

On Israel-Palestine:



2019 to 2021

Scott Douglas Jacobsen

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Scott Douglas Jacobsen

Foreword by Scott Douglas Jacobsen

Human beings invented human rights as human beings invented the gods. To quote Ezra Pound:

*The long flank, the firm breast
and to know beauty and death and despair
and to think that what has been shall be,
flowing, ever unstill,*

Then a partridge-shaped cloud over dust storm.

The hells move in cycles,

No man can see his own end.

The Gods have not returned. "They have never left us."

They have not returned.

Nevertheless, as we all know, the concept of a god, not simply the Abrahamic Yahweh – G-d, comes with blessings and cursings, fortunes and failings, and some claims about Him, not all of which may be true – maybe none. The god concept contains premises knit together into a weave—a weave laced as a drape, even a curtain, gently over the mindscape of believers. Believers believe. Believers act. Believers converse. Believers convert. Believers coalesce. Believers change and alter societies. In this way, the god concept transmutes the abstract, the in-mind, into the concrete, the in-reality. No matter the god in mind, that process affects most rising and falling societies in history. Thus, maybe, we can all agree: the god concept, ignoring veracity, impacts the world in history and to the present, massively.

That which amounts to the in-mind, the invented, the imaginary, the unreal, can affect the in-reality, in that sense. The god concept tends to come with a few universalist ethical principles, for example, the Golden Rule, loving one's neighbour as oneself, compassion and justice, non-harm and welfare, the one family world, brotherhood, world reparation, justice and dignity, service to humanity, living in harmony with The Way, benevolence and reciprocity, and equality. Let us call these traditionalist transcendental religious ethics in the universalist canon; the rest sit in the particularist camp. Parochialism is a specific set of guidelines, rules, and laws for a particular set of believers.

Even if taking the god concept, whether true or not, a mind becomes necessary to make god exist and for the concept to actualize in the world through said beings' minds and lives. Similarly, with the universalist and particularist camps of transcendentalist religious ethics, those need minds to act within them as social codes. In that sense, they become intersubjective agreements in sociality more than objective moralities - let alone transcendental realities. In this manner, traditionalist transcendental religious ethics become universalist, at times, and parochial, in others. While in truth, that is to say, they become intersubjective agreements bound to specific geographic locales and historical periods, they get perceived as transcendental and objective, mistakenly.

Human rights come forth similarly, in-mind. In the mind, these formulate the codes of conduct and ethics in most of the substantive ethical institutions in the world today. They exist around the globe. They created the framework for establishing an international system of laws, obligations, and rules. These become, not only human rights but, international human rights. These institutions become stronger with each passing year, for the most part, with some, minor setbacks. These international human rights come with massive intersubjective agreements despite consistent violations since the inception of their invention. The striving for international human rights converges with the work of universalism.

The universalism inherent in international human rights represents a convergence of the universalism from religious ethics towards a common core of moral truths bound to a principle of simplicity in foundations for an optimization of ethical considerations with equal application for all in theory with the extinguishment of religion in them while an allowance for belief in them, through them. In a manner similar to the god concept, minds become necessary for actualization in beings' minds and lives. No minds, no rights, so minds make rights. An intersubjective agreement abstracted for approximated objective observation of formalized processes, human actions, international institutions, and rights documents. The difference: god concepts get blind acceptance, illegitimate authority, and dogmatic worship; rights get conscious deliberation, open debate, and democratic enactment. The former as absolute and simplistic. The latter as statistical and complex.

Traditional religious transcendental ethics seen in the religious ethics come with narrow application. International human rights come with broad applicability. Do not simply believe me; we merely need to count the truism: Even amongst the religious in societies, most adhere to human rights arguments when making cases for fairness, justice, and truth. In addition, few play by religious rules in an international sense. Most play by international human rights through global institutions, for example, the United Nations. Every Member State participates there, whether the General Assembly, Security Council, Economic and Social Council, or the International Court of Justice. Not many take part in the religious ethics in theocracies or the dogmatic secular moralities of Maoism, Communism, and the like. International human rights become secular in this decoupling process. These become international secular human rights, whether spiritual religions or political religions: Both insist on and generate dogma.

Hence, the reason for the stipulations in prior writings of traditional religious transcendental ethics and international secular human rights as a distinction for Canadians and others, one, to make, and two, to decide upon as a path forward for their societies and regions. Even though, these exist, gods and rights, in mind. Their impacts on individual lives and systems of governance remain inevitable while not immutable. Any move towards universalism in ethics will necessitate a move to international secular human rights due to the decoupling from the parochial nature of spiritual and political dogmas. In this way, abstracted ethical principles garner reality through these intersubjective agreement abstractions of international secular human rights enacted through minds into lives with an arc towards universalism as a prism for fractionation to pervasive values and decoupled from spiritual and political religions: benevolence, compassion, dignity, equality, harmony, justice, non-harm, one family world, reciprocity, service, welfare, and world reparation. Which is to say, we never "left" ourselves.

January 19, 2024

Scott Douglas Jacobsen

Human Rights Watch

Interview with Omar Shakir – Israel and Palestine Director, Human Rights Watch (Middle East and North Africa Division)

May 6, 2019

Omar Shakir is the Israel and Palestine Director for Human Rights Watch (Middle East and North Africa Division). Here we talk about Israel, Palestine, human rights, international law, and more.

Scott Douglas Jacobsen: Let's start from a general overview. What are the basic facts in the modern context with regards to the Israeli-Palestinian conflict?

Omar Shakir: The major human rights issues stem from Israel's near half-century-long occupation of the West Bank and the Gaza Strip. That occupation has been characterized by systematic rights abuses and institutional discrimination, particularly targeting Palestinians.

It includes abuses like settlements. Israel has established over 200 Israeli-only settlements in the occupied West Bank. It has over 600,000 Israeli-Jewish settlers living in these settlements who are subject to a separate and unequal system of laws, rules, and regulations.

So, they are treated under a legal system that is different than the legal system of the Palestinians living in the same territory are ruled under. Israeli settlers are citizens of Israel, vote in Israeli elections, move freely; whereas, Palestinians are not citizens, do not vote, and do not have free movement.

Even to get to East Jerusalem or Gaza, which is part of Occupied Palestinian Territories, they are not able to do so presumptively. In addition, Palestinians are treated under military law. Whereas, Israeli settlers are treated under Israeli civil law.

Palestinians receive inferior access to electricity, health, and water. That military court system is replete. It has a 98% conviction rate. It is replete with due process violations. Of course, in addition to that, Palestinians live under a very brutal occupation, which means regular excessive force by Israeli soldiers.

It also means that Palestinians: thousands are held for politically motivated charges. Some are held in administrative detention without trial or charge.

Of course, the situation, in many ways, in the Gaza Strip is harsher in many of these respects because Israel for the last 12 years has imposed a full closure or blockade around Gaza, which means there is a generalized travel ban.

Nobody is allowed to travel into and out of Gaza, except unless if you exist within a list of narrow exemptions.

Even food as well as Palestinian exports, being able to go to the West Bank, which is part of the Occupied Palestinian Territories, are limited in their exports, the economic situation in Gaza is quite desperate in addition to the services, electricity, and water being more dismal.

In addition, in many parts of the West Bank, Palestinians are effectively not allowed to build. It is impossible to build in most of the West Bank and all of East Jerusalem. It means Palestinian homes that are built are at risk of demolition.

In fact, many Palestinian homes have been demolished. The legal status of Palestinians, especially those in East Jerusalem, have the status of the stateless, which can be revoked on a wide variety of parameters including moving out of the Occupied Palestinian Territories. It puts them in jeopardy.

Whatever geographical area that you look at, especially around the Occupied Palestinian Territories that we're talking about here, whether status, land and building policy, access to resources, even social aspects like marriage, you find really serious discrimination with Palestinians facing serious rights abuse.

Of course, it also applies in Israel itself, where Palestinian citizens of Israel who are 25% of the population face very serious and entrenched discrimination.

Jacobsen: There is another urgent fact. UN reports stating that with Gaza. It is going to be unlivable by 2020. That has been stated for at least a couple of years as far as I understand.

What are the current conditions in terms of demographics as well as some of the strong facts spoken before? Gaza in terms of the unliveability.

Shakir: In Gaza, look, you have about 2,000,000 Palestinians who are living in a 25x7 mile narrow strip of land. It is one of the most densely populated areas on Earth.

A huge percentage of the population is actually youth, are young people, who are educated and struggling to find jobs and basically live.

There are no Israelis in Gaza. Israel withdrew its settler population in 2005. However, there are Israeli towns and villages a kilometre, 2 kilometres, sometimes several kilometres away.

The discrimination is quite clear. They have access to healthcare, freedom of movement, basic civil and political rights, not given to Palestinians.

Jacobsen: What has been the longstanding international consensus on the Israeli-Palestinian conflict?

Shakir: Look, internationally, every country, there is a consensus that the West Bank and Gaza are part of an entity of Palestine. The UN has recognized Palestine as a non-member, observer state.

More fundamentally, every state in the world recognizes Israel's occupation of these lands under international law, the West Bank and Gaza.

There is virtual universal agreement outside the Israeli government basically recognize Israel's occupation of these lands.

Under international law, the West Bank and Gaza, there is universal consensus outside the Israeli government that the settlements the Israeli government has are war crimes and violations of international law. The international peace process has been on finding a two-state solution.

In terms of legal and human rights issues, the key concern has been about Israel's violations of international humanitarian law. Both the law of occupation and human rights law.

Jacobsen: With the violation of rights law, of occupation, with regards to domestic things you're talking about such as marriage, in addition to the lack of resources, the vast

differential there. What is the basic misrepresentation of these straightforward facts about this conflict?

Shakir: I think what Israel would say in response, “Well, settlers are part of Israel. They are Israelis. Palestinians are part of something else. They have some limited level of Palestinian self-rule.”

In fact, the 1993 Oslo Accords did establish a Palestinian Authority. The issue here is the Palestinian Authority have limited actual rule.

Most everyday decisions on fundamental things Israel controls; the air space, the water space, the borders, the entry and exit of people and goods. They even register every Palestinian baby born in Gaza. They control tax collection.

In practice, the Israeli government is the one that controls the lives of all 13 million people that live between the Jordan River and the Mediterranean Sea. In other words, the modern West Bank, Israel, and Gaza.

In that land, you have about 6.5 million Jews and 6.5 million Palestinians, because some Palestinians are Israeli citizens. Palestinians receive unequal treatment, as compared to Jews, throughout this area.

Israel would say, “In the West Bank and Gaza, we don’t control them. They are left to rule on their own, which doesn’t match the facts on the ground. Within Israel, they vote in elections. They receive the same treatment at hospitals. While there may be issues, they, certainly, don’t amount to systemic discrimination.”

Even though, that as been documented by the UN and others.

Jacobsen: If you look at the Western media in terms of Western Europe and North America, there are systems of public relations that just misreport the facts, selectively report facts, or, sometimes, outright lie about the conflict.

How can people who are more critically minded about their news sources pierce through that, basically, occlusion of the facts of the matter?

Shakir: Yes, I think in this day and age. There are alternative sources of information. I think social media. I think the diversity of news sites available makes this easier to find alternative perspectives for the situation on the ground.

Unfortunately, in the West and in Europe, there is a pretty strong effort to silence those who are critical of Israel’s policies.

The efforts to label critics of Israel and of the occupation, and Israeli policy, as being anti-Israel or even antisemitic – or attacking methods used by activists of civil disobedience like boycotts, labelling them as anti-Israel, anti-Zionist, or antisemitic.

When, in fact, those are the same tactics used throughout the world. I think that those who are concerned seek alternative sources of information.

If you are a citizen who relies on Human Rights Watch or Amnesty International for U.S. human rights abuses, or about the situation in Saudi Arabia or in China, then you should also rely on their reporting on the situation in Israel, Palestine, or Egypt.

I think it is important to be consistent and, likewise, to seek out Israeli NGOs including human rights work like B'Tselem, Gisha, or Breaking the Silence, or Palestinian groups like al-Haq, or Palestinian Center for Human Rights, or international groups, or even UN bodies.

If you look at direct sources of information rather than relying on media sources that have other influences, then I think that you're more likely to get at the reality on the ground.

Jacobsen: For those who want to find some other direct human rights organizations as resources, what other reliable sources of information would you recommend for them?

Shakir: B'Tselem is a great human rights organization that does work around the occupation. I think al-Haq, which is a Palestinian human rights organization based in Ramallah. It does really fantastic work.

Gisha is an Israeli human rights group based in Tel Aviv. It does really great work around Gaza and the closure of Gaza. I think if people are concerned specifically about Gaza, I think that is a great source of information.

On the Palestinian side, I think the Palestinian Center for Human Rights or the Al Mezan Center For Human Rights. Both provide great information about the situation in Gaza. I think people should avail themselves of multiple sources of information.

I think those are among the many, many groups – Israeli and Palestinian – that provide a fair review of the abuses of all parties.

All these organizations, for the most part, are not shy to talk about the Palestinian Authority and the Hamas authority and the rights abuses that they carry out as well.

Jacobsen: From the perspective of the Palestinians in the next year or two, what are their concerns?

Shakir: The closure of Gaza, I cannot emphasize that enough. It's 12 years of closure. You have unemployment rates over 50%.

For youth, it is close to 70%. In addition to unemployment, you have 80% of the population reliant on humanitarian aid at a time when humanitarian aid is being cut by humanitarian bodies, including the countries United States.

Electricity continues to be a pressing issue in Gaza. There's been a recent increase. But for the most part, people have more many, many months having 4-6 hours of electricity per day. It has slightly gone up.

But it is still not enough to meet the needs of the everyday population. In the West Bank, you have Israel continuing to expand and annex settlements in parts of the West Bank including worsening the everyday conditions for Palestinians that live in the communities, which is almost every community in settlements in the West Bank.

You have, in addition, developments with Hamas and the Palestinian Authority being divided. There has been an effective split between the West Bank and Gaza over the last few years.

We have seen both authorities arbitrarily arrest supports of each side and put punitive pressure, especially the Palestinian Authority, on Gaza.

So, I think that combination of Palestinians stuck between multiple authorities that are intolerant of dissent. I think the everyday citizen is facing a precarious situation.

Jacobsen: What would be the perspective of the Israelis on this, as you were noting? Some would be taking any criticism of Israel as either anti-Zionist or antisemitic. Why resort to these assertions? What is their general perspective here?

Shakir: Look, like anyone else, I don't think the Israelis speak with one voice. I think, in fact, the human rights community; there have been some very courageous Knesset members and journalists, and other activists who have spoken very honestly about the human rights abuses that this government is perpetrating, particularly in the occupied territories.

I think a position that is more defensive of the current Israeli government. Often, you will hear that the attacks are anti-Israel or antisemitic. Unfortunately, I think this is an attempt to change the conversation, to attack the messenger as opposed to the substance of the critique.

It is a way to shutdown the conversation, muzzle criticism of Israel's human rights records. Many different arguments like this have been used: sometimes, terrorism, or sometimes, antisemitism, or bias altogether.

I think the reality is that these are all ways to divert from dealing with the matter in hand. The occupation and the serious rights abuses that are characteristic of it.

Jacobsen: There can be idealistic solutions in the world, "I want peace. I want to end hunger." Things like this. In terms of practical, immediate steps, such as removal of the blockade, what are ways forward for Palestinians?

Shakir: Sure, ending the closure of Gaza is step one. Without free movement, all other rights – the right to health, right to water, right to electricity, so many fundamental freedoms – are impeded.

I think dismantling settlements and the two-tiered discriminatory structure that goes along with it is critically important.

Palestinians for over five decades, or 52 years, have been deprived of their most basic civil and political rights. Their socioeconomic rights are restricted too. Ultimately, Israel needs to lift its closure. There needs to be a formal removal of settlements and an end to institutional discrimination.

There are many ways this can be done: one-state, two-state, and so on. There can be many solutions to protecting rights. The bottom line: there is no solution that does not at its core action to end the rights abuses that have continued for too long.

Jacobsen: If we're looking at the largely young population, especially in Gaza and the highly densely populated area there, I recall some commentary stating that it is more densely populated than Tokyo, Japan.

Let's say the blockade is lifted, what then can international support do to basically provide the things that kids need, e.g., education?

Shakir: I want to be clear. When we say to remove the closure, we don't mean open the doors. Israel has the right to allow an individualized security assessment. The problem now is the policy now is that it is not based on that; it is a travel ban.

No one, even my colleague, who covers Gaza for Human Rights Watch, was for the first time in her life in 2018 given a permit to leave Gaza, she left and came back. She doesn't pose a security threat.

She has been denied a permit more recently since then because it is a generalized travel ban. It is not an individualized security assessment.

If you lift it, and people and students can go abroad for study and professional opportunities, and goods are allowed to be exported, people can move between the West Bank, Gaza, and Ramallah.

International investment can come in. Who is going to invest in a territory where there is no private sector because it has been crushed by the closure?

Taking the West Bank where the situation is relatively more open than Gaza, the World Bank in 2013 estimated that the restriction in Area C of the West Bank, a part of the West Bank alone, cost over \$3 billion to the Palestinian economy.

You can imagine, if the blockade is lifted, the opportunity this would allow for everyday people.

Jacobsen: Any final feelings or thoughts in conclusion based on the conversation today?

Shakir: No, I think you covered it all!

Jacobsen: Thank you for the opportunity and your time, Omar.

HRW Israel and Palestine (MENA) Director on Systematic Methodology and Universal Vision

May 23, 2019

Director for Human Rights Watch (Middle East and North Africa Division). Here we talk about human rights and methodology.

Scott Douglas Jacobsen: For Human Rights Watch, as you're operating in over 100 countries around the world, and with your own expertise in the Israel and Palestine issue, when you're looking at the application of human rights and international law, you have to do this methodologically. You have to do this systematically.

How do you apply them methodologically and systematically?

Omar Shakir: Step one is to make sure that you have a deep understanding of the context. That you're engaging with a wide range of stakeholders: government authorities, NGOs, human rights victims. It is important that you're able to be in touch with a wide cross-section of different groups.

That includes language skills, making sure the team is equipped in all the relevant languages and is able to engage a wide range of voices. HRW has a policy of speaking to all sides.

If we are documenting the use of force against demonstrators, we will always speak to the demonstrators themselves. We will try to speak to independent witnesses. Maybe, those who were bystanders who saw the event or doctors or lawyers involved in the matter. We will seek the government's perspective too. We will try to get video footage and monitor online perspectives that may be seen.

It is obtaining all the different perspectives and then assessing what happened in the light of that, seeking the cooperation of testimony and gaining a factual account of what likely took place to the best of our abilities.

Once have a factual account, that is verified, we then proceed to, of course, do legal analysis and determine whether or not violations have taken place, publish our findings, and then conduct advocacy to seek changes where there are human rights abuses.

Jacobsen: If you're taking a context of non-violent protests, and if you're taking a context of getting access to all the parties involved in a complicated situation like Israel and Palestine, how do you gain access to Hamas, the Palestinian Authority, to Fatah, to medical personnel, journalists, protestors, IDF personnel, and so on?

Shakir: Every research project involves a different methodology. You have to craft one best tailored to getting results.

For example, I documented the Rabaa Massacre in Egypt. One of the largest single-day killings of protestors in modern day history. It was a year-long investigation. The way we went about that investigation is being there the day of the massacre with 800+ people being killed in the span of 12 hours. We observed what was taking place. We were on the side streets — a team of us — interviewing those who fled the killings. In the days and weeks afterwards, we went to the hospitals and talked to eyewitnesses. Then we went into the neighbourhoods. We would look at

buildings overlooking the square at which the dispersal took place and interview local residents and journalists who were reporting in the square that day.

We immersed ourselves in those accounts. We reviewed video footage. We reviewed public statements made by public officials. We reviewed accounts provided to the media. Once we had a good sense of what we might conclude, we wrote to the various government authorities.

We asked them a series of detailed questions. Then you write the report. At that point, the government did not respond to our letters; we sent them three letters in the span of three months and received no response. So, instead, we relied on public statements made by government officials.

When documenting demonstrations in Gaza, for example, our foreign staff does not have access to Gaza. We have a local researcher in Gaza. She will, similarly, go to hospitals, go to journalists who were reporting. She will look at social media and see who was there on a particular event. We will write to the Israeli army or authority, depending on the body there. We seek to report on it.

Methodology depends on the context, access, and safety and security of the individuals interviewed.

Jacobsen: For those who may not know about some of the coverage about you, and given some of the prior coverage in Egypt and journalistic work too, it is not easy. It is showing a tough, resilient personality, whether it's looking at dealing with people right in the midst who have been massacred and cataloguing it, being harshly criticized from all sides in the media, and even threats of deportation in the most recent context.

For those who want to get involved in the work, what would be your recommendation to them? How do you maintain the integrity in light of consistent critique from all sides?

Shakir: The key is having universal vision of human rights and justice. The ability to relate to somebody whether or not they are of the same religion, nationality, or speak a different language. The ability to empathize with the other and put yourself in their shoes. Often, it is putting aside stereotypes or public perceptions regarding a certain context.

I think it is quite easy in any context to dehumanize the other. I saw that firsthand in Egypt the way in which the demonstrators were reduced to sub-human in some ways. The ways Muslim Brother members were seen as not people.

Or when in the United States, I represented the men in Guantanamo Bay and their invisibility. The ability to see them beyond how they look and the government accusations.

Certainly, in the Israeli and Palestinian side, you see this with some Israelis unable to see the humanity of Palestinians who have lived over half of a century under a brutal, ugly military occupation, who face human rights abuse every day as part of normal life.

And there are Palestinians who will see rockets indiscriminately firing and killing civilians, or attacks that may kill an Israeli who is not in the army or the military, and not understand or see that person and what that means to them and their families.

The ability to be methodologically consistent and to ensure that you're always being universal in your approach. If the faces were different and the abuses the same, would you bring the same passion and intensity to the work?

If you were not able to do that, or reach the same conclusion on similar issues in two different contexts, or if you trust one organization's reporting in one context and not another, it might suggest that there is a need to re-check your own assumptions and ensure that you really are approaching things in a way that is methodologically and ethically consistent.

Jacobsen: Thank you for the opportunity and your time, Omar.

Human Rights Watch (Israel and Palestine) on Common Rights and Law Violations

May 25, 2019

Omar Shakir is the Israel and Palestine Director for Human Rights Watch (Middle East and North Africa Division). Here we talk about rights and law violations, and more.

Scott Douglas Jacobsen: With regards to the Israeli and Palestinian conflict or issue, there are violations of international law on both sides. When these violations happen, what are common streams of international law in this conflict? How are they consistently violated?

Omar Shakir: Because Israeli authorities have occupied the West Bank, including East Jerusalem, and the Gaza Strip since 1967, international humanitarian law applies to the situation on the ground. International humanitarian law, otherwise known as the law of war or the law of occupation, provides one layer of protection to the occupied Palestinian population.

But, of course, in addition to international humanitarian law, international human rights law applies to the Israeli authorities, but also to the Palestinian authorities vis-a-vis their own populations and vis-a-vis Israelis.

Different bodies of law will apply depending on the particular circumstances. For example, when there are armed hostilities, missiles fired back and forth between the Gaza Strip and Israel, international humanitarian would apply.

It would also perpetually apply because Palestinians are protected persons. Sometimes, a particular event might trigger a different body of law. For example, when Palestinians in Gaza are protesting or even in Ramallah are protesting, and there are Israeli forces there policing the demonstration, whether across the fence with Gaza or in Ramallah, the body of law that would govern would be human rights law because that body of law applies to policing situations.

So, different bodies of law will govern. When we're talking about the Palestinian Authority dealing with its own citizens, for example, arrests or conditions of detention, that would be governed by international human rights law, because it is the obligations of a power that has some authority over people within its jurisdiction.

Jacobsen: For those who may hear the basic phrase of "right to self-defense," what does this mean in the context of the conflict? How is this typically applied in the media? But then, also, how is this properly applied within a legal context?

Shakir: The UN Charter has a prohibition against using force, except as a means to self-defense. There have been different analyses over the years on what exactly constitutes self-defense. Some argue this means only attacking when one has been attacked. Others have stretched the meaning to pre-emptive attacks at different levels of distance from imminence.

There are two main governing bodies of law. There's what you call *jus ad bellum* and *jus in bello*.

Jus ad bellum concerns the legality of using force in general. Then there is *jus in bello*, which governs how force is used in the context of conflict. Human Rights Watch itself focuses mostly on the latter. We don't generally make pronouncements on whether or not war, occupation, or the beginning of hostilities is or isn't justified.

Jus ad bellum is a body of law that's generally been underdeveloped.

Most of our focus is on when force is used: is the use of force legitimate regardless of whether the war, occupation, or hostilities itself was justified?

Most of HRW's focus is on research pertaining to abuse of all parties pertaining to the laws of war, which is, in essence, *jus in bello* versus *jus ad bellum* – which would concern a decision whether to go to war or ignite hostilities is itself justified.

Jacobsen: For those organizations like HRW, and others, covering several sides of the issue in terms of human rights violation and breaches of international law. You can get bad press from all sides.

You might get credit from one side for critiquing one side in terms of application and human rights violations and pointing out breaches of international law, and vice versa.

What would be a proper response to those who may be critiquing what seems to me like a very legitimate work that you're doing in terms of having a comprehensive perspective in the application of human rights and international law?

Shakir: Certainly, one of the most common critiques of HRW in the nearly 100 countries that we operate in across the world is one side or the other claiming that we underfocused on the other side's abuses while focusing on them. That we have a bias.

I used to cover Egypt for HRW. When we were covering the abuses of Mohamed Morsi and the Muslim Brotherhood when they were in power in 2012-2013, we were accused of being against them.

Then when there was a coup, and the military government was gunning down protestors and arbitrarily arresting thousands, we were accused of supporting the Muslim Brotherhood.

It is a similar pattern everywhere. Israel-Palestine, we have seen the same dynamic. The Israeli government says that we are biased against them.

When we released reports, as we have done for more than two decades, on arbitrary arrests by the Palestinian Authority or Hamas, or the unlawful use of force by them, we are accused by of being part of an agenda of Israel and the United States to undermine them.

Even in the last year, we have seen accusations from both Israelis and Palestinians. I think the way to respond to that is to be methodologically consistent, to use the same tools, and to document the abuses of all parties.

That doesn't mean that we have a ledger and then count how many reports we issued on each party's abuses to make sure that it is equal, because human rights abusers are not equal in the amount of the abuse that they inflict on the others.

But it means that you bring the same tenacity and bring the same seriousness and rigour and approach, and use the same tools, to measure abuse, and the consistently reach the same conclusions for the same abuses in different contexts.

That's the work that we try to do in the nearly 100 countries that we operate in, including every country in the Middle East and North Africa.

Jacobsen: Thank you for the opportunity and your time, Omar.

Ask HRW (Israel and Palestine) 1 – Recent Events

May 23, 2019

Omar Shakir is the Israel and Palestine Director for Human Rights Watch (Middle East and North Africa Division). Here we talk about Israel, Palestine, human rights, international law, and more.

Scott Douglas Jacobsen: In mid-May, what are some of the updates in some of the issues regarding Israel and Palestine, especially in light of some of the recent firings in the issue between Israel and Palestine?

Omar Shakir: Early May, we saw an escalation between Israel and armed Palestinian groups in the Gaza Strip. These resulted in 25 Palestinians being killed in the Gaza Strip and 4 Israelis were killed in Southern Israel.

The Israelis were killed, 3 of whom were killed via rockets fired indiscriminately from the Gaza Strip. Those are war crimes under international law. There was a fourth Israeli targeted by an anti-tank weapon fired apparently from the Gaza Strip.

The Palestinians were killed – 23 out of the 25 – by Israeli air strikes on the Gaza Strip. A number of those were militants belonging to different armed Palestinian groups. Two Palestinians were apparently killed when a militant rocket misfired and hit their home.

Jacobsen: For those who may not know the prior conflicts, what tends to be the proportion of those who are military targets, who are killed or injured, or those who are civilians, who are killed or injured, on the Israeli side and the Palestinian side?

Shakir: It is hard to generalize. If we look back at the 2014 war, for example, you had a situation in which you had over 2,000 Palestinians killed. You had more 1,400 who were civilians. We have seen smaller scale flare-ups, where the number of civilians killed has been far fewer than that.

I think the issue is that when raining fire down on a very densely populated area – 2,000,000 people amid a 25×7 mile territory. It is quite likely that civilian casualties are likely to result.

Jacobsen: Thank you for the opportunity and your time, Omar.

Ask HRW (Israel and Palestine) 2 – Demolitions

October 29, 2019

Omar Shakir is the Israel and Palestine Director for Human Rights Watch (Middle East and North Africa Division). Here we talk about demolitions.

Scott Douglas Jacobsen: You have a specialty. That specialty is the Israel-Palestine issue. For June 2019, what were some of the major updates in terms of human rights violations and international law breaches on all sides?

Omar Shakir: The UN reported that April, actually, saw the most demolitions in East Jerusalem in a single month in over a decade and that the first four months of 2019 saw more people displaced than all of 2018. Home demolitions that take place outside of military necessity are a serious violation of international humanitarian law.

We have continued to see the Israeli army take punitive measures towards the people of Gaza in response to alleged acts of violence by some people in Gaza, including restricting the fishing zone off of the Gaza coast that thousands of families depend on for a living, as well as restricting the entry of fuel for a number of days, which reduced electrical supply to people in Gaza at a time in which there is significant demand for electricity.

Of course, collective punishment is a serious violation of international law. These developments come in the context of a more-than-decade-long Israeli closure of Gaza, in which it has greatly restricted the entry and exit of people and goods, sweeping restrictions that are also unlawful.

Jacobsen: How have the media reported this in the Middle East, in the West, and so on?

Shakir: These developments have been overshadowed by events on the political front. Particularly, there has been a focus on an economic workshop that the United States hosted in Bahrain in late June. That they claimed was aimed at generating interest and economic development planned for Palestine.

Of course, this \$50 billion tenure plan aims to, by its own terms and power, unlock the vast potential of the Palestinian people. Yet, it says nothing about how Palestinians are disempowered today or why they're unable to unlock their potential.

The fact that that event receives significant media attention and not the developments on the ground that are the most significant barriers to economic development indicate that this economic workshop amounts to nothing more than a sideshow divorced from reality.

Jacobsen: If we're looking at the most severe crimes, what would you point to?

Shakir: The most significant barriers to economic development, for example, would be the closure of Gaza, the fact that Israel imposes a generalized travel ban on the 2 million Palestinians who are caged into a 25-by-7-mile territory. The economic development plan speaks of developing a transportation corridor to connect the West Bank to Gaza. But what good is a corridor when Israel and Egypt have effectively turned Gaza into an open-air prison?

The problem is not the lack of roads. In addition, the plan speaks of the importance of private property rights, without mentioning that the Israeli authorities have methodically stolen thousands of acres of privately-owned Palestinian land to build settlements, which are illegal under international humanitarian law, or the illegal exploitation of natural resources by the Israeli

government for the benefit of their own population, while imposing severe restrictions on how Palestinians can use these resources.

The World Bank has estimated that Israeli restrictions in particular on Area C of the West Bank cost the Palestinian economy \$3.4 billion a year. So instead of vast economic plans, throwing money at the problem, in essence, the lifting of those restrictions would do far more good for the Palestinian economy, ultimately.

Until, you take steps like ending arbitrary restrictions on movement, opening up Gaza, ending settlements, discrimination, which relate to core rights and legal principles, economic initiatives will fail ultimately. While there are many possible paths to a better future, there are none that are not centred on the dignity and respect for the rights of Palestinians.

Jacobsen: What about the targeted killings or, say, shooting at the kneecaps of journalists, medical personnel, civilians, children during, more or less, nonviolent protests?

Shakir: Every Friday Palestinian protestors in Gaza amass at the fences between Israel and Gaza. We've continued to see Israeli authorities fire live ammunition at protesters causing almost every week a significant number of serious injuries and some deaths. The number of injuries has declined in recent weeks in part, because the protests have been smaller in scale, but the policy of the Israeli government to fire on demonstrators irrespective of whether they pose an imminent threat to life, which is the standard under international human rights law, continues. It continues to guide Israel's policing of demonstrations in both the West Bank and Gaza.

Jacobsen: Of those who are maimed but not killed and then returned to Palestinian society, do they essentially become seen as parasites because they are unable, based on the disability, to contribute productively to society?

Shakir: I think, certainly, throughout the world, not unique to Palestine, there is a stigma associated with people with disabilities. In the context of Gaza, though, there is a strong collection of civil society groups though that support people with disabilities.

Israel's use of force against demonstrators has caused many people to lose a limb or otherwise experience a disability. One alarming trend we have seen is, according to the World Health Organization, in May of this past year, the Israeli army only approved 18% of their requests put forward by people injured during these demonstrations for urgent medical care outside of Gaza.

That's compared to a 61% acceptance rate for requests or permits made by other people needing medical assistance, suggesting that the Israeli authorities are punitively denying medical care to these individuals as a result of their involvement in the protests.

Jacobsen: How does racism play into this dynamic of the conflict or the issue?

Shakir: Israel today maintains discriminatory systems that treat Palestinians unequally, whether they be Palestinians who are occupied in the West Bank and the Gaza Strip or those that Israel annexed in East Jerusalem or those who are citizens of Israel, or refugees denied their internationally recognized right to return. The reality is, Israel's nation-state law passed in 2018 reflects what has guided Israeli policy for years and dedicates the state as a constitutional mandate to the supremacy of Jewish Israeli over other people living here.

That policy manifests itself in the discriminatory policies towards Palestinians on issues like access to land, freedom of movement for Palestinians in the West Bank and the Gaza Strip, the

security of legal status, and marriage laws. It permeates almost every aspect of Israeli policy and everyday life.

Jacobsen: If we're looking into July, what trends will very likely continue?

Shakir: On a month-to-month basis, for the duration of Israel's more than 52-year-long occupation, the trends, unfortunately, look similar on a month-to-month basis: on the Israeli side, continuing expansion of settlements which are illegal under international law, demolitions of Palestinian homes for lacking a permit which are nearly impossible to obtain in East Jerusalem and in the majority of the West Bank under Israeli control, and, in Gaza, the maintaining of the closure policy and the generalized ban on travel. There are many others on the Palestinian side. We continue to document arbitrary arrests by the Palestinian Authority and by Hamas authorities, and mistreatment and even torture of detainees in detention. It's quite likely those trends will continue.

Jacobsen: If academics want to research this in a very frank and honest light, what has happened in the past to their careers?

Shakir: I mean, look, it's difficult to paint with a broad brush. Certainly, contexts differ from country to country. There are many academics that have published research and analyses that are critical of Israeli government policies. Certainly, there have been some academics who have been penalized, punished, apparently, in reaction to their scholarly work or political work critical of the Israeli occupation. So, it really depends on the country and the context.

Jacobsen: What are some glimmers of hope?

Shakir: I think the reality here is human rights groups on the ground, Israeli, Palestinian, international alike, continue to document rights abuses and principally insist on respect for international law, despite the shrinking of civil society space. I think there are indications that public opinion on some of these issues are shifting in key places.

There also are a number of important initiatives under consideration by the international community from the preliminary examination from the International Criminal Court to the UN Office of the High Commission for Human Rights mandated to publish a database of businesses that operate in settlements to efforts by some European countries to push back against settlement policies, including criticizing and even in some cases insisting for compensation for structures they funded being demolished in East Jerusalem and Area C. I think the fact that human rights advocacy continues despite the sustained assault by the Israeli government and its supporters on it is a hopeful sign.

Jacobsen: Any final feelings or thoughts in conclusion based on the conversation today for this session?

Shakir: Thank you for having me. I think you covered quite a bit.

Jacobsen: Thank you for the opportunity and your time, Omar.

Shakir: All right, Scott. Take care.

Jacobsen: Take care.

Ask HRW (Israel and Palestine) 3 – November-December: Deportation from Tel Aviv, Israel for Human Rights Watch Israel and Palestine Director

December 25, 2019

Omar Shakir, J.D. works as the Israel and Palestine Director for Human Rights Watch. He investigates a variety of human rights abuses within Occupied Palestinian Territory (Gaza and the West Bank) and Israel. He earned a B.A. in International Relations from Stanford University, an M.A. in Arab Studies from Georgetown University's School of Foreign Affairs, and a J.D. from Stanford Law school. He is bilingual in Arabic and English. Previously, he was a Bertha Fellow at the Center for Constitutional Rights with a focus on U.S. counterterrorism policies, which included legal representation of Guantanamo detainees. He was the Arthur R. and Barbara D. Finberg Fellow (2013-2014) for Human Rights Watch with investigations, during this time, into the human rights violations in Egypt, e.g., the Rab'a massacre, which is one of the largest killings of protestors in a single day ever. Also, he was a Fulbright Scholar in Syria.

Duly note, the Question of Palestine continues since April of 1947. On November 22 of 1974, in resolution 3236 (XXIX) of the United Nations General Assembly, the inalienable rights of the Palestinian people were "reaffirmed" with specifications on the "right to self-determination without external interference; the right to national independence and sovereignty; and the right of Palestinians to return to their homes and property, from which they had been displaced and uprooted" (United Nations, 2019; United Nations General Assembly, 1974). With November 10 of 1975 resolution 3376 (XXX), in the United Nations General Assembly, there was the establishment of the Committee on the Exercise of the Inalienable Rights of the Palestinian people with a request for a systematic set of recommendations on the implementation of the enabling of the rights of the Palestinian people (United Nations General Assembly, 1975).

Here we continue with the third part in our series of conversations with updates on November and December of 2019 between Israel and Palestine, and the recent decision of the Israeli Supreme Court to deport Shakir, which resulted in having to work, eventually, in Amman, Jordan at the time of the third session.

Interview conducted on December 15, 2019.

Scott Douglas Jacobsen: We have been doing, more or less, something like an intermittent educational series with updates on some of the activities of the Israel-Palestine issue.

How have things been characterized in November-December so far? It is midway through December on the 15th.

Omar Shakir: The most significant human rights event of November-December would have to be the escalation between Palestinian armed groups in Gaza and the Israeli army in mid-November of 2019, which involved both Israeli airstrikes that killed more than two dozen Palestinians in Gaza, including a number of members of armed Palestinian groups, but also a number of civilians.

Armed Palestinian groups also fired hundreds of rockets towards Israeli population centres that injured more than 75 Israelis. These are indiscriminate attacks that are war crimes. Those hostilities, of course, raised a number of other human rights issues.

Of course, elsewhere, we have continued to see home demolitions take place, the number of which has risen in 2019 (See: [Ask HRW \(Israel and Palestine\) 2 – Demolitions](#)). So, those have been among the many human rights issues that we have continued to see take place in Israel and Palestine over the last six weeks.

Jacobsen: As a result of some of the reportage through Human Rights Watch, you have been critiqued lightly in some ways and heavily in others (Al-Jazeera, 2019; Kuttab, 2019; Safi, 2019). This can come with state-based consequences when you were living in Jerusalem. What happened there?

Shakir: The Israeli government for more than two and a half years now has sought to restrict Human Rights Watch's access to Israel and the Occupied Palestinian Territory. Of course, for more than a decade, it effectively blocked our access into Gaza, except for allowing us to enter on an exceptional basis in 2016.

However, in February 2017, the Israeli government denied Human Rights Watch a permit to hire a foreign employee to work from Israel and the occupied West Bank. Amid public pressure, they eventually reversed the decision and gave the organization a work permit.

I received a work visa under that. But in May of 2018, Israel revoked my work visa. We challenged that decision in court. In early November of this year, the Israeli Supreme Court upheld the government's deportation order.

I was deported on November 25th, 2019 as a result of my human rights advocacy. This event comes amid many other efforts, systematic efforts, to muzzle human rights defenders. They come at a time in which many other international rights advocates have been denied entry.

A time in which Israeli and Palestinian human rights defenders are maligned, face restrictions on their ability to receive funding, and have faced arrest, or received travel bans, amid many other punitive measures.

But the case also marked a dangerous escalation— because not only did the Supreme Court put its stamp on the government's effort to clamp down on human rights advocacy, but the Israeli government went further in using allegations in support of boycotts to effectively say that mainstream human rights advocacy – in our case, calling on businesses to refrain from contributing to rights abuse, which is the kind of work that we do in 100 countries around the world – is grounds for denying entry to and deporting a representative of one of the largest human rights organizations. This sort of action could not only precipitate further denials of entry and deportations, but could be used to also restrict or close Israel's doors to other critics and to further restrict Israeli and Palestinian human rights defenders who, themselves, engage in very similar work.

Jacobsen: What other types of states are known for this kind of activity?

Shakir: Human Rights Watch works in over 100 countries across the world. This is the first time a country that calls itself a democracy has deported or blocked access to one of our staff members.

In so doing, Israel joins a club of countries like Venezuela, Cuba, North Korea, Egypt, and others, who have blocked access to Human Rights Watch staff. Israel can aspire to join countries

like Uzbekistan, the DRC, and Ethiopia who expelled our researcher and, eventually, allowed us back into the country.

Israel claims to be the region's only democracy, but, at the same time that I have been expelled from Israel, we have offices in Jordan, Lebanon, Tunisia where foreign colleagues work from. I am speaking to you, now, from Amman. I am continuing to cover Israel and Palestine alongside my team on the ground.

I think this highlights not only the government's attack on human rights advocacy, but also its larger disdain for basic international norms.

Jacobsen: Whether you are allowed back into the country to continue your human rights work through Human Rights Watch (Human Rights Watch, 2019a; Human Rights Watch, 2019b), or not, what does this do in terms of the image of Israel as a state over the long haul?

Shakir: The world saw through the Israeli government's explanations here. The world saw this as an attack on the human rights movement. The reality is that the Israeli Foreign Ministry long opposed my deportation, because it knew that it would hurt Israel's image.

