

## Al-Haq's 40<sup>th</sup> Anniversary Seminar

### The Right of the Palestinian People to Self-determination

*Ramallah Municipal Theatre*

*Saturday, 13 July 2019*

#### **Abstracts and Biographies of Speakers**

**Professor John Quigley**

##### **"The International Legal Foundation for the Palestinian People's Right of Self-determination"**

The right of the Palestinian people to self-determination is based on the norm of law that accepts the attachment of a people to their territory, and their right to control their fate. The antecedent of this norm is observed during the period of colonialism, when the European powers acknowledged an obligation to promote the interests of indigenous populations, even if they did not implement that obligation in practice. The norm was developed during the period of the League of Nations through the mandate system and through international oversight of the rights of minority populations.

The norm found further development by its inclusion in the United Nations Charter, and by provision in the Charter for a trusteeship system in replacement of the mandate system. Self-determination was then written into two major human rights treaties. As colonial peoples increasingly asserted their claims to self-determination, the UN General Assembly gave guidelines for implementation of self-determination in a resolution it adopted in 1960. In this resolution the General Assembly forbade military force to prevent effectuation of self-determination and called for transition to independence of dependent territories. The resolution positioned self-determination as necessary to preservation of international peace. It further specified that considerations of readiness for independence could not be used to deny self-determination.

The UN Security Council used its powers under the UN Charter a few years later when effectuation of the right to self-determination was threatened in Southern Rhodesia. The Security Council declared that a declaration of independence there, to be carried out in a way that excluded the majority indigenous population from political participation, was a threat to international peace.

Through all this development, self-determination for the indigenous population of Palestine was accepted in principle but overridden in practice. The Palestine Mandate required Great Britain as Mandatory power to implement the Balfour Declaration, which called for a "Jewish national home" in Palestine. The Zionist Organization aimed at statehood for Jews in Palestine, statehood that would inure to the benefit of Jews worldwide. Great Britain took its obligation to mean that it should facilitate immigration of Jews into Palestine, even in numbers that would allow the Zionist Organization to take control of the territory. When the people of Palestine took up arms against Great Britain, British troops suppressed their resistance.

When Great Britain withdrew from Palestine, the United Nations mixed the issue of displaced Jews in Europe with that of the status of Palestine. This decision was inconsistent with self-determination of the people of Palestine. The Zionist Organization was able to gain a foothold, leading to the deprivation of the rights of the people of Palestine and to loss of control over Palestine's territory, first in 1948 and later in 1967.

*John Quigley is Professor Emeritus at the Moritz College of Law of The Ohio State University in Columbus, Ohio, USA. A specialist in public international law and the law of human rights, he writes on key legal issues relating to Palestine. THE INTERNATIONAL DIPLOMACY OF ISRAEL'S FOUNDERS: DECEPTION AT THE UNITED NATIONS IN THE QUEST FOR PALESTINE (2016) explains how a Jewish state came to be supported in relation to Palestine. THE SIX-DAY WAR AND ISRAELI SELF-DEFENSE: QUESTIONING THE LEGAL BASIS FOR PREVENTIVE WAR (2013) assesses the legality of Israel's entry into control of the Gaza Strip and West Bank. THE STATEHOOD OF PALESTINE: INTERNATIONAL LAW IN THE MIDDLE EAST CONFLICT (2010) traces Palestine as a state from the Treaty of Lausanne. THE CASE FOR PALESTINE: AN INTERNATIONAL LAW PERSPECTIVE (2005) is a legal history of the conflict over Palestine.*

**Professor Alessandra Annoni and Ms. Grazia Careccia**

### **“Faraway, So Close: Why is the International Court of Justice’s Advisory Opinion of the Chagos Archipelago Relevant for Palestine?”**

On 25 February 2019, the International Court of Justice delivered an Advisory Opinion on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965.

The Court found that the decolonization of Mauritius was not conducted in a manner consistent with the right of peoples to self-determination, and that the United Kingdom's continued administration of the Chagos Archipelago constituted a wrongful act, entailing the international responsibility of the State. The United Kingdom was consequently required to bring an end to its administration of the Chagos Archipelago as rapidly as possible, so as to allow the General Assembly to exercise its functions relating to decolonization, while all Member States were called upon to co-operate with the United Nations in order to ensure the completion of this process.

In the Advisory Opinion, the Court touched upon several issues that may be relevant for Palestine. This paper will focus, in particular, on two aspects.

