

Peace and Human Rights: Palestine as a Case Study

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Abstract: *The notion that peace and human rights must coexist is widely accepted. The issue becomes much more complex and divisive when we ask, which has to come first? The case of Palestine provides a clear enough answer, that without respect for human rights there can be no peace. This paper provides an account of Al-Haq's experience over the past thirty years as a Palestinian human rights organisation and its analysis of how efforts to achieve peace have met with failure after failure due to the continuous disregard for the human rights of the Palestinian people enshrined in international law. The paper will first address the attempted subjugation of the Palestinian people by Israel and the resulting first intifada. The attempt to bypass international law through the Oslo Accords and the resulting second intifada will then be examined. Finally, the paper will provide an analysis of the current environment, the ongoing indifference to human rights while "negotiations" continue, and an assessment of the potential future scenarios. Throughout the paper, Al-Haq's experiences through monitoring and documentation of the Palestinian human rights situation, along with advocacy at the international level, provide a glimpse into the available solutions for a just peace, and into how the failure to utilise international law and human rights as a guiding principle for achieving peace continues to push peace further and further away.*

Please allow me to first convey my thanks and gratitude to the University Centre Saint-Ignatius Antwerp and the sponsors of this conference for generously inviting me to participate. Saying that, however, I am saddened by the fact that I cannot be with you in person today, as the Israeli authorities have denied my right to freedom of movement and prevented me from travelling abroad for the third consecutive year. Nevertheless, this will not debilitate my resolute will to continue the struggle for human rights, for the establishment of justice and equality, and for the exercise of the right of peoples to self-determination. I will continue to strive for the values, principles, rights and freedoms, particularly that of inherent human dignity, safeguarded by the Universal Declaration of Human Rights since 1948, the very year that the displacement and dispossession of the Palestinians began.

Not intending to make my personal problems and missions the subject of my presentation, I will talk about human rights and international humanitarian law, and their inextricable links to peace. To avoid theoretical, academic axiom, I will highlight some lessons emanating from longstanding experience in this field. The situation of the Occupied Palestinian Territory (OPT) and the Palestinian-Israeli conflict provide a lens through which we can examine the seriousness of our commitment to respect and apply human rights norms and principles.

Tangible experiences of attempts to establish peace on grounds of vested interests and power balances alone have and will not prosper so long as they ignore international law. Disregard of human rights norms in any political agreement will render it pointless and prone to collapse. In this regard, the Palestinian experience is a prime example.

As represented by the Universal Declaration and the International Covenants, modern human rights principles endow a universal dimension that is the product of longstanding human suffering, especially during the World Wars. Prescription of human rights is not a matter of extravagant thought. On the contrary, it is an honest manifestation of a societal

necessity associated with personal dignity, humanity and civilisation. Human rights are prescribed to be enjoyed.

Despite the achievements and progress made over the past 60 years, the status of human rights worldwide is still witnessing declines and deterioration, as a result of insufficient responses to natural disasters, and, even worse, calamitous wars, large-scale conflicts and sustained violence, as well as continuing poverty, hunger, and lack of security in our daily lives. The so-called "global war on terror", driven by political considerations, does not observe the simplest standards of civil and political rights, particularly the rights to life, to freedom from cruel, inhuman or degrading treatment, to due process and to fair trial. This is a vivid illustration of the status of human rights and freedoms in our world today. Clearly, such a diminished status will not help promote political and social stability, particularly in societies suffering from poverty and oppression, societies where the rule of law remains weak. Desired development processes are being stifled by the disregard for human rights. What is more, cycles of violence will only perpetuate under repression, inequality, prevention of development and participation in public life, and discrimination on grounds of race, gender, religion or national or ethnic origin.