But Israel's image is primarily hurt by the fact that it continues to systematically abuse the rights of Palestinians. The best answer to that is to stop abusing the human rights of Palestinians. The attacks on human rights defenders must be seen in the larger context of a more than half a century occupation [Ed. 52 years now] that is defined by institutional discrimination and systematic abuses of the rights of Palestinians.

Jacobsen: Have other researchers or human rights defenders been deported from Israel (rather than an organizational representative)?

Shakir: This is the first time that the Israeli government used a 2017 amendment to the law of entry [Ed. Amendment No. 28 to the Entry Into Israel Law from March 6 of 2017] that permits it to deny entry to people that they allege support the Boycott, Divestment and Sanction movement (UNODC, 2017).

We will continue to do in Israel and Palestine the same work that we have done with our team of local researchers on the ground in close coordination with our Israeli and Palestinian partners.

Of course, the larger impact of this decision is that this limits our ability to engage authorities – Israeli and Palestinian, which is much more easily done face-to-face on the ground.

We will continue to engage them by phone, but that certainly makes things more complicated. Also, it limits the access of Israeli and Palestinian rights groups and human rights victims themselves to Human Rights Watch.

But we are determined to compensate for that in different ways. We also have a team of researchers without portfolio, which can be deployed under my supervision when needed to supplement our documentation on the ground.

So, the work won't stop; the advocacy won't stop. We will be as committed as always to human rights in Israel and Palestine, as we are around the world.

Jacobsen: Thank you very much for the opportunity and your time, Omar.

Shakir: Thanks so much, take care.

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Ask HRW (Israel and Palestine) 4 – Uninhabitable: The Viability of Gaza Strip’s 2020 Unlivability

March 20, 2020

***Omar Shakir, J.D., M.A.** works as the Israel and Palestine Director for Human Rights Watch. He investigates a variety of human rights abuses within the occupied Palestinian territories or oPt (Gaza and the West Bank) and Israel. He earned a B.A. in International Relations from Stanford University, an M.A. in Arab Studies from Georgetown University’s School of Foreign Affairs, and a J.D. from Stanford Law school. He is bilingual in Arabic and English. Previously, he was a **Bertha Fellow** at the Center for Constitutional Rights with a focus on U.S. counterterrorism policies, which included legal representation of Guantanamo detainees. He was the **Arthur R. and Barbara D. Finberg Fellow** (2013-2014) for Human Rights Watch with investigations, during this time, into the human rights violations in Egypt, e.g., *the Rab’a massacre*, which is one of the largest killings of protestors in a single day ever. Also, he was a **Fulbright Scholar** in Syria.*

Here we continue with the fourth part in our series of conversations with coverage of some of the real responses to this and prior work with Shakir, and then some updates on the end of December of 2019 and the first half of January of 2020 for Israel and Palestine. As a note, with the deportation of Shakir based on the decision of the Israeli Supreme Court, Shakir, for this session, works from Amman, Jordan.

Interview conducted on January 12, 2020.

Scott Douglas Jacobsen: Based on some of the interviews we’ve done (Jacobsen, 2019a; Jacobsen, 2019b; Jacobsen; 2019c; Jacobsen, 2019d; Jacobsen, 2019e; Jacobsen, 2019f), and some of the more extensive work you’ve done through Human Rights Watch (HRW) on Israel and Palestine regarding human rights violations on all sides (Human Rights Watch, 2019c), you can get peripheral critiques, or *ad hominem*, i.e., “Ad hominem: This is an attack on the character of a person rather than his or her opinions or arguments,” or red herrings, i.e., “Red Herring: This is a diversionary tactic that avoids the key issues, often by avoiding opposing arguments rather than addressing them” (Purdue University, 2020). One can be standard. For instance, if you critique human rights violations by Israel or Israeli policy, you can be labelled anti-Semitic. What is generally the context for that charge? What is an appropriate response?

Omar Shakir: Anti-Semitism is a serious problem around the world, but to conflate criticism of Israeli policy or human rights documentation with anti-Semitism is to undermine what is a really serious societal ill (United Nations, 2019b). The reality is Human Rights Watch covers human rights abuses in over 100 countries around the world [Ed. HRW states, “Our researchers work in the field in 100 some countries, uncovering facts that create an undeniable record of human rights abuses” (Human Rights Watch, 2020b)]. We use the same methodologies in every country in which we work in. Often times, abuse of governments and their supporters instead of dealing with the substance of our work and our documentation will instead attack the messenger and assert claims of bias, as a way to attempt to shift attention from the underlying human rights abuse. But this strategy has failed around the world. Folks understand that concerns about

human rights abuse stems from a desire to improve the lives and the respect for the human dignity of all peoples.

Jacobsen: How does this cheapen real charges of anti-Semitism against those who are victimized by that kind of prejudice?

Shakir: It undermines the fight, the necessary fight, against all forms of racism, including anti-Semitism, to conflate Israeli policy with that societal ill. The reality is that human rights documentation in any context and advocacy for protection of human rights is an attempt to protect the rights of all people, including the right to be free from discrimination of all forms, including anti-Semitism.

Jacobsen: Another one that came my way. The idea that you have Arab ethnic heritage and, therefore, you are biased against Israel or likely to be biased. Is this along the same lines of a red herring-*ad hominem*?

Shakir: Absolutely, we have researchers of diverse backgrounds at Human Rights Watch. Often, we have a person from the country who is covering that country. Of course, I'm neither Israeli or Palestinian. My predecessor was Jewish Israeli. Our methods are the same regardless of the identity of the particular researcher. To assert that someone because of their background is more or less able to do the research is a real reductionist argument. It is important to also note the research of Human Rights Watch is not the work of one person. We are an organization with a review process that goes through, at least, four other people. So, everything that goes out of the organization has been vetted to ensure that it meets the rigorous research standards, and that it applies through all the work of Human Rights Watch.

Jacobsen: For others, they mentioned not referencing Hamas attacks or other attacks against Israelis. I think that one is straightforward. They can look at other content that we have produced [Ed. Shakir stated, "Armed Palestinian groups also fired hundreds of rockets towards Israeli population centres that injured more than 75 Israelis. These are indiscriminate attacks that are war crimes. Those hostilities, of course, raised a number of other human rights issues" (Jacobsen, 2019f). Also, Shakir, in another session, stated, "It is a similar pattern everywhere. Israel-Palestine, we have seen the same dynamic. The Israeli government says that we are biased against them. When we released reports, as we have done for more than two decades, on arbitrary arrests by the Palestinian Authority or Hamas, or the unlawful use of force by them, we are accused... of being part of an agenda of Israel and the United States to undermine them. Even in the last year, we have seen accusations from both Israelis and Palestinians. I think the way to respond to that is to be methodologically consistent, to use the same tools, and to document the abuses of all parties" (Jacobsen, 2019c)]. They're pointing to the idea that people reading this series will only come out with the idea that Israel is a colonialist, racist nation. I think we have covered this in other sessions.

Shakir: Our documentation looks at abuses committed by all actors in Israel and Palestine. Take 2019, we issued a report that called the firing of indiscriminate rocket attacks by Palestinian groups war crimes (Human Rights Watch, 2019c). Also, we released a report documenting systematic, arbitrary arrest, mistreatment, and torture of people in detention by both the Palestinian authority and the Hamas authorities in the Gaza Strip. We regularly do this. Not because we are trying to create a "balance," but because the reality of human rights abuse on the

ground is that it is committed by a range of actors – not solely Israelis, not solely Palestinians. Our work covers the range of different actors involved in human rights abuse.

Jacobsen: The last one on the list was labelling some of the work you’ve been reporting on to me as irresponsible propaganda [Ed. “irresponsible propaganda” against Israel]. Maybe, we can focus on the ways in which many international respectable rights organizations are coming to the same conclusions as Human Rights Watch.

Shakir: Human Rights Watch regularly does thorough, meticulous investigations speaking to a range of different witnesses of different backgrounds, consulting and seeking to corroborate all our findings with physical evidence and video evidence, a range of different sources, opinions of all stakeholders. Our research and conclusions, often, are reaching similar results as those reached by Israeli, Palestinian or other international human rights organizations. I think, an easy way to dismiss an argument instead of dealing with the substance is to attach a label on it rather than delving into the substance in depth.

Jacobsen: Thank you, let’s delve more substantively into current events. As we are moving close to the second half of January in 2020, what are some of the important updates on the Israeli side and the Palestinian side?

Shakir: Let’s start with the Gaza Strip. The United Nations put out a report a few years ago saying that Gaza would be unlivable by 2020 (United Nations Relief and Works Agency, 2012; Macintyre, 2019; Belousha & Berger, 2019; Baroud, 2020). As we turn the page into a new decade, Gaza continues to be on the brink. Economically, 80% of the population relies on humanitarian aid (United Nations Office for the Coordination of Humanitarian Affairs, 2015), unemployment figures hover around 50% (Estrin, 2018), and are even higher for women and for youth. Gaza continues to be in a process of de-development with a GDP per capita lower than it was 25 years ago [Ed. “Since 1994, Gaza’s per capita GDP has shrunk by 23 per cent” (United Nations Conference on Trade and Development, 2017)]. That reality continues. In the West Bank, of course, we are in the 53rd year of the occupation [Ed. “It is the longest occupation in recent history” (Ibid.)]. We see, now, a new Defense Minister [Ed. The Minister of Defense for Israel is Naftali Bennett (Knesset, 2020).] who has reiterated the desire to not only continue the systematic abuses, but, in fact, accelerate the construction of illegal settlements in the West Bank, as well as to facilitate and increase demolition of Palestinian homes and other structures (Kubovich, 2020; Lazaroff, & Toameh, 2020; Japan Times, 201). In 2019, we saw alarming figures regarding demolitions of homes in East Jerusalem and elsewhere in the occupied West Bank (Jacobsen, 2019e). I think these are among the significant developments. Of course, while much of the focus is on Israeli elections (Jerusalem Post, 2020), we continue to see the government double down on abusive policies (Human Rights Watch, 2019a). None of the major political parties are articulating an alternative vision.

Jacobsen: On the issues of unlivability in 2020, what are the most significant issues regarding that? What are the most pressing ones, e.g. around clean water?

Shakir: I think the most significant are limited access to clean water, limited or restricted access to electricity, and the larger humanitarian considerations that come with caging 2 million people in a 25 x 7 mile or 40 x 11 kilometre strip of land for more than a decade (Human Rights Watch, 2019c; Human Rights Watch, 2020a). That creates environmental and other issues. It is not a

sustainable model. Much less, one that safeguards the rights entitled to the Palestinian population living in Gaza.

Jacobsen: Are there any comments or updates on the blockade?

Shakir: The blockade continues into its 12th year (The Editors of Encyclopaedia Britannica, 2019b). The Israeli government continued in 2019 a policy, where punitively in response to actions by armed groups or hostilities will, at times, further tighten the noose, e.g., restricting the access of fishermen off the coast of Gaza, access to the sea, or closing its crossing for the movement of people and/or goods, occasionally restricting export and import of goods. Otherwise, the ongoing policy, which is, in essence, a generalized travel ban of the people in Gaza outside of a narrow set of exemptions, continues to be in place (Human Rights Watch, 2019c; Human Rights Watch, 2020a). As well, there are restrictions on what goods can be exported out of Gaza, including to the occupied West Bank, which is part of the singular territorial entity, or to the outside world.

Jacobsen: What has been reported as the single most significant thing that could be done to improve the livelihood and the livability of Gaza?

Shakir: I think there's no question. The single thing that must be done is to end the sweeping, unlawful restrictions on the movement of people and goods. The reality here is that movement of people and goods is key to developing the economy of Gaza and increasing the capacity of Gaza's population, which is urban, highly educated. There are, of course, many other steps that can be taken by the Egyptian government, which controls one of the crossings out of Gaza, and the Palestinian Authority and Hamas, which have a degree of control. The single most important thing would be to end the closure. That does not mean to open the borders to all goods and traffic into Israel. Of course, Israel can enact some restrictions in the name of security, but a broad, sweeping, generalized ban that only lets people on an exceptional basis is unlawful. Rather, the baseline should be free movement with restrictions on individual movement on specific cases, where Israel has demonstrated a legitimate security concern.

Jacobsen: What about North American and Western European backing of Israel that permits the continuance of things like the blockade or the rights violations?

Shakir: I think the international community has failed to use its power and leverage to restrain Israeli rights abuses. Of course, we have the U.S. Administration under President Trump that has gone even further from the historic U.S. position of failing to use its leverage to stop rights abuse, to greenlighting and, in some cases, even being directly complicit in rights abuse. With Europe, there have been, at times, strong statements of concern, but a failure to take or support actions that would, in fact, deter rights abuse. Not only by the Israeli government, mind you, but also with regards to its support to Palestinian security agencies. There is a need for concrete action, including supporting efforts around accountability through the International Criminal Court, actions such as at the U.N. with a database of businesses being compiled the U.N. High Commissioner of the businesses operating in settlements (Zeyad, 2019). These are the sort of actions that are needed for there to be real change in the systematic rights abuse that we see year and after.

Jacobsen: As I am speaking from Canadian response, what has been the Canadian response?

Shakir: I think the Canadian government's response has shifted and changed through different governments (Government of Canada, 2019). Canada has of late often voted alongside the United States, making it among the handful of nations that will fail to support resolutions that reiterate basic principles of international law or call for common sense statements or actions regarding unlawful policies. Canada is among that governments that sometimes fail to even endorse consensus international positions on a range of issues; much less, taking action on Israeli abuses.

Jacobsen: Where do you think things are going for the rest of January?

Shakir: With the focus on Israeli elections on the Israeli side, we will likely continue to see sharpened rhetoric, particularly around annexation, settlement expansion, home demolitions, as we have seen in the previous election cycles. The one-upmanship among different political forces at the expense of Palestinian lives. On the Palestinian side, there is clearly pressure around holding elections, but there appears to be lack of will by both Hamas and the Palestinian Authority to move to elections. Stagnation, as has been the case for some time now, will likely continue.

Jacobsen: Thank you for the opportunity and your time, Omar.

Shakir: Thanks, Scott.

Previous Sessions (easier access than References, in chronological order)

[Interview with Omar Shakir – Israel and Palestine Director, Human Rights Watch \(Middle East and North Africa Division\)](#)

[HRW Israel and Palestine \(MENA\) Director on Systematic Methodology and Universal Vision Human Rights Watch \(Israel and Palestine\) on Common Rights and Law Violations](#)

[Ask HRW \(Israel and Palestine\) 1 – Recent Events](#)

[Ask HRW \(Israel and Palestine\) 2 – Demolitions](#)

[Ask HRW \(Israel and Palestine\) 3 – November-December: Deportation from Tel Aviv, Israel for Human Rights Watch Israel and Palestine Director](#)

Addenda

[Ask HRW \(Israel and Palestine\) Addendum: Some History and Contextualization of Rights](#)

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Ask HRW (Israel and Palestine) 5 – The Trump Peace Plan: Is This the “The Deal of the Century,” or Not?

March 26, 2020

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Here we continue with the 5th part in our series of conversations with coverage on regular updates, the American context for the Israelis and the ongoing human rights issues, the release of the American peace plan, the reactions of the international community, the release of the U.N. Database of Settlement Companies, and some clarification on claims about relations between HRW and Interdisciplinary Center (IDC) Herzliya. As a note, Shakir’s work permit revoked based on the decision of the Israeli Supreme Court in late 2019 (Krauss, 2019). One can see similar actions with travel bans, ongoing, against others, including Amnesty International staff member Laith Abu Zeyad (Amnesty International, 2019a; Zeyad, 2019; Amnesty International, 2020). Reps. Rashida Tlaib and Ilhan Omar were subject to being barred from entry (Romo, 2019). Dr. Noam Chomsky was denied entry, previously (Hass, 2010). Dr. Norman Finkelstein was deported in the past (Silverstein, 2008). With the deportation of Shakir based on the decision of the Israeli Supreme Court, Shakir, for this session, works from Amman, Jordan.

Interview conducted on February 17, 2020.

Scott Douglas Jacobsen: In the previous session, Session 4, we covered some of the feedback and responses coming my way (Jacobsen, 2020a; Jacobsen, 2020b). However, I can see some of these coming probably to others covering similar human rights abuses and violations of international law [Ed. Shakir noted, in “Human Rights Watch (Israel and Palestine) on Common Rights and Law Violations,” the following, “It is a similar pattern everywhere. Israel-Palestine, we have seen the same dynamic. The Israeli government says that we are biased against them. When we released reports, as we have done for more than two decades, on arbitrary arrests by the Palestinian Authority or Hamas, or the unlawful use of force by them, we are accused... of being part of an agenda of Israel and the United States to undermine them. Even in the last year, we have seen accusations from both Israelis and Palestinians” (Jacobsen, 2019)]. Now, people can reference that if any concerns regarding some of these secondary concerns. For February 17th, what are some updates on the Israeli side? And then we can move into some other questions, basically, in a logical progression here.

Omar Shakir: Sure, I think, the most significant newsworthy development has been the release of Trump’s “Deal of the Century” and reactions for what it might mean in terms of the human rights situation on the ground affecting Israelis and Palestinians (White House Staff, 2020; Heller & Lee, 2020; Daraghmeh & Akram, 2020).[1] That plan unveiled in late January (White House Staff, 2020). Of course, it elicited a wide range of responses in the international community.[2] And, of course, within Israel and Palestine, that in conjunction with statements made by the Palestinian Authority, as well as the build up to the Israeli election, has been among the more significant developments (Krauss, & Daraghmeh, 2020).[3] Obviously, while these are political considerations, the ramifications for human rights are rather significant (Jacobsen, 2020b).

Jacobsen: **Has the American context for relations with Israel, basically, since the inception of this particular human rights issue (Ibid.) been central to human rights issues down the line, whether indirectly or directly in other words?**

Shakir: Sure, Americans for much of the past quarter century have played a leading role in negotiations between the Israelis and the Palestinians. The United States has never been an honest broker.[4] It has always taken the Israeli side and frequently turned a blind eye to its human rights abuses or would underplay their prominence (Jacobsen, 2020b). Under this U.S. Administration, we have seen a shift in the United States, as it has greenlighted and, in some cases, is complicit in Israeli human rights abuses on the ground (Lederer & Sanminiatelli, 2019). This plan, while departing from U.S. positions on a number of issues, lays bare what the peace process has become: a fig leaf for Israel’s discriminatory rule over Palestinians from the Jordan River to the Mediterranean Sea (White House Staff, 2020; Lederer & Sanminiatelli, 2019). There are many possible paths to peace that ensure a better future for Israelis and Palestinians, but none that are not rooted in the dignity and rights of those on the receiving end of any peace deal (Jacobsen, 2020b).

Jacobsen: **When this was released on the 28th of January, no Palestinian representatives were present (Heller & Lee, 2020). However, the Prime Minister of Israel, Benjamin Netanyahu, was present in terms of a press conference with President Donald Trump (Ibid.). Is this in line with the obvious message being sent?**

Shakir: Of course, the United States government under the Trump Administration has taken a series of steps that are intended or have the effect of utterly decimating organized Palestinian politics, and the institutions that work on issues related to Palestinians, as well as the issues themselves, but it goes beyond the optics of having only one side present (Lederer & Sanminiatelli, 2019). I think this plan takes the status quo, which is a reality that can be characterized by institutional discrimination, systemic repression of Palestinians, and serious human rights abuses, and calls it its final solution (Human Rights Watch, 2019a; Human Rights Watch, 2019b). It strives to make permanent a one-state reality in which 14 or so million people, about half of whom are Israeli or Palestinian, live in the area between the Jordan River and the Mediterranean Sea with Palestinians treated unequally.[5] This would make permanent this reality and facilitate Israeli annexation of the West Bank and allow it to, in essence, maintain full domination and control over Palestinians and its abusive system of control over them (The Associated Press, 2020a; Krauss & Daraghmeh, 2020).

Jacobsen: **How are American allies reacting to the release of this? Is it complacency or explicit support in many cases?**

Shakir: There has, of course, been a mixed response in the international community (Daraghmeh & Akram, 2020). I think, on one hand, there is a desire by many states for a political process in a context where for a number of years in which there has been little movement. I also think there has been a widespread rejection of the way in which this proposal undermines international law (Lederer & Sanminiatelli, 2019; Daraghmeh & Akram, 2020). Of course, any process should be open to different and new ideas, but this proposal does nothing more than entrench an abusive, discriminatory status quo. But I think you have seen some interesting developments. You have seen a rejection of the plan by significant blocs of states, including the European Union (Emmott, 2020), the League of Arab States [6] (Fahmy, el-Din, & Laessing, 2020), the Organization of Islamic Cooperation [7] (Kalin & Abdullah, 2020), among others. You have also seen the European Union and some states in Europe make clear that any future resolution should be rooted in the equal rights of all people [8] (United Nations, 1948; Jacobsen, 2020b), which, while a straightforward notion, has not been the sort of language and framing that has been used in this context. I think it underlies the basic reality that Israel cannot continue to use the logic of occupation to justify the mass suspension of basic Palestinian rights (Jacobsen, 2020b). There have been some states (Daraghmeh & Akram, 2020) that have reacted more positively to this initiative, but, at the same time, I think the overall trend has been a rejection of the attempt to liquidate core rights for Palestinians (Human Rights Watch, 2019a; Human Rights Watch, 2019b; Jacobsen, 2020b).

Jacobsen: How are the conversations taking place over time since the 28th [9] in the Gaza Strip, in the West Bank?

Shakir: Look, I think for many Palestinians this plan is nothing new. [Laughing] It is the reality that they have lived under for more than half of a century of ugly occupation characterized by entrenched discrimination and serious rights abuse (Human Rights Watch, 2019a; Jacobsen, 2020b). Polling data indicates that 90%+ of Palestinians reject the plan (The Associated Press, 2020b). [10] There have, certainly, been demonstrations and uses of force by Israeli security forces against demonstrators (Daraghmeh & Akram, 2020; Goldenberg, 2020). There have also been more violent attacks by Palestinians against Israeli security forces and civilians (Akram, 2020; Krauss, 2020a; Krauss, 2020b; The Associated Press, 2020c). We have seen a range of different reactions (Lederer & Sanminiatelli, 2019; Krauss & Daraghmeh, 2020; Daraghmeh & Akram, 2020; Heller & Lee, 2020). I think Palestinians understand this plan for what it is: an attempt to make permanent the discriminatory status quo (The Associated Press, 2020b).

Jacobsen: The U.N. also recently released a list of companies, 112 [11] [Ed. Countries with companies on the listing (number of companies in parentheses per country): France (3), Israel (94), Luxembourg (1), Netherlands (4), Thailand (1), United Kingdom (3), United States of America (6) (U.N. Human Rights Council, 2020).], who are doing business on Israeli settlements in the West Bank (Nebhay, 2020; Federman, 2020; Federman & Keaten, 2020). What does this mean for this similar discourse of rights violations through the annexation of land? What are the particular types of rights violations in this reportage?

Shakir: The long-awaited release of the U.N. Database of Settlement Companies should really put companies on notice: to do business with illegal settlements is to aid in the commission of war crimes (U.N. Human Rights Council, 2020). [12] Companies have hid for too long behind the idea of these issues as too controversial or complex as a way to excuse their direct contribution to rights abuses. The underlying reality is that settlements are not only a violation of the Fourth

Geneva Convention and a war crime (Diplomatic Conference of Geneva, 1949; Amnesty International, 2019b).[13] They also entail systematic abuses to the rights of Palestinians. Settlements are built on land confiscated, stolen, from Palestinians (Amnesty International, 2019b). In order to maintain the settlement enterprise, Israel has erected a two-tiered discriminatory system[14] in the West Bank that treats Palestinians separately and unequally (Human Rights Watch, 2010). Companies that do business in settlements not only further entrench the illegal settlement enterprise, but they actually profit from the theft of Palestinian land and contribute to the further dispossession of Palestinians.[15] I think the release of this database is an important step towards ensuring transparency around these activities, but also towards protecting human rights, not only of Palestinians, but setting a precedent that can be used in other contexts to improve the standards around business and human rights.

Jacobsen: Is there a project ongoing with the Interdisciplinary Center Herzliya (2020a)? Is there a partnership between HRW and IDC Herzliya in terms of a rule of law project called “Reconnect” (Cronin, 2020)?

Shakir: No, there isn't. The RECONNECT project is a multidisciplinary research project focusing on rule of law in Europe (2020b). It involves several universities and academic institutions. The international advisory board, on which one Human Rights Watch staff member serves in her private capacity, is solely linked to the RECONNECT project (IDC Herzliya, 2020c), and it does not involve any dealings with the individual academic institutions and their individual programs, curricular, research etc.

Jacobsen: Have there been any force or military engagements in the last month as well?

Shakir: There have been, of course, in the aftermath of the U.S. plan. There have been demonstrations. There have been instances, certainly, of Israel in keeping with its practice of apparently using excessive force and policing operations in East Jerusalem and along the fences separating Gaza and the West Bank. Those practices, certainly, have continued. There have also been instances in emanating from Gaza and the West Bank of Palestinians using violence that affected civilians. So, those have continued in line with the practices that have been documented before.

Jacobsen: Thank you for the opportunity and your time, Omar.

Shakir: Bye now.

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Footnotes

[1] In terms of the presence at an announcement or an unveiling of the “Deal of the Century,” the Mideast plan, the Trump peace plan, or the release of the publication entitled “Peace to Prosperity: A Vision to Improve the Lives of the Palestinian and Israeli People,” it was reported by the *Associated Press*:

“It’s going to work,” Trump said, as he presented the plan at a White House ceremony filled with Israeli officials and allies, including evangelical Christian leaders and wealthy Republican donors. Representatives from the Arab countries of Bahrain, Oman and the United Arab Emirates were present, but there were no Palestinian representatives [emphasis added].

See Heller & Lee (2020).

[2] The *Associated Press* stated:

Palestinian President Mahmoud Abbas said “a thousand no’s” to the Mideast peace plan announced Tuesday by President Donald Trump...

... “We are certain that our Palestinian people will not let these conspiracies pass. So, all options are open. The (Israeli) occupation and the U.S. administration will bear the responsibility for what they did,” senior Hamas official Khalil al-Hayya said as he participated in one of several protests that broke out across the Hamas-ruled Gaza Strip...

...EU foreign policy chief Josep Borrell said Trump’s initiative “provides an occasion to re-launch the urgently needed efforts towards a negotiated and viable solution” to the conflict...

...U.N. Secretary-General Antonio Guterres said the United Nations supports two states living in peace and security within recognized borders, on the basis of the pre-1967 borders, according to his spokesman...

...Saudi Arabia said it appreciated the Trump administration’s efforts and encouraged the resumption of direct talks between Israel and the Palestinians “under the auspices of the United States...”

...Jordan, meanwhile, warned against any Israeli “annexation of Palestinian lands” and reaffirmed its commitment to the creation of a Palestinian state along the 1967 lines, which would include all the West Bank and Israeli-annexed east Jerusalem...

...Egypt urged Israelis and Palestinians to “carefully study” the plan and said it appreciates the administration’s efforts.

See Daraghmeh & Akram (2020).

[3] The *Associated Press* stated:

The Palestinian Authority in the West Bank also has adamantly rejected the plan [emphasis added], which would allow Israel to annex all of its settlements and large parts of the West Bank, leaving the Palestinians with limited autonomy in an archipelago of enclaves surrounded by Israel.

See Krauss & Daraghmeh (2020).

[4] The *Associated Press* stated:

Palestinian President Mahmoud Abbas took to the world stage on Thursday to slam the United States for “depriving the peace process of any credibility” and undermining prospects for a two-state solution to the decades-old Israeli-Palestinian conflict.

In a speech before the U.N. General Assembly, Abbas also criticized the U.S. for recognizing Jerusalem as Israel’s capital, for saying that Israeli settlements in the Palestinian territories are legitimate and for cutting development aid to the Palestinians.

U.S. policy, he said, is “pushing large segments of the Palestinian people to lose hope in the possibility of long-awaited peace,” and renewed his call for an international peace conference.

See Lederer & Sanminiatielli (2019).

[5] This differs from the United Nations stance up to the U.N. Secretary-General making the stance explicit as recent as early 2020. The *Associated Press* stated:

U.N. Secretary-General Antonio Guterres said the United Nations supports two states living in peace and security within recognized borders, on the basis of the pre-1967 borders, according to his spokesman.

“The position of the United Nations on the two-state solution has been defined, throughout the years, by relevant Security Council and General Assembly resolutions by which the Secretariat is bound,” the spokesman, Stephane Dujarric, said.

See Daraghmeh & Akram (2020).

[6] *Reuters* stated:

The Arab League rejected U.S. President Donald Trump’s Middle East peace plan [emphasis added] at a meeting of foreign ministers in Cairo on Saturday, saying it would not lead to a just peace deal.

The Arab League will not cooperate with the United States to execute the plan, a communique said. Israel should not to implement the initiative by force, it said.

See Fahmy, el-Din, & Laessing (2020).

[7] *Reuters* stated:

The Organization of Islamic Cooperation said on Monday it rejects U.S. President Donald Trump’s Middle East peace plan [emphasis added].

The 57-member organization which held a summit to discuss the plan in Jeddah said it “calls on all member states not to engage with this plan or to cooperate with the U.S. administration in implementing it in any form”.

See Kalin & Abdullah (2020).

[8] The United Nations stipulated:

...recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...

...THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations...

...All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood...

...Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other

opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty...

...All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

See United Nations (1948).

[9] The “Deal of the Century” or the “Peace to Prosperity: A Vision to Improve the Lives of the Palestinian and Israeli People” released on this date. See Holland, Williams, & Mohammed (2020).

[10] *The Associated Press* (in *Haaretz*) stated:

Ninety-four percent of Palestinians reject President Donald Trump’s Mideast initiative according to a poll released Tuesday, which also found plummeting support for a two-state solution with Israel and nearly two-thirds backing armed struggle [emphasis added].

The Palestinian Center for Policy and Survey Research was published the poll as thousands of Palestinians rallied in the West Bank and Gaza to reject the Trump plan and express support for President Mahmoud Abbas in his efforts to gain backing at the [UN Security Council](#) for a resolution opposing it.

The survey, the first of Palestinian public opinion to be released since [Trump’s plan](#) was announced, undercuts the administration’s claims that opposition to the plan is largely confined to the Palestinian leadership, and raises concerns that the implementation of the proposal, which heavily favors Israel, could ignite a new round of violence.

Trump’s Mideast plan, announced at the White House on January 28, sides with Israel on virtually all of the most contentious issues of the decades-old conflict...

...The Palestinian leadership, which cut off ties with the United States after Trump recognized disputed Jerusalem as Israel’s capital in 2017, have adamantly rejected the plan.

The opinion survey found that an overwhelming majority of Palestinians in the West Bank and Gaza also oppose it.

“I don’t think we’ve ever seen such a level of consensus among the Palestinian public,” said Khalil Shikaki, the head of the polling center...

... “All Palestinian people and all the factions, national and Islamic, are standing behind President Mahmoud Abbas,” Prime Minister Mohammed Shtayyeh told the crowd in Ramallah. “All the streets are full,” he said. “This is the Palestinian response.”

See *The Associated Press* (2020b).

[11] *U.N. News* stated:

A database of 112 businesses connected to Israeli settlements in the occupied Palestinian territory has been hailed by an independent human rights expert as “an important initial step towards accountability and the end to impunity”.

Ninety-four of the businesses are domiciled in Israel and the rest are in six other countries.

“While the release of the database will not, by itself, bring an end to the illegal settlements and their serious impact upon human rights, it does signal that sustained defiance by an occupying power will not go unanswered”, Special Rapporteur Michael Lynk [said](#) on Friday...

... “Without these investments, wineries, factories, corporate supply and purchase agreements, banking operations and support services, many of the settlements would not be financially and operationally sustainable. And without the settlements, the five-decade-long Israeli occupation would lose its colonial raison d’être”, he stated.

The rights expert urged UN Member States to implement laws banning the import of goods produced in illegal settlements located in any occupied territory.

“The international community has rightly condemned the illegal status and harmful impact of the Israeli settlements,” the Special Rapporteur said. “But by engaging in trade and commerce with the settlements, the international community sustains their viability and undercuts its own pronouncements”.

Special Rapporteurs are appointed by the Geneva-based UN Human Rights Council to examine and report back on a specific human rights theme or a country situation. The positions are honorary and the experts are not UN staff, nor are they paid for their work.

See U.N. News (2020).

U.N. Human Rights Council lists the companies in this footnote below the rest of this contextualization text. The report stated, “OHCHR found that 112 of the 188 business enterprises considered for inclusion in the database met the required standard of reasonable grounds to believe that they were involved in one or more of the listed activities (see table below). The remaining 76 business enterprises did not meet the standard of proof and were not included in the database.” The classifications for the “Category of listed activity” in the table of the 112 businesses references II. Mandate 6. (a) through (j), as follows:

- (a) The supply of equipment and materials facilitating the construction and the expansion of settlements and the wall, and associated infrastructure;*
- (b) The supply of surveillance and identification equipment for settlements, the wall and checkpoints directly linked with settlements;*
- (c) The supply of equipment for the demolition of housing and property, the destruction of agricultural farms, greenhouses, olive groves and crops;*
- (d) The supply of security services, equipment and materials to enterprises operating in settlements;*
- (e) The provision of services and utilities supporting the maintenance and existence of settlements, including transport;*

(f) *Banking and financial operations helping to develop, expand or maintain settlements and their activities, including loans for housing and the development of businesses;*

(g) *The use of natural resources, in particular water and land, for business purposes;*

(h) *Pollution, and the dumping of waste in or its transfer to Palestinian villages;*

(i) *Captivity of the Palestinian financial and economic markets, as well as practices that disadvantage Palestinian enterprises, including through restrictions on movement, administrative and legal constraints;*

(j) *The use of benefits and reinvestments of enterprises owned totally or partially by settlers for developing, expanding and maintaining the settlements.*

OHCHR noted, “With respect to three listed activities (see para. 6 (c), (i) and (j) above), OHCHR did not find any business enterprise satisfying the standard of reasonable grounds to believe involvement consistent with the definitions set out above.” Please find the complete 112 out of the 188 companies who formally met the requirements for inclusion as follows:

**Business enterprises
involved in listed
activities**

<i>No.</i>	<i>Business Enterprise</i>	<i>Category of listed activity</i>	<i>State concerned</i>
1	Afikim Public Transportation Ltd.	E	Israel
2	Airbnb Inc.	E	United States
3	American Israeli Gas Corporation Ltd.	E, G	Israel
4	Amir Marketing and Investments in Agriculture Ltd.	G	Israel
5	Amos Hadar Properties and Investments Ltd.	G	Israel

6	Angel Bakeries	E, G	Israel
7	Archivists Ltd.	G	Israel
8	Ariel Properties Group	E	Israel
9	Ashtrom Industries Ltd.	G	Israel
10	Ashtrom Properties Ltd.	G	Israel
11	Avgol Industries 1953 Ltd.	G	Israel
12	Bank Hapoalim B.M.	E, F	Israel
13	Bank Leumi Le-Israel B.M.	E, F	Israel
14	Bank of Jerusalem Ltd.	E, F	Israel
15	Beit Haarchiv Ltd.	G	Israel
16	Bezeq, the Israel Telecommunication Corp Ltd.	E, G	Israel
17	Booking.com B.V.	E	Netherlands
18	C Mer Industries Ltd.	B	Israel
19	Café Café Israel Ltd.	E, G	Israel
20	Caliber 3	D, G	Israel

21	Cellcom Israel Ltd.	E, G	Israel
22	Cherriessa Ltd.	G	Israel
23	Chish Nofei Israel Ltd.	G	Israel
24	Citadis Israel Ltd.	E, G	Israel
25	Comasco Ltd.	A	Israel
26	Darban Investments Ltd.	G	Israel
27	Delek Group Ltd.	E, G	Israel
28	Delta Israel	G	Israel
29	Dor Alon Energy in Israel 1988 Ltd.	E, G	Israel
30	Egis Rail	E	France
31	Egged, Israel Transportation Cooperative Society Ltd.	E	Israel
32	Energix Renewable Energies Ltd.	G	Israel
33	EPR Systems Ltd.	E, G	Israel
34	Extal Ltd.	G	Israel

35	Expedia Group Inc.	E	United States
36	Field Produce Ltd.	G	Israel
37	Field Produce Marketing Ltd.	G	Israel
38	First International Bank of Israel Ltd.	E, F	Israel
39	Galshan Shvakim Ltd.	E, D	Israel
40	General Mills Israel Ltd.	G	Israel
41	Hadiklaim Israel Date Growers Cooperative Ltd.	G	Israel
42	Hot Mobile Ltd.	E	Israel
43	Hot Telecommunications Systems Ltd.	E	Israel
44	Industrial Buildings Corporation Ltd.	G	Israel
45	Israel Discount Bank Ltd.	E, F	Israel
46	Israel Railways Corporation Ltd.	G, H	Israel
47	Italek Ltd.	E, G	Israel

48	JC Bamford Excavators Ltd.	A	United Kingdom
49	Jerusalem Economy Ltd.	G	Israel
50	Kavim Public Transportation Ltd.	E	Israel
51	Lipski Installation and Sanitation Ltd.	G	Israel
52	Matrix IT Ltd.	E, G	Israel
53	Mayer Davidov Garages Ltd.	E, G	Israel
54	Mekorot Water Company Ltd.	G	Israel
55	Mercantile Discount Bank Ltd.	E, F	Israel
56	Merkavim Transportation Technologies Ltd.	E	Israel
57	Mizrahi Tefahot Bank Ltd.	E, F	Israel
58	Modi'in Ezrachi Group Ltd.	E, D	Israel
59	Mordechai Aviv Taasiot Beniyah 1973 Ltd.	G	Israel
60	Motorola Solutions Israel Ltd.	B	Israel

61	Municipal Bank Ltd.	F	Israel
62	Naaman Group Ltd.	E, G	Israel
63	Nof Yam Security Ltd.	E, D	Israel
64	Ofertex Industries 1997 Ltd.	G	Israel
65	Opodo Ltd.	E	United Kingdom
66	Bank Otsar Ha-Hayal Ltd.	E, F	Israel
67	Partner Communications Company Ltd.	E, G	Israel
68	Paz Oil Company Ltd.	E, G	Israel
69	Pelegas Ltd.	G	Israel
70	Telephone Communications Ltd.	E, G	Israel
71	Proffimat S.R. Ltd.	G	Israel
72	Rami Levy Chain Stores Hashikma Marketing 2006 Ltd.	E, G	Israel

73	Rami Levy Hashikma Marketing Communication Ltd.	E, G	Israel
74	Re/Max Israel	E	Israel
75	Shalgal Food Ltd.	G	Israel
76	Shapir Engineering and Industry Ltd.	E, G	Israel
77	Shufersal Ltd.	E, G	Israel
78	Sonol Israel Ltd.	E, G	Israel
79	Superbus Ltd.	E	Israel
80	Supergum Industries 1969 Ltd.	G	Israel
81	Tahal Group International B.V.	E	Netherlands
82	TripAdvisor Inc.	E	United States
83	Twitoplast Ltd.	G	Israel
84	Unikowsky Maoz Ltd.	G	Israel
85	YES	E	Israel

86	Zakai Agricultural Know-how and inputs Ltd.	G	Israel
87	ZF Development and Construction	G	Israel
88	ZMH Hammermand Ltd.	G	Israel
89	Zorganika Ltd.	G	Israel
90	Zriha Hlavin Industries Ltd.	G	Israel
Business enterprises involved as parent companies			
<i>No.</i>	<i>Business Enterprise</i>	<i>Category of listed activity</i>	<i>State concerned</i>
91	Alon Blue Square Israel Ltd.	E, G	Israel
92	Alstom S.A.	E, G	France
93	Altice Europe N.V.	E	Netherlands
94	Amnon Mesilot Ltd.	E	Israel
95	Ashtrom Group Ltd.	G	Israel
96	Booking Holdings Inc.	E	United States

97	Brand Industries Ltd.	G	Israel
98	Delta Galil Industries Ltd.	G	Israel
99	eDreams ODIGEO S.A.	E	Luxembourg
100	Egis S.A.	E	France
101	Electra Ltd.	E	Israel
102	Export Investment Company Ltd.	E, F	Israel
103	General Mills Inc.	G	United States
104	Hadar Group	G	Israel
105	Hamat Group Ltd.	G	Israel
106	Indorama Ventures P.C.L.	G	Thailand
107	Kardan N.V.	E	Netherlands
108	Mayer's Cars and Trucks Co. Ltd.	E	Israel
109	Motorola Solutions Inc.	B	United States
110	Natoon Group	E, D	Israel

111	Villar International Ltd.	G	Israel
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Business enterprises involved as licensors or franchisors

<i>No.</i>	<i>Business Enterprise</i>	<i>Category of listed activity</i>	<i>State concerned</i>
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112	Greenkote P.L.C.	G	United Kingdom
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See U.N. Human Rights Council (2020).

[12] By the statements from Shakir’s expert evaluation, and the personal analyses above, France, Israel, Luxembourg, the Netherlands, Thailand, the United Kingdom, and the United States of America are *actively engaged* in aiding “in the commission of war crimes” based on “business with illegal settlements” to the tune of 3 companies, 94 companies, 1 company, 4 companies, 1 company, 3 companies, and 6 companies, respectively.

[13] Amnesty International states:

Israel’s policy of settling its civilians in occupied Palestinian territory and displacing the local population contravenes fundamental rules of international humanitarian law.

Article 49 of the Fourth Geneva Convention states: “The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.” It also prohibits the “individual or mass forcible transfers, as well as deportations of protected persons from occupied territory”.