The first relates to the validity of the Lancaster Agreement, through which the representatives of Mauritius consented to the separation of the Chagos Archipelago from the rest of the non-self-governing territory then administered by the UK. The Court established that an agreement concluded by two parties, one of which was under the authority of the other, cannot be considered as a valid expression of consent to relinquish sovereign rights. While the Court established that self-determination was part of customary law in 1968, it did not provide further guidance as of the modalities in which it could have been exercised beyond excluding that free and genuine will can be expressed by a people under colonial domination until the latter has been fully brought to an end. The analysis will focus on how these findings could be of use in analysing past agreements and current proposals that affect the territorial integrity of Palestine.

The second issue relates to the legal consequences arising from the continued administration by the United Kingdom of the Chagos Archipelago. Once acknowledged that the conduct of the UK amounts to a continuous breach of the right to self-determination of the people of Mauritius,

one would have expected the Court to apply the system of aggravated responsibility established under Article 40 and 41 of the Draft Articles on State Responsibility. In the Advisory Opinion, however, no mention is made of the obligations for third States not to recognise the unlawful territorial situation of the Chagos Archipelago and not to render assistance to the UK in maintaining it. This paper will analyse the reasons behind this choice, and explore the impact the solution adopted by the Court might have on international practice, at a time where the obligations of Third States in respect of grave breaches of international law – and in particular the principle of non-recognition of unlawful territorial situations – are often called into question, as the decisions of certain countries to relocate their embassies from Tel Aviv to Jerusalem demonstrate.

*Alessandra Annoni is Associate Professor of International Law at the Department of Law of the University of Ferrara; coordinator of the law degree programme, member of the Executive Committee of the Centre for European Legal Studies on Macro-Crime – Macrocrimes and co-coordinator of the Core Crimes cluster.*

*Alessandra received a law degree with highest honours from the University of Ferrara (2002) and holds a PhD in International Law at the University of Padova (2007). She volunteered for Al-Haq in 2007 and was a research fellow of the Center of Applied International Law of Al-Haq in 2011. Before joining the Law Department of the University of Ferrara in 2015, she was a research fellow at the University of Ferrara (in 2008), and an assistant professor at the University of Catanzaro (2008-2015).*

*Alessandra is the author of a monograph on military occupation (L'occupazione "ostile" nel diritto internazionale contemporaneo, Turin, 2012) and co-author, with Francesco Salerno, of a textbook on the protection of human beings in times of armed conflict (La tutela internazionale della persona umana nei conflitti armati, Bari, 2019). She has also written extensively on international humanitarian law, international human rights law and international criminal law. She is currently working on a monograph on recognition as a unilateral act of States.*

**Dr. Mudar Kassis**

### **"Towards an Alternative Understanding of Self-determination"**

In the context of the emergence and development of the world order the meaning, significance, and techniques of the realisation of the right to self-determination have undergone, and still are undergoing changes. These changes are particularly bearing in the Palestinian situation due to multiple reasons/vulnerabilities. In this presentation, I will discuss the tension between self-determination as a libertarian concept, as an imperial concept, and as an emancipatory concept, with a view on the requisites of Palestinian emancipation.

The notion of self-determination in international law is interconnected, inter alia, with the contested and frequently negotiated concepts of territory, sovereignty, and statehood. There are internal and external debates, colonial challenges, neo-colonial ambitions, and neoliberal interests concerning each of them. Thus, there is no clarity concerning their significance and role in the Palestinian aspirations for liberation and freedom.

The need to revisit the approach to the notion of self-determination is evidenced by a variety of facts and developments. These include the failure of all attempts by Palestinians to achieve some sustainable form of self-determination over the past century; the change of the significance of the state, the function of "territory", and the place of "identity"; and the radical changes in the scope, significance, meaning, and function of sovereignty.

