of the American Indians.

Bleak Prospects

Rarely has the Palestinian cause looked as bleak as at the present. For over a decade, a profoundly compromised leadership led the Palestinian people down a path whose almost every step was dictated by Israel. Palestinian leaders (the ones Israel chose not to assassinate) seemed able to do little more than repeat the lines assigned to them by an Israeli narrative of domination. Apparently unable to come up with their own alternatives, they continued to call for a return to the “peace process” and the Bush road map long after it had become evident that these discourses of dispossession embody the very logic of the Israeli occupation itself. And they often did so under the most surreal circumstances, as though they were not in touch with their own people or even with the evening news. “If I am not a partner, ask yourselves who is a partner,” Mahmud Abbas pleaded to the Israeli public on the eve of the March 2006 Israeli elections, when it was obvious that Israelis were about to vote to proceed with the same unilateral and self-serving plan that they had been pursuing for decades, with or without a Palestinian leadership—whose only assigned role has been to acquiesce or remain silent. “I am one of those who signed the Oslo agreement and was a patron of the negotiations that were conducted prior to it in secret for eight months,” Abbas went on. “I supported, and I continue to support, a clear peace plan, based on the legitimacy of international law, to which we all agreed, and on the road map.”

It was as though Abbas had learned nothing; as though he were proud, rather than ashamed, of the secret capitulations he had entered into at Oslo, whose only tangible outcome has been the affirmation and indeed the reinforcement of the Israeli occupation, and the further immiseration and paralysis of the Palestinian people; and as though he actually believed that the road map—which seeks to shift responsibility for the occupation from the occupiers to the occupied—held out the chance of a just or even a reasonable peace (which of course it does not).

Narratives to Fit the Realities

The time has come for the Palestinians to take the initiative and turn the tables on an opponent that may be entitled to claim military, financial, organizational, and diplomatic superiority, but has no right—as anyone knows who has ever confronted an American Zionist equipped with all those tired clichés and worn-out myths—to claim dominance over the field of narrative and representation. And it is precisely on this field, in conjunction with renewed and re-energized activism at the grassroots level in Palestine and among Palestinians in exile, that the Palestinian struggle will likely be won or lost—if only because, unlike the military or diplomatic arenas, it is the only field in which the Palestinians have not (yet) been decisively defeated. By no means should this be seen to override or supersede the urgent work being done on the ground in the West Bank, Gaza, and Jerusalem; but there is an urgent need to mediate between efforts on the ground and the realm of representation, particularly

in the United States, which, as Israel's political and financial guarantor, holds many of the keys to ending the conflict.

What is needed, then, is a more honest and consistent set of narratives covering the various aspects of the Palestinian struggle as they take shape in a future in which the discourse of a two-state solution has no meaningful place. Aside from the fact that it never really addressed urgent issues such as the rights of Israel's Palestinian minority or those of the 1948 refugees and their descendents, the two-state solution has been rendered geographically unworkable by Israel's relentless drive to create "facts on the ground" in the occupied territories (uprooting ancient olive groves, destroying orchards and fields, demolishing homes, and building roads, walls, outposts, and colonies): in 2006, there is literally no more room for a second state. A new set of narratives is urgently required, one that not only will give meaning to different forms of struggle (grassroots networking, activism, petitioning, publishing), but also better serve the Palestinian cause in its confrontation with Zionism, which has not, in ideological terms at least, undergone any significant developments since the late nineteenth century. It is, as the authors of one Arab-American blog rightly put it, "an ideology from another time."

Indeed, undoubtedly the most effective way to think of the contours of this renewed struggle is to keep in mind the reality that the contest between Zionism and the Palestinians is ultimately a contest between a nineteenth century ideology (with a corresponding set of racial hierarchies and rigid forms of ethnic exclusion) utterly out of place in the contemporary world, and what ought to be a vibrant, intelligent, heterogeneous, flexible set of narratives accommodated to the twenty-first century.

In fact, despite the prevailing alignment of American and Israeli ideological viewpoints—an alignment that has come under increasing pressure as more and more Americans question it, which explains the perpetual near hysterical state of the network of individuals and institutions dedicated to the defense of Israel in the United States—it ought to be obvious that literally everything that Americans most pride themselves on in their own country, such as the separation of church and state, vigorous protections against racial and ethnic discrimination, social mobility and freedom, universal suffrage, the rule of law, and the protection of private property, is altogether incompatible with the day-to-day realities of Israel. As a state that was founded on—and that continues to operate according to—a logic of ethnic exclusivism, religious intolerance, political disenfranchisement, extrajudicial incarceration and assassination, expropriations of private property, and brutal military regulations. Israel's implementation of Zionism's core principles is fundamentally at odds with those ideological values that (notwithstanding its own violent history) America represents to itself and the world.