The extensive appropriation of land and the appropriation and destruction of property required to build and expand settlements also breach other rules of international humanitarian law. Under the Hague Regulations of 1907, the public property of the occupied population (such as lands, forests and agricultural estates) is subject to the laws of usufruct. This means that an occupying state is only allowed a very limited use of this property. This limitation is derived from the notion that occupation is temporary, the core idea of the law of occupation. In the words of the International Committee of the Red Cross, the occupying power “has a duty to ensure the protection, security, and welfare of the people living under occupation and to guarantee that they can live as normal a life as possible, in accordance with their own laws, culture, and traditions.”

The Hague Regulations prohibit the confiscation of private property. The Fourth Geneva Convention prohibits the destruction of private or state property, “except where such destruction is rendered absolutely necessary by military operations” ...

... The settlements have been condemned as illegal in many UN Security Council and other UN resolutions. As early as 1980, UN Security Council Resolution 465 called on Israel “to dismantle the existing settlements and, in particular, to cease, on an urgent basis, the establishment, construction and planning of settlements in the Arab territories occupied since 1967, including Jerusalem.” The International Committee of the Red Cross and the Conference of High Contracting Parties to the Fourth Geneva Convention have reaffirmed that settlements violate international humanitarian law. The illegality of the settlements was recently reaffirmed by UN Security Council Resolution 2334, passed in December 2016, which reiterates the Security Council’s call on Israel to cease all settlement activities in the OPT. The serious human rights violations that stem from Israeli settlements have also been repeatedly raised and condemned by international bodies and experts.

See Amnesty International (2019).

[14] Human Rights Watch reported:

This report consists of a series of case studies that compare Israel’s different treatment of Jewish settlements to nearby Palestinian communities throughout the West Bank, including East Jerusalem. It describes the two-tier system of laws, rules, and services that Israel operates for the two populations in areas in the West Bank under its exclusive control, which provide preferential services, development, and benefits for Jewish settlers while imposing harsh conditions on Palestinians...

...It is widely acknowledged that Israel’s settlements in the West Bank, including East Jerusalem, violate international humanitarian law, which prohibits the occupying power from transferring its civilian population into the territories it occupies; Israel appears to be the only country to contest that its settlements are illegal...

...Since 1967, when it seized the West Bank from Jordan during hostilities—and under a variety of governments, since the right-wing Likud party first came to power in 1977—Israel has expropriated land from Palestinians for Jewish-Israeli settlements and their supporting infrastructure, denied Palestinians building permits and demolished “illegal” Palestinian construction (i.e., Palestinian construction that the Israeli government chose not to authorize), prevented Palestinian villages from upgrading or building homes, schools, health clinics, wells, and water cisterns, blocked Palestinians from accessing roads and agricultural lands, failed to provide electricity, sewage, water, and other utilities to Palestinian communities, and rejected their applications for such services.

See Human Rights Watch. (2010).

[15] Human Rights Watch stated:

Israeli and multinational corporations and their subsidiaries profit from settlements in a variety of ways, including by receiving, producing, exporting, or marketing settlement agricultural and industrial goods, and by financing or constructing settlement buildings and infrastructure. Companies have directly contributed to discriminatory rights violations against Palestinians, for example through business activities based on lands that were unlawfully confiscated from Palestinians without compensation for the benefit of settlers, or activities that consume natural resources like water or rock quarries to

which Israeli policies provide settlement industries preferential access, while denying equitable access to Palestinians. These businesses also benefit from Israeli governmental subsidies, tax abatements, and discriminatory access to infrastructure, permits, and export channels; Palestinian businesses deprived of equitable access to these government-provided benefits are sometimes as a result unable to compete against settlement-based companies in Palestinian, Israeli, or foreign markets.

See Ibid.

Ask HRW (Israel and Palestine) 6 – Tripartite Partition: The Israeli Elections, the International Criminal Court (ICC), and SARS-CoV-2/COVID-19

April 9, 2020

***Omar Shakir, J.D., M.A.** works as the Israel and Palestine Director for Human Rights Watch. He investigates a variety of human rights abuses within the occupied Palestinian territories/Occupied Palestinian Territories or oPt/OPT (Gaza and the West Bank, including East Jerusalem) and Israel. Language recognized in the work of the [OHCHR](#), [Amnesty International](#), [Oxfam International](#), [United Nations](#), [World Health Organization](#), [International Labor Organization](#), [UNRWA](#), [UNCTAD](#), and so on. Some see the Israeli-Palestinian issue as purely about religion. Thus, this matters to freethought. These ongoing interviews explore this issue in more depth. He earned a B.A. in International Relations from Stanford University, an M.A. in Arab Studies from Georgetown University's School of Foreign Affairs, and a J.D. from Stanford Law School. He is bilingual in Arabic and English. Previously, he was a [Bertha Fellow](#) at the Center for Constitutional Rights with a focus on U.S. counterterrorism policies, which included legal representation of Guantanamo detainees. He was the [Arthur R. and Barbara D. Finberg Fellow](#) (2013-2014) for Human Rights Watch with investigations, during this time, into the human rights violations in Egypt, e.g., [the Rab'a massacre](#), which is one of the largest killings of protestors in a single day ever. Also, he was a [Fulbright Scholar](#) in Syria.*

Here we continue with the 6th part in our series of conversations with coverage in the middle of February to the middle of March for the Israeli-Palestinian issue. With the deportation of Shakir, this follows in line with state actions against others, including Amnesty International staff member Laith Abu Zeyad when attempting to see his mother dying from cancer (Amnesty International, 2019; Zeyad, 2019; Amnesty International, 2020), United States Congresswoman Rashida Tlaib and United States Congresswoman Ilhan Omar who were subject to being barred from entry (Romo, 2019), Professor Noam Chomsky who was denied entry (Hass, 2010), and Dr. Norman Finkelstein who was deported in the past (Silverstein, 2008). Shakir commented in an opinion piece:

Over the past decade, authorities have barred from entry MIT professor [Noam Chomsky](#), U.N. special rapporteurs [Richard Falk](#) and [Michael Lynk](#), Nobel Peace Prize winner [Mairead Maguire](#), U.S. human rights lawyers [Vincent Warren and Katherine Franke](#), a delegation of [European Parliament](#) members, and [leaders of 20 advocacy groups](#), among others, all over their advocacy around Israeli rights abuses. Israeli and Palestinian rights defenders have not been spared. Israeli officials have [smeared](#), [obstructed](#) and sometimes even [brought criminal charges against them](#). (Shakir, 2019)

Now, based on the decision of the Israeli Supreme Court and the actions of the Member State of the United Nations, Israel, he, for this session, works from Amman, Jordan.

Interview conducted on March 16, 2020. The previous interview conducted on February 17, 2020[1].

Scott Douglas Jacobsen: Since February, middle of February (Jacobsen, 2020), what have been some of the updates in terms of rights abuses within the Israeli-Palestinian issue?

Omar Shakir: Of course, we had Israeli elections on March 2nd (Federman, 2020a; Federman, 2020b; Zion, 2020; Goldenberg, 2020a).^[2] A lot of the attention has been taken up by the elections and what that might mean for the human rights situation on the ground. As of now, there are still ongoing negotiations (Federman, 2020c). Benny Gantz^[3], the leader of the Blue and White Party (2020), has been tasked with the first opportunity to form a government.^[4] He will have some time now to do that.^[5] The impact on rights remains to be seen. Another significant development as part of a global environment has been the spread of the coronavirus in Israel and Palestine (Federman, 2020d). Israel has recorded hundreds of cases (Ibid.). We have a few dozen cases in the West Bank as well (Daraghmeh, 2020). Of course, those numbers will continue to likely increase.^[6] The spread of this virus has brought about a series of measures taken by both Israeli and Palestinian governments that intersect with a range of human rights issues (Daraghmeh, 2020; Federman, 2020d).

Jacobsen: When we're looking at some other nations, some will go into complete national or provincial/state lockdown (Barry & Calanni, 2020; Barry & Geller, 2020; The Associated Press, 2020a). Others will deal with things bit-by-bit by closing down schools (Neumeister & Villeneuve, 2020), closing down sporting events (Reynolds, 2020a; Reynolds, 2020b), telling the public not to go into public spaces (Khalil, 2020), because there is no major immunity in the population at large^[7]. What are some of the measures being taken in Israeli society and Palestinian society?

Shakir: The Israeli and Palestinian authorities have taken different steps (Federman, 2020d; Daraghmeh, 2020). On the Israeli side, of course, we have seen a series of restrictions on travel (Gambrell, 2020). Most significantly, the Israeli government requires all Israeli citizens and residents returning from travel to go into home quarantine for a period of 2 weeks (The Associated Press, 2020b). So, obviously, this effects thousands of people. The Israeli government is not actively enforcing this, though there have been press reports of folks being questioned, even arrested, for violating that order. The Israeli government has also announced surveillance measures that they are taking against those suspected of having the virus (Mitnick, 2020). That has been a policy that has raised significant rights concerns on the intrusion on the right to privacy (OHCHR, 2020). It also opens the door to discrimination and other rights abuse (Ibid.). In addition, on the Israeli side, there has been a policy that all non-citizens and residents, all foreigners, will be denied entry if they cannot prove that they have the ability upon arrival to self-quarantine (The Associated Press, 2020b).^[8] We have also seen, of course, measures taken with regards to Palestinians on the Israeli side.

Among them has been the virtual closure of Bethlehem, once Bethlehem reported a number of coronavirus-related cases (Daraghmeh, 2020). We have also seen a restriction on Israel's land borders, in terms of entry to Gaza being restricted to humanitarian cases. So, certainly, a lot of these preventative measures have been quite wide. We have seen schools and other institutions closed (Federman, 2020e). Israel hasn't gone to the point of complete lockdown, as have some countries (Gambrell, 2020; Barry & Geller, 2020). Of course, these policies affect many, but most drastically affect, vulnerable communities. On the Palestinian side, we have seen in the West Bank, authorities have instituted restrictions (Vahdat & Kullab, 2020; Akour & Karimi, 2020). They first imposed some restrictions around access to Bethlehem. Of course, they have limited authority, but their security forces have set-up more checkpoints to monitor movement by Palestinians. Just today, we have seen the Hamas authorities, apparently, closed their side of the

border with there's crossing with Israel. They have announced measures on the Rafah Crossing, where they were putting folks arriving into a quarantine, an institutional quarantine, at a school (Vahdat & Karam, 2020). There have been reports of there being abuses there, having taken place.

Jacobsen: What about issues around conflict increases or decreases along borders? Have there been escalations in conflict before some of these quarantine measures were being more taken into account since we last talked along the border between Israel and Palestine, or (occupied) Palestinian territory?

Shakir: With respect to the Gaza Strip, there was a period earlier in the year with low-grade hostilities between both sides (Federman, 2020f; The Associated Press, 2020c; The Associated Press, 2020d). There were some explosive devices being sent off from Gaza (U.N. News, 2020) and measures by the Israeli's being taken on restrictions on a fishing zone and a number of permits being given (Federman & Akram, 2020). We have seen those sorts of actions being taken. But there have been on-and-off situations, interim agreements reached, reportedly reached between the sides. Those took place earlier in the year. Things have, obviously, shifted, now, with some of the restrictions taken around the coronavirus.

Jacobsen: What will be the likely policy and political outcomes over the term of, another term of, Benjamin Netanyahu?

Shakir: It is quite clear. Over the course of over a decade of Prime Minister Netanyahu's rule, his government has pursued a policy seeking to only further entrench and make permanent Israel's rule over millions of Palestinians in the West Bank and control over the populations in Gaza (Goldenberg, 2020b; Goldenberg, 2020c). In the elections, he made crystal clear his intention to annex settlements to Israel, all settlements, and to continue and maintain restrictions in place against Palestinians (Goldenberg, 2020b). Over the course of the decade, we've seen increasing attacks on human rights groups and on critics of Israeli government policy (Human Rights Watch, 2018; Human Rights Watch, 2019a; Human Rights Watch, 2019b; Human Rights Watch, 2020). It is quite likely that those will continue and potentially intensify.^[9] There have been several election cycles now, where the Netanyahu government, their coalition partners, and even other parties, have engaged in regular race-baiting and expressed a total disregard for international law and norms (Weiss, 2020; Hodgkins, 2019; Dugard, 2019). All indications are that these abusive policies could very well continue under a Netanyahu government.

Jacobsen: There's been much commentary around the "Deal of the Century" of the Trump Administration (White House Staff, 2020; Heller & Lee, 2020; Daraghmeh & Akram, 2020). There has also been counter-commentary comparing setup, the eventual setup that would be the setup on this, to the Bantustans of apartheid South Africa (Jabari & Smith, 2020). What are some of your thoughts on this "Deal of the Century" (Jacobsen, 2020)?

Shakir: Look, the Trump plan seeks to make permanent Israel's discriminatory rule over Palestinians (Ibid.). It is presenting the repressive status quo as a final solution. It is quite clear the Israeli policy towards Palestinians has been about boxing them into dense population centers and maximizing the land on the West Bank for illegal Israeli settlements (Ibid.). This policy would, essentially, put the United States' stamp, which has already been firmly placed through decades of support and decades of unwillingness to use leverage to stop policies on the one-state reality on the ground today where Israel effectively rules the entire area from the Jordan River to

the Mediterranean Sea, and discriminates institutionally against the Palestinians, treats them unequally in all these areas, and ensures the control and domination by Jewish-Israelis, this would lock in that reality (Ibid.).

Jacobsen: In the case of an outbreak of COVID-19 or SARS-CoV-2, what will be the political fallout of that over time, potentially?

Shakir: I think it is difficult to predict. This is, in many ways, a fast moving and unprecedented sort of development. There have been efforts by some Israeli political forces to use the outbreak of COVID-19 as a way to establish a unity government between the Blue and White Party and the Likud Party (Heller, 2020c). Those efforts, at the time of recording, have not yet materialized. It is certainly possible that the imperative of dealing with this situation could, particularly if things continue to escalate, create a situation in which it facilitates a unity-type government. Certainly, with regards to human rights situation the West Bank and the Gaza Strip, the poor state of healthcare, in particular in the Gaza Strip as a result of decades of restrictions on movement of people and goods and the occupation more generally, makes Gaza more susceptible to a large-scale type crisis should the virus make its way into the Gaza Strip, particularly in its refugee camps (The Associated Press, 2019; The Associated Press, 2018). There are, obviously, some in the West Bank as well. In many cases, the virus around the world has affected vulnerable populations, be they minorities, elderly or refugees. Certainly, it raises the real risk that these communities would face heightened challenges should this virus continue to spread.

Jacobsen: What should we be paying more attention to between March and April looking forward?

Shakir: I think right now the world's attention is around containing this virus. I think the key things to look for in this period, obviously, will be Israeli government formation and what that might mean for the human rights situation for Palestinians, annexation, and the situation in Gaza. Will we see COVID-19 make its way into Gaza? Will the crisis continue to develop across the world and in Israel and Palestine? Also, of course, we have the International Criminal Court studying the question of jurisdiction over Palestine in light of the prosecutor's request. A decision on jurisdiction could come in the spring, although that could very well drag out further.

Jacobsen: Thank you for the opportunity and your time, Omar.

Shakir: Alright! Thank you.

Previous Sessions (Chronological Order)

[Interview with Omar Shakir – Israel and Palestine Director, Human Rights Watch \(Middle East and North Africa Division\)](#)

[HRW Israel and Palestine \(MENA\) Director on Systematic Methodology and Universal Vision Human Rights Watch \(Israel and Palestine\) on Common Rights and Law Violations](#)

[Ask HRW \(Israel and Palestine\) 1 – Recent Events](#)

[Ask HRW \(Israel and Palestine\) 2 – Demolitions](#)

[Ask HRW \(Israel and Palestine\) 3 – November-December: Deportation from Tel Aviv, Israel for Human Rights Watch Israel and Palestine Director](#)

[Ask HRW \(Israel and Palestine\) 4 – Uninhabitable: The Viability of Gaza Strip’s 2020 Unlivability](#)

[Ask HRW \(Israel and Palestine\) 5 – The Trump Peace Plan: Is This the “The Deal of the Century,” or Not?](#)

Addenda

[Ask HRW \(Israel and Palestine\) Addendum: Some History and Contextualization of Rights](#)

Other Resources Internal to Canadian Atheist

[Interview with Dr. Norman Finkelstein on Gaza Now](#)

[Extensive Interview with Gideon Levy](#)

[Interview with Musa Abu Hashash – Field Researcher \(Hebron District\), B’Tselem](#)

[Interview with Gideon Levy – Columnist, Haaretz](#)

[Interview with Dr. Usama Antar – Independent Political Analyst \(Gaza Strip, Palestine\)](#)

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[1] For more information, the 5th session in this educational series seems the aptest for updates up to and including the middle of February. See Jacobsen (2020).

[2] Election results showed the following outcomes by the party and the parenthetical numbers of seats won, given by the most recent (of several) elections:

1. Likud (36)
2. Blue & White (33)
3. Joint List (15)
4. Shas (9)
5. Yisrael Beiteinu (7)
6. United Torah Judaism (7)
7. Labour-Gesha-Meretz (7)
8. Yemina (6)

Central Elections Committee. (2020, March 2). Elections for the 23rd Knesset. Retrieved from <https://bechirot23.bechirot.gov.il/election/english/Pages/default.aspx>.

[3] There has been substantial and strong rhetoric in the midst of this interim period, circa the time of the interview:

“Netanyahu: The public atmosphere and the threats worry every national leader,” he said, pointing his finger forward. “The incitement is raging everywhere and you are silent.”

“I won’t allow you to sow fear. I won’t allow you to turn man against his brother. I won’t allow you to bring about modern Israel’s first civil war in return for a ticket out of your trial,” he added. “Your regime has trampled all norms.”

Also, Netanyahu remains in difficulties in terms of criminal charges and legal issues:

Netanyahu is scheduled to go on trial next week to face corruption charges of fraud, breach of trust and accepting bribes. Israel’s longest-serving leader is desperate to remain in office, because installing a new government would give him an important political boost and potentially allow him to legislate his way out of the legal quagmire.

On Monday, Amit Haddad, one of Netanyahu’s lawyers, said he would seek a delay in the start of the trial. He said the request was “technical” and meant to give the defense time to review investigative materials that it still has not received.

The main question, at the time of the Heller reportage, remained who would lead the coalition between the Blue & White Party and the Likud, and the specific length for the initial leadership. See Heller (2020a).

[4] Duly note, there have been significant issues with the security for Benny Gantz of the Blue & White Party because of the continual and growing acrimony between the Blue & White Party and the Likud with each successive election. Gantz faced death threats and received increased security. See Heller (2020b).

[5] With ongoing issues around the charges against Benjamin Netanyahu, the death threats against Benny Gantz, human rights violations with the illegal settlements in the West Bank, the perilous potential for a calamity with SARS-CoV-2 entering Palestinian society, and the ongoing negotiations for the joining of the parties, the situations for human rights and for respect for international law may remain at its current standstill until the context becomes more stable.

[6] All countries once having a few cases continued to increase for some time with many on exponential, or worse, increases or curves in the number of the cases and, thus, the numbers of deaths due to the novel coronavirus.

[7] Harvard University (2020) stated:

COVID-19 will be defeated forever only when enough people develop immunity to it so that it can no longer spread easily from person to person, according to experts. This so-called “herd immunity” can happen in one of two ways. A vaccine—the preferred way—is at least a year away. The other way happens naturally, when a large percentage of the population becomes infected and develops antibodies to the disease that protect from reinfection. The problem with the second way is that many will die in the process. In addition, it’s unknown what percentage of the population needs to become infected to provide herd immunity. Even for those who have developed immunity, “we don’t know how effective it is or how long it will last,” said William Hanage. He said that, until a vaccine is available, repeated rounds of physical distancing may be needed.

See Harvard University T.H. Chan School of Public Health (2020).

[8] Israel stopped entry, at the time of the interview, to all internationals. See MEMO: Middle East Monitor (2020).

[9] That is to say, with the continual assault on international human rights, international humanitarian law, and the like, the trendline appears strongly in favour of the argument of a continuation of the breach of international law and the disregard for international human rights disproportionately by the Israeli government.

Ask HRW (Israel and Palestine) 7 – New Heights to the Plight and the Fight: Covid-19, Hegemony, Restrictions, and Rights

August 10, 2020

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Here we continue with the 7th part in our series of conversations with coverage in the middle of March to the middle of April for the Israeli-Palestinian issue. With the deportation of Shakir, this follows in line with state actions against others, including Amnesty International staff member Laith Abu Zeyad when attempting to see his mother dying from cancer (Amnesty International, 2019; Zeyad, 2019; Amnesty International, 2020), United States Congresswoman Rashida Tlaib and United States Congresswoman Ilhan Omar who were subject to being barred from entry (Romo, 2019), Professor Noam Chomsky who was denied entry (Hass, 2010), and Dr. Norman Finkelstein who was deported in the past (Silverstein, 2008). Shakir commented in an opinion piece:

Over the past decade, authorities have barred from entry MIT professor [Noam Chomsky](#), U.N. special rapporteurs [Richard Falk](#) and [Michael Lynk](#), Nobel Peace Prize winner [Mairead Maguire](#), U.S. human rights lawyers [Vincent Warren](#) and [Katherine Franke](#), a delegation of [European Parliament](#) members, and [leaders of 20 advocacy groups](#), among others, all over their advocacy around Israeli rights abuses. Israeli and Palestinian rights defenders have not been spared. Israeli officials have [smeared](#), [obstructed](#) and sometimes even [brought criminal charges against them](#). (Shakir, 2019)

Now, based on the decision of the Israeli Supreme Court and the actions of the Member State of the United Nations, Israel, he, for this session, works from Amman, Jordan.

Interview conducted on April 19, 2020. The previous interview conducted on March 16, 2020.

Scott Douglas Jacobsen: With regards to Israel and Israeli society, what have been some human rights violations against Israelis since we last talked (Jacobsen, 2020a)?

Omar Shakir: I think the major issue that's dominated the world for the past six weeks or so has been the coronavirus and the way in which different governments have responded to it (Schalit & Zion, 2020; The Associated Press, 2020; Akram, 2020a; Daraghme & Krauss, 2020; Akram, 2020b; Akram, 2020c; Federman, 2020; Reuters, 2020a; Ganeyeh & Shakhshir, 2020; Reuters, 2020b; Reuters, 2020c; Najib & Halbfinger, 2020). On the Israeli side, of course, that's necessitated significant restrictions, including limitations on movement between towns and cities inside Israel, as well as closures of entire neighbourhoods (TOI Staff, 2020; Jerusalem Post Staff, 2020) where there has been significant exposure to the virus (al-Mughrabi, 2020). We have seen limitations on travel into and out of the country necessitated by the virus (Nimeh & Sawafta, 2020). So, a lot of the focus has been on both efforts to contain the virus as well, as on some of the restrictions brought about as a result of it (Toameh, & Ahronheim, 2020). Of course, the fact of restriction does not automatically connote rights abuse. It has to be taken holistically into account given the situation in the country. Certainly, there have been numerous ways in which the Israeli government's response to the Covid-19 pandemic has manifested the institutional discrimination at the core of the system (Federman, 2020; Magdy & Krauss, 2020). For example, we have seen the Israeli government shut down testing centers in East Jerusalem for claiming that it was being supported by the Palestinian Authority (Hasson, 2020).

We have also seen areas in which the Israeli government has not provided sufficient testing of populations such as areas in the Jerusalem municipality, but outside the separation barrier, including Shuafat and Kafr 'Aqab, where you have well more than 100,000 residents (Abraham, 2020; Al-Waara, 2020a). In these areas, there was no testing for several weeks until after the human rights group Adalah filed a lawsuit (Ibid.). We've also seen concerns raised about surveillance (Melman, R., Fatafta, M., & Berda, Y., 2020). The Israeli government, as part of its Covid-19 response, passed regulations that widened the scope of surveillance that Shin Bet and the government was allowed to carry out in response to the health crisis (Bajak & Winefield, 2020; Heller, 2020). Of course, there have been lawsuits filed by Israeli human rights organizations who fear this could widen the scope of surveillance conducted by the government and remain in place after the crisis wanes down.

Jacobsen: If we are looking down at one of the areas where people are most fearful of calamity, how are cases looking there?

Shakir: Gaza Strip, the number of cases remain low, but there is significant concern about what would happen should the virus enter (Akram, 2020d; Akram, Aji, & Krauss, 2020). The Israeli closure has weakened considerably the healthcare system in the Gaza Strip (United Nations Office for the Coordination of Humanitarian Affairs: Occupied Palestinian Territory, 2020). The local health ministry has reported on a shortage of ventilators and ICU beds (Relief Web/Physicians for Human Rights Israel, 2020). Of course, should the crises continue and there are more cases there, there is a question to what extent Gaza can handle such a situation amid closure (al-Qedra, 2020). At the same time, there is concern about the number of testing kits and a question as to the efficacy of the strategy of the Hamas authorities to largely focus on restricting those who re-enter Gaza and putting them in quarantine centers (Toameh, & Ahronheim, 2020). There isn't widespread testing being done on the rest of the population (Reuters/Jerusalem Post, 2020). There is concern about number of testing kits received based on the restrictions by Israel, potentially the PA, and other actors (Ibid.; United Nations Office for the Coordination of Humanitarian Affairs: Occupied Palestinian Territory, 2020; United Nations

Office of the High Commissioner, 2018). So, the Hamas authorities like others have shut down much of life in the Gaza Strip. There is a lot of concern given Gaza is one of the most densely populated places on Earth. Social distancing, which has been a central response around the world, is much more difficult in Gaza (BBC News, n.d.).

There is a concern about the possibility of an outbreak. It still yet has to take place; if this is to happen in the coming weeks and months, then the prospect for a humanitarian disaster, unfortunately, would be quite high.

Jacobsen: What about the West Bank?

Shakir: In the West Bank, the Palestinian Authority has very quickly, when this crisis began, taken measures in the areas where it exercises a degree of control (Haaretz, 2020). The outbreak began in Bethlehem there with a number of cases and spread to other parts of the West Bank (Zeidan, 2020). The PA has also declared lockdowns throughout (Ragson, 2020). As part of those efforts, it has been particularly concerned regarding Palestinian workers who have permits to work in Israel or settlements and have increasingly returned (Xinhua, 2020). Many of them came back with symptoms of the coronavirus (Al-Waara, 2020b). The government is taking a very proactive position because it faces limitations like in Gaza when it comes to healthcare capacity and ability to respond, as well as the nature of Israeli hegemony and domination throughout the West Bank (Jacobsen, 2020a; Jacobsen, 2020b). These dynamics limit the degree to which the PA is able to take a robust response. Of course, there is concern again there about what could happen should things escalate. We have seen the PA and Israel take sharper measures to restrict movement within the West Bank and, of course, and between the West bank and inside Israel – and between East Jerusalem and the rest of the West Bank.

Jacobsen: With regards to East Jerusalem, is the situation more or less the same with hegemonic restrictions with the capacity to deal with the crisis?

Shakir: Israel annexed East Jerusalem in 1967 in a move no other country except maybe the Trump Administration in the U.S. acknowledges, but the municipality has in its planning document a commitment to maintaining the Jewish majority (Jacobsen, 2020c; Jacobsen, 2020b). It maintains deeply discriminatory systems. It has manifested itself in regards to the coronavirus, both in terms of availability of testing and the ways in which authorities have dealt with the different populations and communities. There have been more cases as of late. There have been efforts by the PA to help build the capacities of different neighbourhoods. Those efforts have resulted in the shuttering of testing centres, arrest of authorities linked to the PA trying to mount a response, at the same time the Israeli government has failed to meet its duties in regards to the communities there. In many ways, the Covid pandemic has exposed the deep discrimination at the core of Israel's regime of control of Palestinians throughout the territories (Human Rights Watch, 2019).

Jacobsen: What about the relieving of the elderly and the sick, or otherwise, in Israel?

Shakir: I assume we're talking about places of detention.

Jacobsen: Yes.

Shakir: There has been concern over the plight of prisoners about the spread of the virus in places of detention (The International Committee of the Red Cross, 2020; Nassar, 2020). We have seen places around the world shutter prisons and release prisoners (Radio Farda, 2020). On

the Israeli side, we have seen the release of some detainees, particularly Jewish prisoners. We haven't seen much movement to date in terms of Palestinian political prisoners, or what Israeli authorities consider "security detainees." We do know that there were at least four Palestinians exposed to an interrogator who was infected by the coronavirus (Samidoun Palestinian Prisoner Solidarity Network, 2020). Of course, there has been concern about a potential outbreak in places of detention. Human Rights Watch has universally called on governments, including the Israeli government, to release detainees, particularly those who are vulnerable to the virus in addition to aggressively guarding against spread and ensuring quality healthcare for all in detention.

Jacobsen: Some have been making some commentary with Covid-19, the reactions to Covid-19, in terms of the governmental or state measures to restrict its measures throughout territories or societies. The comparison has been made on the restrictions on the lives of Palestinians imposed in part now in those in more free or the freer societies. Is this a window into seeing the situation through the eyes of Palestinians in terms of the restrictions on their lives when those restrictions, some of them, are imposed, for health reasons, on freer societies' citizens' lives?

Shakir: I would say Covid-19 restrictions offer a glimpse into the Palestinian experience. At the end of the day, it is only a glimpse because Palestinians have faced for decades far worse restrictions (Human Rights Watch, 2019). Covid-19 restrictions pale in comparison to what Palestinians have faced for decades. Take, for example, movement restrictions, the Israeli government inside its own government has imposed restrictions on inner city travel for short periods and has imposed closures on entire neighbourhoods, but Israel for the past 13 years has closed the Gaza Strip – effectively caged, alongside Egypt, 2 million people as per a generalized travel ban vastly disproportionate to any security threat, where people cannot travel or leave Gaza, including to the rest of the occupied Palestinian territory, with only narrow exceptions. Israel also for the 2.5 million Palestinians in the West Bank imposes severe travel restrictions, including blocking their access to the rest of the occupied West Bank, and having them face hundreds of checkpoints inside the West Bank where a routine drive to school, work, to family can turn into an hours-long humiliating ordeal (United Nations Office for the Coordination of Humanitarian Affairs: Occupied Palestinian Territory, 2020). Covid-19 has also resulted in family separation worldwide, but this has been Israeli policy with regards to Palestinians for many years. Israel passed a law in 2003 that prohibits Israeli citizens or spouses from bringing their spouse to live with them in Israel or in occupied East Jerusalem or to grant them long-term legal status if they are Palestinian from the West Bank or Gaza (Human Rights Watch, 2005). Israel since 2000 has largely frozen the process that would allow Palestinians in the West Bank and the Gaza Strip to confer status to a spouse that is not living in the same area. But unlike the coronavirus restrictions, which are temporary and meant to protect one's citizens, the restrictions on Palestinians have been in place for over half of a century with no signs of ending any time soon and they're not meant to protect Palestinians.

Jacobsen: What happened with the Gaza activists who were jailed by Hamas based on a video chat with Israelis?

Shakir: Sure, Hamas authorities in Gaza Strip have detained for over a week now 7 activists for participating in a Zoom call or video chat with Israelis (Akram, 2020e). They have charged them or have accused them with engaging in "normalization" or activities with Israelis not rooted in

challenging Israeli repression. These detainees remain in detention. They have been subjected – some of them, at least – to mistreatment in detention. There is no justification for detaining people for their peaceful free expression, whether or not you agree with that political speech. Hamas authorities should immediately release these men. It is part of a systematic, longstanding process of arbitrarily arresting individuals based on their free expression and mistreating and torturing them in detention.

Jacobsen: What about the clinic in Silwan that was raided and then activists were arrested?

Shakir: As I mentioned, I think, it manifests part of the discriminatory system in Jerusalem and throughout Israel and Palestine. It seems that the Israeli government has failed in many areas to meet its obligation of providing testing and health care to Palestinian communities. When other actors try to provide that, instead of actually dealing with the underlying issue, which is the access to healthcare for the community, it has gone ahead and detained those who are trying to provide that service.

Jacobsen: Why does Saudi Arabia have a mass trial and arrests of Jordanians?

Shakir: I would refer you to a publication we just issued on the subject, which you can find online: [“Saudi Arabia: Abuses Taint Mass Terrorism Trial.”](#)

Jacobsen: Take care, Omar.

Shakir: Alright, Scott, take care and stay healthy.

Previous Sessions (Chronological Order)

[Interview with Omar Shakir – Israel and Palestine Director, Human Rights Watch \(Middle East and North Africa Division\)](#)

[HRW Israel and Palestine \(MENA\) Director on Systematic Methodology and Universal Vision](#)

[Human Rights Watch \(Israel and Palestine\) on Common Rights and Law Violations](#)

[Ask HRW \(Israel and Palestine\) 1 – Recent Events](#)

[Ask HRW \(Israel and Palestine\) 2 – Demolitions](#)

[Ask HRW \(Israel and Palestine\) 3 – November-December: Deportation from Tel Aviv, Israel for Human Rights Watch Israel and Palestine Director](#)

[Ask HRW \(Israel and Palestine\) 4 – Uninhabitable: The Viability of Gaza Strip’s 2020 Unlivability](#)

[Ask HRW \(Israel and Palestine\) 5 – The Trump Peace Plan: Is This the “The Deal of the Century,” or Not?](#)

[Ask HRW \(Israel and Palestine\) 6 – Tripartite Partition: The Israeli Elections, the International Criminal Court \(ICC\), and SARS-CoV-2/COVID-19](#)

Addenda

[Ask HRW \(Israel and Palestine\) Addendum: Some History and Contextualization of Rights](#)

Other Resources Internal to Canadian Atheist

[Interview with Dr. Norman Finkelstein on Gaza Now](#)

[Extensive Interview with Gideon Levy](#)

[Interview with Musa Abu Hashash – Field Researcher \(Hebron District\), B’Tselem](#)

[Interview with Gideon Levy – Columnist, Haaretz](#)

[Interview with Dr. Usama Antar – Independent Political Analyst \(Gaza Strip, Palestine\)](#)

[Interview with Wesam Ahmad – Representative, Al-Haq \(Independent Palestinian Human Rights Organization\)](#)

[Extensive Interview with Professor Richard Falk – Fmr. \(5th\) United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967](#)

[Extensive Interview with Professor John Dugard – Fmr. \(4th\) United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967](#)

[Extensive Interview with S. Michael Lynk – \(7th\) United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967](#)

[Conversation with John Dugard, Richard Falk, and S. Michael Lynk on the Role of the Special Rapporteur, and the International Criminal Court & Jurisdiction](#)

[To resolve the Palestinian question we need to end colonialism](#)

[Trump’s Colonial Solution to the Question of Palestine Threatens the Foundations of International Law](#)

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Ask HRW (Israel and Palestine) 8 (w/ Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967) – Annexation, International Law, Occupation, Rights, and Settlements

August 18, 2020

***Omar Shakir, J.D., M.A.** works as the Israel and Palestine Director for Human Rights Watch. He investigates a variety of human rights abuses within the occupied Palestinian territories/occupied Palestinian Territories or oPt/OPT (Gaza and the West Bank, including East Jerusalem) and Israel. He earned a B.A. in International Relations from Stanford University, an M.A. in Arab Studies from Georgetown University's School of Foreign Affairs, and a J.D. from Stanford Law School. He is bilingual in Arabic and English. Previously, he was a *Bertha Fellow* at the Center for Constitutional Rights with a focus on U.S. counterterrorism policies, which included legal representation of Guantanamo detainees. He was the *Arthur R. and Barbara D. Finberg Fellow* (2013-2014) for Human Rights Watch with investigations, during this time, into the human rights violations in Egypt, e.g., *the Rab'a massacre*, which is one of the largest killings of protestors in a single day ever. Also, he was a *Fulbright Scholar* in Syria.*

***Professor S. Michael Lynk** is the current (7th) United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967 (March, 2016 to Present). He is an Associate Professor at the Faculty of Law, Western University, in London, Ontario, who works in one of the most important legal and investigative positions in the history of rights and law reportage for the United Nations on this issue of Israel and the occupied Palestinian territories.*

Language of the oPt/OPT is recognized in the work of the [OHCHR](#), [Amnesty International](#), [Oxfam International](#), [United Nations](#), [World Health Organization](#), [International Labor Organization](#), [UNRWA](#), [UNCTAD](#), and so on. Some see the Israeli-Palestinian issue as purely about religion. Thus, this matters to freethought. These ongoing interviews explore this issue in more depth.

Here we continue with the 8th part in our series of conversations with coverage in the middle of March to the middle of April for the Israeli-Palestinian issue. With the deportation of Shakir, this follows in line with state actions against others, including Amnesty International staff member Laith Abu Zeyad when attempting to see his mother dying from cancer (Amnesty International, 2019a; Zeyad, 2019; Amnesty International, 2020), United States Congresswoman Rashida Tlaib and United States Congresswoman Ilhan Omar who were subject to being barred from entry (Romo, 2019), Professor Noam Chomsky who was denied entry (Hass, 2010), and Dr. Norman Finkelstein who was deported in the past (Silverstein, 2008). Shakir commented in an opinion piece:

Over the past decade, authorities have barred from entry MIT professor [Noam Chomsky](#), U.N. special rapporteurs [Richard Falk](#) and [Michael Lynk](#), Nobel Peace Prize winner [Mairead Maguire](#), U.S. human rights lawyers [Vincent Warren](#) and [Katherine Franke](#), a delegation of [European Parliament](#) members, and [leaders of 20 advocacy groups](#), among others, all over their advocacy around Israeli rights abuses. Israeli and

Palestinian rights defenders have not been spared. Israeli officials have [smeared](#), [obstructed](#) and sometimes even [brought criminal charges against them](#). (Shakir, 2019)

Now, based on the decision of the Israeli Supreme Court and the actions of the Member State of the United Nations, Israel, he, for this session, works from Amman, Jordan. Similarly, Lynk remains prevented from carrying out the full capacities of the position based on barring from entry.

Interview conducted on May 13, 2020. The previous interview conducted on April 19, 2020.

Scott Douglas Jacobsen: To begin, this is a 3-way conversation with S. Michael Lynk and Omar Shakir. We are going to talk about annexation and an overview of the Israel-Palestine issue (Jacobsen, 2020a). On May 1, Michael, you released a press release (United Nations Human Rights Office of the High Commissioner, 2020) that was based around some of the annexation ongoing, which is based on a proposal from the White House (White House Staff, 2020). Also, the outcome would be akin to, or would be, Bantustans (The Editors of Encyclopaedia Britannica, 2019). The terms used by you, phrasing, “Palestinian Bantustan, an archipelago of disconnected islands of territory” (United Nations Human Rights Office of the High Commissioner, 2020). Can you expand on some of that and the implications for the lives of Palestinians and rights?

Professor Michael Lynk: This stems, most immediately, from the proposals in the Trump Peace to Prosperity plan (White House Staff, 2020) released at the end of January 2020, which calls for, among other things, the annexation by Israel of 30% of the West Bank, including much of the Jordan Valley and all of the 240 or more settlements (BBC News, 2020a; United Nations Human Rights Office of the High Commissioner, 2019). Obviously, the ones already in East Jerusalem are annexed, but 225 to 230 in the West Bank (Collard, 2012). This includes not only those who are close to the Israeli border, the seamline, and the separation wall, but also those who are quite deep into Palestinian territory. They create fingers of annexation and sovereignty, which would make an archipelago of what the Palestinians would be left with – to have a “state.”^[1]

The important point to make about the annexation – that is, the formal *de jure*^[2] annexation by Israel as outlined in the Trump plan and, apparently, as agreed to by the coalition agreement between Mr. Netanyahu and his new partner, Benny Gantz – is that it changes everything and it changes nothing (BBC News, 2020b).

It changes everything in the sense that Israel is now planning to step forward and make a formal annexation of about 1/3rd of the West Bank including all of the settlements in the occupied territory (Federman, 2020a; Zion, 2020; Federman, 2020b; The Associated Press). Eventually, this would mean the application of Israeli domestic law to the settlements instead of the formulation of the forms of special laws applying to the settlements (Amnesty International, 2019b).^[3]

So, this changes everything in the sense that it is another form of annexation in East Jerusalem in 1980 and the Syrian Golan Heights in 1981 (UNISPAL, 1997; Jacobsen, 2020c; ECF, 2019).^[4] Neither of which were recognized by the international community.^[5] Both annexations were condemned in U.N. Security Council resolutions (United Nations, 1980a; United Nations, 1980b).^{[6],[7]} This new annexation will now require the international

community, particularly Europe and other powerful players in North America and other places in the Western world, to express a stance and, ideally, to take sanction measures [8] against Israel in the same way with sanction measures applied to Russia and its annexation of Crimea in 2014. [9], [10] This changes everything, as I said, in the formal renunciation of the Oslo process [11] and the end to any meaningful Palestinian state [12].

But it also changes nothing. The lives of Palestinians either in Area C (OCHA OPT, n.d.) under Israeli civil and security control or the Palestinians in Areas A and B in the towns and cities primarily in the center of the West Bank don't change at all (BBC News, 2019). As before, they won't have access to settlement roads (B'Tselem, 2004). As before, they will continue to lose land to settlement and military use by the Israeli occupation (Tahhan, 2017). As before, they still will not be able to vote in elections to form the government that ultimately controls their day to day decisions of their lives, i.e., the Israeli government (Krauss, & Daraghmeh, 2019). [13] What has happened over the last 50 years has been the steady process of a *de facto* annexation, where Israel took many different steps to alienate property from the Palestinians in the West Bank and offered enormous incentives for Israelis and immigrants to Israel to move into these settlements, which geographically hemmed in the Palestinians (El-Ad, 2020).