The needed alternative approach should fulfil several criteria to ensure that it facilitates the incorporation of the notion of the “community”, and breaks the monopoly of the “polity” as the main unit of analysis for self-determination (with a focus on the communicative component in the definition of the “community”). The needed approach also requires a new understanding and possibly a new “legal framing” of the notion of “entity”, which is currently an expression that de-facto relates exclusively to the polity and not the community, and assumes segregation/exclusivity

*Faculty member at Birzeit University since 1992. Currently serves as director of Muwatin Institute for Democracy and Human Rights, director of the MA Programme in Democracy and Human Rights, and co-director of the Windsor Birzeit Dignity Initiative (an international interdisciplinary research partnership). Previously served as chairperson for the Department of Philosophy and Cultural Studies, Director of the Institute of Law, acting dean of the Faculty of Law and Public Administration (led its establishment), Co-Director of the Initiative on Judicial Independence and Human Dignity (a joint project with the University of Windsor – Canada).*

*His research interests include democratization, decolonization, the concept of dignity, the everyday, human rights education, research ethics, and developing the methodology for measuring the state of democracy.*

## Professor Susan Akram

### **“Palestinian Nationality, International Law, and Self-determination”**

My talk will assess the legal foundations of Zionist and Palestinian national claims over the land of Palestine since the British Mandate. I will describe the legal basis and implications of the claim of Jewish nationality in Palestine and compare it with the claim of Palestinian nationality. The question of national rights, and who can claim them, is central to rethinking the statehood, residency and return rights of those living today in the area of historic Palestine. The law of nationality is at the core of the protections of peoples’ right to self-determination and right of return, as well as restitution of property and compensation for losses. Understanding the principles underlying nationality law is essential to separating claims from rights in considering Palestinian and Jewish peoples’ supposedly conflicting claims to residency and right of return. It is also the single most critical factor that unifies Palestinians inside 1948, in the OPT and in the diaspora.

*Professor Susan Akram is a graduate of the University of Michigan (BA), Georgetown University School of Law (JD), Oxford University (MA), and the Institut International des Droits de l'Homme (Diplome). She directs BU Law’s International Human Rights Clinic, in which she supervises students engaged in international advocacy in domestic, international, regional, and UN fora. She teaches or has taught courses in International Human Rights, Refugee and Migration law, US Immigration law and Palestinian Refugees under International Law. Her research and publications focus on immigration, asylum, refugee, forced migration and human and civil rights issues, with an interest in the Middle East, the Arab, and Muslim world. Her book projects include *Still Waiting for Tomorrow: The Law and Politics of Unresolved Refugee Crises* (with Tom Syring); *International Law and the Israeli-Palestinian Conflict: A Rights-Based Approach to Middle East Peace* (with Mick Dumper, Michael Lynk and Ian Scobbie). Her articles and book chapters include “Palestinian Exceptionalism, Whether it Matters, and the Role International Agencies Play” in the *Oxford Handbook of Refugee and Forced Migration Studies*; “The Arab Israel Conflict,” (with Michael Lynk) in the *Max Planck Encyclopedia of International Law*; and “Temporary Protection as an Instrument for*

*Implementing the Right of Return for Palestinian Refugees” in the Boston University International Law Journal.*

*Akram received a Fulbright Senior Scholar Teaching and Research Award for the 1999–2000 academic year, with which she taught at Al-Quds University School of Law in Palestine. She has lectured on Palestinian refugees to general audiences around the world as well as to United Nations bodies (including the High Commission for Refugees and the Relief and Works Agency for Palestine Refugees), the European Union, and representatives of European and Canadian government ministries and parliaments. She has also presented widely on the USA Patriot Act and immigration-related laws and policies as well as on her work challenging standard interpretations of women’s asylum claims from the Arab/Muslim world.*

*With her clinic students as well as in collaboration with other legal organizations, Akram has worked on resettlement and refugee claims of Guantanamo detainees, and has been co-counsel on a number of high profile cases, including the 20+-year litigation of a case of first impression on the interpretation of one of the exclusion bars to asylum, In Re A-H-. She has taught at the American University in Cairo, Egypt and at Al-Quds and Birzeit Universities in Palestine. She regularly teaches in the summer institute on forced migration at the Refugee Studies Centre at Oxford University, and in various venues in the Middle East on refugee law.*

**Dr. Joni Aasi**

### **“The Right of Self-determination in a Context of Ethnic-nationalized State”**

The right to self-determination is a double-edged sword; it can serve as an instrument for imperialism and territorial annexation (the fundamental law of the 2018 nation-state promulgated by the Israeli Knesset), and it is at the center of a liberating discourse that characterizes international law in the post-WWII period. The law of the nation-state is in continuity with the Zionist enterprise but at the same time it participates in a general trend of nationalization which operates in waves: the first was in Germany after the First World War and the second since the 1990s, in the former Yugoslavia and in Rwanda and Sudan. What solution can offer the right to self-determination in the face of this nationalization?