The fact that this simple reality is not adequately represented in the U.S. public sphere means that it is Israel that can be represented as "normal" to an American audience, while the Palestinians are the ones who are tarnished with the image of abnormality, otherness, and "extremism." By way of example, an op-ed by Niall Ferguson in the *Los Angeles Times* cites the openly racist

Arnon Sofer of Haifa University as though he were a respectable social scientist operating in the accepted mainstream of his field.¹⁹ The point here is not that Ferguson relies upon Sofer's crude xenophobia to evaluate the "risks" to Israel's "democracy" from all those over-reproductive Arabs who seem to have no other function in the world but to overwhelm the Jewish state with their sheer numbers. Rather, the point is that, from Ferguson's uninformed (but conventional) perspective, it is Sofer who looks "normal," and it is the Palestinians who look like a swarm of locusts threatening to clutter a beautiful democratic ideal.

Obviously, such assertions need to be challenged, and the realities of Israel's extraordinary institutionalized racism—as well as the abuses of international humanitarian law that Israel carries out on a daily basis in Jerusalem and the occupied territories—need to be documented and represented to as wide an audience as possible.

"Intellectual Warfare"

Such challenges amount to what the English poet William Blake once identified as "intellectual warfare." What this form of struggle most urgently requires is a new set of Palestinian narratives to replace the outmoded ones bequeathed by a different era. Although their task will not be easy, in the formulation of narratives the Palestinians have at least one enormous advantage over their opponents. Israel's defenders have to weave an ever more tangled (and ever more fragile) web of half-truths and outright lies in order to justify their position, a position which is entirely out of synch with the world in which we live and which uses language—as Harold Pinter put it recently in a not dissimilar context—to keep thought at bay. By contrast, and no matter how naïve this sounds, all the Palestinians have to do is to express the reality of their own historical and actual circumstances. There is no better way of illustrating the lopsided nature of the contest between Israel and the Palestinians at the narrative level than to point out the fact that whereas Alan Dershowitz's baseless, plagiarized, and shoddily written *Case for Israel* represents the sorry state of the art of Zionist propaganda, Palestinians can still draw on the rich intellectual legacy of Edward Said.

No one did more than Said to present a clearly articulated set of points distinguishing the Palestinian cause from what Israel and Zionism stand for. The task now is to extend Said's accomplishments, to carry on where he left off. First and foremost is the need to follow his lead and explore alternatives to the so-called two-state solution, which has—to say the very least—run its course, as Said himself (who was an early advocate of the two-state solution at a stage when it seemed feasible) repeatedly insisted in his final years.

The opponents of the Palestinian cause place much emphasis on a state-centered solution to the question of Palestine, even though their putative Palestinian state does not look anything like the textbook version of a state.

¹⁹Niall Ferguson, "After Sharon, Which Deluge?" *Los Angeles Times*, 9 January 2006.

However, it is not only for that reason the Palestinians ought to be wary, but also because Israel keeps insisting that the scraps of disconnected territory held together entirely at its whim would be taken to constitute a Palestinian state—“with attributes of sovereignty,” according to the language of the road map. For Palestinians to accept that or any other “state” is not a solution to their problems.

The creation of a mere state could even be said to compromise the question of Palestine—because the Palestinian cause is about more than merely a state. The Palestinian struggle is about more than simply contesting one nationalism with another, and replacing one ethnically defined state with another. Rather, at its best, the struggle for Palestine seeks to contest an unacceptable system of ethnic separation and exclusion with a vision of inclusion and cooperation; to challenge claims of divine dispensation with secular and humanist arguments; to refuse the logic of physical violence with principles of nonviolent intervention. In a word, the Palestinian struggle is ultimately not about a state but about *justice*.

The point here is not that Palestinians ought to start making the case for a one-state alternative (a task that has been undertaken by non-Palestinians such as Tony Judt and Virginia Tilley). Rather, it is to make clear that what the Palestinians are opposing is not merely the state of Israel as a state for one people that violently excludes another *on its own land*, but also the logic of an ethnically defined state in the first place, a logic whose ugly realities are nowhere more graphically revealed than in Israel itself, as well as in its policies in the occupied territories. For example, Israel’s policy to hold the population of Jerusalem in a certain ethnic ratio—72 percent Jews, 28 percent “non-Jews”—has no equivalent in the contemporary world; but, shocking as this policy is, hardly anyone seems to know about it. It furnishes, however, a striking illustration of what is wrong with Israel—and a valuable opportunity for Palestinians to explain what they would do differently.

In a sense, then, Palestinians have always diminished their own cause on those occasions when they have expressed it merely as a quest for nothing more than a state of their own. For ultimately the Palestinian cause was never solely about the creation of a state, but rather about a larger set of issues, about the need to address a much broader question of historical and political injustices—and about the urgent need to find a just, peaceful, and humane way to resolve the conflict with Israel. At its best, the Palestinian cause has always sought to integrate the reality of Israel—and the existence of Israelis as human beings—into its own narratives, in exactly the inverse of the way in which Palestine and the Palestinians have been systematically removed, whenever possible, from Zionism’s and Israel’s accounts of themselves.

This is a remarkable fact, one that Palestinians understate at their peril—for it sums up the ways in which the Palestinian struggle differs from Zionism. Indeed, it seems to me that this claim ought to be one of the central components of the Palestinian narrative of liberation for the twenty-first century.