What the Palestinians have been left with are archipelagos of fragmented lands, there are 165 different islands of land in the West Bank, meaning that the Palestinians have very restricted freedom of movement (B'Tselem, 2017). When you have restricted personal freedom of movement, it also means restricted freedom of movement with respect to trading, importing goods, and finding external markets for their products as well (European Commission, 2020). So, you have a stunted economy with the restricted freedom of movement (B'Tselem, 2017; European Commission, 2020). All in all, what may happen or probably will happen sometime after the first of July will be a seismic change in the Middle East with the endorsement of a formal annexation. Yet, in many other ways, it will remain a continuation of life as it has been for the Palestinians as it has been.

Jacobsen: Omar, from the point of view of Human Rights Watch, how is this continuation going on without much or any consequences for the Israeli government?

Omar Shakir: *In many ways, the Israeli push for annexation stems from the failure of the international community to sufficiently use its leverage to stop systematic Israeli rights abuse. [14] The reality here goes back decades. Israel has continued to build settlements, which are a clear violation of international humanitarian law [15], and have continued to further entrench a discriminatory system that treats Palestinians living in the same territory separately and unequally in virtually every aspect of life from legal status, to freedom to move, to freedom to build, to security of the legal status, to their ability to access water and electricity (Human Rights Watch, 2010). Annexation, in many ways, would merely formalize what has been the de facto reality where the Israeli government controls the entire area between the Mediterranean Sea and the Jordan River and rules over Palestinians unequally compared to Jewish Israelis and systematically suppresses them (Human Rights Watch, 2019b; Human Rights Watch, 2018; Human Rights Watch, 2019a; Human Rights Watch, 2020a). The reality is the peace process for half the life of the occupation has effectively become a fig leaf for this discriminatory Israeli rule. The international community allowed itself to be sucked into the narratives of temporary occupation, Palestinian self-governance, Israeli egalitarian democracy, and the peace process; all of which are smoke screens to a very apparent reality, where 6.6 million or so Palestinians*

live in this area between the Jordan River and the Mediterranean Sea, as do 6.6 or so Jewish Israelis, with Palestinians treated unequally in virtually every aspect of life.

The international community should use annexation as a wake-up call to both understand the reality of what is going on, on the ground, as well as to adopt the human rights based measures regularly taken in other parts of the world with abuses this grave. A peace process assumes that the problem is one that negotiations, as opposed to human rights measures, can cure. It is the wrong diagnosis for the underlying problem here. I think it's beyond time in the international community to shift to action and accountability in holding Israeli authorities, as well as Palestinians when they abuse rights, to account for their serious abuses (Human Rights Watch, 2020b; Human Rights Watch, 2017).

Lynk: If I can add to that.

Jacobsen: Please.

Lynk: I don't think that we would be here today discussing annexation here in 2020 if the world had imposed meaningful accountability measures in 1980 with the annexation of Jerusalem or in 1981 with the annexation of the Syrian Golan Heights (ECF, 2019; UNISPAL, 1997; Jacobsen, 2020c). We have virtually all the laws that we need to be able to assess that this occupation is illegal. The settlements are illegal.[\[16\]](#),[\[17\]](#),[\[18\]](#) The human rights violations – the various forms of collective punishment[\[19\]](#),[\[20\]](#), the blockage of Gaza[\[21\]](#),[\[22\]](#), the denial of self-determination[\[23\]](#) – are illegal; the location of the separation wall, is illegal. What we need is not more laws, we need accountability (The Palestinian Information Center, 2019; Jacobsen, 2020d; United Nations General Assembly, 2019).[\[24\]](#) It has been sorely missing in all of this. What I often note, particularly in the last weeks when discussing the issue of annexation with international audiences, is how swift the international community was to bring in meaningful and significant sanctions against Russia in 2014 with respect to its annexation of Crimea[\[25\]](#) and Sevastopol[\[26\]](#) (European Council/Council of the European Union, 2020; Popovici, 2018). Even though, these sanctions didn't have the endorsement of the United Nations because of the Russian veto[\[27\]](#) in the Security Council (Chappell, 2014). Yet, there was a very swift movement to degrade political relations with Russia, to bring in targeted sanctions on specific individuals, to bring meaningful collective sanctions which significantly impacted on the Russian economy, and to ban goods coming out of Sevastopol and Crimea going to the world market (Gutterman, Grojec, & RFE/RL's Current Time, 2018). It was done quickly. And it wasn't done without cost to countries in Europe, particularly Eastern Europe, based on their dependence on Russian aid.

Here, we are talking about Israel, a country with 6% of the Russian population[\[28\]](#), which is heavily dependent on trade and with cultural ties to Europe and many parts of the world, including the United States. There have never been meaningful sanctions brought in to oppose Israeli policy. Even though, there are volumes of Security Council and General Assembly resolutions against the various forms of illegality that are integral to this 53-year-old occupation. As a result, there is a strong sense of impunity among the Israeli political leadership.

Today, we have come the point where almost 10% of the Israeli Jewish population are living in settlements in East Jerusalem and the West Bank, which has led to the pro-annexation lobby, a critical mass of the population (Myre, & Kaplow, 2016). When I did a nose count of the 120 Knesset members elected in the April election, I could only count 18 members of the Knesset

who are opposed to the settlements and who would end them if they were in a position of power. 18 out of 120 are in that particular position. So, there is enormous domestic political support. Primarily because the ordinary Israeli doesn't wake up and worry, "Will I get a travel visa if I wanted to travel to Europe or somewhere else?" Or, "Are goods all of the sudden more expensive?" Because there are many trade privileges that Israel enjoys. Israel has had the best of both worlds to continue with the annexation and all the while mouthing the words of a peace process and "let's negotiate." All the while extending the occupation because of the enormous number of settlements and settlers now in the occupied territory.

No Occupying Power engaged in creating civilian settlements, particularly at the pace that Israel has, can be serious about wanting to end its occupation and realizing the self-determination of the occupied population.

Jacobsen: How does the lack of accountability internationally degrade international institutions like the United Nations when particular principles are proposed and then not acted upon? This is to both of you.

Shakir: *I think it is a universal pattern. When impunity reigns and states commit serious violations of international law without consequence, it is not only a green light for them to double down on the policies, but also signals to other actors that the principles that undergird the international system are selective and apply differently based on how much power you wield. The experience in Israel and Palestine, as well as the more universal phenomena, show that this really poses a fundamental challenge to international institutions, including U.N. bodies and international courts. A litmus test for any international institution is how principled they are and whether they are able to apply the same standards universally to all actors (Jacobsen, 2019). For example, the High Commissioner of Human Rights earlier this year took a strong step in releasing the database given the mandate to her through the Human Rights Council.[\[29\]](#),[\[30\]](#),[\[31\]](#) Similarly, I think the prosecutor of the International Criminal Court took an important step in concluding her examination into the situation in Palestine with a recommendation for a formal investigation to be opened. I think it is incumbent upon states and others that are concerned about the credibility of international law and institutions to ensure these a sorts of measures, of the variety that were foreseen by some of the foundational treaties when it comes to failure to comply with international norms, are adhered to. Otherwise, they are not worth the paper that they are written on.*

Lynk: What I think is very damaging is the concept of legal exceptionalism, when the whole body of laws that we have created for the modern world after 1945 are ignored, our modern rules-based international order was meant to create a dense network of rights and responsibilities that international states had towards one another as one of the surest guarantees to prevent the repetition of annexing land, creating wars, and producing great human suffering.[\[32\]](#)

The world has not been perfect in the aftermath of 1945. However, we have had a much greater, longer run of political and economic stability thanks to this strong network of rules and responsibilities that the international community has signed onto. If a country that belongs to the rules-based order says, "These particular rules do not apply to me. The Fourth Geneva Convention does not apply to the occupied territories," then this is cherry-picking international law; and, international law is not a menu *a la carte*. We have to listen to the 2004 Advisory Opinion of the International Court of Justice[\[33\]](#), and what the Security Council[\[34\]](#) has said in numerous resolutions with respect to our occupation.

What we are winding up doing – particularly in the eyes of those who pay close attention to the Israeli and Palestinian conflict – are two parallel ways in which state defiance is dealt with, when other would-be renegades of international law see that state exceptionalism is being tolerated for Israel, they will want to see if they can have the same incentives and the same legal exceptionalism applies to them as well. There are very few things that are as uncontroversial in international law as the legal fact that Israeli rule over the Palestinians *is occupation* and, *therefore*, the Fourth Geneva Convention applies. Accordingly, based on Article 49 of the Fourth Geneva Convention, the Israeli settlements created in the occupied territory are profoundly illegal under international law.

Indeed, the Israel settlements are a presumptive war crime under the 1998 *Statute of Rome* (Amnesty International, 2019c; International Criminal Court, 1998). Also, annexation *is* illegal under international law. The vast majority – I’d say over 99% – of international lawyers, international legal scholars, and for the diplomatic ministries of almost all states around the world accept that. But the difficulty, the refusal, has been the unwillingness to hold Israel accountable to all the standard norms that apply to an occupation.

We see this in the backsliding on international legal norms applying to an occupation on the part of the United States. In early November 2019, Secretary of State, Mike Pompeo, stated that the US State Department came to the conclusion that the Israeli settlements were not illegal under international law (Lee, 2019).^[35] He said, ‘We have done a 40-page study.’ To the best of my knowledge, this study has not been released publicly. I certainly think it would be a document that international lawyers and scholars would have a field day in picking apart its findings and reasoning, which may be why it is not publicly released. He made the point that in other cases, ‘Settlements in occupied territory may be illegal or the annexation of occupied territory may be illegal, but not in this case involving Israel.’ You can see how the growth of international law exceptionalism^[36] becomes a malignant stain on the whole body of a rules-based international order when clear rules can be undermined by powerful parties saying that they no longer apply to them.

Jacobsen: Some of the premises floating around are the non-transparency with Mike Pompeo in the 40-page report. Another is in the language used around some of the titles of things. So, Judea and Samaria rather than Area C (Israel Ministry of Foreign Affairs, 2015; BBC News, 2009). It is both the non-transparency and the part of actors for states and then the labelling things only among one’s own party and national group, where there is a well-established set of titles and terms with specific meanings based on a consensus internationally. That’s another important issue to touch upon for this too. For Human Rights Watch, what has their take been on some of this labelling unique to Israel and some allies compared to the generally accepted international community consensus?

Shakir: *I think the shifts and changes in terminology are a reflection of underlying policies on place on the ground. One example to take is Israel has a formal separation policy between the West Bank and the Gaza Strip aimed at ensuring minimal travel between the two areas (Human Rights Watch, 2019a). It has resulted in significant changes. Part of it is an effort to break apart the idea of what is a single territorial entity under international law, to make Gaza its own stand-alone entity, not part of the larger equation in dealing with Israel-Palestine. Even the term “Gazans,”^[37] often not with malintent, is part of the practice, it is reducing the people who live there to being tied to their specific geographic areas as opposed to having an identity common*

with those in the West Bank and East Jerusalem. Similar with terminology when it comes to the West Bank, part of Israel's strategy to maintain settlements in the West Bank in perpetuity is to convey the idea of this area as the core part of their idea of Israel (Human Rights Watch, 2017). The change in the terminology is part of advancing that strategy. You see this in Jerusalem with the Temple Mount[38] as a reference to Al-Aqsa Mosque compound[39], which is, again, underlying a certain narrative.[40] A valid historical one, but it is only a part of the entire story there (Hammer, 2011). I think terminology is, of course, always contested everywhere, but, certainly, is used by the Israeli government as a way to muddy-up what are relatively straightforward notions of Palestine being a single territorial entity in terms of its connections between different areas and its historical roots (United Nations, 2012a; United Nations, 2012b).

Lynk: One of my most favourite passages on political terminology comes from George Orwell who wrote in the late 1940s on the necessity of those in power of finding euphemisms and bland words that will diminish the scar or the tragedy unfolding before our eyes.[41] When you look to uncover modern terminology being used by Israel with respect to the occupation, they don't use the word occupation; they will use the word "administered territories" or "disputed territories" (BBC News, 2009; Israel Ministry of Foreign Affairs, 2015b). Settlements are no longer "settlements" in the phraseology at the Fourth Geneva Convention. They are Jewish neighbourhoods on biblical land. It is not the West Bank. It is Judea and Samaria. It is not an apartheid wall built largely in the West Bank. It is a fence. All of these choices of terminology are meant to diminish the horror of the scale of human rights abuses that are going through an occupation, where one national group is clearly dominant over another.

Where it has annexationist tendencies, and where there is no link between what they are doing and what international law requires them to wind up obeying, so, the use of this selective terminology in everyday political discourse and, certainly, in the arguments that they make legally to international diplomatic capitals or to courts such as the International Court of Justice or the International Criminal Court. It is all meant as a way to mask, to minimize, or to disguise the horror that we as civilians in democratic societies in the 21st century would normally want to feel if the true reality of what is unfolding in the occupied territories was said in immediate, urgent, and truthful adjectives and verbs.

Jacobsen: Another sociological variable, often, on the periphery of the commentaries, though central to the lives of many is religious identity and ethnic heritage. On the issue of religious identity, something that we note in Michael and I's own country, Canada, is anti-Muslim sentiment or Islamophobia.[42],[43] On the ethnic heritage front, there is simply anti-Arab sentiment in addition to anti-Semitic sentiment as well. How do these points of contact play into the media portrayals from the occupied Palestinian territories and from Israel when there are certain flare-ups in the overall conflict?

Shakir: Look, I think there is a tendency when looking at conflicts around the world to reduce it to intrinsic ethnic, religious, or other sorts of intrinsic differences, and less of a desire to see conflicts for what they often are at core: access to land, resources, and rights, often, between different groups of people with various political leaders who often use difference to bolster their standing. I think the reality in Israel and Palestine is one such conflict. This is not some thousand-years-old ethnic and religious conflict, but one about land, resources, and rights, primarily. The other elements are certainly not irrelevant. Some policy positions can be informed by views that are bigoted or racist. We've certainly heard in the last rounds of Israeli elections

statements by political parties that were bigoted. We have seen some anti-Semitic statements by Palestinian officials (Schrader, 2020; Nirenstein, 2020; Allgemeiner Staff, 2020). But that is not what the heart of the conflict is about. There's a significant underlying issue of discrimination and very severe discrimination and repression on account of identity, but, at the core, it is less about how the groups view one another and more about securing rights and privileges to land and resources by one group over another. While it manifests in one group having more of those things than another group, it is less about the tensions or animosities between members of those groups and more about struggles over rights, land, and resources.

Lynk: I would echo what Omar has said. For many people in the world, it reflects some of the reporting coming from the region. It has the appearance of being a religious or an ethnic conflict, or simply a neighbourhood squabble between irreconcilable people living next to one another. Often, the conflict is being presented as being intractable. In some of the reporting, it is seen as a tragedy of two people having equal rights to the land. In my view, I think this is what Omar was saying as well. Ultimately, this is a struggle over land and over justice. The ethnic veneer and the religious veneer explains some of the conflict, but the best explanation of the conflict goes to your understanding of the lack of rights and the lack of justice by one side caused by one side subjugating the other.

Yet, I am heartened when I am asked, "Is there any hope for the future?" I am heartened by the civil society efforts: Israeli civil society actors, Palestinian civil society, regional civil society, and international civil society. They want the same rights. They rely on the same international documents to proclaim the importance of human rights as a measuring stick to determine what is going on with that. I think Israeli and Palestinian civil society organizations are one of the important bridges to the future to building two societies living side-by-side, where there will be prosperity, reconciliation, equality; that they can wind up living productively with each other. It is the best hope and, in many ways, the only hope for the conflict being resolved. As Omar said earlier on, there is an equal number of Palestinian Arabs and Israeli Jews living between the Mediterranean Sea and the Jordan River. They are going to have to find some way to live in equality, whether two states or one state as a confederation. I do not purport to have a blueprint for that. It will have to be anchored on human rights law and democratic institutions to enable them to live side-by-side or an end to this conflict to occur. Any forms of a future depending on subjugation or domination with one group over another will sooner or later fall apart simply because people will not live under subjugation or domination for long periods of time.

Jacobsen: Any closing statements – either of you?

Lynk: Only this, I don't think Omar would be doing this work – I don't think I would be doing his work – without feeling some ingrained optimism amid all the struggles that we wind up seeing in front of us for this particular conflict. What gets us up every morning is our belief that international law and international morality can play, should play, and, ultimately, will play a decisive role in bringing justice and peace and prosperity to the 14 million Palestinians and Israeli Jews who live in the area. Through that lens, we can see a meaningful path to get to the future. Otherwise, I think that we would slit our wrists a long time ago. Let me speak for myself, although, I think Omar may agree with this as well; it is only going to happen through actively bending the arc of history towards justice; which means a meaningful peace and finding a *modus operandi* where the two people can live in harmony and equality via the decisive action from the international community. All by itself, this 53-year-old occupation will not die by old age. Israel

can probably sustain the status quo long into the future. Only though the international community becoming motivated by international civil society to take decisive steps that would wind up bringing this subordination and domination to an end. Until that happens, we will see more of the same and more of these bitter human rights violations occurring, which are a credit to no people and, certainly, not to the Israeli leadership and, in its own way, the Palestinian leadership either.

Jacobsen: Omar, Michael, thank you for your time.

Shakir: *Thanks so much, Scott.*

Lynk: Thank you, Scott.

Previous Sessions (Chronological Order)

[Interview with Omar Shakir – Israel and Palestine Director, Human Rights Watch \(Middle East and North Africa Division\)](#)

[HRW Israel and Palestine \(MENA\) Director on Systematic Methodology and Universal Vision Human Rights Watch \(Israel and Palestine\) on Common Rights and Law Violations](#)

[Ask HRW \(Israel and Palestine\) 1 – Recent Events](#)

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[Ask HRW \(Israel and Palestine\) 3 – November-December: Deportation from Tel Aviv, Israel for Human Rights Watch Israel and Palestine Director](#)

[Ask HRW \(Israel and Palestine\) 4 – Uninhabitable: The Viability of Gaza Strip’s 2020 Unlivability](#)

[Ask HRW \(Israel and Palestine\) 5 – The Trump Peace Plan: Is This the “The Deal of the Century,” or Not?](#)

[Ask HRW \(Israel and Palestine\) 6 – Tripartite Partition: The Israeli Elections, the International Criminal Court \(ICC\), and SARS-CoV-2/COVID-19](#)

[Ask HRW \(Israel and Palestine\) 7 – New Heights to the Plight and the Fight: Covid-19, Hegemony, Restrictions, and Rights](#)

Addenda

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Other Resources Internal to Canadian Atheist

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[Interview with Musa Abu Hashash – Field Researcher \(Hebron District\), B’Tselem](#)

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[Interview with Dr. Usama Antar – Independent Political Analyst \(Gaza Strip, Palestine\)](#)

[Interview with Wesam Ahmad – Representative, Al-Haq \(Independent Palestinian Human Rights Organization\)](#)

[Extensive Interview with Professor Richard Falk – Fmr. \(5th\) United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967](#)

[Extensive Interview with Professor John Dugard – Fmr. \(4th\) United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967](#)

[Extensive Interview with S. Michael Lynk – \(7th\) United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967](#)

[Conversation with John Dugard, Richard Falk, and S. Michael Lynk on the Role of the Special Rapporteur, and the International Criminal Court & Jurisdiction](#)

[To resolve the Palestinian question we need to end colonialism](#)

[Trump’s Colonial Solution to the Question of Palestine Threatens the Foundations of International Law](#)

[Dr. Norman Finkelstein on the International Criminal Court](#)

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Footnotes

[1] “Dr. Norman Finkelstein on the International Criminal Court” (2020) in which Finkelstein stated:

On the UN question, Palestine is officially defined as a non-member observer state. That’s its status. So, it is not a member of the General Assembly, but it is classified as a state: non-member observer state. I think the only other entity that has that definition is the Vatican. The Vatican also has non-member observer state status. Whether or not Palestine is a state, the essence comes down to the following: technical, under what is called the Montevideo criteria, a state has four characteristics. It has a territory. It has a population. It has an effective government. And it has the capacity to engage in foreign

relations to sign treaties and things like that. Those are the four technical criteria of a state. The issue that has been the most contentious between the two sides is the effective government.

See Jacobsen (2020b).

[2] “Legal English: “De Facto/De Jure”” (2012) states:

Today’s phrases, “de facto” and “de jure,” (Pronunciation: dee fak-toh/di joo r-ee: Origin: Latin) are closely related concepts. De facto means a state of affairs that is true in fact, but that is not officially sanctioned. In contrast, de jure means a state of affairs that is in accordance with law (i.e. that is officially sanctioned). Most commonly, these phrases are used to describe the source of a business or governmental leader’s authority, but they apply to a wide variety of situations. Here are some example sentences that use the phrases:

- *“Our country is going through some very difficult times. We have an elected prime minister, but he has no actual power. Instead, the general who sits at the head of the military is the de facto ruler of the nation.”*
- *“I know that, de jure, this is supposed to be a parking lot, but now that the flood has left four feet of water here, it’s a de facto swimming pool.”*
- *“We understand that these are the de facto bounds of your manufacturing facility, but what do the official land records and surveys show? Is that mountain of scrap rubber over there encroaching on anyone else’s property?”*
- *“The rest of the world considers your company to be a U.S. corporation, but where is your de jure jurisdiction of incorporation? If it’s somewhere offshore, we might have a P.R. issue on our hands.”*

As you can see, de facto refers to situations that are true for practical reasons, whereas de jure refers to formal, official status of the matter.

See Washington United in St. Louis: School of Law (2012).

[3] “Chapter 3: Israeli Settlements and International Law” (2019b) states:

Israel’s policy of settling its civilians in occupied Palestinian territory and displacing the local population contravenes fundamental rules of international humanitarian law.

Article 49 of the Fourth Geneva Convention states: “The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.” It also prohibits the “individual or mass forcible transfers, as well as deportations of protected persons from occupied territory”.

The extensive appropriation of land and the appropriation and destruction of property required to build and expand settlements also breach other rules of international humanitarian law. Under the Hague Regulations of 1907, the public property of the occupied population (such as lands, forests and agricultural estates) is subject to the laws of usufruct. This means that an occupying state is only allowed a very limited use of this property. This limitation is derived from the notion that occupation is temporary, the

core idea of the law of occupation. In the words of the International Committee of the Red Cross, the occupying power “has a duty to ensure the protection, security, and welfare of the people living under occupation and to guarantee that they can live as normal a life as possible, in accordance with their own laws, culture, and traditions.”

The Hague Regulations prohibit the confiscation of private property. The Fourth Geneva Convention prohibits the destruction of private or state property, “except where such destruction is rendered absolutely necessary by military operations”.

As the occupier, Israel is therefore forbidden from using state land and natural resources for purposes other than military or security needs or for the benefit of the local population. The unlawful appropriation of property by an occupying power amounts to “pillage”, which is prohibited by both the Hague Regulations and Fourth Geneva Convention and is a war crime under the Rome Statute of the International Criminal Court and many national laws.

Israel’s building of settlements in the West Bank, including in East Jerusalem, does not respect any of these rules and exceptions. [Emphasis added.]

See Amnesty International (2019b).

[4] “The Status of Palestine” (1997) states:

*The 1967 war, which resulted in the occupation by Israel of East Jerusalem and the Palestinian territories, ended the armistice demarcation line between the eastern and western sectors but reopened with new vehemence the debate over the two competing claims. **Israel, which annexed East Jerusalem in 1980**, considers that “Jerusalem, whole and united, is the capital of Israel”, and wants the City to “remain forever under Israel’s sovereignty.” Its de facto control on the ground has enabled it to invest vast resources and efforts into changing the physical and demographic characteristics of the City. The Israeli claim to Jerusalem, however, has not been recognized by the international community which rejects the acquisition of territory by war and considers any changes on the ground illegal and invalid. On the other hand, the Palestinians have claimed East Jerusalem as the capital of a future independent State of Palestine to be established in the territories occupied since 1967.* [Emphasis added.]

See UNISPAL (1997).

[5] Lynk, here, references the overwhelming consensus of the international community of the status of illegality of the Israeli settlements, of Israeli occupation, of Israel defined as an Occupying Power, and annexation in the West Bank and East Jerusalem as illegal under international law. Thusly, the international community does not recognize the 1980 and 1981 annexations by Israel.

[6] U.N. Resolution 478 came with 14 votes in favour, none against, and 1 abstention (The United States of America), and states, in full:

The Security Council,
Recalling *its resolution 476 (1980)*,

Reaffirming again *that the acquisition of territory by force is inadmissible,*

Deeply concerned over the enactment of a “basic law” in the Israeli Knesset proclaiming a change in the character and status of the Holy City of Jerusalem, with its implications for peace and security,

Noting that Israel has not complied with resolution 476 (1980),

Reaffirming its determination to examine practical ways and means, in accordance with the relevant provisions of the Charter of the United Nations, to secure the full implementation of its resolution 476 (1980), in the event of non-compliance by Israel,

1. Censures in the strongest terms the enactment by Israel of the “basic law” on Jerusalem and the refusal to comply with relevant Security Council resolutions;
2. Affirms that the enactment of the “basic law” by Israel constitutes a violation of international law and does not affect the continued application of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian and other Arab territories occupied since June 1967, including Jerusalem;
3. Determines that all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem, and in particular the recent “basic law” on Jerusalem, are null and void and must be rescinded forthwith;
4. Affirms also that this action constitutes a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East;
5. Decides not to recognize the “basic law” and such other actions by Israel that, as a result of this law, seek to alter the character and status of Jerusalem and calls upon:
 - (a) All Member States to accept this decision;
 - (b) Those States that have established diplomatic missions at Jerusalem to withdraw such missions from the Holy City;
6. Requests the Secretary-General to report to the Security Council on the implementation of the present resolution before 15 November 1980;
7. Decides to remain seized of this serious situation.

See United Nations (1980a).

[7] United Nations Resolution 476, in full, states:

The Security Council,

Having considered the letter of 28 May 1980 from the representative of Pakistan, the current Chairman of the Organization of the Islamic Conference, as contained in document S/13966 of 28 May 1980,

Reaffirming that acquisition of territory by force is inadmissible,

Bearing in mind *the specific status of Jerusalem and, in particular, the need for protection and preservation of the unique spiritual and religious dimension of the Holy Places in the city,*

Reaffirming *its resolutions relevant to the character and status of the Holy City of Jerusalem, in particular resolutions 252 (1968) of 21 May 1968, 267 (1969) of 3 July 1969, 271 (1969) of 15 September 1969, 298 (1971) of 25 September 1971 and 465 (1980) of 1 March 1980,*

Recalling *the Fourth Geneva Convention of 12 August 1949 relative to the Protection of Civilian Persons in Time of War,*

Deploing *the persistence of Israel, in changing the physical character, demographic composition, institutional structure and the status of the Holy City of Jerusalem,*

Gravely concerned over *the legislative steps initiated in the Israeli Knesset with the aim of changing the character and status of the Holy City of Jerusalem,*

1. Reaffirms *the overriding necessity to end the prolonged occupation of Arab territories occupied by Israel since 1967, including Jerusalem;*
2. Strongly deplores *the continued refusal of Israel, the occupying Power, to comply with the relevant resolutions of the Security Council and the General Assembly;*
3. Reconfirms *that all legislative and administrative measures and actions taken by Israel, the occupying Power, which purport to alter the character and status of the Holy City of Jerusalem have no legal validity and constitute a flagrant violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East;*
4. Reiterates *that all such measures which have altered the geographic, demographic and historical character and status of the Holy City of Jerusalem are null and void and must be rescinded in compliance with the relevant resolutions of the Security Council;*
5. Urgently calls on *Israel, the occupying Power, to abide by this and previous Security Council resolutions and to desist forthwith from persisting in the policy and measures affecting the character and status of the Holy city of Jerusalem;*
6. Reaffirms *its determination in the event of non-compliance by Israel with this resolution, to examine practical ways and means in accordance with relevant provisions of the Charter of the United Nations to secure the full implementation of this resolution.*

See United Nations (1980b).

[8] Lynk argued for this before. “Special Rapporteur on Situation of Human Rights in the oPt Presents Report to Third Committee – Press Release (GA/SHC/4273) (Excerpts)” (2019) states:

One of five mandate holders to present their findings, Michael Lynk, Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, focused on the deepening humanitarian crisis in Gaza. “This would properly be labelled a tragedy if I was reporting to you about a natural catastrophe and the ensuing scale of

human suffering,” he said. However, this is a human-made disaster. Israel’s now 12-year blockade of Gaza is expressly prohibited under the Fourth Geneva Convention.

The will of the international community does not seem strong enough to compel Israel into compliance, he said. “No country is as dependent on the support of the international community as Israel, yet Israel allows itself to defy the world as few dare.” To ensure accountability, he advocated a complete ban on exports from illegal Israeli settlements, coupled with flight bans, refusing arms transfers and using universal jurisdiction to bring violators of international law to justice...

... Yet, Israel has demonstrated no accountability to address these actions, despite calls by the international community, by the 2019 Commission of Inquiry and by civil society. Describing the 53-year-old occupation as the longest belligerent occupation in the modern world, he said the international community has demonstrated “great unwillingness” to impose any meaningful accountability on Israel for its permanent occupation and its serious violations of international law.

He said Israel has rightly assessed that the international community — particularly Western industrial nations — lacks the political will to compel an end to its impunity.

See UNISPAL (2019).

[9] In reference to “Europe and other powerful players in North America and other places in the Western world,” this contains a historical context important for comprehension here. The United Nations formed after the collapsed efforts of the League of Nations. With this, at the foundation of the United Nations on October 24, 1945, the Israeli-Palestinian issue set forth, which came in the wake of the Second World War, as primarily a war with involvement of the Western world and the Europeans. In fact, the issue runs back farther. See UNISPAL (n.d.).

[10] “Crimea profile” (2018) states:

In early 2014 Crimea became the focus of the worst East-West crisis since the Cold War, after Ukraine’s pro-Moscow president Viktor Yanukovich was driven from power by violent protests in Kiev.

Kremlin-backed forces seized control of the Crimean peninsula, and the territory, which has a Russian-speaking majority, voted to join Russia in a referendum that Ukraine and the West deem illegal.

See BBC News (2018).

[11] See Stone, R.S., Elath, E., Ochsenwald, W.L., & Sichernan, H. (2020).

[12] “67/19. Status of Palestine in the United Nations” states:

*Reaffirming its resolution 3236 (XXIX) of 22 November 1974 and all relevant resolutions, including resolution 66/146 of 19 December 2011, reaffirming the right of the Palestinian people to self-determination, including the right to their independent **State of Palestine**...*

...Reaffirming also its resolutions 43/176 of 15 December 1988 and 66/17 of 30 November 2011 and all relevant resolutions regarding the peaceful settlement of the question of Palestine, which, inter alia, stress the need for the withdrawal of Israel from

*the Palestinian territory occupied since 1967, including East Jerusalem, the realization of the inalienable rights of the Palestinian people, primarily **the right to self-determination and the right to their independent State** ...*

*...emphasizing the need for a way to be found through negotiations to resolve the status of Jerusalem as **the capital of two States** ...*

*...Recalling also its resolution 43/177 of 15 December 1988, by which it, inter alia, acknowledged the proclamation of **the State of Palestine** by the Palestine National Council on 15 November 1988 and decided that the designation “Palestine” should be used in place of the designation “Palestine Liberation Organization” in the United Nations system, without prejudice to the observer status and functions of the Palestine Liberation Organization within the United Nations system,*

*Taking into consideration that the Executive Committee of the Palestine Liberation Organization, in accordance with a decision by the Palestine National Council, is entrusted with the powers and responsibilities of the Provisional Government of the **State of Palestine** ...*

*...Reaffirming its commitment, in accordance with international law, to the two-State solution of an independent, sovereign, democratic, viable and contiguous **State of Palestine** living side by side with Israel in peace and security on the basis of the pre-1967 borders,*

*Bearing in mind the mutual recognition of 9 September 1993 **between the Government of the State of Israel and the Palestine Liberation Organization**, the representative of the Palestinian people,*

Affirming the right of all States in the region to live in peace within secure and internationally recognized borders,

*Commending the Palestinian National Authority’s 2009 plan for constructing the institutions of an **independent Palestinian State** ...*

*...Recognizing also that, to date, **132 States Members of the United Nations have accorded recognition to the State of Palestine** ...*

*...1. Reaffirms the right of the Palestinian people to self-determination and to independence in their **State of Palestine on the Palestinian territory occupied since 1967**;*

*2. Decides to accord to **Palestine non-member observer State status** in the United Nations, without prejudice to the acquired rights, privileges and role of the Palestine Liberation Organization in the United Nations as the representative of the Palestinian people, in accordance with the relevant resolutions and practice;*

*3. Expresses the hope that the Security Council will consider favourably the application submitted on 23 September 2011 by **the State of Palestine** for admission to full membership in the United Nations... [Emphasis added.]*

See United Nations (2012).

[13] “Unable to vote, Palestinians shrug off Israel’s elections” (2019), in part, states:

*MAS'HA, West Bank (AP) — **Barhoum Saleh's town is surrounded by Jewish settlements**, the sign above his roadside mechanic shop is in Hebrew, most of his customers are Israeli and he needs an Israeli permit to visit the beach a half hour's drive away.*

But unlike his Jewish neighbors, he can't vote in next week's elections.

***Saleh is among the 2.5 million Palestinians in the West Bank who have no voice in choosing Israel's next government and no control over whether it decides to annex part or all of the occupied territory**, as Prime Minister Benjamin Netanyahu [has vowed to do](#) . With the peace process having sputtered to a halt a decade ago, they also have little hope of getting a state of their own anytime soon. [Emphasis added.]*

See Krauss & Daraghme (2019).

[14] One of the, or the, fundamental violation of international law comes in the form of Article 49 of the Fourth Geneva Convention. The Fourth Geneva Convention deals specifically with the protection of civilians in war zones as a humanitarian matter. You can observe some of the common phraseology defined within the context of the occupation in the Fourth Geneva Convention, which gets used throughout the discourse, e.g., “Occupying Power,” where the means “Israel” in the context of Israeli annexation and settlements. Article 49 states:

Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.

The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated.

The Protecting Power shall be informed of any transfers and evacuations as soon as they have taken place.

The Occupying Power shall not detain protected persons in an area particularly exposed to the dangers of war unless the security of the population or imperative military reasons so demand.

The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.

See International Committee of the Red Cross (1949).

[15] See United Nations Security Council (2016).

[16] “Resolution 2334” states:

... Condemning all measures aimed at altering the demographic composition, character and status of the Palestinian Territory occupied since 1967, including East Jerusalem, including, inter alia, the construction and expansion of settlements, transfer of Israeli settlers, confiscation of land, demolition of homes and displacement of Palestinian civilians, in violation of international humanitarian law and relevant resolutions ...

...Reaffirms that the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace...

See United Nations Security Council (2016).

[17] “Resolution 465” states:

...Taking note of the reports of the Commission of the Security Council established under resolution 446 (1979) to examine the situation relating to settlements in the Arab territories occupied since 1967, including Jerusalem, contained in documents S/13450 and Corr. 1 and S/13679...

...Deploing the decision of the Government of Israel to officially support Israeli settlement in the Palestinian and other Arab territories occupied since 1967,

Deeply concerned over the practices of the Israeli authorities in implementing that settlement policy in the occupied Arab territories, including Jerusalem, and its consequences for the local Arab and Palestinian population...

...Drawing attention to the grave consequences which the settlement policy is bound to have on any attempt to reach a comprehensive, just and lasting peace in the Middle East...

... 6. Strongly deplores the continuation and persistence of Israel in pursuing those policies and practices and calls upon the Government and people of Israel to rescind those measures, to dismantle the existing settlements and in particular to cease, on an urgent basis, the establishment, construction and planning of settlements in the Arab territories occupied since 1967, including Jerusalem;

7. Calls upon all States not to provide Israel with any assistance to be used specifically in connexion with settlements in the occupied territories;

8. Requests the Commission to continue to examine the situation relating to settlements in the Arab territories occupied since 1967, including Jerusalem, to investigate the reported serious depletion of natural resources, particularly the water resources, with a view to ensuring the protection of those important natural resources of the territories under occupation, and to keep under close scrutiny the implementation of the present resolution...

See United Nations Security Council (1980).

[18] “Resolution 446” states:

...Determines that the policy and practices of Israel in establishing settlements in the Palestinian and other Arab territories occupied since 1967 have no legal validity and constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East...

...Establishes a Commission consisting of three members of the Security Council, to be appointed by the President of the Council after consultations with the members of the Council, to examine the situation relating to settlements in the Arab territories occupied since 1967, including Jerusalem...

See United Nations Security Council (1979).

[19] See International Middle East Media Center (2019).

[20] See Al-Haq (2015).

[21] “Gaza Strip: Blockade” (2020) states:

In autumn 2007 [Israel](#) declared the [Gaza](#) Strip under [Hamas](#) a hostile entity and approved a series of sanctions that included power cuts, heavily restricted imports, and border closures. In January 2008, facing sustained rocket assaults into its southern settlements, Israel broadened its sanctions, completely sealing its border with the Gaza Strip and temporarily preventing fuel imports. Later that month, after nearly a week of the intensified Israeli blockade, Hamas’s forces demolished portions of the barrier along the Gaza Strip–Egypt border (closed from Hamas’s mid-2007 takeover until 2011), opening gaps through which, according to some estimates, hundreds of thousands of Gazans passed into Egypt to purchase food, fuel, and goods unavailable under the blockade. Egyptian Pres. [Hosni Mubarak](#) temporarily permitted the [breach](#) to [alleviate](#) civilian hardship in Gaza before efforts could begin to restore the border.

In the years after the Israeli blockade on Gaza was instated, an organization known as the Free Gaza Movement made a number of maritime efforts to breach it. The first such mission—which consisted of a pair of vessels bearing medical supplies and some 45 activists—was permitted to reach Gaza in [August](#) 2008, and four missions in subsequent months were also successful. In May 2010 a flotilla bound for Gaza was the scene of a clash between activists and Israeli commandos in which 9 of the more than 600 activists involved were killed.

Under Mubarak, Egypt’s cooperation in enforcing the blockade was deeply unpopular with the Egyptian public. In May 2011, four months after a [popular uprising in Egypt](#) forced Mubarak to step down as president, Egypt’s [interim](#) government announced that it would permanently reopen the Rafah border crossing, allowing Palestinians to pass between Egypt and Gaza. About 1,200 people were allowed to cross the border daily, though it remained closed for trade. However, in the turmoil following the ouster of Egyptian Pres. [Mohamed Morsi](#) in the summer of 2013, traffic through the border crossing was reduced to 50 people per day because of security concerns and was later closed altogether.

After the [PA](#) took control of the Rafah border crossing in late 2017, Egypt began allowing 200 people per day to cross the border in May 2018. The border was closed

briefly after the PA quit the Gaza Strip in January 2019, but it was reopened weeks later by Hamas. During this rare and prolonged easing of the border, tens of thousands of Gazans were reported to have permanently emigrated from the Gaza Strip.

After months of violence between Israel and Hamas in mid-2018, Israel began to ease restrictions on its blockade as a part of an effort to incentivize a more long-term cease-fire agreement between the two. In 2019 Israel allowed the flow of additional goods into and out of the territory, expanded the permitted fishing zone for Gazans to its largest extent in more than a decade, and began allowing thousands of Gazans to cross the border to work in Israel.

See The Editors of Encyclopaedia Britannica (2020).

[22] See Federman (2019).

[23] See UNISPAL (2006).

[24] “Situation of human rights in the Palestinian territories occupied since 1967” (2019) states:

...The key issues raised during the mission included the continued shrinking of civic space, the pervasive lack of accountability, especially in relation to the investigation and prosecution of hostilities in Gaza in 2014, home demolitions in the West Bank, in particular in East Jerusalem, the ongoing use of administrative detention and the detention of children, and the impact of various practices on the environment...

...Israel has demonstrated virtually no accountability for these actions despite calls by the international community and civil society for independent and transparent investigations into the incidents...

...Far too often, accountability has been applied by the international community in a selective and partisan fashion to many serious issues, reflecting a dispiriting mixture of design and indifference, collusion and apathy. On too many occasions, defiance has been ignored and outliers have been excused or appeased. This deficit of accountability erodes popular trust in the efficacy of international law, thereby jeopardizing a precious common good...

...The 52-year Israeli occupation of the Palestinian territory – Gaza and the West Bank, including East Jerusalem – is a bitter illustration of the absence of international accountability in the face of the systemic violations of Palestinian rights under human rights and humanitarian law. Accountability is the key to opening the titanium cage that is the permanent occupation, and its principled application is the best path to a just and durable settlement...

...The Court then elaborated upon the duty of accountability of the international community when a competent organ of the United Nations had issued a binding decision on the illegality of a situation...

...In a variety of forums, the United Nations has frequently called upon the international community to ensure accountability and to end impunity with respect to the Israeli occupation...

...In four major independent reports commissioned by the Human Rights Council since 2009, the constant theme has been the serious violations of human rights and humanitarian laws by Israel, the necessity to ensure Israeli accountability and the prevailing culture of exceptionalism...

...The General Assembly and the Human Rights Council have both accentuated the necessity for accountability by Israel, the occupying Power, in recent years...

...Impunity and the lack of accountability by Israel in its conduct of the occupation have also been addressed by the Secretary-General...

...The lack of accountability has also been a central concern of the United Nations High Commissioner for Human Rights...

...Of the 178 recommendations issued regarding accountability and access to justice, Israel had implemented 2, had partially implemented 8 and had not implemented 168 (90 per cent)...

...Much more can be said about the range of appropriate countermeasures that the international community has at its disposal to ensure accountability and an end to impunity regarding the Israeli occupation...