My intervention will, therefore, focus on the challenge of the nationalization of the state and its implications for the right to self-determination. But it will also present an attempt to look at the policy to be taken on the right to self-determination by reviewing different approaches: approach of the colonized people, approach of the rights of the minority, and approach of the indigenous people. It is not only a matter of seeing what the positive right of self-determination has to say but also of examining the role of the right to the reconstruction of reality.

*Director of Unesco Chair on democracy and human rights since 2014, dean of law school at Najah University 2018, and teacher of political science and international law at Bir Zeit University and Najah University for more than 18 years. Visiting professor at many French universities (Lyon, Besancon, Rennes, and Paris) and at Palermo University in Italy. Research interests are in the theory of democracy and comparative democratization and in international and constitutional law.*

**Ms. Diana Buttu**

*Ms. Diana Buttu is a Canadian-Palestinian attorney specializing in human rights and negotiations. In 2000, Ms Buttu moved to the occupied West Bank where she served as a legal advisor to the Palestinian negotiating team and later to the Palestinian president. She resigned from her post in 2005 but remains a frequent commentator on Middle East politics and human rights, with quotes and appearances in major international media outlets such as the NYT, CNN, BBC, Aljazeera, the Wall Street Journal and the Washington Post, among others. She is an instructor at Harvard's Extension School.*

*Ms. Buttu is the recipient of the Stelle Solidariete Italian prize for her human rights work. She was the Eleanor Roosevelt Fellow at Harvard Law School holding an appointment with the Kennedy School and Law School at the same time. She holds law degrees from the University of Toronto, Queen's University, Stanford University and an MBA from Kellogg Northwestern School of Business. She also holds a BA in Middle East and Islamic Studies from the University of Toronto.*

### **Mr. Wesam Ahmad**

#### **“Hostile Takeover: The Role of Business Enterprises in the Evolution of the Struggle for Palestine”**

My presentation proposes a new approach to understanding the current nature of the conflict by focusing on the role that business enterprises have played over time, space and context. The presentation explores the merger of British and Zionist interests in the acquisition of Palestine and the Israeli refinement of colonial best business practices in the continued denial of the right to self-determination for the Palestinian people. The presentation seeks to challenge the linear and binary nature of the discourse around the conflict as well as the perceptions of the role of international law and business enterprises in bringing the conflict to an end.

*Mr. Wesam Ahmad is a Palestinian-American, born and raised in the US. He holds a BA in Political Science and Sociology from Louisiana State University (LSU) as well as a JD, also from LSU. In 2012 he completed his LLM in International Human Rights Law from the National University of Ireland - Galway, where he is currently a PhD candidate focusing on business and human rights in the Palestinian context and is the current NUI EJ Phelan International Law Fellow. Wesam moved to Palestine in 2006, working with Al-Haq for over a decade before transitioning to pursue his PhD full-time.*

### **Mr. Raja Kahlidi**

#### **“The Main Economic Tools to Establish the Sovereignty of the State of Palestine”**

My presentation explores the economic content of the concept “state sovereignty”, and examines the prospects and instruments needed to establish sovereignty in the medium and long-term dimensions. In light of its serious scope, the concept of “economic sovereignty” should be avoided as it may disregard the legal and political sovereignty. Economic independence cannot be attained in isolation from the political independence. This presentation addresses the following issues:

- 1- Parameters of exercising state sovereignty in a global and globalised economy.
- 2- The extent to which elements of sovereignty were available in the Palestinian economic environment in 2010.
- 3- A medium-term perspective of extending Palestinian sovereignty in vital economic sectors.

4- Alternatives and priorities for action to secure a minimum of economic instruments in support of the State of Palestine's sovereignty

- a. Potential for security enforcement
- b. Control over geography and natural resources
- c. Governance institutions and rule of law
  - i. Primary economic legislation
  - ii. Building strategic sovereign institutions
- d. Ability to draft development, economic, fiscal and trade policies
  - i. Drafting and adopting the Palestinian National Development Plan
  - ii. Approving the right trade system to extend sovereignty
  - iii. Upgrading and implementing trade agreements
  - iv. Approving the right monetary and fiscal systems to establish sovereignty and allow a greater policy space
  - v. Introducing needed amendments to particular provisions under the Paris Protocol, which impede the extension of sovereignty (lists, etc.).
- e. Ability to draft and form fiscal and monetary policies
  - i. Nature of, and overlap between, fiscal and monetary policies
  - ii. Economic impact of fiscal and monetary policy on development and growth
  - iii. Available policies and instruments for the Palestinian fiscal policy – budget
  - iv. Available monetary policies and instruments for the Palestinian Authority
  - v. Mechanisms for policy making and implementation
- f. Ability to mobilise social capital networks and human resources