In this presentation I want to emphasise some crucial lessons which my organisation has concluded from its experiences to date. The oldest human rights organisation in the Arab world, Al-Haq has been active in this field for 30 years. Having been employed at Al-Haq for over 20 of those years, I, along with my colleagues, have encountered major challenges and changes associated with human rights agendas. We have documented, compiled and analysed information on human rights violations throughout the OPT, publishing trend analyses, studies and legal commentaries based on international humanitarian and human rights law. Despite massive efforts exerted, we still see the human rights situation in further decline. Nonetheless, Al-Haq has succeeded in at least one sphere: it has raised the Palestinian community's awareness of the culture of human rights. Such a culture now expresses itself through increased community and institutional concern with human rights. Still, even this achievement faces difficult questions by concerned individuals and activists. The lay man is sceptical of how feasible adherence to human rights principles can be in the Palestinian case. The unfortunate reality to date is that the Palestinian population as a whole faces ongoing, widespread and systematic repression, manifested through infringements on all walks of civilian life by the Israeli occupying authorities.

Against this backdrop, and due to an absence of mechanisms to protect the civilian population under subjugation and continuing human rights violations, the Palestinian society has become increasingly convinced that the most feasible path to the safeguarding of their rights is to search for alternative means of protection. Many Palestinian civilians feel they can no longer rely on external parties, nor do they believe it is useful to attempt to seek redress from international law. For them, international law and human rights are comprised of a collection of ornamental phrases inscribed on paper, which they hear, but never see or feel.

In reality, this dichotomy forewarns a grave risk, with far reaching consequences if the rights and safeguards provided to Palestinian civilians by international legal instruments continue to go unapplied and disrespected.

The Israeli Occupation and the Occupied Palestinian Territory

Over the course of 41 years of occupation, the Israeli Occupying Power in the West Bank (including East Jerusalem) and Gaza Strip has utterly ignored its legal responsibilities

towards the occupied population under international humanitarian and human rights law. Worse than the neglect of positive duties, the occupying authorities have committed flagrant violations of the law under a broad, systematic policy of oppression and dispossession. Israel has appropriated and effectively annexed vast areas of Palestinian land in the West Bank, forcibly transferring the Palestinian owners of the land and replacing them with Jewish-Israeli settlements. Such practices are in severe contravention of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, the principal legal instrument governing the conduct of an occupying power in occupied territory.

Disregarding the basic needs and welfare of the occupied civilian population, the Israeli authorities have also expropriated and exploited Palestinian natural resources, including water, for its own benefit and the benefit of the Jewish settlers illegally present in the OPT. In addition to this, the pervasive administrative, military, economic and legislative measures that the Israeli occupation imposes in pursuit of its policies of annexation and domination in the OPT result in the Palestinian population being placed under extremely harsh living conditions.

Of its abusive measures, Israel has seized ID cards, particularly of Palestinian Jerusalemites, in order to deprive them of their right to reside in the city of Jerusalem, to force them to live elsewhere in the West Bank or beyond. In addition, husbands and wives are prevented from living together and families kept apart because their ID cards show that they come from different parts of the occupied territory. The Israeli authorities have forced thousands of Palestinians into exile. Seeking to forcibly transfer the Palestinian population, Israel implements systematic policies of house demolition, property destruction and Wall construction for further annexation of Palestinian land. Israel also unilaterally imposes purported political solutions that are in line with its own long-term agenda. Ultimately, Israel aims to force more and more Palestinians to leave the OPT, thereby reducing their number while simultaneously increasing the number of Jewish settlers in the occupied territory, thus consolidating Israel's control of the land.

In contemporary history, the Israeli occupation is of a special, unique nature that differs from what we think of as a traditional military occupation. The aims of creating permanent 'facts on the ground' by seizing Palestinian land and transferring civilian populations is at odds with the conventional legal conception of occupation as a temporary situation. According to international humanitarian law, the Occupying Power may not introduce measures that would permanently alter the status of the occupied territory. The occupier is also precluded from changing the existing laws in the territory unless the interest of the civilian population under occupation or the immediate security interest of the occupying forces thus require.

Since the first day of occupation, however, Israel has applied legislative, administrative and economic measures to subvert any Palestinian attempt to exercise the right to self-determination. Israel recognises that self-determination facilitates the exercise of other rights, which may not be fulfilled under ongoing occupation and continuing appropriation of land and natural resources as prescribed in Israel's long-term plans.

The right to self-determination is the soul of fundamental human rights. Now enshrined in common Article 1 of the International Covenants, it was the principle that underpinned successive waves of decolonisation and liberation of peoples from foreign domination. Without exercise of this right, any speculation or opinion as to potential progress in the field of human rights in the OPT will be mere fantasy. Under occupation and absent self-determination, the status of human rights will continue to deteriorate.