...It would realize that bold measures and the determination to enforce accountability in these circumstances would greatly improve the chances that the next obstinate occupier would not likely want to test its resolve...

See United Nations General Assembly (2019).

[25] See BBC News (2016).

[26] See Gragg & Volochine (2019).

[27] A single negative vote from one of the permanent members – China, France, Russia, the United Kingdom and the United States – of the Security Council would block a draft resolution. “Charter of the United Nations – Chapter V: The Security Council” states:

1. *Each member of the Security Council shall have one vote.*
2. *Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members.*
3. *Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.*

See United Nations (1945).

[28] Approximately 9,000,000 Israelis divided by about 145,000,000 Russians comes to about 6%.

[29] The illegal settlements database provided an insight into the contexts for a number of the illegal settlement-dealing businesses. This comes from another portion of the international effort for a transition from statements or reminders of rights and abuses of said rights, and more into the firm transition into the world of accountability tied to action, so as to make the statements of

rights and abuses of said rights substantive rather than null and void. This became part of a previous session with Shakir, in which we stated:

Jacobsen: *The U.N. also recently released a list of companies, 112 [Ed. Countries with companies on the listing (number of companies in parentheses per country): France (3), Israel (94), Luxembourg (1), Netherlands (4), Thailand (1), United Kingdom (3), United States of America (6) (U.N. Human Rights Council, 2020).], who are doing business on Israeli settlements in the West Bank (Nebehay, 2020; Federman, 2020; Federman & Keaten, 2020). What does this mean for this similar discourse of rights violations through the annexation of land? What are the particular types of rights violations in this reportage?*

Shakir: *The long-awaited release of the U.N. Database of Settlement Companies should really put companies on notice: to do business with illegal settlements is to aid in the commission of war crimes (U.N. Human Rights Council, 2020). Companies have hid for too long behind the idea of these issues as too controversial or complex as a way to excuse their direct contribution to rights abuses. The underlying reality is that settlements are not only a violation of the Fourth Geneva Convention and a war crime (Diplomatic Conference of Geneva, 1949; Amnesty International, 2019b). They also entail systematic abuses to the rights of Palestinians. Settlements are built on land confiscated, stolen, from Palestinians (Amnesty International, 2019b). In order to maintain the settlement enterprise, Israel has erected a two-tiered discriminatory system in the West Bank that treats Palestinians separately and unequally (Human Rights Watch, 2010). Companies that do business in settlements not only further entrench the illegal settlement enterprise, but they actually profit from the theft of Palestinian land and contribute to the further dispossession of Palestinians. I think the release of this database is an important step towards ensuring transparency around these activities, but also towards protecting human rights, not only of Palestinians, but setting a precedent that can be used in other contexts to improve the standards around business and human rights.*

See Jacobsen (2020e).

[30] See Federman (2020c), Federman & Keaten (2020), and Nebehay (2020).

[31] You can find the complete 112 out of the 188 companies who formally met the requirements for inclusion as follows:

Business enterprises involved in listed activities			
<i>No.</i>	<i>Business Enterprise</i>	<i>Category of listed activity</i>	<i>State concerned</i>

1	Afikim Public Transportation Ltd.	E	Israel
2	Airbnb Inc.	E	United States
3	American Israeli Gas Corporation Ltd.	E, G	Israel
4	Amir Marketing and Investments in Agriculture Ltd.	G	Israel
5	Amos Hadar Properties and Investments Ltd.	G	Israel
6	Angel Bakeries	E, G	Israel
7	Archivists Ltd.	G	Israel
8	Ariel Properties Group	E	Israel
9	Ashtrum Industries Ltd.	G	Israel
10	Ashtrum Properties Ltd.	G	Israel
11	Avgol Industries 1953 Ltd.	G	Israel
12	Bank Hapoalim B.M.	E, F	Israel
13	Bank Leumi Le-Israel B.M.	E, F	Israel

14	Bank of Jerusalem Ltd.	E, F	Israel
15	Beit Haarchiv Ltd.	G	Israel
16	Bezeq, the Israel Telecommunication Corp Ltd.	E, G	Israel
17	Booking.com B.V.	E	Netherlands
18	C Mer Industries Ltd.	B	Israel
19	Café Café Israel Ltd.	E, G	Israel
20	Caliber 3	D, G	Israel
21	Cellcom Israel Ltd.	E, G	Israel
22	Cherriessa Ltd.	G	Israel
23	Chish Nofei Israel Ltd.	G	Israel
24	Citadis Israel Ltd.	E, G	Israel
25	Comasco Ltd.	A	Israel
26	Darban Investments Ltd.	G	Israel
27	Delek Group Ltd.	E, G	Israel

28	Delta Israel	G	Israel
29	Dor Alon Energy in Israel 1988 Ltd.	E, G	Israel
30	Egis Rail	E	France
31	Egged, Israel Transportation Cooperative Society Ltd.	E	Israel
32	Energix Renewable Energies Ltd.	G	Israel
33	EPR Systems Ltd.	E, G	Israel
34	Extal Ltd.	G	Israel
35	Expedia Group Inc.	E	United States
36	Field Produce Ltd.	G	Israel
37	Field Produce Marketing Ltd.	G	Israel
38	First International Bank of Israel Ltd.	E, F	Israel
39	Galshan Shvakim Ltd.	E, D	Israel
40	General Mills Israel Ltd.	G	Israel

41	Hadiklaim Israel Date Growers Cooperative Ltd.	G	Israel
42	Hot Mobile Ltd.	E	Israel
43	Hot Telecommunications Systems Ltd.	E	Israel
44	Industrial Buildings Corporation Ltd.	G	Israel
45	Israel Discount Bank Ltd.	E, F	Israel
46	Israel Railways Corporation Ltd.	G, H	Israel
47	Italek Ltd.	E, G	Israel
48	JC Bamford Excavators Ltd.	A	United Kingdom
49	Jerusalem Economy Ltd.	G	Israel
50	Kavim Public Transportation Ltd.	E	Israel
51	Lipski Installation and Sanitation Ltd.	G	Israel
52	Matrix IT Ltd.	E, G	Israel
53	Mayer Davidov Garages Ltd.	E, G	Israel

54	Mekorot Water Company Ltd.	G	Israel
55	Mercantile Discount Bank Ltd.	E, F	Israel
56	Merkavim Transportation Technologies Ltd.	E	Israel
57	Mizrahi Tefahot Bank Ltd.	E, F	Israel
58	Modi'in Ezrachi Group Ltd.	E, D	Israel
59	Mordechai Aviv Taasiot Beniyah 1973 Ltd.	G	Israel
60	Motorola Solutions Israel Ltd.	B	Israel
61	Municipal Bank Ltd.	F	Israel
62	Naaman Group Ltd.	E, G	Israel
63	Nof Yam Security Ltd.	E, D	Israel
64	Ofertex Industries 1997 Ltd.	G	Israel
65	Opodo Ltd.	E	United Kingdom
66	Bank Otsar Ha-Hayal Ltd.	E, F	Israel
67	Partner Communications Company Ltd.	E, G	Israel

68	Paz Oil Company Ltd.	E, G	Israel
69	Pelegas Ltd.	G	Israel
70	Pelephone Communications Ltd.	E, G	Israel
71	Proffimat S.R. Ltd.	G	Israel
72	Rami Levy Chain Stores Hashikma Marketing 2006 Ltd.	E, G	Israel
73	Rami Levy Hashikma Marketing Communication Ltd.	E, G	Israel
74	Re/Max Israel	E	Israel
75	Shalgal Food Ltd.	G	Israel
76	Shapir Engineering and Industry Ltd.	E, G	Israel
77	Shufersal Ltd.	E, G	Israel
78	Sonol Israel Ltd.	E, G	Israel
79	Superbus Ltd.	E	Israel
80	Supergum Industries 1969 Ltd.	G	Israel

81	Tahal Group International B.V.	E	Netherlands
82	TripAdvisor Inc.	E	United States
83	Twitoplast Ltd.	G	Israel
84	Unikowsky Maoz Ltd.	G	Israel
85	YES	E	Israel
86	Zakai Agricultural Know-how and inputs Ltd.	G	Israel
87	ZF Development and Construction	G	Israel
88	ZMH Hammermand Ltd.	G	Israel
89	Zorganika Ltd.	G	Israel
90	Zriha Hlavin Industries Ltd.	G	Israel
Business enterprises involved as parent companies			
<i>No.</i>	<i>Business Enterprise</i>	<i>Category of listed activity</i>	<i>State concerned</i>
91	Alon Blue Square Israel Ltd.	E, G	Israel

92	Alstom S.A.	E, G	France
93	Altice Europe N.V.	E	Netherlands
94	Amnon Mesilot Ltd.	E	Israel
95	Ashtrom Group Ltd.	G	Israel
96	Booking Holdings Inc.	E	United States
97	Brand Industries Ltd.	G	Israel
98	Delta Galil Industries Ltd.	G	Israel
99	eDreams ODIGEO S.A.	E	Luxembourg
100	Egis S.A.	E	France
101	Electra Ltd.	E	Israel
102	Export Investment Company Ltd.	E, F	Israel
103	General Mills Inc.	G	United States
104	Hadar Group	G	Israel
105	Hamat Group Ltd.	G	Israel

106	Indorama Ventures P.C.L.	G	Thailand
107	Kardan N.V.	E	Netherlands
108	Mayer's Cars and Trucks Co. Ltd.	E	Israel
109	Motorola Solutions Inc.	B	United States
110	Natoon Group	E, D	Israel
111	Villar International Ltd.	G	Israel
Business enterprises involved as licensors or franchisors			
<i>No.</i>	<i>Business Enterprise</i>	<i>Category of listed activity</i>	<i>State concerned</i>
112	Greenkote P.L.C.	G	United Kingdom

See U.N. Human Rights Council (2020).

[32] “International law: Jurisdiction” (2019) states:

Jurisdiction refers to the power of a state to affect persons, property, and circumstances within its territory. It may be exercised through legislative, executive, or judicial actions. International law particularly addresses questions of [criminal law](#) and essentially leaves civil jurisdiction to national control. According to the territorial principle, states have [exclusive](#) authority to deal with criminal issues arising within their territories; this principle has been modified to permit officials from one state to act within another state in certain circumstances (e.g., the [Channel Tunnel](#) arrangements between the United Kingdom and France and the 1994 peace [treaty](#) between Israel and Jordan). The nationality principle permits a country to exercise criminal jurisdiction over any of its nationals accused of criminal offenses in another state. Historically, this principle has been associated more closely with civil-law systems than with common-law ones, though

its use in common-law systems increased in the late 20th century (e.g., the adoption in Britain of the War Crimes Act in 1991 and the Sex Offenders Act in 1997). Ships and aircraft have the nationality of the state whose flag they fly or in which they are registered and are subject to its jurisdiction.

The passive personality principle allows states, in limited cases, to claim jurisdiction to try a foreign national for offenses committed abroad that affect its own citizens. This principle has been used by the United States to prosecute terrorists and even to arrest (in 1989–90) the de facto leader of Panama, [Manuel Noriega](#), who was subsequently convicted by an American court of cocaine trafficking, racketeering, and [money laundering](#). The principle appears in a number of conventions, including the International Convention Against the Taking of Hostages (1979), the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons (1973), and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984). The protective principle, which is included in the hostages and aircraft-hijacking conventions and the Convention on the Safety of [United Nations](#) and Associated Personnel (1994), can be [invoked](#) by a state in cases where an alien has committed an act abroad deemed prejudicial to that state’s interests, as distinct from harming the interests of nationals (the passive personality principle). Finally, the universality principle allows for the assertion of jurisdiction in cases where the [alleged](#) crime may be prosecuted by all states (e.g., [war crimes](#), crimes against the peace, crimes against humanity, slavery, and piracy).

See Shaw (2019).

[33] “International Court of Justice Advisory Opinion Finds Israel’s Construction of Wall ‘Contrary to International Law’” (2004) states:

The International Court of Justice (ICJ), principal judicial organ of the United Nations, has today rendered its Advisory Opinion in the case concerning the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (request for advisory opinion).

In its Opinion, the Court finds unanimously that it has jurisdiction to give the advisory opinion requested by the United Nations General Assembly and decides by 14 votes to 1 to comply with that request.

The Court responds to the question as follows:

“A. By 14 votes to 1,

The construction of the wall being built by Israel, the occupying Power, in the occupied Palestinian territory, including in and around East Jerusalem, and its associated regime, are contrary to international law”;

“B. By 14 votes to 1,

Israel is under an obligation to terminate its breaches of international law; it is under an obligation to cease forthwith the works of construction of the wall being built in the occupied Palestinian territory, including in and around East Jerusalem, to dismantle forthwith the structure therein situated, and to repeal or render ineffective forthwith all

legislative and regulatory acts relating thereto, in accordance with paragraph 151 of this Opinion”;

“C. By 14 votes to 1,

Israel is under an obligation to make reparation for all damage caused by the construction of the wall in the occupied Palestinian territory, including in and around East Jerusalem”;

“D. By 13 votes to 2,

All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction; all States parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 have in addition the obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention”;

“E. By 14 votes to 1,

The United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated regime, taking due account of the present Advisory Opinion.”

See International Court of Justice (2004).

[34] See United Nations Security Council (2016), United Nations Security Council (1979), and United Nations Security Council (1980).

[35] “U.S. backs Israel on settlements, angering Palestinians and clouding peace process” (2019) states:

Pompeo said U.S. statements about the settlements on the West Bank, which Israel captured in 1967, had been inconsistent, saying Democratic President Jimmy Carter found they were not consistent with international law and Republican President Ronald Reagan said he did not view them as inherently illegal.

“The establishment of Israeli civilian settlements is not, per se, inconsistent with international law,” Pompeo told reporters at the State Department, reversing a formal legal position taken by the United States under Carter in 1978.

His announcement drew praise from Netanyahu, who said it “rights a historical wrong,” and condemnation from Palestinian negotiator Saeb Erekat, who said Washington was threatening “to replace international law with the ‘law of the jungle.’”

Palestinians argued the U.S. stance flouted international law. The international community views the transfer of any country’s civilians to occupied land as illegal under the Fourth Geneva Convention of 1949 and U.N. Security Council resolutions.

“The United States is neither qualified nor is authorized to negate international legitimacy resolutions and it has no right to give any legitimacy to Israeli settlement,” said Nabil Abu Rudeineh, a spokesman for Palestinian President Mahmoud Abbas.

The United States said its stance could prompt violence, warning Americans in the region to exercise greater vigilance because those opposing the move “may target” U.S. government facilities, private interests and citizens.

Jordan’s foreign minister, Ayman Safadi, said the policy change would have “dangerous consequences” for the prospects of reviving peace talks and called settlements “a blatant violation of international law.”

See Mohammed, Spetalnick, & Pamuk (2019).

[36] As noted by Lynk, one of the prime issues comes in the opposition to the universalism or universal application of international law to all member states of the United Nations without exception – hence, exceptionalism as a concern and universalism as a necessary ideal – to the actions of any Member State, wherein one exception creates the basis for other borderline ill-actors within the international community asking, “Why not me?” Universalism must be universal without exception to be “worth the paper that they are written on.”

[37] If you search this term in any of the search engines available, then you will find such use of the term as a common occurrence.

[38] For one example, see Israel Ministry of Foreign Affairs (2015a).

[39] For an opposing example, see United Nations Security Council (1982).

[40] Now, these discrepancies can raise questions about historicity of the titular claims or the reality of the claims to appropriation of a site based on particular historical narratives. BBC News in “Unesco passes contentious Jerusalem resolution” reported in 2016 on this issue:

Unesco’s executive board approved the Arab-sponsored resolution, which repeatedly refers to only the Islamic name for a hilltop complex which is also the holiest site in Judaism.

The site is known to Jews as the Temple Mount and Haram al-Sharif to Muslims.

The resolution caused Israel to freeze co-operation with Unesco last week.

The stated aim of the text was “the safeguarding of the cultural heritage of Palestine and the distinctive character of East Jerusalem”.

It criticises Israel’s activities at holy places in Jerusalem and the occupied West Bank.

But it is how it refers to the sites which prompted Israel to act against the cultural body.

While acknowledging the “importance of the Old City of Jerusalem and its walls for the three monotheistic religions”, the document refers to the sacred hilltop only by the name “al-Aqsa Mosque/al-Haram al-Sharif” (Noble Sanctuary).

It is the location of two Biblical Jewish temples and is flanked by the Western Wall, venerated by Jews as part of the original supporting wall of the temple compound.

Haram al-Sharif is also the place where Muslims believe the Prophet Muhammad ascended to Heaven, and is the third holiest site in Islam.

The draft refers to the precinct in front of the wall as “al-Buraq Plaza ‘Western Wall Plaza’” – placing single quote marks only around “Western Wall”, giving the name as it is known to Jews less weight than the one by which it is known to Muslims.

Unesco’s executive board chairman Michael Worbs said on Friday he would have liked more time to work out a compromise.

He told Israeli television network Channel 10: “It’s very exceptional what happened yesterday, and I’m sorry for that.”

On Tuesday, Israel’s Unesco ambassador, Carmel Shama Hacoheh, accused the Palestinians of playing “games”.

“This is the wrong place to solve problems between countries or people,” he told AFP.

But Palestine’s deputy ambassador to Unesco, Mounir Anastas, welcomed the adoption of the resolution, saying he hoped it would put pressure on the Israeli authorities to “stop all their violations”, particularly the excavation of sites in and around the Old City.

See BBC News (2016).

[41] Not sure if this is the correct quote, however, George Orwell, in *Politics and the English Language* (1946), states:

*In our time, **political speech and writing are largely the defence of the indefensible.** Things like the continuance of British rule in India, the Russian purges and deportations, the dropping of the atom bombs on Japan, can indeed be defended, but only by arguments which are too brutal for most people to face, and which do not square with the professed aims of the political parties. Thus **political language has to consist largely of euphemism, question-begging and sheer cloudy vagueness.** Defenceless villages are bombarded from the air, the inhabitants driven out into the countryside, the cattle machine-gunned, the huts set on fire with incendiary bullets: this is called pacification. Millions of peasants are robbed of their farms and sent trudging along the roads with no more than they can carry: this is called transfer of population or rectification of frontiers. People are imprisoned for years without trial, or shot in the back of the neck or sent to die of scurvy in Arctic lumber camps: this is called elimination of unreliable elements. Such phraseology is needed if one wants to name things without calling up mental pictures of them. Consider for instance some comfortable English professor defending Russian totalitarianism. He cannot say outright, ‘I believe in killing off your opponents when you can get good results by doing so’. Probably, therefore, he will say something like this:*

‘While freely conceding that the Soviet regime exhibits certain features which the humanitarian may be inclined to deplore, we must, I think, agree that a certain curtailment of the right to political opposition is an unavoidable concomitant of transitional periods, and that the rigors which the Russian people have been called upon to undergo have been amply justified in the sphere of concrete achievement.’

***The inflated style itself is a kind of euphemism. A mass of Latin words falls upon the facts like soft snow, blurring the outline and covering up all the details. The great enemy of clear language is insincerity.** When there is a gap between one’s real and*

one's declared aims, one turns as it were instinctively to long words and exhausted idioms, like a cuttlefish spurting out ink. In our age there is no such thing as 'keeping out of politics'. All issues are political issues, and politics itself is a mass of lies, evasions, folly, hatred, and schizophrenia. When the general atmosphere is bad, language must suffer. I should expect to find — this is a guess which I have not sufficient knowledge to verify — that the German, Russian and Italian languages have all deteriorated in the last ten or fifteen years, as a result of dictatorship. [Emphasis added.]

See Orwell (1946).

[42] Statistics Canada reported 429 hate crimes based on religion in 2014, 469 hate crimes based on religion in 2015, 460 hate crimes based on religion in 2016, 842 hate crimes based on religion in 2017, 639 hate crimes based on religion in 2018. This averages 567.8 hate crimes per annum over a five year period based on the years of 2014, 2015, 2016, 2017, and 2018. See StatsCan (2018).

[43] See Ferreras (2018), where one can see coverage of anti-Muslim and anti-Jewish hate crimes, defined as such, in about equal measure in the number of the respective raw occurrences. Although, more Muslims, by a large comparative amount, live in Canada than Jewish peoples. Thus, per capita, Jewish peoples, at a minimum, report more if not experience more. In this context, anti-Jewish means anti-Semitic, and vice versa.

Ask HRW (Israel and Palestine) 9 – When Rain is Law and Justice is Dry Land

May 3, 2021

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Language of the oPt/OPT is recognized in the work of the [OHCHR](#), [Amnesty International](#), [Oxfam International](#), [United Nations](#), [World Health Organization](#), [International Labor Organization](#), [UNRWA](#), [UNCTAD](#), and so on. Some see the Israeli-Palestinian issue as purely about religion. Thus, this matters to freethought. These ongoing interviews explore this issue in more depth.

Here we continue with the 9th part in our series of conversations with coverage in the middle of middle of May, 2020, to the middle of July, 2020, for the Israeli-Palestinian issue. With the deportation of Shakir, this follows in line with state actions against others, including Amnesty International staff member Laith Abu Zeyad when attempting to see his mother dying from cancer (Amnesty International, 2019a; Zeyad, 2019; Amnesty International, 2020), United States Congresswoman Rashida Tlaib and United States Congresswoman Ilhan Omar who were subject to being barred from entry (Romo, 2019), Professor Noam Chomsky who was denied entry (Hass, 2010), and Dr. Norman Finkelstein who was deported in the past (Silverstein, 2008). Shakir commented in an opinion piece:

Over the past decade, authorities have barred from entry MIT professor [Noam Chomsky](#), U.N. special rapporteurs [Richard Falk](#) and [Michael Lynk](#), Nobel Peace Prize winner [Mairead Maguire](#), U.S. human rights lawyers [Vincent Warren](#) and [Katherine Franke](#), a delegation of [European Parliament](#) members, and [leaders of 20 advocacy groups](#), among others, all over their advocacy around Israeli rights abuses. Israeli and Palestinian rights defenders have not been spared. Israeli officials have [smeared](#), [obstructed](#) and sometimes even [brought criminal charges against them](#). (Shakir, 2019)

Now, based on the decision of the Israeli Supreme Court and the actions of the Member State of the United Nations, Israel, he, for this session, works from Amman, Jordan.

Interview conducted on July 23, 2020. The previous interview conducted on May 13, 2020.

Scott Douglas Jacobsen: With regards to Israeli politics, what is happening there as to the human rights violations happening on the ground?

Omar Shakir: The Israeli coalition government was formed earlier this year (Katkov, 2020). The government is in place with ministers across the board. They have begun to implement policies. Of course, much of the attention, particularly around July 1st, was around the prospect of whether the Israeli government would annex additional parts of the West Bank (Federman, 2020a). At the same time, the COVID-19 crises returned with a vengeance with an uptick in cases in Israel and in the Occupied Palestinian Territory (Goldenberg, 2020). Much of the focus has been on the government's response to the public health crisis, as well as what it means in terms of schools, education, etc., across the country, as well as travel (Zion, 2020).

So, much of the attention has been there. At the same time, the Israeli government has been debating to pass the budget. If not passed, and if certain events transpire, it could trigger fourth elections, potentially even later this year. That's really been where most of the public discourse has been focused.

Jacobsen: What about Gaza Strip, East Jerusalem, West Bank?

Shakir: Yes, I think also we have seen, in particular, in East Jerusalem and the West Bank, that the COVID crisis has been quite significant (Akram & Krauss, 2020). In the West Bank, it has been centered around Hebron (Goldenberg, 2020). As a result, the Palestinian Authority has taken a series of measures. They imposed closures in much of the parts of the West Bank where they manage affairs (Associated Press, 2020a). They have also put in place curfews and restrictions on movement. That's really taken much of the public conversation. We also have continued to see some of the same abuses take place by the Palestinian Authority and the Hamas authorities (Daraghmeh, 2020; Toameh, 2020). In the West Bank, for example, in June, a journalist was detained after a video he had produced, a political video, on the sale of watermelons in Tulkarm, which is the town where he is from, was posted to a Facebook page considered critical of the Palestinian Authority (Committee to Protect Journalists, 2020; Committee to Protect Journalists, 2019).

He spent several weeks in detention and was released on bail earlier this month, earlier in July. We've seen other examples in the West Bank. In the Gaza Strip, you continue to have, as of now, two Palestinians detained for participating in a Zoom chat with Israelis, which took place several months ago (United Nations Human Rights Council, 2020).^[1] Of course, this is in addition to Israeli government abuses in these areas.

Jacobsen: With some of the coronavirus pandemic focus for many, many governments around the world now, it can reduce the amount of coverage on various relations, international relations. So, some of the major players with regards to the players you're centrally covering, including European allies of Israel as well as America and other North American allies. What are some of the updates on the international edge of things regarding human rights violation or support of them?

Shakir: I think much of the focus on the international community has been on the prospect of annexation (Associated Press, 2020b; Heller, 2020a; Cook, 2020; Federman, 2020b). You saw many governments in June, early July, issue statements, sometimes speaking directly to Israeli audiences, as to what annexation might mean for their bilateral or multilateral relationships. We have seen the EU, for example, and some European states refer to consequences for Israel if they

were to proceed in that direction (Heller, 2020a; Krauss, 2020a). German officials were in Israel in June (Krauss, 2020b) and the UK Prime Minister Boris Johnson wrote an article in a Hebrew language newspaper making pitches around annexation (Heller, 2020a; Halbfinger, 2020a). So, much of the international community's focus has been around annexation given the July 1st date, the date the Israeli government could, if it chose to, annex part of the West Bank. With the International Criminal Court, we have to await a decision by the pre-trial chamber about whether or not they will confirm jurisdiction over the State of Palestine, a ruling that would allow the Prosecutor to proceed with a formal investigation (Rubeo & Baroud, 2020; TOI Staff, 2020a). We continue to see statements at the UN regarding developments on the ground (United Nations Human Rights Council, 2020).

Jacobsen: What have been any indications or open statements of Fatou Bensouda as this process has been going forward with the International Criminal Court?

Shakir: The prosecutor has made her position clear (Corder, 2020). The elements for a formal investigation have been met (Middle East Monitor, 2020). Her office put forward a submission for the pre-trial chamber that made clear their position that there is jurisdiction (International Criminal Court, 2020a; International Criminal Court, 2020b). In December (2019), in announcing that her preliminary inquiry had concluded, she said there was reasonable basis to believe that serious crimes committed in the State of Palestine and therefore to proceed with a formal investigation (Carvosso, 2020).

Jacobsen: In other contexts, there have been defamation campaigns against individuals with status and can actually harm the image of Israel as a state, not necessarily the people but as a state. What could be some potential backlash given historical precedent in particular cases towards individuals such as the Chief Prosecutor?

Shakir: Already, the United States and the Israeli government have unleashed an array of attacks against the International Criminal Court (Ravid, 2020). There have been restrictions by the United States, for example, on travel to the U.S. by senior ICC officials (Ibid.). An Executive Order was issued by President Trump that put in place consequences of those who work on investigations that touch on the United States or its partners, including Israel. There have also been bellicose statements coming from the Israeli government, including threats against the ICC (MEE and agencies, 2020). We have also seen a number of states across Europe and the world really defend the ICC as an important institution in the fight against impunity and highlighting the importance of its independence and neutrality (Euractiv, 2020). I think it has been very much a concern in the international community and, certainly, should a decision be made to confirm jurisdiction, it can be expected that those attacks will escalate.

Jacobsen: Now, with regards to some more specific issues, there was a list of Knesset members who gave a statement. These were members of the Joint List. Was it the Yesh Din legal opinion (Yesh Din, 2020)?

Shakir: Yes, Yesh Din.

Jacobsen: So, what were those statements? Why did those particular Knesset members take part in this?

Shakir: Yesh Din is an Israeli human rights group that has been working in the West Bank for 15 years now on a range of issues involving land confiscation, settler violence, etc. Their legal

advisor, Michael Sfard, who – full disclosure – also represented me in my legal challenge against the Israeli government’s decision to deport me (Kershner, 2019), wrote a legal opinion finding the Israeli government is carrying out the crime of apartheid in the West Bank (Iraqi, 2020; Sfard, 2020a). The opinion looked at particular serious abuses and the kind of regime of systematic discrimination in place in the West Bank, as well as the intent of Israeli officials (Sfard, 2020b). Several Knesset members, particular members of the Joint List, one of the larger parties in Israel representing a significant percent of the Palestinian population in Israel, but which also has a Jewish MK and has attracted a number of votes from Jewish Israelis, read excerpts of the legal opinion in the Knesset this week. In so doing, they highlighted their significant concern about the effectively permanent occupation and the systematic repression of Palestinians.

Jacobsen: *Haaretz* has reported on some suicide cases (Shehada, 2020). This is in Palestine (Sharir & Gontarz, 2020). What were some of those cases, not necessarily in particular but, as general trends based on the lives that are being forced on them?

Shakir: There, certainly, have been reports on an uptick in suicides (Shehada, 2020; Sharir & Gontarz, 2020). It is always difficult to speculate why or what leads someone to take their own life. Certainly, when you look at the situation in Gaza, many people feel a lack of hope. Gaza, for the last 13 years, has been facing a closure (Al Mezan, 2020a; Al Mezan, 2020b), a policy by the Israeli government, supported for much of this time by the Egyptian government (Chick, 2010; Middle Est Policy Council, n.d.), of caging the 2,000,000 people of Gaza in, of turning Gaza into an open-air prison, where there is a generalized travel ban robbing 2,000,000 Palestinians of their free movement outside of narrow exceptions (OCHA, 2021). That closure has affected the entry and exit of goods and this has had a drastic effect on the economy (United Nations: The Question of Palestine, 2016). Eighty percent of the population depend on financial support from international organizations (Asharq Al Awsat, 2018). Young people face increasingly high unemployment rates of well over 50% (UNCTAD, 2019).

Where you have significant parts of the population who have few opportunities, you also have a repressive Hamas government there that is quashing dissent (Daraghmeh, 2018). So in a 25 x 7 mile or 45 by 11 kilometre area, you have 2,000,000 people locked into a dire economic situation, few opportunities, frequent power cuts, the vast majority of water is unfit for human consumption (Anera, 2020). With all of these things going on, you have seen a number of people who have decided to take their own life (Shehada, 2020; Sharir & Gontarz, 2020). Each situation is different, but, certainly, the overall situation of Gaza is vital context.

Jacobsen: What about cases that exemplify this, not necessarily direct deportation cases such as yours, but those of Laith Abu Zeyad (Shakir, 2020; Amnesty International, 2020) who has had a travel ban imposed on him since October of last year (2019)?

Shakir: Absolutely, one doesn’t realize how important the freedom of movement is until it is taken away from you. The ability to travel to the next town, visit family, to go on vacation, to study abroad, etc. I think some people have experienced a taste of this amid COVID closures, but it pales in comparison to the daily reality for millions of Palestinians (Arab News, 2020; Kenny, 2020). Laith Abu Zeyad is a human rights defender, a colleague, a representative of Amnesty International who received a travel ban by Israel for undisclosed security reasons. He lives about 3 kilometres away from a hospital in Jerusalem, where his mother was receiving cancer treatment. He sought a permit to be by her side. She died in December, a couple months after the

travel ban was imposed. He was also denied the ability to head to Jordan, which is the only outlet for Palestinians in the West Bank if they want to travel abroad unless they receive a rare permit to use Israel's Ben-Gurion Airport. He missed a relative's funeral in Amman. This is a human rights defender for one of the world's most prominent human rights organizations, Amnesty International (Zeyad, 2020). It gives a window into some of the restrictions many Palestinians face.

Jacobsen: Back to Israel with a particular focus on Israeli politics, what is the status of the Netanyahu and Gantz alliance (Halbfinger, 2020b)?

Shakir: It is a day-to-day process that varies. It was never, certainly, an alliance in which there was much love lost between the two main protagonists (Associated Free Press, 2020). Gantz said he joined to fight the coronavirus (Mualem, 2020a). There are some differences of policies on several issues. Reports in the Israeli press, from July 22nd, indicated that Netanyahu was contemplating early elections (TOI Staff, 2020b). There's a context now, discussions over the budget (Scheer, 2020). There have been some disagreements around responses to the COVID crisis, annexation (Williams, 2020; Heller, 2020b; Heller & Williams, 2020; Reuters Staff, 2020a). In any coalition, there are disagreements and it is unclear what will transpire, but, in the meantime, disagreements between the two main coalition partners will remain a near-daily fixture.

Jacobsen: With respect to May of 2020, into the current period, late July, what have been some of the updates on recent criminal proceedings for Benjamin Netanyahu, Bibi (Lubell, 2020; Reuters Staff, 2020b; Lubell, 2020)?

Shakir: There have been several preliminary hearings on the case. The most recent one set a schedule for further hearings (Reuters Staff, 2020b). The evidentiary part of the proceedings will not really get started before January 2021 (TOI Staff, 2020c). The hearings thus far have been very preliminary, formally kicking off the process. It is likely that the heart of the proceedings will take place next year.

Jacobsen: Now, what do you think are going to be some of these processes moving forward regarding the legal context for Benjamin Netanyahu? How do you think this might impact, based on the facts that we have on the ground, the tenuous nature of this Gantz and Netanyahu political alliance?

Shakir: I think there still remains a lot to be seen. Benjamin Netanyahu stands as the longest serving Israeli prime minister (BBC News, 2020a; BBC News, 2020b). It is unprecedented for a prime minister under indictment to remain in power. Certainly, Netanyahu's fate has been at the center of Israel's political instability that we've seen over the last year and a half (OHCHR, 2020a). It is difficult to prognosticate how things might change. Netanyahu still seems quite strong in the polls (Mualem, 2020b). Meanwhile, Benny Gantz has dropped in the polls with the dissolution of the Blue & White Party (Caspi, 2020). There aren't many challengers that have naturally emerged (Ferber, 2020). It seems we are stuck with this reality, probably, for some time, even if there are elections. It is difficult to see a prospect for a different trajectory.

Jacobsen: With the focus of the international community and the regional community on both coronavirus and the prospects for this full-blown annexation, particularly on the West Bank, I want to touch on one thing in particular. How much would be projected, the West Bank, outright annexed?

Shakir: There have been many different proposals floated. As much as there have been discussions about annexation (Krauss, 2020c), the details have not been laid out. According to some press reports, they have not been discussed at the senior governmental level. I would say: at one end of the spectrum, annexation could encompass everywhere encompassed by the Trump Plan (Lederer, 2020), up to 30% of the West Bank (Heller, 2020a), including the Jordan Valley and much of the areas where settlements lie or areas under the control of settlements, to, on the other end, a more symbolic annexation, which would apply to some of the settlements closer to the Green Line (Bateman, 2020) that are larger and more well-established as settlement blocks as they are sometimes referred to as. I think that's part of the internal conversation, the scale of annexation. While this was on the front of everyone's minds around July 1, amid the uptick of corona cases and other global developments, it has sort of fallen out of the discussion. I think a lot remains to be seen as to what will take place and when.

Jacobsen: This cybercrime law (Kuttab, 2020), how is this limiting Palestinian freedom of expression in particular?

Shakir: Palestinians have had for a couple of years a law, a cybercrime law, that includes many restrictions on free expression (Civicus, 2020). It is important to note that many of parts of the cybercrime law were already in the Palestinian Penal Code. There were already laws, for example, that made it illegal to insult "higher authorities," or otherwise imposed criminal sentences based on peaceful free speech (Human Rights Watch, 2016). The cybercrime law clarified that some of these provisions also applied to online speech (7amleh – Arab Center for Social Media Advancement, 2018). We have seen some of the provisions applied to, for example, criticism on Facebook (Nofal, 2020; Fatafta, 2020). According to PA statistics given to Human Rights Watch, in 2018, 815 people were detained under the cybercrime law (Human Rights Watch, 2019). So, certainly, the cybercrime law gives additional tools to a government that has a systematic practice of arbitrary detaining critics and opponents (Human Rights Watch, 2018).

Jacobsen: What is the political stability in each portion of Palestinian territory?

Shakir: It is difficult to assess that. Governments that look unstable have a way of hanging on. Certainly, the situation in Gaza is tense with closure, but it has been 13 years without major change since 2007 (OHCHR, 2020b). In the West Bank, there's certainly a lot of questions that annexation has brought to the fore about the future of the Palestinian Authority (Rahman, 2020). We have already seen security coordination between the Israeli government and the Palestinian Authority decrease significantly, if not stop altogether, amid talk of annexation (OCHA, 2020). I think there's a lot hinging on what happens to annexation, as well the future of Mahmoud Abbas, the President of the Palestinian Authority. Those two things could trigger things changing quickly.

Jacobsen: A lot of commentary has focused on the death knell or the outright death of the two-State solution. Some have been claiming that it has been dead for a long time and the Trump-Kushner plan merely made it more explicit. What are some of the commentaries happening on the ground now among either political elites or ordinary people, on either side of the territories?

Shakir: One sign of someone who has spent a lot of time on the ground in Israel and Palestine is that they focus on the reality on the ground and not their preferred solution. Whatever one might

prefer as a solution, we have in effect a one-state reality on the ground (Beinart, 2020), where the Israeli government is the dominant power inside the Green Line and throughout the West Bank, East Jerusalem, and the Gaza Strip, and systematically represses Palestinians and discriminates against them in favour of Jewish Israelis (Human Rights Watch, 2020). For most people on the ground, the question is about how you get beyond this discriminatory reality today and force a change in the status quo. Given this context, discussions around solutions feel academic and a bit far removed. That has been in certain quarters, in particular in the United States among political elites, more conversation on the one-State/two-State solution triggered in part by annexation, but also by a piece written by Peter Beinart (Ibid.), an American Jewish thinker and academic, earlier this month that touched on his personal shift of opinion towards a one-state solution founded on equality for all people living in Israel and Palestine. For Beinart and others, the concern animating them is to move beyond the current ugly reality.

Jacobsen: The oldest human rights issue is the Israel-Palestine conflict. With regards to the foundation of the United Nations, so, if this annexation goes full bore, what does this state about the efficacy the legitimacy of an international rights based order?

Shakir: There are many other longstanding conflicts out there that date back to the end of WWII and the post-colonial moment. But I think annexation should trigger change in the international community's approach here. It is quite clear what annexation means in terms of international law. A move towards annexation wouldn't change the reality of occupation or the protections that Palestinians enjoy under the law of occupation. But it should put to rest the notion that Israel considers its occupation temporary (Shafir, 2017). It is fully intent on ruling in perpetuity Palestinians and depriving them of their fundamental rights. So, it should trigger a shift in the international community's approach.

Jacobsen: Also, in late June, Belgian and Dutch parliaments adopted motions to look at various measures that could be taken on the premise of Israel annexing Palestinian territory (Ahren, 2020). How is this proceeding along the lines of taking real accountability measures, nation by nation, if annexation moves forward?

Shakir: It is long overdue. I think Israel has maintained for years now a discriminatory system against Palestinians and committed serious abuses. It is beyond time for the international community to take action and hold Israel accountable. Those measures shouldn't turn on annexation. Annexation may or may not change the reality on the ground. In East Jerusalem, which has been annexed for more than 50+ years, you have separate and unequal rule for decades over Palestinians, who face many of the same abuses as they face elsewhere in the West Bank. The focus should be on the current reality on the ground. Annexation may make things worse, but things are quite dire as we speak. It is encouraging to see movement in some countries towards accountability. More is needed.

Jacobsen: Last question for this particular session for July, should there be any focus to documents or reports that might be coming out of Human Rights Watch?

Shakir: We're working on research on a range of issues. I will happily discuss those when they're out. But I suspect that you'll be hearing from us in the coming weeks and months with some pretty significant reports. I did neglect to mention one thing in response to one of your earlier questions, which I wanted to add before we conclude. There have been several examples in recent weeks of killings of Palestinians by Israeli security forces that have received significant

attention because they are emblematic of the systematic pattern of excessive force by Israeli security services against Palestinians. Two examples in particular have received significant attention. One is the killing of Eyad Hallaq, a Palestinian man with disabilities who was gunned down in Jerusalem in circumstances that, certainly, suggest that he did not pose any sort of imminent threat to life or serious bodily injury to officers (Hasson, Khoury, & Breiner, 2020). The police acknowledged that he did not have a weapon and did not pose a threat at the time. Similarly, a Palestinian man, Ahmad Erekat, was shot and killed at a checkpoint in the West Bank on the weekend of his sister's wedding (Reuters Staff, 2020c). His car crashed into a checkpoint. He emerged from the vehicle with his hands up as video evidence showed. Again, in circumstances in which he did not appear to pose an imminent threat to the lives of the officers, he was gunned to death and died there. These cases are two of many that take place on a regular basis, where Palestinians are gunned down and killed when Israeli forces open fire on Palestinians in circumstances in which they do not pose an imminent threat to life and serious bodily injury, which is the standard in international human rights law.

Jacobsen: Omar, as always, thank you.

Shakir: Thanks, Scott!