*Raja Khalidi, was trained as a development economist, with a B.A.(Hons) from Oxford University and M.Sc. from University of London (SOAS). He has conducted research and published and lectured widely on Palestinian economic conditions in Lebanon, in the Arab region in Israel and in the occupied territories. He worked with the United Nations Conference on Trade and Development (UNCTAD) from 1985 to 2013 and as senior economist he served as Coordinator of its Programme of Assistance to the Palestinian people, Head of its Debt and Development Finance Branch and Chief of the Office of the Director or the Division of Globalization and Development Strategies. He is currently Research Coordinator at the Palestine Economic Policy Research Institute (MAS).*

**Dr. Basem Ezbidi**

**"The Ineffectiveness of the Palestinian Political Discourse in the Realization of the Right to Self-determination"**

My presentation addresses weaknesses of the Palestinian political discourse. It places a special focus on the Madrid formula (Oslo and the so-called Peace Process), which has had a prominent place in this discourse and inflicted extensive damage on the right to self-determination. Within the scope of that formula, the State/Authority project took precedence over, and effectively deconstructed, the principle of the right to self-determination.

The question [of Palestine] or conflict has been reduced to so-called “final status issues”, including borders, settlements, Jerusalem and refugees. These have gradually vanished, together with any commitment to the principle and accurate approach to the right to self-determination. The Palestinian side did not seriously refuse the presence of Israeli settlement blocs, which continue to be under Israeli sovereignty. The Palestinian side did not express any serious reservation to the so-called Clinton’s view of Jerusalem. Accordingly, while Israel continues to control Jewish quarters, the Palestinian state would have Arab quarters. In other words, Israel would keep all the areas it seized control of during the 1967 war. Hence, all areas east of the 1967 border are dividable, but those on the western border are not. In general, the peace process gave Israel the impetus to take full control of East Jerusalem. Israel is aware that areas beyond its control will be the maximum demand of the Palestinians. That is also the case for Palestinian refugees. According to the so-called understandings with Olmert, Palestinian claims were limited to the return of as few as 15,000 refugees. On the other hand, the Israelis offered the return of just 1,000 refugees! These understandings have eliminated the fundamental rights of millions of UNRWA-registered Palestinian refugees

Against this backdrop, even if it is established, it is not clear if a sovereign Palestinian state will be capable of protecting and fulfilling the Palestinian people’s right to self-determination, which has been violated for decades. This highlights the need to draw a distinction between the narrow objective of sovereignty and the broader goal of self-determination. While the former requires effective control over the land, borders, resources and political independence, the latter is way beyond that. Self-determination is a right lawfully exercised by people on their land. It may, or may not, lead to sovereign statehood. The right to self-determination is not fulfilled by the state alone. It remains at the heart of the Palestinian struggle to attain liberation and maintain human dignity, both physically and morally.

*Basem Ezbidi holds a PhD in political theory and public administration from the University of Cincinnati and currently teaches at Birzeit University, Palestine. He has written on numerous aspects related to Hamas, state-building, political reform, corruption, local government, development and democratization, and the West and the Islamic World. Ezbidi has coauthored *The West and the Muslim World: The Muslim Position* (IFA, 2004); a chapter on the Palestinian Authority and future statehood, published in *State Formation in Palestine: Viability and Governance during a Social Transformation* (Routledge, 2004); as well as a chapter in *Where Now for Palestine? The Demise of the Two-State Solution* (Zed Books, 2007). He is the author of *Hamas and Governance: Is Hamas Getting into the System or Rebellious Against It?* (in Arabic, Palestinian Center for Policy and Survey Research, 2010) and co-editor of *Popular Protest in the New Middle East: Islamism and Post Islamist politics* (I.B.Tauris, 2014), to which he also contributed the chapters “Democracy as a Minor Necessity in Hamas’s Narrative” and “Postscript.” Published journal articles include “The Palestinian Split: Roots of Fracture and Requirements of Repair,” (in Arabic) *Al Mustaqbal Al Arabi*, April, 2016. Most recently, he has contributed the political material to the *Annual Human Development Report on Palestine* (to be released in May 2019) and a chapter titled “Is Sustainable Development Possible Under Occupation? The Case of Palestine” shall be part of a book to be published by Routledge in 2019.*