The Israeli occupation is not only a matter of soldiers dispatched in military bases and checkpoints throughout the occupied territory. It is not, and can never be, defensive or benign. On top of the armed violence and aggressive property destruction and land confiscation, it is a pervasive regime that affects all aspects of Palestinian daily life, entailing a complex apparatus of control to facilitate Israeli settlers, daily sweeping arrests raids and arbitrary detentions, as well as a matrix of administrative restrictions dictating where Palestinians can move and when, where they can build, whether or not they can register the birth of their children. By fragmenting the occupied territory into enclaves and imposing a closure on East Jerusalem, the occupation also denies access to workplaces and prevents all denominations of Palestinian society from accessing holy sites, effectively obstructing freedom of worship. Despite massive sums of international aid being poured in, the policies of the Israeli occupation continue to plunge more and more of the Palestinian population into poverty. By not addressing the root causes of the problem, namely the continuing occupation and denial of self-determination, international aid has failed to achieve real economic or social development, to the point that the term “de-development” has become commonplace. Recent reports released by major international humanitarian and development organisations working in the OPT make this undoubtedly clear.

Certain local and international organisations active in the human rights field in Palestine regrettably fail to address the occupation *per se* as a major cause for the continuing degradation and infringement of human rights. They believe that the human rights situation can still make progress under ongoing occupation. To justify their position, they claim that demands to terminate occupation are political. Such a position, however, entails a blindness to reality and is illustrative of the failure to fulfil the role that these organisations can play, on both local and international levels.

Over 41 years of ongoing occupation, and following persistent failures to make any qualitative progress in the field of human rights, we – as human rights activists – must ask ourselves: What are the causes, strategies and discourses we need to adopt, educate on and advocate for, in order to effect substantial change to the status of human rights as an important foundation for any permanent peace in this part of the world?

Some might believe that achieving peace is a primary prerequisite to allow any positive development in the exercise of human rights. However, I firmly believe that, in terms of the mechanics of the issue, the inverse is true. Unless grounded on principles of justice and respect for basic human rights, a genuine and permanent peace cannot be attained.

The background I have outlined, however, does not propose that I am improvising a stratagem to evade addressing violations of human rights and international law committed by the Palestinian Authority, by Hamas or any armed Palestinian factions. However, a careful diagnosis of causes is indispensable so that we can determine the relevant cure. In this regard, the occupation underpins almost all human rights violations witnessed throughout Israel and Palestine.

The First *Intifada* and Oslo Process

It is self-evident that any people under domination will rebel against tyranny, repression and rights violations. The first *intifada* (or uprising) of 1987, a popular and mainly unarmed resistance, was a natural reaction by the occupied Palestinian people that demanded implementation of their right to self-determination. However, the Israeli response entailed heightened violence, mass internment, and increased restrictions on everything from

movement to freedom of expression. As military policies failed, Israel prescribed political solutions based on the "strong vs. weak rule". In this context, the Oslo Agreements in 1993 and 1995 were from the outset incapable of establishing a permanent and stable peace. These agreements effectively neglected the causes and roots of the conflict, as well as the principles of international law and human rights.

By refusing to acknowledge its status as the occupying power, Israel managed to avoid its clear legal obligations, not least to dismantle settlements and revoke its claim to sovereignty over East Jerusalem. As a result, the Israeli authorities were able to double the number of settlers in the occupied territory during the years of the so-called peace process, 1993-2000, and to isolate the Gaza Strip, the city of Jerusalem, and the rest of the West Bank from each other. Master plans were drafted and implemented in order to Judaize East Jerusalem.

The Palestinian right to self-determination, affirmed by countless United Nations General Assembly and Security Council resolutions was also postponed and effectively disregarded by the Oslo Agreements. Thus, the lack of emphasis or even acknowledgment of human rights in the Agreements inevitably resulted in the persistence of violations. Similarly inevitably, with no positive changes on the ground, the result was that the Palestinian public lost hope in peace. This frustration and the worsening situation accumulated to lead to the outbreak of the second *intifada* in September 2000. Ariel Sharon's inflammatory visit to the compound of Jerusalem's Al Aqsa Mosque was but the straw that broke the camel's back.