Previous Sessions (Chronological Order)

[Interview with Omar Shakir – Israel and Palestine Director, Human Rights Watch \(Middle East and North Africa Division\)](#)

[HRW Israel and Palestine \(MENA\) Director on Systematic Methodology and Universal Vision Human Rights Watch \(Israel and Palestine\) on Common Rights and Law Violations](#)

[Ask HRW \(Israel and Palestine\) 1 – Recent Events](#)

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[Ask HRW \(Israel and Palestine\) 3 – November-December: Deportation from Tel Aviv, Israel for Human Rights Watch Israel and Palestine Director](#)

[Ask HRW \(Israel and Palestine\) 4 – Uninhabitable: The Viability of Gaza Strip's 2020 Unlivability](#)

[Ask HRW \(Israel and Palestine\) 5 – The Trump Peace Plan: Is This the “The Deal of the Century,” or Not?](#)

[Ask HRW \(Israel and Palestine\) 6 – Tripartite Partition: The Israeli Elections, the International Criminal Court \(ICC\), and SARS-CoV-2/COVID-19](#)

[Ask HRW \(Israel and Palestine\) 7 – New Heights to the Plight and the Fight: Covid-19, Hegemony, Restrictions, and Rights](#)

[Ask HRW \(Israel and Palestine\) 8 \(w/ Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967\) – Annexation, International Law, Occupation, Rights, and Settlements](#)

Addenda

[Ask HRW \(Israel and Palestine\) Addendum: Some History and Contextualization of Rights](#)

Other Resources Internal to Canadian Atheist

[Interview with Dr. Norman Finkelstein on Gaza Now](#)

[Extensive Interview with Gideon Levy](#)

[Interview with Musa Abu Hashash – Field Researcher \(Hebron District\), B'Tselem](#)

[Interview with Gideon Levy – Columnist, Haaretz](#)

[Interview with Dr. Usama Antar – Independent Political Analyst \(Gaza Strip, Palestine\)](#)

[Interview with Wesam Ahmad – Representative, Al-Haq \(Independent Palestinian Human Rights Organization\)](#)

[Extensive Interview with Professor Richard Falk – Fmr. \(5th\) United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967](#)

[Extensive Interview with Professor John Dugard – Fmr. \(4th\) United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967](#)

[Extensive Interview with S. Michael Lynk – \(7th\) United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967](#)

[Conversation with John Dugard, Richard Falk, and S. Michael Lynk on the Role of the Special Rapporteur, and the International Criminal Court & Jurisdiction](#)

[To resolve the Palestinian question we need to end colonialism](#)

[Trump's Colonial Solution to the Question of Palestine Threatens the Foundations of International Law](#)

[Dr. Norman Finkelstein on the International Criminal Court](#)

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Footnotes

[1] “Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*” or A/HRC/44/60 stated:

21. Cases of arbitrary arrest and detention by the de-facto authorities in Gaza continued to be reported, particularly of journalist, human rights and political activists. On 9 April, a number of Palestinian activists were arrested and detained by the de-facto authorities after being accused of engaging in “normalization activities with Israel”. A small group of activists had organized a zoom call with young Israeli activists to discuss living conditions in Gaza.³⁰ Many continue to be arrested because of their political affiliation and perceived opposition to the Hamas authorities. Serious restrictions on freedom of expression continue to be in place particularly in the context of reporting on the socio-economic impact of the COVID19 pandemic.³¹ In June, a number of persons were arrested by the de-facto authorities in Gaza, as they expressed opposing political views and attempted to organize events that were banned by security forces.

22. A number of arrests by Palestinian Security Forces continued to be reported in the West Bank. Many of those arrested were accused of using social media platforms to criticize the Palestinian authority or expressing opposing political views.³² Limitations on freedom of expression remain a concern for journalists. A number of allegations of ill-treatment of those arrested also continue to be received.

United Nations Human Rights Council. (2020).

Ask HRW (Israel and Palestine) 10: The Human Rights Skyfall

August 17, 2021

Omar Shakir, J.D., M.A. works as the Israel and Palestine Director for Human Rights Watch. He investigates a variety of human rights abuses within the occupied Palestinian territories/occupied Palestinian Territories or oPt/OPT (Gaza and the West Bank, including East Jerusalem) and Israel. He earned a B.A. in International Relations from Stanford University, an M.A. in Arab Studies from Georgetown University's School of Foreign Affairs, and a J.D. from Stanford Law School. He is bilingual in Arabic and English. Previously, he was a **Bertha Fellow** at the Center for Constitutional Rights with a focus on U.S. counterterrorism policies, which included legal representation of Guantanamo detainees. He was the **Arthur R. and Barbara D. Finberg Fellow** (2013-2014) for Human Rights Watch with investigations, during this time, into the human rights violations in Egypt, e.g., **the Rab'a massacre**, which is one of the largest killings of protestors in a single day ever. Also, he was a **Fulbright Scholar** in Syria.

Language of the oPt/OPT is recognized in the work of the **OHCHR, Amnesty International, Oxfam International, United Nations, World Health Organization, International Labor Organization, UNRWA, UNCTAD**, and so on. Some see the Israeli-Palestinian issue as purely about religion. Thus, this matters to freethought. These ongoing interviews explore this issue in more depth.

Here we continue with the 10th part in our series of conversations with coverage in the middle of middle of July, 2020, to the middle of September, 2020, for the Israeli-Palestinian issue. With the deportation of Shakir, this follows in line with state actions against others, including Amnesty International staff member Laith Abu Zeyad when attempting to see his mother dying from cancer (Amnesty International, 2019; Zeyad, 2019; Amnesty International, 2020), United States Congresswoman Rashida Tlaib and United States Congresswoman Ilhan Omar who were subject to being barred from entry (Romo, 2019), Professor Noam Chomsky who was denied entry (Hass, 2010), and Dr. Norman Finkelstein who was deported in the past (Silverstein, 2008). Shakir commented in an opinion piece:

Over the past decade, authorities have barred from entry MIT professor **Noam Chomsky**, U.N. special rapporteurs **Richard Falk** and **Michael Lynk**, Nobel Peace Prize winner **Mairead Maguire**, U.S. human rights lawyers **Vincent Warren and Katherine Franke**, a delegation of **European Parliament** members, and **leaders of 20 advocacy groups**, among others, all over their advocacy around Israeli rights abuses. Israeli and Palestinian rights defenders have not been spared. Israeli officials have **smearred, obstructed** and sometimes even **brought criminal charges against them**. (Shakir, 2019)

Now, based on the decision of the Israeli Supreme Court and the actions of the Member State of the United Nations, Israel, he, for this session and some prior sessions, works from Amman, Jordan. Originally, he worked from Tel Aviv, Israel.

Interview conducted on September 25, 2020. The previous interview conducted on July 23, 2020.

Scott Douglas Jacobsen: With regard to some of the activists, there were some issues regarding arbitrary arrests by the Hamas Authority in the use of the freedom of expression rights (Rasgon, 2020). What is the current status of the case? How did it escalate over time?

Omar Shakir: In early April, a group of Gaza activists engaged in a Zoom chat with Israeli citizens (United Nations Human Rights Council, 2020). [1] They were speaking about the situation in Gaza and some of the challenges they face. A few days after when news of this event became public in Gaza, there was some pushback on social media. Hamas authorities detained seven of the activists, who participated in that Zoom chat (Palestinian Centre for Human Rights, 2020). Several of the activists were released in a matter of days. Two have remained detained for over five months, as of this recording. The men were being held largely in this period in pre-trial detention facing interrogations. Last week, in around mid-September, Hamas authorities charged the two activists who were detained, as well as one who was released on bail, with a charge under the PLO's revolution code, military law, for weakening the revolutionary spirit. This is a charge that Hamas authorities have used before as a way of detaining critics and opponents over their peaceful expression. The arrests of these activists and the ongoing detention of two of them is a part of Hamas' practice of systematic detaining of individuals based on their peaceful free expression (Human Rights Watch, 2016; Human Rights Watch, 2018a; Harkov, 2011).

Jacobsen: Other larger news had to do with the Israel-United Arab Emirates normalization agreement (Keleman, 2020) or the Abraham Accords (Goldberg, 2020) peace agreement. How did this come about? How is this being discussed in some of the areas you're covering?

Shakir: Israel has long had long relations with a number of Arab states, particularly in the Gulf. This agreement with the UAE makes the more secretive relationship public. It was marketed as a step in normalized relations in return for freezing annexation (U.S. Department of State: Bureau of Near East Affairs; Bowen, 2020; Fishere, 2020; Al-Jazeera, 2020a; Al-Jazeera, 2020b; Holland, & Spetalnick, 2020). Prime Minister Netanyahu immediately made clear that the deal is only a temporary pause on plans for annexing additional parts of the West Bank (Krauss, 2020). Of course, the UAE as well as Bahrain, who signed their own agreement with Israel, have had *de facto* relations with Israel, but, of course, much of their region – with the exception of Jordan and Egypt – had been part of a consensus to hold off on formally normalizing relations with Israel until there was an end to the occupation and a solution to the Israeli-Palestinian conflict. Obviously, this agreement broke that consensus. Of course, there are reports of additional agreements. On the ground, the impact has been limited. Annexation has been frequently raised by the Israeli government, but we have a reality where the Israeli government has been in control for over 50 years across the oPt, *de facto* annexing these areas, and exerting control (Human Rights Watch, 2017). Formal annexation would likely have meant little change on the ground, at least in the short-run. But for the Israeli government, it is a diplomatic achievement; in the sense, Prime Minister Netanyahu and his supporters can say, as opposed to previous agreements, that we were able to reach an agreement with an Arab state in the absence of having made any sorts of concessions or changes to their practices with regards to Palestinians on the ground.

Jacobsen: There is a Palestinian doctoral student in engineering who needs to leave from the Gaza Strip to Tel Aviv to receive a visa for a European state where he is meant to conduct research (Hass, 2020). The research would begin on October 1st. What are some of the difficulties around the case?

Shakir: Israel, for decades now, have kept sharp restrictions for travel on Palestinians in Gaza (Human Rights Watch, 2020a). For 13 years now, the Israeli government has maintained a closure on the Gaza Strip (Ibid.). The closure entails a generalized travel ban, which means, presumptively, Palestinians cannot leave Gaza through the Erez Crossing, their main crossing to the other point of the oPt, the West Bank, and abroad, unless they fall with a list of narrow humanitarian exceptions (Ibid.). Egypt has contributed to the closure with its own restrictions on its border crossing with Gaza. There is no formal exemption for students that are seeking to travel abroad. Sometimes, students manage with, say interventions of European embassies, to secure rarely issued permits. Sometimes, Palestinians leave by Egypt, who sometimes opens its crossing with Gaza (Human Rights Watch, 2017). But there are many instances where Palestinians are unable to leave and are delayed in starting semesters or missing it altogether. Human Rights Watch has documented cases of this sort. Israeli authorities bar Palestinians from Gaza and the West Bank from using Ben Gurion Airport without a rarely issued permit from the Israeli army. The primary outlet for Palestinians to travel abroad is via Jordan. But to get there from Gaza, you need a permit to exit, as well as a Jordanian “No Objection” letter, which states that Jordan does not object to using their territory for transit. Of course, the closure has become even more restrictive with the pandemic. Whereas in 2019, travel via Erez was a small fraction, 1% to 3%, of what it was before the June 2007 tightening of the closure, we’ve seen, since March 2020, that fraction of a number reduced to a further fraction, 1% or 2% of before March 2020, which itself was 1% or 2% of 2000 (Gisha 2021a; Human Rights Watch, 2018b; Gisha, 2021b). The few that are being permitted to exit are those in need of urgent medical care and their companions, largely to go to East Jerusalem or to Ramallah, but almost none outside of that. This case is part of these larger restrictions on movement.

Jacobsen: What is the progress on the annexations as well as the building of further illegal settlements?

Shakir: In terms of annexation, as part of an agreement with the UAE, the Israeli government has put plans to formally annex additional parts of the West Bank on hold (al-Mughrabi & Williams, 2020; Miller, 2020). There have been media reports as to how long that hold will take place that vary from a few months to a few years (Landau & Reuters, 2020; Kaplan, 2020). But as of now, annexation doesn’t appear imminent. Certainly, we will wait until U.S. elections and potentially another round of Israeli elections. In terms of settlement expansion, that is, of course, a trend that has continued in 2020 (Shapiro, 2020). We saw in early 2020, in January and February, the government issue plans, issue tenders, as well as announce plans for a range of different settlements (ACAPS, 2020). The figures from the first two months of 2020 almost reached – in fact, exceeded in publishing tenders and advancing plans – all of the plans of 2019, according to the NGO Peace Now (Ibid.).^[2] Israel continues to entrench its illegal settlement enterprise. Those plans have not stopped during the pandemic.

Jacobsen: There was or is an academic who specializes in human rights named Dr. Valentina Azarova (Bard College Dublin, 2021). This is more close to home for me in terms of the University of Toronto or in Canada. One of the leading institutions of higher learning and research. There are some reports that she was denied a job. There are other reports that the job was there and then it was an offer that was rescinded. Those have different implications in terms of how they’re framed (CAUT, 2020; MEE Staff, 2020; B’nai Brith Canada, 2020). The controversy appears to centre around the fact that

Azarova was documenting human rights abuses by Israel as a state (Deif, 2020; Page, 2020). As well, apparently, she has a strong human rights law background and reputation. What is the status of this particular case? What seems to be the fact of the matter?

Shakir: For full disclosure, one of my colleagues at Human Rights Watch is a partner of the person in question. What the press reports appear to indicate, the University of Toronto withdrew, rescinded, an offer that was made to a scholar to take over the position of heading their international human rights clinic. They apparently did so at the behest of a donor who objected to the candidate's scholarship, which included work on the Israeli government's violations of international law (Gessen, 2021). If this is true, it, certainly, goes to the heart of the university's integrity and the space for academic freedom. Human Rights Watch has worked with this program before (Ibid.). We've had a number of interns that were, in fact, coming from the university. We have partnered together with them on a number of projects. Certainly, this is something of significant concern to all of us who care about academic freedom, including those of us at Human Rights Watch. There have been significant letters of support on behalf of this scholar, including a letter with 1,200 signatures including current and former special rapporteurs. It is concerning to all of us. It is important to see that this is handled transparently, that there is accountability and that the university conduct an independent external review and make its findings public. Universities should stand guard against attacks on academic freedom and should not take part in silencing scholars. No one should pay a price for exposing human rights violations by any country, including Israel.

Jacobsen: Ahmad Erekat was killed at a checkpoint (Najah, 2020; Human Rights Watch, 2020b; Masri, 2020; Adalah, 2020). What happened at the checkpoint? Why is the family not able to bury him?

Shakir: Israel has a long track record of using excessive force in policing situations (Human Rights Watch, 2019a). Human Rights Watch investigated a particular instance that took place in late June of this year in which a Palestinian vehicle at a checkpoint in the West Bank, as it approached, sharply swerved into a booth, where several Israeli soldiers stood (Human Rights Watch, 2020b). An individual emerged from the car, unarmed and, as soon as he did and apparently not approaching the officers, he was fatally shot and killed (Ibid.). The Israeli government has characterized this as a car ramming attack (Patel, 2020). The family has denied that account and said that it was likely caused by a malfunction of the car or an accident (Ibid.). Human Rights Watch investigated the killing (Human Rights Watch, 2020b). We determined that, when he emerged from the vehicle, he did not pose a significant threat to the life of the officers, making the killing apparently unlawful. The Israeli government has not indicated that it is investigating the case. In fact, now, since the killing for a period of three months, the Israeli government has held the body (Ibid.). The Israeli government has held the bodies of Palestinians killed in what they consider security incidents. There was a lawsuit filed on behalf of the family requesting the body be returned for burial. The Israeli government in return announced a decision that they will be withholding the bodies of all Palestinians killed in security incidents, as a form of leverage to secure the bodies of two Israeli soldiers who, apparently, have been held by the Hamas authorities in Gaza, since they were presumed to be killed in the 2014 hostilities (AFP, 2020). A Palestinian human rights group says that about 67 bodies of Palestinians are being held by the Israeli government (B'tselem, 2019). Of course, withholding bodies marks a serious violation of international law, both the bodies of Israeli soldiers held by Hamas and those

held by the Israeli government of Palestinians, including those who had involvement in any armed group (Al-Haq, 2018).

Jacobsen: What is the status of lockdowns with regards to Covid within Israel?

Shakir: The Israeli government had an initial lockdown that took place from about late March until May (Ayyub, 2020). The government, for most of the summer, largely opened up things inside Israel. They maintained, of course, restrictions on travel into the country, but the number of cases within Israel has been on the rise (Goldenberg & Heller, 2020). So, over the last week and going forward, the Israeli government, in the context of a number of Jewish holidays, they have instituted a lockdown, which includes a variety of restrictions in terms of venues that are open (BBC News, 2020a). Obviously, there are exceptions to those restrictions, but a number of businesses are closed (BBC News, 2020b). There are some restrictions, as well, in terms of activities that can place (Heller, 2020). There are now also cases of community transmission of the coronavirus in the Gaza Strip with the first cases of community transmission emerging in August (MacLeod, 2020). We have seen Hamas authorities institute a lockdown as well—broad-based at first, but more targeted of late (Akram, 2020). In the West Bank, Palestinians have been dealing with the community transmission of the coronavirus (Al-Jazeera, 2020c). The PA has taken a series of measures focused on more localized restrictions and lockdowns (OCHA, 2020).

Jacobsen: The United High Commissioner, Michelle Bachelet, made a statement about the lifting of the blockade of Gaza imposed by Israel, “The blockade, which contravenes international law, has conclusively failed to deliver security or peace for Israelis and Palestinians, and should urgently be lifted” (OHCHR, 2020).[3] Although, this is helpful and noteworthy and adds to the many, many years of speaking out against the blockade. Does this form of public statement, by even the U.N. High Commissioner, make any inroads or impact on how the discussion proceeds?

Shakir: Absolutely, I think statements are quite important. I think it is easy for folks to forget that Israel has, essentially, reduced Gaza to an open-air prison exacerbated by Egyptian restrictions (Amnesty International, n.d.). It is easy, years later, to accept that as normal. Every time there are armed hostilities, people forget about the context of closure, in which the majority of the population are barred from traveling unless they fit within a range of narrow exemptions, for example, if they manage to get a permit for urgent medical treatment. I think statements are important, because it is easy to forget in the day-to-day, with the annexation or escalation of particular hostilities, about the context of closure, which is really at the heart of the violations of the rights of Palestinians, not just to freedom of movement, but also to access to health (Human Rights Watch, 2019b; Human Rights Watch, 2021). Also when it comes to restrictions in terms of goods entering the country, they underly the economic woes of the population, where 80% of Gaza’s two million residents rely on humanitarian aid (UNRWA, n.d.). At the end of the day, the keys are in Israel’s hands. Egypt has some ability to help alleviate the situation with its crossing, but Israel, as the one that controls the movement of people and goods, the airspace, and access to the territorial waters, blocks the building of an airport and seaport for those in Gaza, continues to manage the population registry responsible for issuing I.D. cards, controls even the VAT, controls the no-go zone between Gaza and Israel, has effective control (Middle East Policy Council, n.d.; Al-Jazeera, 2021; The Editors of Encyclopaedia Britannica, 2021). It is important that statements continue to be issued and that countries prioritize this in their bilateral relations with Israel and push for ending the closure. Because until these unlawful and sweeping

restrictions are lifted, we are going to continue to see tensions and hostilities there. The closure is really the central fact that accounts for the core of the misery of people in Gaza, effectively caged in an open-air prison.

Jacobsen: How has Israel, recently, in September halted some projects for Palestinians (Agence-France Presse, 2020)?

Shakir: Israel controls the entry and exit of people and goods to Gaza. Israel is able to control everything from how much fuel enters to how power plants run and how far fishermen can fish in the sea. Israel, for example, restricts entry of what it calls “dual-entry goods,” which are goods that, essentially, could be used for military purpose (International Trade Administration, 2020). But, under the Israeli definition, that includes x-ray technology, communications technology, gas tanks, construction material, which are essential for the everyday functioning of society. Israel sometimes decides to accelerate those restrictions (Gisha, 2020). For example, in August after some Palestinians launching incendiary balloons into Israel, Israel punitively restricted access for fishermen off the sea and reduced the entry of many goods, food and medicines (Shehada & Mahmoud, 2020). They have long been limiting the exports of those, including fuel important for the operation of Gaza’s one power plant, whose capacity has been significantly reduced by Israeli bombardment (Khoury & Zikri, 2020). The already limited quantity of electricity was further reduced amid these measures that were taken for a period of several weeks in August (Ibid.). As such, international projects all effectively require Israel’s approval. Egypt also plays a role, particularly on movement, but, even there, Israel plays the central role, for example controlling movement between Gaza and the West Bank, which are part of a single territory, as even the Israeli government has recognized.

Jacobsen: If we take a step back on Israel and Palestine, what are some of the more positive progressions since July towards resolution of parts of the conflict?

Shakir: It is difficult, in the circumstances we’re facing—not only the closure of Gaza, but the daily reality of entrenching a separate and unequal reality for Palestinians, a system of discrimination across the entire area Israel controls—it is difficult on the ground to see much, in terms of the situation and in the midst of the pandemic, to see signs of the situation improving. Certainly, one recent development that bears importance is Hamas and the Fatah-led PA have been in negotiations around some sort of reconciliation, but, again, those of us have seen these reports periodically (Al-Jazeera, 2020d). They have not led to changes on the ground. But certainly, any agreement between the two rival leading Palestinian factions could spell a significant step in reducing separation between the West Bank and Gaza. They also underlying tensions and arbitrary arrests between both authorities (Human Rights Watch, 2019c). While formal annexation would not likely have changed things on the ground, at least, initially, the fact that that is, at least, temporarily off the table helps protect against some of what that move could have meant. But I don’t see these as necessarily signs of hope. I think the hope that one might take is more looking at the ways in which human rights activists on the ground continue to do documentation and the way everyday people continue to challenge the deep oppression, especially by the Israeli government of Palestinians. But those are processes not likely to lead to changes in the short-term, but, one would hope, maybe in the medium to long run.

Jacobsen: From the U.S., there were sanctions against the International Criminal Court. How does this make the context of prosecuting international crimes more difficult and

reduces capacity in which to call out violations and prosecute them properly, to enact justice in other words?

Shakir: I think the International Criminal Court, since its creation and establishment in 2002, has played a critical role as a court of last resort. It's there particularly for situations where there are longstanding, serious abuses taking place and where the outlets for justice in-country have been blocked. Certainly, that's the case with Israel and Palestine. There has been serial impunity for serious crimes by both Israeli and Palestinian authorities. When you look at the expansion of illegal settlements, when you look at use of force, excessive force, indiscriminate force at times by both Israelis and Palestinians, particularly in Gaza, when you look at policies in the West Bank, e.g., home demolitions, or the discrimination that underlies everyday life for Palestinians, it is quite clear that there are very serious crimes. The Israeli government has, at the highest level, sanctioned these policies. There is a whitewash machinery when it comes to investigating these crimes in Israel. It is the exact situation the International Criminal Court was created to combat. Of course, in response to the Court's initial steps towards investigations in Palestine, by both Israelis and Palestinians, and in Afghanistan by the U.S., the U.S. has taken steps to attack and even sanction the prosecutor herself, as well as other members of the team of the International Criminal Court (United Nations, 2020). These are very dangerous moves. It highlights the contempt for the rule of law by the Trump Administration. We have seen many statements of support by other countries for the Court, highlighting the importance of the independence of the prosecutor and the ICC's role as a court of last resort. With cases like this, involving abuses by strong states, they go to the heart of the credibility of an institution like the court. If the ICC can't pursue these cases, every country that doesn't want to face accountability at the International Criminal Court or bodies, will have a good argument. They can say, "If you're making a special rule for powerful states, why should I have to play along with this institution?" I think it is important the Court continues to do its job and states concerned about the rule of law internationally should support the Court.

Jacobsen: Omar, as always, thank you so much.

Shakir: Take care, Scott, talk soon.

Previous Sessions (Chronological Order)

[**Interview with Omar Shakir – Israel and Palestine Director, Human Rights Watch \(Middle East and North Africa Division\)**](#)

[**HRW Israel and Palestine \(MENA\) Director on Systematic Methodology and Universal Vision**](#)

[**Human Rights Watch \(Israel and Palestine\) on Common Rights and Law Violations**](#)

[**Ask HRW \(Israel and Palestine\) 1 – Recent Events**](#)

[**Ask HRW \(Israel and Palestine\) 2 – Demolitions**](#)

[**Ask HRW \(Israel and Palestine\) 3 – November-December: Deportation from Tel Aviv, Israel for Human Rights Watch Israel and Palestine Director**](#)

[**Ask HRW \(Israel and Palestine\) 4 – Uninhabitable: The Viability of Gaza Strip's 2020 Unlivability**](#)

[Ask HRW \(Israel and Palestine\) 5 – The Trump Peace Plan: Is This the “The Deal of the Century,” or Not?](#)

[Ask HRW \(Israel and Palestine\) 6 – Tripartite Partition: The Israeli Elections, the International Criminal Court \(ICC\), and SARS-CoV-2/COVID-19](#)

[Ask HRW \(Israel and Palestine\) 7 – New Heights to the Plight and the Fight: Covid-19, Hegemony, Restrictions, and Rights](#)

[Ask HRW \(Israel and Palestine\) 8 \(w/ Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967\) – Annexation, International Law, Occupation, Rights, and Settlements](#)

[Ask HRW \(Israel and Palestine\) 9 – When Rain is Law and Justice is Dry Land](#)

Addenda

[Ask HRW \(Israel and Palestine\) Addendum: Some History and Contextualization of Rights](#)

Other Resources Internal to Canadian Atheist

[Interview with Dr. Norman Finkelstein on Gaza Now](#)

[Extensive Interview with Gideon Levy](#)

[Interview with Musa Abu Hashash – Field Researcher \(Hebron District\), B’Tselem](#)

[Interview with Gideon Levy – Columnist, Haaretz](#)

[Interview with Dr. Usama Antar – Independent Political Analyst \(Gaza Strip, Palestine\)](#)

[Interview with Wesam Ahmad – Representative, Al-Haq \(Independent Palestinian Human Rights Organization\)](#)

[Extensive Interview with Professor Richard Falk – Fmr. \(5th\) United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967](#)

[Extensive Interview with Professor John Dugard – Fmr. \(4th\) United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967](#)

[Extensive Interview with S. Michael Lynk – \(7th\) United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967](#)

[Conversation with John Dugard, Richard Falk, and S. Michael Lynk on the Role of the Special Rapporteur, and the International Criminal Court & Jurisdiction](#)

[To resolve the Palestinian question we need to end colonialism](#)

[Trump’s Colonial Solution to the Question of Palestine Threatens the Foundations of International Law](#)

[Dr. Norman Finkelstein on the International Criminal Court](#)

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Footnotes

[1] “Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*” or A/HRC/44/60 stated:

21. Cases of arbitrary arrest and detention by the de-facto authorities in Gaza continued to be reported, particularly of journalist, human rights and political activists. On 9 April, a number of Palestinian activists were arrested and detained by the de-facto authorities after being accused of engaging in “normalization activities with Israel”. A small group of activists had organized a zoom call with young Israeli activists to discuss living conditions in Gaza.³⁰ Many continue to be arrested because of their political affiliation and perceived opposition to the Hamas authorities. Serious restrictions on freedom of expression continue to be in place particularly in the context of reporting on the socio-economic impact of the COVID19 pandemic.³¹ In June, a number of persons were arrested by the de-facto authorities in Gaza, as they expressed opposing political views and attempted to organize events that were banned by security forces.

22. A number of arrests by Palestinian Security Forces continued to be reported in the West Bank. Many of those arrested were accused of using social media platforms to criticize the Palestinian authority or expressing opposing political views.³² Limitations on freedom of expression remain a concern for journalists. A number of allegations of ill-treatment of those arrested also continue to be received.

United Nations Human Rights Council. (2020).

[2] “State of Palestine: Annexation Plan of the West Bank” (2020) states:

According to OCHA (2020), around 250 Israeli settlements have been established in the West Bank (including East Jerusalem) with some 633,000 Israeli settlers; over 400,000 reside in the West Bank and around 200,000 in East Jerusalem. According to the latest figures by NGO Peace Now, there are 132 settlements officially recognised by the Israeli Military of Interior (excluding East Jerusalem), and about 124 built by Israeli settlers

without official authorisation—but with governmental support and assistance—known as “illegal outposts”. These settlements cover almost 10% of the West Bank.

ACAPS (2020).

[3] “In her global human rights update, Bachelet calls for urgent action to heighten resilience and protect people’s rights” (2020) states:

*In the **Occupied Palestinian Territory**, the escalating tragedy in Gaza is of particular concern. Although temporary truces are welcome—including the latest agreement to end hostilities between armed groups in Gaza and Israel—Gaza’s two million people desperately need long-term and sustainable solutions. The blockade by sea and land, which Israel has imposed for 13 years, has brought Gaza’s main economic and commercial activities to a complete halt. As a direct result, more than 38% of Gazans live in poverty; 50% are unemployed; and more than 90% of the water from aquifers is undrinkable. Last month’s decision to ban the entry of fuel into Gaza creates even deeper suffering and humanitarian burdens. With sharply rising COVID-19 cases in Gaza, the health sector now faces total collapse, unless aspects of the blockade are lifted. The blockade, which contravenes international law, has conclusively failed to deliver security or peace for Israelis and Palestinians, and should urgently be lifted.*

OHCHR (2020).

Addendum

Ask HRW (Israel and Palestine) Addendum: Some History and Contextualization of Rights

March 20, 2020

Adaptations and changes made based on feedback from some readers with the Addendum, here, as one supplementary piece to the educational series with Human Rights Watch. Other materials can be found through keyword search on the Canadian Atheist website for “Ask HRW (Israel and Palestine).”

Duly note, as some history and contextualization of rights, Palestine, “formerly belonging to the Turkish Empire” (League of Nations, 1922), existed as a former “Ottoman” territory within the United Kingdom’s administration in 1922 under the League of Nations (United Nations, n.d.). All former Ottoman territories became independent, eventually, except for the Palestinian territory. This was part of the British Mandate (League of Nations, 1922) incorporating the 1917 Balfour Declaration (Rothschild et al, 1917). In 1947, the United Kingdom relinquished complete control of the problem of Palestine over to the United Nations, which took the place of the League of Nations after its dissolution on April 19, 1947 (United Nations, n.d.; The Editors of Encyclopaedia Britannica, 2020). That is to say, this remains one of the longest unresolved problems or questions – the Question of Palestine – in the history of the United Nations harkening back to its inception as an international human rights institution and bureaucratic juggernaut.

Upon which, the United Nations proposed a, and in November of 1947 voted for the, partitioning of the Palestinian (British) mandate territory/mandate Palestine into two independent states with one as an Arab state and another as a Jewish state (United Nations, n.d.; United Nations General Assembly, 1947). Jerusalem became internationalized in 1947 in Resolution 181 (II). From 1948 to 1949, this was the time of Israel’s War of Independence and The Palestinian Nakbah [Ed. “Nakbah” means “catastrophe” or “disaster.”], where combat began “almost immediately between Jews and Arabs in Palestine” (The Editors of Encyclopaedia Britannica, 2019). With the May 15, 1948 withdrawal of British troops, Israel declared independence. Nakba (“Nakbah”) Day is commemorated on the Gregorian calendar as the “Day of Catastrophe” on May 15; Yom Ha’atzmaut or the “Day of Independence” is celebrated on May 14. Each in reference or correspondence to the “Day of Catastrophe,” on the one side, and the “War of Independence,” on the other side, respectively. The 1948 Arab-Israeli war led to over half of the Arab Palestinian territory fleeing or forcefully being expelled (United Nations, n.d.). Israel, following the vote and the war, expanded to 77% of mandate Palestine (Ibid.). Resolution 181’s stipulated territory for the Arab state (Palestinian territory) alongside the Jewish state (Israel) went under the aegis of Jordan and Egypt (United Nations General Assembly, 1947; United Nations, n.d.).

Another pivotal war broke out in 1967, from June 5 to 10 in an event called the Six-Day War, in which Israel controlled the Gaza Strip, the West Bank, and East Jerusalem. This war resulted in a second expulsion of Palestinians estimated at half of a million Palestinians (United Nations, n.d.). The United Nations Security Council resolution 242 (United Nations Security Council, 1967) “formulated the principles of a just and lasting peace, including an Israeli withdrawal from territories occupied in the conflict, a just settlement of the refugee problem, and the termination of all claims or states of belligerency” (United Nations, n.d.). Further conflict in 1973 led to the United Nations Security Council resolution 338 (United Nations Security Council, 1973), which

made an open call for peace negotiations. On November 22 of 1974, in resolution 3236 (XXIX) of the United Nations General Assembly, the inalienable rights of the Palestinian people were “reaffirmed” with specifications on the “right to self-determination without external interference; the right to national independence and sovereignty; and the right of Palestinians to return to their homes and property, from which they had been displaced and uprooted” (United Nations, 2019; United Nations General Assembly, 1974a). On the same day – November 22, 1974, the United Nations General Assembly conferred Observer Status on the Palestinian Liberation Organization or the PLO (United Nations General Assembly, 1974b). With November 10 of 1975 resolution 3376 (XXX), in the United Nations General Assembly, there was the establishment of the Committee on the Exercise of the Inalienable Rights of the Palestinian people with a request for a systematic set of recommendations on the implementation of the enabling of the rights of the Palestinian people (United Nations General Assembly, 1975).

Circa June, 1982, Israel aimed to eliminate the PLO through aggressing against Lebanon, where a ceasefire was arranged, eventually, as the PLO left Beirut and transferred to “neighbouring countries” with Israeli forces completely leaving Lebanon in June of 1985 (United Nations, n.d.; The Editors of Encyclopaedia Britannica, 2019). The International Conference on the Question of Palestine (ICQP) adopted some principles including “the need to oppose Israeli settlements and Israeli actions to change the status of Jerusalem, the right of all States in the region to existence within secure and internationally recognized boundaries, and the attainment of the legitimate, inalienable rights of the Palestinian people” in September of 1983 (United Nations, n.d.; United Nations, 1983). In 1987, a mass uprising took place against the Israeli occupation of the Palestinian territories (occupied Palestinian territory or the oPt) in an event known as the Intifada/Intifadah, or the “shaking off,” with the “methods used by the Israeli forces” creating “mass injuries and heavy loss of life among the civilian Palestinian population” (United Nations, n.d.; Araj, B. & Brym, R.J., 2018). The Palestine National Council in Algiers, in 1988, “proclaimed the establishment of the State of Palestine” (United Nations, n.d.) with the proclamation of independence on November 15, 1988 relayed by ambassador Abdullah Salah and (in Annex I) Dr. Riyad Mansour, Deputy Permanent Observer (United Nations Security Council, 1988). In Madrid, Spain in 1991, there was a Peace Conference convened for the purpose of the direct negotiations for a peaceful settlement of disputes between Israel and Arab States and Israel and Palestinians (United Nations, n.d.) because of resolution 242 (United Nations Security Council, 1967) and resolution 338 (United Nations Security Council, 1973), which resulted in the “mutual recognition between the Government of Israel and the PLO, the representative of the Palestinian people” in the signing of the Declaration of Principles on Interim Self-Government Arrangements, the DOP, or the Oslo Accord from 1993 (United Nations, 1993). These lead to partial withdrawal of Israeli forces, and the elections of the Presidency of the Palestinian Authority and the elections to the Palestinian Council (United Nations, n.d.), with, importantly, the “establishment of a functioning administration in the areas under Palestinian self-rule.”

The Oslo Accords deferred some issues until permanent status negotiations held at Camp David in 2000 and at Taba in 2001 with inconclusive results at the time (Ibid.). In Jerusalem in 2000, Ariel Sharon of the Likud Party of Israel travelled to and visited Al-Haram Al-Sharif (Temple Mount), the second intifada or the Al-Aqsa Intifada followed this event and then Israel began construction of the separation wall of the West Bank with locations “mostly within the Occupied Palestinian Territory” (Beauchamp, 2018; United Nations, n.d.). An action ruled as illegal by the

International Criminal Court. The United Nations Security Council affirmed an Israel-Palestine two-States solution to the issue (United Nations Security Council, 2002). The Arab League (2020) adopted the Arab Peace Initiative in 2002 (Agence France-Presse (AFP), 2002) followed by, on May 7 of 2003, the European Union, Russia, the United Nations, and the United States of America, also known as the Quartet (United Nations, 2020) – who follow the principles of “non-violence, recognition of Israel, and acceptance of previous agreements” (Israel Ministry of Foreign Affairs, 2008; United Nations, 2020), publishing “A Performance-based Road Map to a Permanent Two-State Solution to the Israeli-Palestinian” (United Nations Security Council, 2003a). The United Nations Security Council resolution 1515, on November 19 of 2003, endorsed “A Performance-based Road Map to a Permanent Two-State Solution to the Israeli-Palestinian” proposed “a three-phased performance-based strategy to move the peace process towards a final resolution of the conflict.” The Israelis and the Palestinians widely promoted an unofficial Geneva peace accord in 2003, too (United Nations, n.d.). Israel, in 2005, withdrew both “settlers and troops” from Gaza while maintaining control over the airspace, borders, and seashore (Ibid.). With the Palestinian legislative elections in 2006, the Quartet ensured support on a conditional basis to the Palestinian Authority with requisite commitments to nonviolence, a recognition of Israel, and an acceptance of previous agreements, i.e., the affirmed guiding principles as endorsed in United Nations Security Council resolution 1515 (United Nations Security Council, 2003b; United Nations, 2020; United Nations, n.d.).

However, with an aggressive/armed takeover of Gaza by Hamas in June of 2007, Israel imposed a blockade, which followed a series of restrictions on Gaza by Israel in the 1990s onwards with the culmination of the blockade with approximately 1.8 million or more Palestinians in Gaza “locked-in” to the Gaza Strip (Oxfam International, 2019; United Nations, n.d.; United Nations Office for the Coordination of Humanitarian Affairs, n.d.). November 27, 2007 to about the end of 2008 exemplified another attempt at a peace process with the Annapolis process (Canadians for Justice and Peace in the Middle East (CJPME), 2017). Operation “Cast Lead” in Gaza by Israeli forces followed escalations in rocket fire and air strikes in late 2008, where Human Rights Watch reported Israel violated the Fourth Geneva Convention regarding “wanton destruction” (Institute for Middle East Understanding, 2012). Resolution 1860 was adopted by the United Nations Security Council with reiterations on Palestinian territory and eventual statehood, and the importance of a ceasefire (United Nations Security Council, 2009). In 2009, the Goldstone report resulted from the investigation into violations of international law during the recent Gaza conflict (United Nations General Assembly, 2009). The Palestinian Authority in 2009 developed a programme for the development of State institutions, which “received wide international support” (United Nations, n.d.). More peace negotiations happened in 2010, which broke down following the patterns of previous meetings following an “expiration of the Israeli settlement moratorium” (Ibid.). President Mahmoud Abbas submitted a 2011 application for the membership of Palestine in the United Nations (United Nations Security Council, 2011) with United Nations Educational, Scientific and Cultural Organization (UNESCO) admitting Palestine as a member and exploratory Israeli-Palestinian talks being held in early 2012 in Amman, Jordan (United Nations, n.d.). Following more combat breaking out in November of 2012 between Israel and Palestine, Egypt managed to get a ceasefire between all parties (United Nations Security Council, 2012). November 29, 2012, marks the granting to Palestine of non-member observer State status at the United Nations (United Nations General Assembly, 2013) with the United Nations General Assembly stating 2014 as the International Year of Solidarity with the

Palestinians/“Palestinian People” (United Nations, 2014). New negotiations started in 2013 with a suspension of the talks by Israel in April of 2014 with the announcement of a “Palestinian national consensus Government” with further fighting occurring between Israel and Gaza between July and August of 2014 (United Nations, n.d.) with the adoption of resolution 2334 on settlements by the United Nations Security Council (2016).

Human Rights Watch, for some more recent coverage, provided reportage on the 2017 and 2018 contextualizations of events (Human Rights Watch, 2018; Human Rights Watch, 2019a). More recent coverage for 2019 from Human Rights Watch covers the closure or blockade imposed on the Gaza Strip by the Israeli government, the injuring of 11,453 and killing of 71 Palestinians in Gaza circa November 11, 2019 (with another 114 injured and 33 killed between November 12 and 14) by Israeli forces, the injuring of 123 and killing of 4 Israelis and firing of 1,378 rockets towards Israel by Palestinian armed groups, unlawful Israeli settlements in the West Bank and East Jerusalem, discriminatory policies and demolition of Palestinian homes by Israelis, “onerous” restrictions of movement imposed by Israel on Palestinians, arbitrary detention and the detention of children by Israel of Palestinians, Palestinian Authority’s “in effect” criminalization of dissent through detention of Palestinians based on insulting “higher authorities” and the creation of “sectarian strife” including 752 detainments for “social media posts,” the upcoming Israeli elections (March, 2020) and the National State Law or the Basic Law: Israel as the Nation-State of the Jewish People (State of Israel, 2018) impacts on inequality in the prioritization to construct homes and revocation of Arab as a state language in Israel, the Israeli government attempts to and Supreme Court decision for the expelling of a Human Rights Watch official, i.e., Omar Shakir, (Human Rights Watch, 2019b; Ayyub, 2019; Democracy Now!, 2019; Conley, 2019) or the prevention of a Palestinian staff member of Amnesty International, Laith Abu Zeyad, from traveling outside of the Occupied West Bank (Amnesty International, 2019; Middle East Monitor, 2019) or entry into Israel of United States Congresswomen Ilhan Omar and Rashida Tlaib (BBC News, 2019; The Associated Press/CBC News, 2019), the non-legal status of same-sex marriage in Israel, acknowledgement of the ongoing issues related to the annexation of the Golan Heights and other bounded geographic areas, issues around global tourism centered on Airbnb, the conclusion of the prosecutor (International Criminal Court, n.d.), Fatou Bensouda, for the International Criminal Court (ICC) for meeting the criteria to move forward with a formal investigation into these issues, and some more (Human Rights Watch, 2020a). For a more comprehensive look, please examine the publication “Born Without Civil Rights: Israel’s Use of Draconian Military Orders to Repress Palestinians in the West Bank” by Human Rights Watch (2019c). Now, since Session 3 of this educational series, Shakir worked outside of Israel based on expulsion from Israel because of the decision of the Israeli Supreme Court about Shakir.

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Other Resources

Interview with Dr. Norman Finkelstein on Gaza Now

April 26, 2019

***Dr. Norman Finkelstein**, who should be Professor Finkelstein (if interest, please look into the record of the grotesque denial of tenure to Dr. Finkelstein at DePaul University), remains one of the foremost experts and independent scholars on the Israeli occupation and the crimes against the Palestinians.*

Not only known for exemplary independent Scholarship, Finkelstein retains the moral fortitude, mental clarity, and persistence necessary to conduct the research on this topic in spite of the mass of public relations, or massive propaganda, intended to distort the image of the conflict and intentional destruction of his professional academic career. By the loss of one audience, though, he did garner another one.

*By these intellectual and ethical standards, especially because of the autonomous existence in both regards, Finkelstein exists as a rare and formidable human being worth careful reading and deep consideration in the written word. His most recent book is considered the magnum opus and is entitled **Gaza: An Inquest Into Its Martyrdom**.*

Here we talk about the right of the Palestinians to extricate themselves from the currently or soon-to-be unlivable conditions with some modicum of contextualization.

Scott Douglas Jacobsen: 70% of the current population of Gaza, more than 70 years later, are officially recognized as refugees. Approximately half of the population is comprised of children.

Also, it is one of the most densely populated places on Earth. Most of the water accessible to Palestinians is contaminated. In other words, 97% of the drinking water is unfit for human consumption.

Dr. Sara Roy, Senior Research Scholar at the Center for Middle Eastern Studies, describes this as slowly being poisoned by the contaminated water, where this implies about 1 million Palestinian children being poisoned by Israel.

Electricity is available only for some few hours per day. As Palestinians live in what has been called the world's largest open-air prison – most can't leave the Gaza Strip, their conditions have been reported as being unlivable by 2020.

To set the groundwork for some of the other questions, what are some of the other layers to this issue needing explicit statement and repetition in the media?

Dr. Norman Finkelstein: I think that your statement covers a lot of the salient facts. The one fact that it omits – well, I guess, there are two salient facts that it omits – is the problem with exports.

The Gaza economy was largely dependent upon trade of its agricultural goods. Israel has, effectively, banned any exports from Gaza. There are occasional relatively minor and intermittent exceptions.

Once in a while, they will allow Gaza to export some strawberries, but then they will deny Gazans the right.

So, it makes for an unpredictable pattern, which means nobody is going to make contracts even on those limited numbers of exports because it is impossible to know if and when the contracts can be honoured.

So, there is a basic problem of exports. Then there is the other basic problem of what Israel designates dual-use items. Dual-use items are a list of items that Israel claims can be used for both civilian and military purposes.

This list of dual-use items includes, most critically includes, cement. It means Gaza is not able to rebuild from the devastation that Israel inflicted in 2014 during Operation Protective Edge.

It destroyed or made unlivable about 18,000 homes in Gaza. I am not sure what the current status is on the number. I don't have them off the top of my head. The number that they have been able to rebuild of the homes that were totally flattened during Operation Protective Edge.

But the problem of cement. Also, there are various medical devices which are also classified as dual-use, which can't make their way into Gaza.

The long of the short of it is: all of the representative or, I should say, all of the expert organizations monitoring the situation in Gaza, whether it be the International Monetary Fund, or the World Bank, or UNCTAD.

They all concur. There is a consensus. That the principle factor inflicting misery on Gaza is the Israeli blockade, the Israeli siege. Unless that siege is lifted, there is no possibility for any progress Gaza.

Jacobsen: Let's take an example to indicate media reportage bias as well, as you noted elsewhere, in the past, the Hamas 'rockets' being asserted as rockets, but, in fact, being enhanced fireworks.

For those less aware, perhaps, on the style of framing the issue or distorting the truth, or simply lying, how have the cases of the enhanced fireworks or Hamas 'rockets' been reported, in general, in the Western media broadly speaking, in Israeli outlets, and in the other Middle Eastern news and opinion publications?

Finkelstein: Well, the Hamas rockets have effectively been a godsend to Israeli propaganda. Like fireworks on the fourth of July, they are a spectacle, but a spectacle with almost no military consequence.

If you take the case of Operation Protective Edge, Hamas allegedly fired 5,000 rockets at Israel, according to the official Israeli figures. Only 1 house was destroyed and a handful of others incurred some, apparently, minor damage.

This cannot be explained by the allegedly Israeli anti-missile defense system called Iron Dome because Iron Dome only deflected – I guess the official Israeli figure – is about 800 Hamas rockets.

In fact, it is probably much smaller, probably on the order of 50 or so were deflected or disabled. The fact of the matter is: these so-called rockets caused so little damage because they are not rockets.

At least, not rockets in the normal way conceived in the imagination. They are closer to fireworks, enhanced fireworks. Or, I guess, it was *Foreign Affairs* magazine, which called them bottle rockets.

The sort of thing when you were a kid that you would put in a Coke bottle and then set off, and light the fuse and it went into the air.

It is basically what they are. News media like to repeat the figure: several hundred rockets, several hundred this.

Like to repeat the “fear and terror” it induces in Israel, but almost never reports the actual damage, except for the fact that Israel will with a few photos, which are then supposedly representative of the damage done.

They are not really representative. They are exhaustive of the damage done. One photo is supposedly representative of thousands of cases of damage inflicted.

In fact, the one photo is also the only photo. The problem, of course, is the alleged or so-called Hamas rockets have been ballyhooed or deplored by both sides.

So, Israel deplores them as an existential threat. Hamas used to ballyhoo them as a major threat to Israel, echoing the Israeli claim that they were creating an existential threat. Both sides had a mutual stake in inflating the actual damage inflicted by these rockets.

Jacobsen: The attacks on Palestinians appear to become more visible and obvious to more of the wider populace of the world.

There continues to be completely or mostly nonviolent Palestinian protestors, who then are killed, at least, in the double digits in repeated incidents if not more.

In terms of attitudinal stances amongst, for instance, the general American populace and, in particular, American Jewry, how is this wider visibility of the killing of nonviolent protestors changing social attitudes about the Israel-Palestine conflict, as you have written, for example, on a growing disaffection of some American Jews with Israel?

Finkelstein: The major turning points in the Israel-Palestine conflict, as perceived by the broad public. The turning points have correlated or corresponded with the major Israeli bloodlettings among Palestinians, but also neighbouring Arab states.

If you go back, if you were to chronicle or chart the shifts in public opinion, the first major shift comes in 1982, at the time of Israel’s major invasion of Lebanon in June 1982. Israel killed between 15,000 and 20,000 civilians and Lebanese, overwhelmingly civilians.

The Israeli massacre in Lebanon climaxed in September with the Sabra and Chatila massacres in the refugee camps. The refugee camps of Sabra and Chatila.

At that point, it was the first major shift in public opinion. It wasn’t that a big slice of public opinion, but it was the first significant change in public opinion.

That’s when you might say the old left, the communist-oriented left, and the radical wing – maybe radical is too strong, the most militant wing of the anti-war movement. “Anti-war” meaning Vietnam and then its aftermath, what was the aftermath of the anti-war movement.

That sector of public opinion. People like Pete Seeger, Daniel Ellsberg, and assorted others. They came out against Israel publicly for the first time, making a strong statement of condemnation.

And then as time elapsed, the next major change comes in 1987 with the inception of the First Intifada and Israel's massive use of force in order to quell an overwhelmingly non-violent resistance to the Israeli occupation.

Then there was another – so to speak – defection from the Israel camp, another slice of public opinion you would say. Now, inroads are starting to be made in liberal mainstream opinion, not the left fringe but the substantial liberal opinion.

At the time, it would be magazines like *The Nation* magazine, *The New York Review of Books*. You begin to see wavering support for Israel.

The next big shift comes in the Second Intifada, beginning in 2000, when Israel used a massive criminal force in order to suppress the Palestinian resistance, often violent in this case, to the Second Intifada.

The next major turning points come with Operation Cast Lead in 2008/09, which had a very substantial effect on public opinion. And then, most recently, Operation Protective Edge in 2014. Unfortunately, the Great March of Return, a non-violent protest, that began March 30th of last year, 2018.

They did not have the resonance they should have had in changing public opinion. Ironically, the picture I just chronicled or mapped out has changed somewhat because the major factor now driving alienation from Israel is not the various Israeli bloodlettings.

As I said, the Great March of Return has had a relatively marginal impact on public opinion.

The fact that has changed things quite significantly is Benjamin Netanyahu, not just political alliance but his, ideological alliance with the alt-right internationally and, in particular, his ideological, not just political, alliance with Donald Trump.

When I say, “Ideological alliance,” it used to be said that if Israel used to make unsavory alliances, say the alliance between Yitzhak Rabin and Shimon Peres, the leading Labor Party leaders in Israel, who made alliances with South Africa.

These were said to be alliances of convenience because Israel was so isolated politically. It had to look for allies wherever it could find them. The current alliance between – open embrace more than alliance – Trump and Netanyahu is not an alliance of convenience.

It is an alliance based on shared values, perceptions, shared ideological worldview. It is the worldview of the alt-right. Israel is not even a typical alt-right state, because in most alt-right states there is some alt-left to balance out the alt-right.

We have a Donald Trump and a Bernie Sanders. In Brazil, there is a Bolsonaro, but there is also a Workers' Party on the other side. In the case of Israel, you have an alt-right, and you have an alt-more-right.

There is no center. There is no left. It is an extremely right-wing state, currently – extreme right. Not just at the governmental level, but at the level of society.

Jacobsen: Following from the prior question, and looking into the extensive research into nonviolent protests, writings, and tactics of Mahatma Gandhi by you, why were the Gandhian tactics so effective?

How does this translate into the efficacy of the nonviolent protests and tactics of the Palestinians?

Finkelstein: Well, first of all, it is to the eternal credit of the Palestinians. That they have been able to hold out for so long and persist so long in their non-violent resistance.

It has been going on now for more than a year, the protests, which means they've lasted longer than, in an American context, the Montgomery bus boycott.

Which began with Rosa Parks who refused to sit in the back of the bus, that boycott, which is a crossroads, a milestone, in American history, lasted almost exactly one year.

The Gaza protests have now lasted for a year and one month as of now. No one can deny or gainsay the heroism or the courage of the people of Gaza.

The demonstrations have been overwhelmingly non-violent. Non-violent except for trivial things like throwing rocks or various sorts of implements which barely or do not even reach the Israeli snipers on the other side.

This has been documented, now, in a very authoritative, extensive, impressive UN Human Rights Council report on Gaza, probably the most impressive report that has been written on it, on the conflict thus far.

I would say in terms of its conscientiousness, its precision of language, precision of law. I would say it surpasses significantly the Goldstone Report on Operation Protective Edge. The report by Richard Goldstone, the South African jurist, which created a hysteria in Israel.

The current report is even better and also crosses certain red lines, which human rights organizations have been reluctant to cross up until now. It states explicitly and emphatically that Israel not just used disproportionate force.

Israel did not just use indiscriminate force, but Israel is intentionally targeting Palestinian children, Palestinian medical personnel, Palestinian journalists, Palestinian disabled people. It is intentionally targeting them for murder.

That's an unusual acknowledgement. Although, anybody who has followed the conflict knew this all along. Human rights organizations have been very averse to acknowledging it. Now, this new report does.

The one really regrettable fact of these demonstrations is that they cannot succeed without international support. At some point, Israel is just going to mow down everybody, or wear them away, erode their will.

Unless, these demonstrations have an international resonance, which puts a pressure on Israel to stop the killing. The demonstrations cannot succeed. Unfortunately, the solidarity, the international solidarity, movement with Gaza did not rise to the occasion.

Consequently, it has, basically, been ignored, not just by the mainstream media, which is what one might expect. But they have been ignored by the solidarity movement. That, I think, is politically a disaster.

Jacobsen: In contrast to the nonviolent protest tactics of the Palestinians, what has been the main tactic of the Israelis?

Why does this require a pretext, even strained ones, to prevent poor international public perception, in line with the question on media reportage bias?

Finkelstein: Well, Israel always claims it has a pretext. The pretext this time to the non-violent protest has been two-fold.

First of all, Israel periodically targets Hamas militants or Islamic jihadi militants in the hope of provoking a counterattack with these so-called rockets.

So, Israel can claim it is defending itself. In fact, what it is really hoping to do is end non-violent protests and get the Hamas to use its rockets, so Israel will then have another pretext to go in and slap Gaza.

So long as Hamas does not play along with this dirty Israeli provocation, Israel has trouble finding a pretext to go into Gaza.

The problem, right now, is that in the absence of media coverage Israel barely even needs a pretext to continue to fire, or to kill and injure, with abandon in Gaza because nobody is paying much attention.

I should add that Israel is highly sensitive to public attention. It has been careful to limit the actual killings and instead have its snipers aim, for example, at the knee caps of Gaza protestors, so as to permanently maim them.

What's called life changing injuries, which is basically a death certificate to those who get these injuries, it means that you're disabled for life. You become a parasite in Gazan society. You have no future.

But these sorts of life changing injuries don't get any media attention because, typically, it just says, "X number of people killed." It may then say, "Wounded," but "wounded" is somewhat or very misleading because these are not just wounds in general.

These are calculated, life changing injuries, permanent maimings for the demonstrators.

Jacobsen: During Operation Cast Lead from 2008-09, on the first day, in the first five minutes, Israel killed 300 Palestinian civilians. How does this compare or contrast with the current killings?

Why is this difference significant, in terms of the fewer numbers of Palestinians killed followed by the greater negative reaction by more of the world?

Finkelstein: Well, a war gives people or gives states *carte blanche* kinds of mass killings, which aren't permissible in non-war situations.

And so, what Israel did in the first day of Operation Cast Lead is just quickly forgotten, whereas when you're engaging in non-violent resistance, it's much more difficult to conceal the magnitude of the horror that is being inflicted.

That is incidentally why the Human Rights Council report was able to state categorically that Israel was intentionally targeting civilians.

Had it been a war situation, and Israel intentionally targets civilians including children during wars, during Operation Protective Edge on July 12th, I think it was, when they killed the four children playing hide-and-seek in broad daylight on the wharf in Gaza.

That was killing children. However, the thing about non-violent protest. You can't claim things like the fog of war and s-h-i-t happens in war. So, that kind of excuse, extenuation, doesn't fly in those sorts of situations.

There was just so much video evidence, and eyewitness evidence, of kids being shot in the head as they were fleeing the perimeter fence of Gaza or disabled people being shot, or a person carrying the flag being shot.

There was no way to make the claim of, "Well, there was somebody shooting me or by that person." All sorts of the usual excuses for Israeli killing.

They just weren't available. So, the human rights organization, in this case the Human Rights Council, commission, was forced or felt free to report the truth.

Namely, that this was, these are, the targeted killings of children, medical personnel, journalists, disabled people, and so forth.

Jacobsen: UNCTAD and the IMF published several reports. The consensus is the proximate cause of the terrible conditions in Gaza emerging from the Israeli blockade with, perhaps, marginal responsibility of Hamas.

How does this violate international law as a form of collective punishment?

Finkelstein: Right, the Israeli claim that it is imposing the blockade as a matter of self-defense. I won't go into the technicalities here. I don't think Israel has any right to self-defense. I'm not going to go into that argument right now.

The simple matter is: how, for example, does preventing the export of strawberries serve a military purpose? How does preventing people who need cancer care from travelling abroad serve a military purpose?

It is quite clear that a purpose or the purpose of the blockade is to punish the people of Gaza by having elected Hamas into office and also to create the incentive, or to incentivize, the people of Gaza to remove the Hamas government and replace it with one that is more pliable to the U.S. and to Israel.

There are aspects of the Israeli blockade of Gaza that couldn't possibly be explained, defended, on so-called military grounds. Even if it had the right of military grounds, which I don't believe it does, but that is a separate question.

Even if it had the right of military self-defense, there are critical aspects of this blockade in particular with the exports, the denial of exports, or the denial of the right to travel for people in need of medical care, which clearly has no relationship to any notion of self-defense.

But are designed to collectively punish the people of Gaza, first, for having elected Hamas into office and, secondly, to incentivize the people of Gaza to rid itself of Hamas, and collective punishment is illegal under international law, I would say in the current case, since Gaza has already crossed the threshold or is approaching the threshold of unliveability.

The blockade has to be classified as a crime against humanity, as a population of 2 million, 1 million of whom are children, are effectively being confined into an area, which is not metaphorically and not poetically but literally, as described by relatively tame economic and human rights organizations, as being unlivable, as a physical fact.

So, if you are confining 2 million people in a *literally* unlivable situation, you're not allowing them to leave. That's consigning them to a slow or fast, depending on the circumstances, death. That has to be described as a crime against humanity.

Collective punishment can be defined as a crime against humanity in certain situations. The International Criminal Court has described it as a crime against humanity. I would say in the case of Gaza, right now, that it has crossed that threshold.

Jacobsen: Given the mostly child population, the entrapped locale and densely populated area, the urgency of unliveable conditions by 2020, and the right to extricate themselves, instead of idealized or fantasy 'solutions,' what are pragmatic steps for the Palestinians to remove themselves from this context, including removal of the blockade?

What would be the first and foremost step for the international support networks to assist the Palestinians in these practical steps? The Palestinians who are giving their lives.

Finkelstein: The last question, to me, is pretty straightforward. The answer has to be the international community has to force Israel to lift the blockade and put it in accordance with international law and enable the people of Gaza, who are currently being strangled, being throttled, to breathe.

Jacobsen: Thank you for the opportunity and your time, Dr. Finkelstein.

Finkelstein: Okay, best of luck.

Extensive Interview with Gideon Levy

April 3, 2020

Gideon Levy is an Israeli Author and Journalist, and a Columnist for Haaretz. He has earned several awards for human rights journalism focusing on the Israeli occupation of the Occupied Palestinian Territories or the OPT (or oPt). Language recognized in the work of the [OHCHR](#), [Amnesty International](#), [Oxfam International](#), [United Nations](#), [World Health Organization](#), [International Labor Organization](#), [UNRWA](#), [UNCTAD](#), and so on. Some see the Israeli-Palestinian issue as purely about religion. Thus, this matters to freethought. These ongoing interviews explore this issue in more depth.

Here we talk about coronavirus (SARS-CoV-2)/COVID-19, Israeli elections, medical infrastructure or lack thereof, coronavirus on the ground, and a lot more.

Interview conducted on March 28, 2020.

Scott Douglas Jacobsen: Last time we talked was May (2019), there have been some general changes. Some have been game-changers with coronavirus giving symptoms of COVID-19. Perhaps, we can start with that as the most pressing thing based on its global scope and hitting the general territories (oPt) as well as Israel. With regards to the coronavirus with Israel, what is the situation on the ground? What has been some of the reaction of the authorities?

Gideon Levy: I think there has been confusion and some sense of fear. A lot is unknown, like any other place. With some more hysteria, which is typical to Israelis and going from one extreme to the other, we are really in the middle of it. So, no one can really judge. What is it? What will be the outcomes? What will be the consequences? It is too early to judge. The government and the politicians are using it for their own purposes. Obviously, for me, personally, it was a reminder for the Israelis to the conditions that we are enforcing on the Palestinians, because, now, we are in a kind of closure, which, in many cases, is the best that the Palestinians can dream about in many times in history. But maybe this, but this is just a sidekick. Maybe, this will make more Israelis understand how the Palestinians live under our occupation.

Jacobsen: Have you heard or read anything in terms of the reaction on the oPt side, whether through some of the work, brave work, of Amira Hass or others?

Levy: First of all, Amira Hass is not in the country now. I know very little, but I understand that everything is very similar there. They are also living under fear, in many ways. There is isolation. There is some kind of closure. The big issue is Gaza, not the West Bank. Because if God forbid, if it happens in Gaza, then it might develop into an unbelievable catastrophe, unbelievable disaster because, in Gaza, you cannot isolate anybody. You don't have ventilators. You don't have anything. You don't have the infrastructure for fighting the coronavirus. Right now, things are on hold. I don't think much is happening.

Jacobsen: Is one of the main reasons for the lack of infrastructure, medical infrastructure, in Gaza due to the blockade?

Levy: It's not one of the reasons. It is *the* reason. Undoubtedly, it is almost 13 years of closure. After 13 years of remarkable brave behaviour of the medical teams there, those who, don't forget, had to deal with bloodshed in certain periods and with very, very little means. For sure,

anything that happens today in Gaza is due to the closure. Gaza is a cage. Life in a cage can be only like life in a cage.

Jacobsen: Last time we talked, also, you were very explicit about: the two-state solution is dead. And that the main orientation from your own professional opinion is that it should be a one-state perspective, and then a question as to what kind of state it will be. Have you had any developments in that opinion since May of 2019?

Levy: Unfortunately, not, because the issue is totally off the table, we had some time when there were some talks about the “deal of the century,” which just enforced me. Because the “deal of the century” was the final funeral of the two-state solution. If anybody needed proof of the fact that there is no chance for a two-state solution, then came the American plan, it showed it clearly. This was a clear plan for annexation. But all this is now off the table because nobody talks about it. Nobody deals with it. Right now, everything is about the coronavirus.

Jacobsen: What about the numbers on the ground for the coronavirus? How is the testing? How are the cases in terms of critical/serious cases or mortalities?

Levy: It is growing like any other place. I think the coming days are very critical because, if it will not be stopped, they will have to take more serious measures. Namely, to tighten the closure even more than it is, it will, obviously, have a lot of economical and other effects. We have already within weeks. We are facing 21% [Ed. circa March 27, 2020] unemployment from a figure of 4% or 5%. We are having over 700,000 unemployed, declared unemployed, people. It all goes to very dangerous directions. The question is, “What will be in those days?” Right now, there are 11 death cases, which is rather low. But the figures of those who got the disease is tripling every 2 or 3 days.

Jacobsen: You mentioned the known “unemployed.” What about those who are not registered as unemployed? They are not necessarily on the books – so to speak. Would things be worse if they were taken into account – if there are such numbers on that?

Levy: No, they are not taken into account. They will not be compensated. Here, again, we fail the weakest parts of society. Namely, the asylum seekers, African asylum seekers, who have no rights. Obviously, tens of thousands of Palestinians who came to work here every day. Most of them are prevented now. No one will compensate them. Over the long run, this could become a catastrophe.

Jacobsen: You have been reporting on the African asylum seekers for some time now. From their perspective, what is their attitude about the institutional treatment around compensation before the coronavirus became an issue, and leading up to it?

Levy: First of all, the figures, Israel has really minimized their numbers to something around 30,000 asylum seekers. It’s much less than ever before. We had 60,000, 70,000, and 100,000. They succeeded to deport, to convince, anything possible to get rid of them. Really, it is only about 30,000 people who are really nothing. It is a tiny minority. For those people, even for those people, Israel is not ready to be generous and human enough to take some minimal measures like giving them possibilities to make their living. They deposit some of their income. They are obliged to deposit some of their income at the government until they’re leaving. Now, when they are unemployed, the most natural things are to freeze some of those. It’s their money. They should get it. Until now, the government didn’t do anything about it.

Jacobsen: Any issue following from the economics is the issue around businesses. The United Nations Human Rights Council, as you know, released its report on 112 businesses around the world who are doing business on illegal settlements. 94 of which or of whom have been listed as Israeli. Others including places like Luxembourg, United Kingdom, United States, and so on, have companies doing business on that list. How is this impacting, in a positive manner, moving the dial towards justice and respecting international law rather than not?

Levy: It is still a very, very long way to go, but it is the first step. It is very hard, first of all, to separate companies making business in the occupied territories and companies making business with Israel because occupied territories are part and parcel of Israel. You never know. Who doesn't do business in the occupied territories? I can think only about McDonald's, which decided not to have any branch in the occupied territories. But they are almost the only big company that I can think about; that wouldn't work in the occupied territories directly or indirectly. This separation is very at issue. Finally, Israel is invested in the occupation project. All Israel, all Israelis, all Israeli companies, in one way or another, indirectly or directly, even my newspaper *Haaretz* (which is fighting the occupation like no other) sells the newspapers for the settlers. Even us, we are not completely clean because we have to survive somehow. It is a good beginning, though. I don't want to underestimate it. It is a good beginning, but it is one way. Above all, it is not enough to have a list. It is enough to take measures.

Jacobsen: Has Amos Schocken given any statement on this?

Levy: No, not that I know, but Amos also has other troubles because if this situation goes on. Then we are all afraid about the future of the newspaper. This coronavirus will kill many institutions. I don't know exactly the situation. I do not see any advertisement whatsoever. I don't know how long it can survive in those conditions. I can just tell you. Amos Schocken, in the past, wrote an article favouring international pressure on Israel and international economical pressure on Israel, which are responsive. I am not sure if he is supporting BDS.

Jacobsen: I think this leads naturally to, not only social and political commentary but also, politics and governance. Israel had the election, recently, with the Blue and White Party and the Likud, basically, having an alliance set up with the front person, now, going to be Benny Gantz. What seems to have been the reasoning around this? What are the consequences for ways in which governance will be running forward through 2020 and some of 2021?

Levy: Gantz declared that he will join the Netanyahu government. This was very surprising for many people. Not least surprising, that I am supporting it, because I don't see, now, any alternative except for more elections, which is really unbelievable. I mean, we cannot go for fourth elections. We have to pass this period of coronavirus with some kind of government. Therefore, I think he did the right step joining the Netanyahu government, because he had no option to create a government by himself. Above all, I am not sure if I see many, many dramatic differences between Netanyahu and Gantz when it comes to the major issues, like the occupation. Both are equally supporting the occupation. For me, the rest is much less important.

Jacobsen: Is there any political party, whether they have a chance or not, that has any policy or platform piece that is favourable to the human rights and dignity of the Palestinian peoples in the occupied Palestinian territories?

Levy: Yes, there is one. This is the Joint List, which is mainly Palestinian, Israeli-Palestinians, Israeli citizens who are Palestinians. I must tell you. They are the third party in the Parliament. They had great success in the last elections. They have 15 seats out of 120. The only problem is, until now, that they were quite excluded from the political game. The influence is, therefore, very limited.

Jacobsen: You used the phrase “political game.” How, or in what ways, was this third party kept out of this political game?

Levy: They were treated as non-legitimate partners by almost all of the other parties. Netanyahu incited against them and called them “terrorist supporters.” Also, the other parties did anything possible to delegitimize them.

Jacobsen: What was the reference for “terrorist supporters” of Benjamin Netanyahu, when making that charge against them?

Levy: First of all, it doesn’t need any references. When you incite, you incite. You don’t need any facts for it. They have one section because it is a combination of 3 or 4 parties. One section is more nationalistic. Among them, there was one new member of Parliament who once posted or tweeted some sentences that might be construed as supporting terror. It is all ridiculous, but it is incitement where facts are not relevant.

Jacobsen: Also taking another pivot into the international rights realm and the advocacy for rights realm, there are a few cases in, maybe, 2007/08 to present with either deportations, travel bans, or restricted entries. Some individuals coming to mind would be Noam Chomsky, Norm Finkelstein, Laith Abu Zeyad, and Reps. Rashida Tlaib and Ilhan Omar. They’ve had, at least, one of those applied to them, in that period of time. Since our last conversation, in November, the Human Rights Watch Israel and Palestine Director, Omar Shakir, had his work permit revoked, what was the media conversation outside of *Haaretz* regarding this particular event? Basically, it resulted, at present, in Shakir working from Amman, Jordan.

Levy: It was mainly hardly covered, which is in many cases more criminal than being covered in a biased way. Because ignoring it is saying, “It is not important,” “not interesting,” or both. It is the same, like with many other things concerning the occupation. The Israeli media just prevent any coverage by self-censorship, not that anyone pushes us to do so. But those issues, if not *Haaretz*, it is hardly discussed. When it comes to more famous figures like congresswomen who were banned here so obviously, it was also in the other media. But when it comes to the activists, even a Human Rights Watch representative, the coverage was poor. And it was a non-issue.

Jacobsen: Will this kind of action be extended into the future if there are no consequences for restriction on those who are either reporting on human rights violations or advocating for human rights?

Levy: Like many other things, it depends on one thing. Will the world let Israel go like this? If the American, the Canadian, or other governments don’t take measures, because this is the right

of their citizens, if they don't treat Israelis in the same way, then Israel will continue to do so. The day that it will change will be the day that Israelis will be treated the same and banned by entering the United States, Canada, or elsewhere. Until now, the governments in the West couldn't care less about those cases. None were really protested or took any kind of measures. As long as this will continue, Israel will continue. Why not?

Jacobsen: If we look at a self-critical examination of the North American case, even, in particular, in the Canadian case, what is Canadian society, at least as you are aware, have read, have heard, doing right and doing wrong in regards to the human rights and international law norms in Israel or the occupied Palestinian territories?

Levy: I think there's no argument about the fact that Israel is ignoring international law, maybe like no other country in the world: systemically, over a long, long period of time, just ignores international law. This really is the world's fault, not less than Israel's fault. Because by the end of the day, the world knew very well how to treat violations of human rights in other places on Earth. If the population of the West did not go against the apartheid system in South Africa, then the apartheid system in South Africa would last until this very moment. The question is, "Why, what was so evident in South Africa, is not existing when it comes to Israel?" Almost, the same kind of violation of human rights; the same kind of regime; the same kind of thinking. That there are two kinds of peoples. One has all the rights. The other should not get any rights. You see the world either apathetic, indifferent, or even continues to hug Israel, to see Israel as an outpost of the West, of Western values, in the Middle East. As long as this continues, as long as Israel is not punished, as long as Israel will not pay for the occupation, the occupation will last.

Jacobsen: If we look at American history, as we both know, it started – or recent pre-American history started – with a near-genocide of Native Americans, annexation of territorial lands, annexation of Mexican land, enslavement of different tribes of Africans forced to come from Africa to North America. In addition, in the Canadian case, with our first colony in New France, we had slaves. 2/3rds were Indigenous. There's a long history of both the state sanction and church carrying out of things like Residential Schools as an extension of colonization. Is part of the national reluctance, of several countries to criticize the very obvious parallels in the Israeli-Palestinian issue, a reluctance based on the fact that a country or a nation has that history itself is applying the rights standards externally in the particular case that is ongoing, live, for more than half of a century then imply having to apply the same standards to their own situation and rights record that runs back farther?

Levy: I am not sure. Because if this would be the case, how did the world react against South Africa? Why this didn't appear then, emerge then? I think it has to do with history, but more with Jewish history. I think that guilt feelings of the world and, mainly, of Europe, obviously, toward the Jewish people have a bigger role, and the way Israel is manipulating those guilt feelings; together with the belief that Israel is a special case. Together with the unbelievable strategy of Israel. Namely, to convince the world – that is a normal success in recent years, to convince the world that any critique of Israel is anti-Semitism, and once you identify or label any criticism of Israel on the occupation as anti-Semitism, you paralyze almost any criticism of Israel. This was really successfully implemented in recent years. So, altogether, it has more to do with more than what you mentioned. Also, we cannot ignore Islamophobia, which is growing in the last decade playing into Israel's hands. Because Israel says, "You see. We are facing those Islamists in our

backyards.” Altogether, there are many, many factors because the question still stands, “How come the world continues to let the last colonial country continue?” How the world does so little? If you ask civil society, there is a clear majority all over the world resisting or being against the Israeli occupation. But when it comes to governments outside of lip service, you get nothing.

Jacobsen: Also, internationally, external to Israel, there was the issue around charges of rampant anti-Semitism within the Labour Party within the United Kingdom under Corbyn. That’s quite past some of our previous interview. However, just as a retrospective, what do you think can be learned in terms of how the public was told about this particular case and the reality of the case?

Levy: Look, I don’t live in the UK. I really don’t know how far anti-Semitism is in Labour. But I have no doubt knowing the actors. I have no doubt Israel, and the Jewish establishment and the Jewish lobby, did manipulate even this to the service of the Israeli propaganda. Corbyn, who had really a chance of changing the international discourse about Israel or, at least, to be the first important Western leader who would change the discourse throughout Israel, had no chance once Israel, the Zionists, the Jewish establishment, labelled him and his party as anti-Semitic, as an anti-Semitic party. Unfortunately, it was very, very effective. By this, I don’t mean to say that there is no anti-Semitism in The UK or in Labour. I guess, there is. The first question is, “How deep, and how spread, is it?” The second question is, “Are you really convinced that what you call anti-Semitism is not just pure criticism about the Israeli occupation?” Those questions are not very clear.

Jacobsen: In your own opinion, what is a proper definition of anti-Semitism? What might be improper ones, where, for example, there’s an extension, as you were noting, to any criticism of Israeli policy then becomes tied to a charge of anti-Semitism, which would ignore the fact that there are Arab-Israelis?

Levy: So, first of all, it is very clear anti-Semitism should be fought and should be condemned. There is anti-Semitism. There was anti-Semitism. It brought, maybe, the ugliest phenomena in human history. No doubt about this. No doubt about the role of anti-Semitism in World War II, in the Holocaust. Even after, having said this, this does not mean that any criticism of Israel or even on Jews is not legitimate. When it gets to generalization or prejudice, like any racism, then it is unacceptable, like any other kind of racism, like Islamophobia, but when it comes to criticism about Israel, about Zionism, what is more legitimate than criticizing Zionists? What does this have to do with anti-Semitism if someone thinks that Zionism is a form of colonialism? What is legitimate? What is illegitimate in fighting against the Israeli occupation in any way, which is a non-violent way, like calling for boycotting Israel? What is not legitimate in this? What does this have to do with anti-Semitism? You have the right to boycott sweatshops in far East Asia because of their morality, or lack of morality. You have the full right to boycott the meat industry because you believe animal rights are violated. Why don’t you have the full legitimacy, right, and, in my view, duty, to fight against the Israeli occupation?

Jacobsen: Also, on another note, we were talking before, in May, I think, about 12 or 11 months out of some of the therapies, which you had for another instance of cancer. How is your health now?

Levy: I am okay. As far as I know, there are no checkups. But I hope I am okay.

Jacobsen: Good, I'm glad. Have there been any individuals or books that have shed an interesting and unique, or simply a novel, light on the Israeli-Palestinian issue or on Israeli society that have come out since 2019 to now?

Levy: Not that I know. Not enough is written. Not enough is published, for sure not in Israel. Even Ilan Pappé's classical book, *The Ethnic Cleansing of Palestine*, it was never published in Israel. So, not that I know.

Jacobsen: For those reading this when it eventually comes out, Gideon did correct me, last time. That the Israeli press is free, and so it's private interest when beginning to have a bias. There's no complicated situation there, in terms of the influence on media. Are there any topics that I'm not quite covering today?

Levy: Same as one year ago, and even worse. The occupation is not covered. The asylum seekers, their struggle is hardly covered. Anything which might bother the readers or the viewers will not be covered because of economical considerations, not because of any ideology. The Israeli media is very courageous when it comes to fighting corruption, when it comes to fighting the Israeli politicians, very independent, very powerful. When it comes to certain topics and above all the occupation, Israel is living in denial. This denial has a lot to do with the way that the occupation is covered by the Israeli media.

Jacobsen: Another thing, on the 28th of January, there was a press conference with (Israeli) Prime Minister Benjamin Netanyahu and (U.S.) President Donald J. Trump without any Palestinian representatives at the time. There is an optics matter there, as well as simply how things play out matter as well. The Trump peace plan, the mid-east plan, or the "Deal of the Century," what is its status within the Israeli political scene? What will be the outcome of this? As far as I know, I think, one *The Associated Press* article reported 94% of Palestinians based on a survey rejected the plan, which is overwhelming.

Levy: I don't know about the 6% who is supporting it. I am sure there is some error. Because there is not one single Palestinian who can support this plan. It is not a peace plan. As I said before, it is an annexation plan. But in any case, it is off the table right now. If Donald Trump will not be re-elected, then it will be totally forgotten. If he will be re-elected, then it will be back on the table, but not before the upcoming elections in the United States. Anyhow, this would not lead to anything but annexation.

Jacobsen: Something I hear and read a lot of in some of the secular communities are the influence of the fundamentalist Evangelical Christians – some – within the United States of America, and different factions of those with somewhat similar ties in Canadian society. What is the real influence of, broadly speaking, some sectors of fundamentalist Christianity with political aims on Israeli society?

Levy: You mean Christian religious movements.

Jacobsen: Yes, fundamentalist in particular.

Levy: They have very little ties with Israel. In Israel, they are quite involved in the settlement project. They are even sending all kinds of lunatic volunteers to help the settlements, even in settlement work and in the fields. Their main influence is within the United States and, maybe, even Canada. Their main influence is there, not here. They are one of the main powers, which shape the American policy toward Israel.

Jacobsen: Who are the other ones?

Levy: I guess, the evangelists, the military establishment, the weapons industry, and, obviously, the Jewish community.

Jacobsen: In some prior commentary, if I recall correctly, you were making some mentions in an interview in late 2019 about Benjamin Netanyahu evading justice in various ways, but, inevitably, this would not be an indefinite evasion. What – if I am completely misrepresenting, please just tell me, but if I am remembering this right – was meant by those just general sentiments? And what would be the timeline in non-indefinite evasion?

Levy: For Netanyahu, look, for me, this is a minor issue. But he has to go to court. No doubt about it, like any other citizen. He does anything possible, and even more so, to avoid it. He did so much until now. Right now, I am not sure if he will get to court at all. He is really a magician, super-magician – manipulations, of political maneuvers. Until now, he was very successful in postponing his trial, including this coronavirus, which, by all means, he has nothing to do with it. But he is using it so well for his own personal interests. Until now, very successfully.

Jacobsen: There have been some cases of coronavirus, I believe, in Palestinian territories. Have these raised hairs for you?

Levy: Look, there are no borders to the coronavirus. There is even one dead person already in the West Bank. I didn't get into it because I can't go there, ever since it started with isolation and closure. Also, I have to take of myself. But by the end of the day, there are no borders here. The only difference is that the conditions there are much, much poorer. My main, main, main concern is Gaza. I do not want to think about Gaza under epidemic. This will be a catastrophe. I really cross my fingers that the 2, maybe 3, cases found in Gaza are the last ones. Because if it is there, then we will see something that we didn't see anywhere else. Because there isn't any other cage anywhere else in the world.

Jacobsen: If I recall some commentary on a report on Gaza, for the 2,000,000 people there, they have only 60 intensive care beds. That's *nothing*.

Levy: Right, and, therefore, the concern is so great.

Jacobsen: Any final feelings or thoughts in conclusion based on the conversation today?

Levy: No, except for being interesting, nothing more.

Jacobsen: Sir, thank you so much, I'm glad you're doing well.

Levy: I'm very happy. And we'll do it again if you wish.

Jacobsen: I'd be pleased and honoured.

Interview with Musa Abu Hashash – Field Researcher (Hebron District), B'Tselem

March 17, 2020

Musa Abu Hashash is a Field Researcher (Hebron District) for [B'Tselem](#)/ The Israeli Information Center for Human Rights in the Occupied Territories. The organizational name, “B'Tselem,” comes from the Member of Knesset, Yossi Sarid, as an allusion to “And God created humankind in His image. In the image of God did He create them” from Genesis 1:27. B'Tselem aims to achieve democracy, equality, human rights, and liberty as a future for all people. Founded in 1989 devoted to documenting Israeli violations of Palestinians’ human rights in the West Bank (including East Jerusalem) and the Gaza Strip. They have published eyewitness accounts, reports, statistics, testimonies, and video footage. After more than a half of a century of occupation, B'Tselem as a human rights organization unequivocally demands an end to the occupation.

Here we talk about his story and his work.

Scott Douglas Jacobsen: Let’s start with some brief background to provide a context of development for you. What are some family and personal backstory for you? Only have to provide that which you feel comfortable divulging at this time.

Musa Abu Hashash: First things first: I am Musa. My parents were refugees from a Palestinian village called Iraq Almansheyyah north of Gaza and close to the Israeli town Kiryat Gat. The village was wiped out and no marks have been left to tell about the history of the people who lived there for hundreds of years. My parents fled to Hebron district and lived in a refugee camp called Fawwar camp south of the city of Hebron where I was born and brought up in a tent for five years before UNRWA built small rooms for the families where I continued my life together with my brothers and sisters. I am the eldest. I have 26 brothers and sisters. Life in a small overcrowded house in an overcrowded refugee camp was not easy for me. I had to leave the camp when I got married. I am a father of 5 children who live in Ramallah with their mother.

Jacobsen: As we are here today, you work in the occupied Palestinian territories (oPt). In particular, you are a Field Researcher in the Hebron District of oPt. It is the work for B'Tselem. What is B'Tselem? How did you find B'Tselem? What was the development of becoming the Field Researcher for the Hebron District?

Hashash: I joined B'Tselem in the year 2,000, the very day of the start of the second Intifada, B'Tselem thought that they might hire me for a short time, hoping the Intifada would stop in a week or so, but it has been 20 years now. I still work for them. My work in B'Tselem changed my life as it gave me the chance to meet and listen to thousands of victims who were from the poor Palestinians. Despite the sadness and anger, I have experienced; I would say that working for Human Rights was interesting and rewarding, unlike other jobs.

Jacobsen: What is the real history of the Palestinians in the West Bank, the Gaza Strip, and East Jerusalem?

Hashash: The history of the Palestinian territories, West Bank (including East Jerusalem) and the Gaza Strip refer to the early fifties of the last century, when the West Bank including East Jerusalem was annexed to the kingdom of Jordan and when Gaza was annexed to Egypt. In 1967,

these territories were occupied by Israel in the 1967 war. Israel immediately annexed Jerusalem and declared the united Jerusalem (East and West) as its capital.

Jacobsen: What is the emotional and physical toll on refugees? What is the same toll on their children during critical moments of development?