Post-Oslo Political Scenarios

Lessons have not been learnt from the failure of the Oslo process and the reasons behind such failure. The occupying authorities have persisted in systematically violating rights and neglecting their obligations under human rights instruments and international humanitarian law. Relying on power and exploiting its position of dominance, Israel's measures and unilateral actions have rendered fruitless all attempts to build peace and put an end to violence.

Additionally, relevant third states, both individual and within the context of their membership of the UN, have not been guided by their incumbent obligations and the norms of international law as a basis for regulating and defining their political relations and initiatives. Instead, the most influential of these states have adopted a language that compromises Palestinian human rights in deference to maintaining stable economic and political ties with Israel, thereby dismantling opportunities of attaining a genuine peace. Over years, peace initiatives, including the recent Annapolis Conference, have completely sidetracked basic principles and norms of international law. As a result, such initiatives were, and will continue to be, prone to fail. This is the obstacle that needs to be overcome when we address the question of Palestine.

To take one example, I have mentioned previously the illegality of Israeli settlements in the Palestinian territory, as well as their centrality to Israel's entrenched and long-term land policies. The effect that they and their associated infrastructure have on Palestinian rights is significant, from land confiscation to the designation of certain roads for settler only use, from the violence perpetrated by armed settlers against Palestinian civilians to the building of Walls and deployment of troops to protect and consolidate the settlements, and so on. Bearing in mind the UN Security Council's determination that settlements are an obstacle to peace: if you can imagine that the law was respected and the West Bank was freed of settlements, the accompanying violations would be eliminated and the potential for peace would be abundant. We could draw similar conclusions if we look at any other rights

violations, from the separation of Palestinian families to the denial of the rights of displaced persons to return.

Historically, occupying powers ascribe their actions, practices and crimes to security needs and military necessity. However, international law draws a clear demarcating line between necessary and unnecessary actions. Like the right to resistance, the argument of security necessity can be similarly misused. Had the humanitarian law principles regarding military necessity and proportionality been adhered to, most violations of the right to life, for example, that we have witnessed in the OPT would not have been committed. Denying seriously ill individuals access to hospital for medical treatment, and bringing about their death as a result, simply can not be justified under the pretext of security necessity. The same goes for the prevention of students from accessing their schools and universities.

Only if principles and standards governing armed conflict are fully respected will we make essential progress towards peace and safeguard human rights. Mitigation of the level of violence and suffering is not insignificant but at the same time will not in itself solve the bigger problem. Negotiations will not produce any sustainable solution without being founded on a solid basis. That basis must be human rights and international law, for peace is not just a word for the world of diplomacy to bandy about vacuously, and genuine peace has genuine substance behind it. Bearing in mind these lessons of the past and looking to the future, three potential scenarios can be envisaged:

- The first is that we continue to ignore international law and human rights, and, as a result, the status quo, the cycle of violence and suffering will perpetuate. We will reach political agreements on paper but no genuine, just or lasting peace, and no side will really gain.
- The second possibility, from a Palestinian perspective, is that we abandon attempts at negotiation and wait for change in the balance of power in the region – the current situation will continue until if or when that comes. The likelihood then, however, is that the circle will simply go back to the beginning and the use of force will continue to define the conflict.
- The third scenario is that we start to put meaningful pressure on Israel to honour its legal obligations and to respect Palestinian human rights. Demonstration of a genuine commitment by the occupier and an easing of the restrictions will provide motivation for all parties to reduce the violence and to begin to establish a platform from which to reach a stable peace.

Achieving this is a direct responsibility of the international community, but is also in that community's direct interest. The issue presents more than mere abstract ethical obligations of third states to the Palestinians, because in the globalised era, how they choose to deal with this conflict will have ramifications for themselves. The international community needs to at least give people hope for justice and equality through its practices, for as we have seen, when people feel they have no hope left, the consequences are grave.

In conclusion, therefore, despite all respective international, regional and local attempts to achieve peace, the conflict persists in Palestine and Israel, and the prolonged occupation of Palestinian territory is the fundamental reason for this. Only compliance with human rights principles and the provisions of international law presents hope for the achievement of a permanent and lasting peace.