Hashash: The Palestinian refugees' issues for me are the core of the struggle. Without solving it, the struggle will continue. In 1948, 60,000 Palestinians were forced to leave their homes in Palestine and took refuge in West Bank, Lebanon, Syria, and Jordan. They settled in refugee camps and most of them still, including my family. Life in camps has never been stable and comfortable and refugees felt it was temporary till 1967 when many of them lost hope and when hundreds of thousands of them fled to Jordan and became refugees for the second time in new refugee camps. The number of refugees increased by birth and statistics tell about more than six million Palestinians living abroad around the world. Most refugees still stick to their right of return and Israel and the other hosting countries did nothing to change their lives and kept them in miserable refugee camps much worse than the camp where my family still live (Fawwar refugee camp), where 12,000 people live in an area of one square kilometre in overcrowded houses and with a high rate of unemployment. In general, refugees were excluded from development in the hosting countries, especially in Lebanon.

Jacobsen: Thank you for the opportunity and your time, Musa.

Some Background Resources on Musa

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Interview with Gideon Levy – Columnist, Haaretz

May 3, 2019

Gideon Levy is an Israeli Author and Journalist, and a Columnist for Haaretz. He has earned several awards for human rights journalism focusing on the Israeli occupation of the Occupied Palestinian Territories or the OPT.

Language recognized in the work of the [OHCHR](#), [Amnesty International](#), [Oxfam International](#), [United Nations](#), [World Health Organization](#), [International Labor Organization](#), [UNRWA](#), [UNCTAD](#), and so on.

Here we talk about his health, Israeli elections, Palestine and Israel, OPT, journalism, and more.

Scott Douglas Jacobsen: Let us start on a personal note. You have been subject to, unfortunately, cancer and, as a requirement of that, cancer treatment, as well as all the complications that come with that. So, just checking in, how are you doing?

Gideon Levy: I am very, very well. It is not my first cancer. Maybe, it is not my last one. But I am doing very well.

Jacobsen: When was the diagnosis of the most recent one?

Levy: Exactly 1 year ago, or 11 months ago.

Jacobsen: How have treatments been going well and smooth?

Levy: Yes, it is behind me. I just came back from jogging.

Jacobsen: So, with regards to some of the more recent political news in Israel, what are some of the overviews for those who may not be aware of the implications of the recent election outcomes? And how this will be reflected in attitudinal stances of the general population?

Levy: On the one hand, those were not very crucial elections because there was hardly an alternative, a real alternative. On the other hand, they were quite significant, not simply on a personal basis. A prime minister who gets into his fifth term is not something usual, in Western democracies.

That is the case here. But I think we are facing a new development in this government with Donald Trump who will bring us to a new era in the history of the occupation. Namely, the annexation is behind the door. This has many, many implications.

Some of them positive.

Jacobsen: With regards to the five terms, what other precedence is there?

Levy: First of all, it will only be in July when Prime Minister Netanyahu will be in power longer than the founder, Ben-Gurion. He was in longer than Netanyahu, but he was the founding father. In any case, after July, Netanyahu will be the longest acting prime minister in Israel.

There are many examples. Erdogan has been one. I just saw President el-Sisi guaranteed himself until 2030. Five terms are quite rare, I guess.

Jacobsen: In your view, you have mentioned seeing the two-state solution as being non-viable at this point and argue in favor of a one-state solution.

How is this election, this fifth term, going to be impacting this sort of discussion within Israel as well as within the wider Western cultures' discussions on the Israel-Palestine conflict?

Levy: It is a direct contact between the elections and the one-state solution. Because if it is going to become an annexation government, annexation is for the creation of Israel, then the occupation IS something that will last forever. The occupation is not a temporary phenomenon.

If it is not a temporary phenomenon, then we are facing a one-state now. If this is a permanent phenomenon, then there is no intention to remove it. Then we are facing already one state. There is no room for a two-state solution, obviously. Then the only question will be what kind of regime will be in this one state.

This should be the main discourse from now on, in my view. Will it be a democracy? Or will it be an apartheid state? That is the only open question.

Jacobsen: What about in the parliament? There has been a commentary about the Israeli Knesset. The vast majority being supporters of apartheid, in your own terminology and many others as well.

What will be the general impact on the attitudinal stances of the general public with this vast majority and firm support of the stance towards this annexation?

Levy: I am not sure there is a majority for annexation. There is a majority for the status quo, maintaining the status quo. That is for sure. 80-90% of the Israelis, whether they know it or not, are for maintaining the status quo, which means continuing the occupation for an unlimited time.

Each of them has its own justification and rationalization. There is violence. There is terror. We need security. The excuses are many.

But the outcome is one. 80-90%, maybe 95%, of Israelis – Jewish Israelis for sure – are in favour of maintaining the status quo. In other words, they are in favour of maintaining the occupation for an unlimited period.

Change, therefore, cannot come and will not come from within Israeli society. Because there is no incentive for any change. Israeli schools' brainwashing system is very efficient. Do not expect any change from within, it puts the whole weight on the world's shoulders.

Which means, it is really about the world. Does the world accept a second apartheid state in the 21st century? Or is the world ready to do as it did in the first apartheid state, namely South Africa?

Jacobsen: With regards to external pressure, what would be a good argument for an economic boycott? What would be a good argument for an academic and cultural boycott?

Levy: Exactly like with South Africa, it should be everything. The outcome must be only one. The Israelis will start to pay and be punished for the occupation. Any Israeli in any field. As long as this doesn't happen, there is no incentive to put an end to the occupation.

Therefore, it should be everything. In South Africa, even sports were very, very crucial, you cannot say this or that is more important.

Are the Israelis willing to pay the price for the settlements? Right now, there is no price.

Jacobsen: For those potentially unaware of media bias, when you are interacting with others from other Western states and with those in the media from non-Western states, what is their general image of this conflict, of this annexation, and of this apartheid situation, in either case?

Levy: You cannot generalize. Israel has still a lot of supporters. Zionism has a lot of supporters, mainly in Europe but not only. The occupation has many supporters, as you know. Islamophobia, xenophobia, nationalism, racism, are gaining power in many countries, including in the United States.

All this plays to one direction. The opposite direction, there are more and more civil societies that are not accepting or are not ready to accept the continuance of the status quo for forever. They are contradictory movements in the world.

I do not know which one will take over.

Jacobsen: For those who tend to be on the more dissident margins within the society, they are, in a real way, taking on the more patriotic status.

They are critiquing the power and the privilege of those who are implementing certain policies that the general population might not necessarily know about.

In terms of your own service to Israeli society in regards to providing some awareness about what is being done in their name, what would be a proper response to those who would see you as not a patriotic Israeli?

Levy: It is not about patriotism. It is about looking for justice and obeying international law, and looking for accepting the resolutions of international institutions. Those are totally forgotten in Israel.

If Israel would obey international law, like any other country, and obey endless international resolutions, then there is no question.

Why would we get this point of being a patriot or not being a patriot? First of all, basic things must be implemented, which Israel totally ignores. There is no excuse for this. It does not matter if you judge it from a patriotic motivation or not.

Finally, and first of all, obey the law. Then we can talk about other things. But Israel ignores international law.

Jacobsen: If you're looking, as a journalist for *Haaretz*, at the information that is coming, basically, to a general audience in Israel, not necessarily as an indictment of the general population, what are some of the main points of misinformation that is fed into the public media stream?

Levy: The Israeli media is a very free one. It is almost private owned. Ideology plays very little role there. What really plays the role are commercial arguments and interests, this is so destructive, because what is so strong in Israeli media is there is no censorship.

No *governmental* censorship, nobody tells the media what to write or not to write. The media is a total slave of its own commercial interests, of its readership, of the viewers. They do not want to know the truth. Nobody wants to bother them.

Journalism has a role. It is not another economical business. It should be something else. There is a role in a democracy. This role is being betrayed by Israeli media, almost all of it. Not telling the truth, ignoring the occupation almost totally, totally, the occupation is not covered in Israel.

Except for my newspaper, the occupation does not exist, as if there is no occupation. If you follow the Israeli media, there is no suffering; there are no crimes. This is criminal from the point of the media. It does it voluntarily.

Nobody tells the media to be like this, except the readership and the economic interests.

Jacobsen: Who are reporters who you admire reporting the same issues that you are reporting on now?

Levy: For me, it is hard for me to admire, but I highly appreciate Amira Hass who dedicates her life to the struggle against the occupation much more than me – because she lives under the occupation. Before, she lived in Gaza. Now, she lives in Ramallah.

I think that is the highest level of sacrifice, of struggle, of real journalism, which really has a moral core. So, I can only point out her. I cannot forget the publisher of *Haaretz*, Amos Schocken, who enables all this. He gives Amira the freedom, me the freedom, total freedom and support.

There are no publishers like him. I do not think there are any other publishers like him in the world.

Jacobsen: How does he, as a publisher, stand out in that way?

Levy: He is a modest man. He always says that he does it for business considerations. But I know he lost much, much money because of me, because of Amira, based on certain articles that we wrote. He really believes in what he does. He really believes that *Haaretz* has a role. It is not only a business.

He is ready to pay any price. As long as *Haaretz* continues to exist, he is not suicidal. He does not want *Haaretz* to die. None of us want *Haaretz* to die. He will not let *Haaretz* to die. None of us want *Haaretz* to die.

He does anything possible to let *Haaretz* to live. He gives us this unbelievable freedom and courage.

Jacobsen: Along with some of the work that you have done, you have received death threats. Are you still receiving them? What is the general content of them aside from the obvious threats?

Levy: I think Israel public opinion got used to me. But I really do not know. I cannot judge. Look, many times, you get many threats. The situation seems very frightening, but it is not really frightening at all. When it dies, it seems really peaceful, then it can't be the worst danger waiting for you.

It is very hard for me to judge. Right now, it is always hard in times of war or bloodshed, of soldiers being killed. Then it is much harder. More people are being killed, so it is much easier. But you never know.

But I do not live in fear if that is the question.

Jacobsen: For those who are outside of Israel, who are living in Western and non-Western countries, and if they are looking to become more aware of the situation as well as to anticipate some of the developments after the election, what should they be expecting or, potentially, predicting with some of the derivative outcomes from the election?

Levy: I think the combination of Donald Trump in Washington and Benjamin Netanyahu in Jerusalem can become a really very explosive combination. They go hand to hand. It is unbelievable support, and fuels the Israeli nationalism and Israeli racism.

He might get to very unpleasant places. It is not only about annexation. It is also about all kinds of legislations in Israel. Israel will change. The United States seems to support those changes. For those of us who live in Israel, it is not very promising.

It will be much harder for me to function as a journalist if their plans will be implemented. They have plans, indeed.

Jacobsen: On a similar note to a more recent interview published in *Canadian Atheist*, the situation in Gaza has been reported as being unlivable by 2020.

As we are moving more into 2019, and then into 2020, what will be the political and the social fallout and the international relations fallout of the situation if it continues to develop along that trajectory of unliveability into 2020?

Levy: Everyone covers his eyes in the belief that if they do not look to the corner of the room, where the elephant sits; there will be no elephant, but the elephant is there. It is a non-issue here. It is a non-issue in the West and the world.

Gaza, unfortunately, only has one way to remind of its existence and remind of its problems. This is by launching rockets. If they do not launch rockets, who cares about Gaza? Nobody cares about Gaza. This really will end up in a terrible catastrophe.

It's really a question of whether people will die, but nobody seems to care: not in Israel, not in the West, not in the Arab world. People believe that doing nothing will bring some help.

Jacobsen: Why the shrug from the international community?

Levy: Because Gaza doesn't interest anybody. Because the world takes no interest in the Israeli-Palestinian dispute. Because Gaza is Hamas; and Hamas are fundamentalist. And the world doesn't like Islam right now.

Then many make the comparison or an identification between Hamas and Daesh. So, they are almost the same in the eyes of most of the world. So, people don't care. The coverage is very limited. Everyone lost interest about Gaza. Two and a half million people starving.

When there is a catastrophe, then, maybe, the world will wake up, but it might be too late. People will really die by the hundreds and thousands of people. This will not stay in Gaza. This will pass to Israel if this is about the water, the sewage, the air. All sorts of questions like this.

Kids cannot stay in Gaza. I must remind you. Gaza is one hour away from Tel Aviv, by car.

Jacobsen: For those who may not know, you live in Tel Aviv, in Israel.

Levy: Right.

Jacobsen: It becomes not only geographically close, but also a very personal question.

Levy: Yes.

Jacobsen: What is Amira Hass's opinion of the international shrug?

Levy: This you will have to ask Amira Hass, and not me.

Jacobsen: [Laughing] Okay. A common example or comparison is made between South Africa and apartheid and Israel and apartheid.

What are other comparisons on different issues in terms of the conditions in which the Israeli-Palestine conflict is had, and in terms of the internal culture of Israel in history?

Levy: People tend to think that if you compare something, then it should be identical.

[Laughing] That is by all means not true. The apartheid system in South Africa was different than the apartheid system in Israel. But the basic principles were basically the same.

Namely, two peoples living on one piece of land. One people gain all the rights in the world. The other people don't get any rights whatsoever. This is apartheid *by definition*. The fact that in South Africa there were things that were not here.

Here, there were things not in South Africa. You can ask, "Where was it worse, and why?" I know many South Africans who thought what was going on here is worse than what they had. That is really open. But by the end of the day, it is not about comparing.

It is really about looking at the picture without prejudice and seeing the truth. The truth is that the very brutal tyranny is ruling a people of four and a half million people in Gaza and the West Bank in a very brutal way.

One of the worst tyrannies today. The worst because Israel is one of the only democracies in the Middle East. This masquerade is unbelievable.

Jacobsen: As a historical question, personally, when did this become a moral mission for you in terms of the journalism and the reportage? When did this awareness come to you?

When did this become ethically charged in order to pursue this for much of your life?

Levy: It is a very gradual process, which is still ongoing. It is not as if one day; I saw the light or the darkness. In the late '80s, I started to travel to the occupied territories as a journalist. Then I decided to dedicate my professional life to covering the occupation.

The more I saw, the more radical I became, the more disturbed I became. This is really a process that never ended. You cannot find a certain point. Except, one day, I decided to go for a day trip to the West Bank, as a journalist and to seek some old trees that were uprooted by settlers.

It was my first story about the occupation. But it was really a gradual process.

Jacobsen: Is that a common story or pathway in terms of those who come to this consciousness and awareness of it?

Levy: I know very few who came to this consciousness. If I talk, for example, about Amira, it is a different story. It is a different story. Because she grew up in a communist house, a very ideological house. I was brought up in a different home. So, I didn't get it from home.

Maybe, she got more from home than what I got in terms of more judgment and looking for justice. So, this was my process. It is very individual. You cannot generalize.

Jacobsen: We have been witnessing more prominent awareness of the murder of journalists and harm to journalists, as this represents a threat to journalists.

Not in any particular nation, but around the world, the severity of the threats will differ depending on the region and the country, and the culture.

However, this is an issue. For those who are wanting to enter into journalism, what are the pluses and minuses in terms of the life that one will lead as well as the threats that one will come across in their life, or in their professional life?

Levy: First of all, I can just highly recommend it. I think it is one of the most fascinating jobs that anybody can dream about. It is going through many changes now, because of social media. It is really going to change really rapidly.

The old school of journalism is really dying. But in any case, it is not really about the threats and the dangers. Most of the journalists in the world do not face life threats. Even me, I do not feel as though I am in life danger, not daily anyway. It is about courage.

The courage to tell the truth. But what is more noble than having this courage?

Jacobsen: Thank you for the opportunity and your time, Mr. Levy.

Levy: Thank you very much, thank you.

Interview with Dr. Usama Antar – Independent Political Analyst (Gaza Strip, Palestine)

May 22, 2019

Dr. Usama Antar is an Independent Political Analyst living in the Gaza Strip, Palestine. Here we talk about the Gaza Strip, the West Bank, Israel, and more.

Scott Douglas Jacobsen: What is the current sociopolitical situation from the view of Gaza Strip?

Dr. Usama Antar: You cannot describe the Gaza Strip in a straightforward way. It is complex. We are talking about a multi-dimensional conflict. There is an internal conflict within the Palestinians themselves, and there is an external conflict with Israel.

Let us consider the last few years, there is a political split between the Gaza Strip and the West Bank. As you know, the Gaza Strip is small. It is about 360 square kilometres.

However, in approximately the last century, the Gaza Strip was the main actor in Palestinian politics and the Palestinian-Israeli conflict. The Gaza Strip remains the focal point with the different political personalities, the novel ideologies, the new thoughts, and the changes in the political approaches.

There were real dynamics moving forward. What does this mean? In Gaza, there is the roots of the Fatah movement and the roots of the Hamas movement too.

For example, due to the political split between Gaza and West Bank, President Abbas was unable to enact the Israeli-Palestinian peace process without the approval of the Gaza Strip. The small Gaza prevented in some way the whole peace process.

I don't think that the Gaza Strip will be alone as the Palestinian state in the future. Even if the Palestinians in Gaza will have good life conditions in 10 years to 20 years, they will want not to be separated from the West Bank, and will want to have a Palestinian state with the West Bank.

After a 12-year siege, the situation is tricky with a radicalized mentality of the Palestinians in the Gaza Strip; the people became more radical compared to 10 to 20 years ago as well.

Jacobsen: In terms of social outlook, economic views, and travel restrictions, what increases Palestinian radicalization?

Antar: There are several factors. As noted, one is the siege or the blockade imposed by Israel since 12 years ago, and the collective punishment imposed by the Palestinian Authority since a couple of years ago. Same with the Egyptian side with the closing of the Rafah crossing border. It is less than 1% of the whole society that can travel to the world outside of Palestine.

Most Palestinians live in perpetually harsh conditions. No freedom of movement or free import-export of goods. Few know the real world outside of the Gaza Strip. Anybody after three wars and 12 years of an air, land, and sea blockade will become radicalized. This happened to the Palestinians in Gaza.

The Palestinians in the Gaza Strip are asking for simple demands, namely a real social and economic perspective. What does an economic and social perspective mean here?

It means halting of the high 46% unemployment in the Gaza Strip. This is the highest unemployment in the world. Declining the poverty rate, which reached about 70%.

What does a social perspective mean here? The social perspective means to have the access of movement and to be allowed to travel and relate with the world outside of Palestine.

For example, if I want to travel to Europe, I need about 3 days to travel from the Gaza Strip to Cairo, and I need another 4 to 5 days to return from Cairo to the Gaza Strip.

There are many restrictions and many checkpoints on the Sinai, the way between Gaza and Cairo, and just 200 people can travel daily and cross the borders.

In order to have a real social and economic perspective, the Palestinians are looking for sovereignty and identity as the Palestinian people with an independent Palestinian state.

Jacobsen: If the blockade was lifted, how would this impact Palestinians?

Antar: If Hamas remains in power, the siege will stay. Even if we have a progressive government in the future, it is uncertain if the Israelis would lift the siege.

The Palestinians in Gaza sent messages through the Great March of Return. They want to live and let others live. The majority of the Palestinians don't want to harm the Israelis. They want to live in peace and prosperity.

During the three wars on Gaza in the last decade, the Israeli military targeted civilians, business owners, farmers. Many companies and factories were destroyed during the wars. The businesspeople are angry due to destroying the factories, and the normal workers are angry, because they lost their jobs.

Man can say, Israel is targeting the whole society with the imposed siege since 13 years, not the Hamas people alone. The goal of the Israeli aggression against the Palestinian society in the Gaza Strip is to maintain the control on it.

Jacobsen: How does a blockade, a lack of resources, a sense of despair and want of revenge among some of the population, affect people's abilities to form families and people's abilities to raise their children in what their children sense is a safe and nurturing environment?

Antar: [Laughing] it is like a joke. Even the children understand war, we are not safe. No place in the Gaza Strip is safe. In the recent attacks, it was hurtful. Why? We cannot do anything. If we get a rocket targeting our building, we are helpless. We demand to stop all kind of violence from the both sides, the Palestinian side and the Israeli side.

Jacobsen: What has been the experience in life for you?

Antar: I lived in Europe for about 12 years. I know, what it means a real good life in Europe. With my family, we travelled and enjoyed our life before. My family is now unable to travel abroad since more than 14 years ago. There is huge restriction on access and movement, and the travel way from Gaza to Cairo is horrible.

If you know the normal life, the good life, in Europe, and if you compare with the current life in Gaza Strip, you get crazy. I cannot travel elsewhere. If we have an escalation or a war in the Gaza Strip, the border will close immediately. Even if you have money, you cannot escape. In any case, most Palestinians do not have money.

You are trapped. It is your fate, survive or not. We have this dead feeling. In the war in 2014, for 51 days, we were scared. We tried with our little children to make some jokes, to show TV, and to make some plays.

However, we know the statistics well from the war in 2014. We are talking about 500 women, and more than 200 children, killed because rockets targeted buildings, that contains women, children, or elders.

Jacobsen: What is the sense of the conflict? What is a fair solution to the conflict?

Antar: The Palestinians in the Gaza Strip want to live a normal life with dignity and respect. They want some money to live with their families. They want normal access of movement.

A fair solution would be according the international resolutions and the two-state solution. How to achieve it? The Palestinian in Gaza and West bank tried the non-violent protests several times.

The Palestinians have to choose between non-violent resistant, negotiations, or a diplomatic approach. Negotiations led after 25 years of Oslo Accord to big Zero.

And the military resistance is idiocy, because the Palestinians have primitive weapons, and they are unable to fight Israel. Israel is strong. Israel can demolish the Gaza Strip within two days. The international community sides since decades with the Israeli side.

Jacobsen: What are historical reasons for internal political split and in easing of the tensions?

Antar: Hamas governs the Gaza Strip and Fatah governs the West Bank. There is one-party system in the West Bank and one-party system in the Gaza Strip. The one-party system will not change soon, and will be dominant in the next few years. For that reason, there is no democracy or pluralism. Both sides want control of the government.

Both Fatah and Hamas are dominating the polarization in the society; then about 90% of the society identifies them with either Fatah or Hamas. The real problem is the acceptance of the others.

Therefore, there are different political approaches. One is for resistance, and the other one for negotiation. Both approaches failed against Israel. This created the split between Fatah and Hamas. This split eliminated the culture of democracy and pluralism.

Jacobsen: Thank you for the opportunity and your time, Dr. Antar.

Interview with Wesam Ahmad – Representative, Al-Haq (Independent Palestinian Human Rights Organization)

April 13, 2020

Wesam Ahmad works for [Al-Haq](#). He is a Palestinian-American born and raised in the U.S. He earned a B.A. in Political Science and Sociology, and a J.D., from Louisiana State University. Also, he completed an LL.M./M.L. in International Human Rights Law from the National University of Ireland – Galway. Al-Haq is an independent Palestinian human rights organization based in Ramallah, West Bank (occupied Palestinian territories). It was founded in 1979 devoted to documenting human rights violations of “parties to the Israeli-Palestinian conflict” or Israeli-Palestinian issue with the continual production/issuance of reports and detailed legal studies.

Here we talk about the blockade, the Question of Palestine, humanizing the issue, the Great March of Return/Great Return March, illegal settlement businesses in the West Bank, and more.

Interview conducted on April 1, 2020.

Scott Douglas Jacobsen: Okay, so, let’s start with some of the more perennial issues well past a decade since their inception to do with the blockade, what is the current status of this? What have been some of the impacts? Some people may not know, but the serious impacts on the lives of Palestinians due to this. The blockade and how this affects Palestinian society in general in the oPt.

Wesam Ahmad: The situation in Gaza has been dire for an extremely long time. Even U.N. agencies addressed the issue, the current situation, about Gaza being an uninhabitable place with extreme population density and lack of access to resources, and various other factors like water and electricity, it makes the situation very difficult. This has been the result of concerted efforts by the Israeli occupation to confine and punish the Palestinian population living in the Gaza Strip as part of its broader policy of occupation toward the entirety of occupied Palestinian territory (oPt). The impact is having a very dire impact on Palestinians living in the Gaza Strip. The ability to pursue the most basic elements of a dignified life are stripped away. They are unable to access one of the greatest resources, which is the Mediterranean Sea, whether for fishing or, in a larger sense, the access to natural gas reserves. So, Israel controls the entirety of the occupied Palestinian territories, but, in many ways, takes advantage of the resources there, as well.

Jacobsen: In regard to some semblance of justice, this has been marginally acquired for Palestinians and Palestinian society in general. This is one of the longest-standing issues in the United Nations entitled the Question of Palestine. Also, it is one of the major, last colonial facets of the 20th-century spanning into the 21st. There have been some developments with regards to the International Criminal Court, the ICC, with Fatou Bensouda (Chief Prosecutor of the ICC). What, from the perspective of Al-Haq, are some of the updates there?

Ahmad: I mean, like you said, Scott. The issue is very much a connection between the colonial past of the world and the present situation Palestinians are facing. It is a test for international law in terms of its development to stop these colonial practices. Practices the world has deemed as inappropriate behaviour in international relations. We see the ICC as a manifestation of the development of international law as an institution to hold perpetrators accountable who are

involved in the breach of international law and various crimes. The test is for the ICC to stay true to its principles and show the revolution of international law, and the institutions associated therewith, are principled and withstand even politically sensitive issues. Otherwise, it would only be another institution in which only the weak are subjected to account.

Jacobsen: In the Gaza Strip, in the West Bank, and in East Jerusalem, what are the conversations among civilians? How do they view it? Their attitudes and feelings to humanize the issue, where the abstract legal and other aspects are covered along those lines.

Ahmad: In one sense, it is about trying to control that segment of the population and ensure the costs do not outweigh the benefits of the control. So, Israel is able to benefit from the captive population therein, in terms of sales of products. Also, it is able to exploit the natural gas reserves off the coast of the Mediterranean preventing Palestinian access to it. So, it becomes part of the broader matrix of control, where Israel is trying to manage the colonial practices and the people under its control while, at the same time, exploiting whatever resource are available, whether natural resources or the people themselves, in order to maintain this cost-benefit calculus.

Jacobsen: Every week, for some time (March 30, 2018, to December 27, 2019) [Ed. Originally, these were planned from Land Day (March 30) in 2018 to Nakba Day (May 15) in 2018.], there was the Great March of Return/Great Return March. What were some of the communities' reactions to this and the international community?

Ahmad: Look, the Great March of Return, like any developments in a Palestinian context, is part of a much bigger issue. We can't look at that in isolation. It is very much connected to the ongoing blockade and the creation of this uninhabitable situation. You don't have to be Palestinian. You don't have to come from Gaza in order to understand human nature and the reaction to a horizon of an uninhabitable society before you. The ability to see how people would react to this prospect. It is against human nature to simply sit back and accept this kind of demise. We are seeing this around the world today. Even the freest societies have fights over toilet paper, so, we have to look into the nature of the human being. What makes them react in a particular way within a particular context? Then you can very much see the parallels.

Jacobsen: Regarding some of the issues in some of the freer societies, and in some of these societies with more abundant resources, for example, the mentioning of the hoarding of toilet paper hitting the newsstands in some of these more abundant countries. How is COVID-19 impacting Israeli society and Palestinian society?

Ahmad: A dramatic impact on everyone in the world. Given the Palestinian context, the inability of the Palestinians to decide their own fate because so many things are under Israeli control. It highlights how interconnected we are and how important it is for us to have freedom. Not simply for the purposes of determining our fate, but the ability to ensure our survival, these things are very much becoming more acute in the developments with regards to the pandemic. Even more so in the current moment than before, there is an opportunity for the world to, not only sympathize with the Palestinians but, empathize and relate more than before.

Jacobsen: As you were noting, many of the issues Palestinians are facing, which are numerous and enormously impactful in their daily lives. The issue around COVID-19 and

the lack of resources – intensive care beds, masks, testing kits, etc.; the lack of these can be largely attributed to the blockade.

Ahmad: With regards to the Gaza Strip, absolutely, the blockade exists in different manifestations and different parts of occupied Palestinian territory. It is the sea access, which gives it a unique dimension with regards to Gaza. Anything Palestinians want to import or export is subject to Israeli discretion, whether it is in Gaza or in the West Bank. It is much more difficult when you're dealing with the situation in Gaza.

Jacobsen: In fact, there was another thing. The U.N. Human Rights Council released a list of businesses dealing internationally – Israel, Luxembourg, France, Netherlands, Thailand, the United Kingdom, and the United States. Countries doing business, basically, on illegal settlements in the West Bank with the number coming out as 112. Is this a healthy first step in moving things towards justice rather than not in this domain of businesses in the illegal settlements in the West Bank?

Ahmad: It is an important positive development. It is a U.N. body providing affirmation to this issue. However, at the same time, it is a very conservative document, which does not take into account the much broader scope and engagement of multinational corporations within the Israeli settlement enterprise. For us, it is about keeping the U.N. involved in this issue, but, also, to not forget the information in the U.N. database does not cover everything. We have to ensure all actors are not involved in violations of international humanitarian law and not profiting from the conflict.

Jacobsen: From the point of view of Al-Haq, what would be the scope required to more accurately represent, not only the businesses listed in the U.N. Database but also, the aforementioned multinational corporations and others?

Ahmad: I can direct you to a fellow organization, which is an Israeli human rights organization. It has a much more extensive listing of corporations. It gives a sense of the scope because there is direct and indirect involvement. There is a supply chain. There is a benefit. All of these things. If you really want to address the issue of fatality, then you have to look at this in a more holistic manner. As they say, "Follow the money."

Jacobsen: What other organizations would you recommend for readers today?

Ahmad: There are many great organizations working very hard, even within the current situation. I've mentioned "[Who Profits.](#)" B'Tselem, some of the Israeli organizations, Adalah (Palestinian organization in Israel), some other great Palestinian organizations in the Gaza Strip (Al Mezan, Palestinian Center for Human Rights). You have a lot of other great Palestinian organizations here in the West Bank focused on specific issues, e.g., Defense for Children International – Palestine (DCI-P) focused on children. Anyone who wants more information can go to Al Haq's website and see the various organizations, which we work with, to get more information.

Jacobsen: Will there be any upcoming reports or reportage that will be particularly prescient and important for some of the topics covered today, including the ICC, COVID-19, and the blockade?

Ahmad: The pandemic has had an impact on a lot of the work that we've been doing. It is a question of balancing the things that were in the pipeline before and addressing the current

situation. I think a lot of the timelier work will be related to the current situation and the COVID-19 outbreak, and how that plays out within the dynamics of the conflict. Other issues will be continuing to address the ICC, which is really within the hands of the Court because we've already submitted necessary documentation. Only last week, we had involvement in issues regarding the blockade in Gaza with other organizations. So, it is a very fluid situation, which we try to continue to balance more short-term issues and more long-term issues.

Jacobsen: Any final feelings or thoughts in conclusion based on the conversation today?

Ahmad: No, I think it's great to have your readers interested in the situation here. I hope that as the situation develops over time; that we come to see our interconnectedness, to see ourselves as a collective of humanity rather than individual states competing with one another. Hopefully, this will lead to positive change for all.

Jacobsen: Thank you for the opportunity and your time, Wesam.

Ahmad: Thank you, Scott, take care.

Extensive Interview with Professor Richard Falk – Fmr. (5th) United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967

April 24, 2020

Professor [Richard Falk](#) is the Fmr. (5th) United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967 (26 March 2008 – 8 May 2014). Professor Falk is Albert G. Milbank Professor of International Law and Practice, Emeritus, at Princeton University, the Director of the Climate Change Project, and an Advisor on the POMEAS Project in the Istanbul Policy Center at Sabanci University. He is widely revered as one of the great legal minds in the world today, especially on the issue of Israel and the occupied Palestinian territories, and reviled in other circles as well. The position of the United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967 isn't, and shouldn't, be taken lightly based the depth and length of the human rights issue, and on the level and extent of state and other actions one can encounter against oneself in the position devoted to this long-standing human rights catastrophe seen on the Israel-Palestinian issue, as Professor Falk and others encountered in their tenures. An individual with a clear sense of human rights, humanitarian law, and the range and character of history. This was a humbling experience. With great pleasure, and a deep sense of honour, I present the extensive interview with Professor Richard Falk to you.

Here we talk about the “[Israeli Practices towards the Palestinian People and the Question of Apartheid](#),” apartheid discourse and sustainable peace, settler-colonialism and the Indigenous in Australia, Canada, the United States, and the United Kingdom, and the Golan Heights and Area C of the West Bank.

Interview conducted on April 3, 2020.

Scott Douglas Jacobsen: The topics to be discussed today based on the recommendations of Professor Falk were the relevance of apartheid discourse to a sustainable peace, the Great March of Return, and the annexation of the Golan Heights and Area C of the West Bank. Let's start at one of the larger conversational pieces around discourse, when you're phrasing things as “apartheid discourse” and “sustainable peace” as a particular type of peace, what are you intending by apartheid discourse and sustainable peace?

Richard Falk: That's an important issue, I believe. The way in which language is used in trying to approach the preconditions of a settlement or a solution, and the nature of what one is trying to achieve is often conveyed by a choice of words. Part of my use of “sustainable peace” rather than the naked word ‘peace’ as in ‘peace process’ is to signal a critique of the Oslo diplomacy. I wanted to call attention to a series of failed negotiations and more specifically, to the way in which the United States Government tried to impose a framework of what was misleadingly being called ‘peace’ on negotiations between Palestine and Israel. The diplomatic dynamic was almost explicitly partisan in favour of the stronger side and would have introduced had it ‘succeeded’ – what I would call – a one-sided peace that over time would be little other than a ceasefire between phases of an ongoing struggle. Such an outcome reflecting the geopolitical disparities between the negotiating parties would not have been sustainable even if the Palestinian Authority was persuaded to accept what was being offered. Since it was not a

genuine peace agreement it would be inevitably resisted and repudiated at some point. For this reason, it is more realistically understood and interpreted as a ceasefire. As suggested, even if the Palestinian leadership could have been induced to swallow such a one-sided peace arrangement, future generations of Palestinians and young Palestinians, and, maybe, Arab neighbours, would surely reject it when an opportune moment arrived, and then proceed to resume a politics of struggle with the goal of sustainable peace. A fundamental precondition of genuine peace is to treat the parties on the basis of equality and on this basis seek an outcome that embodies a fair compromise. To my mind, that cannot be achieved, so long as present structures of the domination and fragmentation of the Palestinian are maintained. This has made the apartheid discourse responsive to the realities of the diplomatic impasse that has kept the conflict alive decade after decade. It also makes it crucial to challenge, discredit, the alternative paradigm or narrative of liberal Oslo critics, which insists that “ending the occupation” is the vital precondition for reaching peace between Palestinians and Israeli. I believe there are several difficulties with any perspective that concentrates on territory rather than people.

Among other concerns, focusing only on the occupation marginalizes the grievances and rights of the several million Palestinians living in refugee camps in neighbouring countries, and those other Palestinians who are living around the world as involuntary exiles. Also, it doesn't address the issue of discrimination within Israel itself as between Jews and non-Jews. My view is that this kind of *hegemonic relationship* between the Jewish/Israeli form of governance and the Palestinian people seen as a whole are, in different ways constitutive of the interaction. This embedding of inequality has to be removed for restorative diplomacy to be able to fulfill its stated purpose of lasting accommodation reflecting widely endorsed views of fairness to both sides. So, my view, and the view that is embodied in the UN study [Ed. “[Israeli Practices towards the Palestinian People and the Question of Apartheid](#)” or the Economic and Social Commission for Western Asia (ESCWA) Report.] I prepared in collaboration with [Virginia Tilley](#) [Ed. Professor of Political Science at Southern Illinois University]. In our report to the UN, we agreed that the indispensable precondition for diplomacy leading to what I am calling a “sustainable peace” needed to be based on existential equality of the peoples, and this could not be achieved without the prior dismantling of Israel's apartheid structures of control. The further point is: unless, equality is established between the peoples there will be resistance to the status quo exerted both by Palestinians living under occupation and by a global solidarity movement that is guided by diaspora Palestinians. In turn, continued resistance by Palestinians will lead Israel to respond by a variety means designed to crush, demoralize, and discredit resistance. If this transpires, the likely prospect is a cycle of violent and non-violent confrontations, possibly aggravated by ethnic cleansing of the weaker Palestinian side. This combination of different modes of struggle has characterized the whole century during which this conflict has unfolded. More or less, this analysis of why peace has eluded the parties arises from the contradictory agendas of the two sides, even as they both claim a dedication to a negotiated agreement. This interpretation of failed diplomacy expresses my personal view as to why the apartheid discourse is a preferable and necessary precondition for reaching a genuine peace while endorsing the slogan ‘ending the occupation’ is not. Ending Israeli apartheid clears a more credible realistic path, at least this is so if we assume that the goal of this diplomacy is what it claims to be—the search for a sustainable peace. This assumption is somewhat questionable as the evidence seems to support the view of Rashid Khallidi, and others, that Israel never sought a diplomatic solution,

at least after Rabin's assassination in 1995, and that the U.S. was complicit in acting as if Israel was ready to accept an independent Palestinian state.

Jacobsen: How would Israeli citizens and Palestinian citizens integrate with one another within this “sustainable peace,” early on, given the history?

Falk: Underlying this issue is the anti-colonial movement, which gained strength after World War II, that is, after 1945. One of the perplexing peculiarities of this conflict is that Israel established its political independence at the very time that colonialism around the world was discredited and in a condition of free fall. In one way, the Zionist project was facilitated by the historical context. Zionism overcame many formidable obstacles on the path to its goals by gaining a great deal of sympathy and support as a consequence of the Holocaust and the failure of the liberal democracies to take action that might have prevented genocide against the Jews. This failure produced a post-war sense of liberal guilt. It allowed a myopic sense of Palestine to dominate the political imagination. This land of Palestine was open to settlement by a people dispersed around the world who had a strong historical attachment and strong biblical feelings of entitlement, to be sure, that could be traced back to ancient times. Yet Jews, despite a huge effort to encourage immigration remained a relatively small minority, even as late as 1945 – with about 30% of the population of Palestine being Jewish. This demographic imbalance remained despite the feverish Zionist efforts since the issuance of the *Balfour Declaration* in 1917 to encourage and subsidize Jewish immigration. This included striking a series of Faustian bargains between the Zionist movement and anti-Semitic governments – Poland, Germany, Ukraine, and others – relating to receiving aid in exchange for settling expelled Jews in Palestine often against their will.

Zionism was also assisted in establishing its military capabilities and arrangement for the removal of Jews from the various European countries. It was understandable to rescue Jews from these very crude forms of persecution, but the process also served the pragmatic priorities of the Zionist movement by increasing the Jewish demographic presence in Palestine. This Zionist Project also served the interests of these European governments that welcomed the removal of Jews from their societies. These developments largely preceded the genocidal phase of Nazism, which didn't begin to occur until midway through World War II. There was earlier persecution and concentration camps. However, the deliberate and systematic killing of Jews came later and before that the favoured anti-Semitic policy during the 1930s was ethnic cleansing, achieved through some form of voluntary expulsion. That served the world Zionist movement, which was trying to create a sufficient Jewish presence in Palestine. Zionism was totally committed to fulfilling its statist ambitions that included a commitment to establish a democratic political framework, which was understood to require an assured Jewish majority. It is important to understand both of the elements were posited as essential goals in this dominant tendency of Zionism to attain Jewish statehood and legitimacy through being democratic. It sought to attain sovereignty by dominating the political realities of Palestine.

As earlier observed, it was remarkable from a Zionist point of view and tragic from a Palestinian point of view, that a settler colonial polity could be established and gain international acceptance in the middle of the last century. A utopia on one side, a catastrophe on the other side. In this period all forms of European colonialism were being discredited and collapsing in the response to anti-colonial movements dedicated to national independence. This has always created part of the puzzle confronting the state of Israel. How could Israel become internationally legitimate

when its origins entailed the cruel displacement of the resident majority population? Several troubling elements accompanied the birth of Israel.

First, the way the 1947/48 War was conducted, including the denial of any right of return to the Palestinians who had been dispossessed and displaced and numbered anywhere between 700,000 and 800,000 from many peasant villages. During the fighting Palestinian civilians were encouraged or forced to flee and many were so frightened that they left their villages just to escape the ravages of combat. Several hundred of these villages were later bulldozed and destroyed by Israel to send a message that those Palestinians who left had no future in Israel and were not welcome to return. This meant the creation of a permanent refugee and dispossessed population that coincided with the establishment of Israel as a sovereign state. These flaws or crimes associated with the establishment of Israel were overlooked by most of the non-Arab members of the international community. Israel received the most important symbol of international legitimacy early in its existence by being admitted as a full member of the United Nations while the Palestinian fate was left unresolved, a huge and unforgivable mistake by the UN.

Combining this failure to find a solution prior to granting Israel UN membership was made that much worse by recommending a partition of Palestine to satisfy the irreconcilable claims of these two peoples. Such a proposed solution was put forth in defiance of the dominant trend toward regarding self-determination as the fundamental and inalienable right of a people, Palestinians and the Arab neighbours overwhelmingly rejected the idea of an imposed partition on the territorial entity governed as a unity during the period of the British Mandate. The British, as was their custom in a series of countries once colonially administered, were the original sponsors of a partition approach, which they had imposed on India, Ireland, Cyprus – a whole series of countries—in part, the outcome of their ‘divide and rule’ approach to colonial administration. This partition policy produced a series of disastrous results, with the worst outcome inflicted on the Palestinian people with no end in sight. The British were not solely responsible for the adoption for this partition approach. The British came to the conclusion that they could no longer govern Palestine effectively as the mandatory power, a role entrusted to them after the collapse of the Ottoman Empire in World War I. In frustration, the British gave the UN the responsibility for determining the future of Palestine, a role for which it was not able to discharge in an equitable and fair manner. The United Nations, as became its practice, appointed an international commission dominated by a Euro-American outlook, which came up with this partition proposal. As might have been predicted, it was accepted by the Zionist leadership and rejected by the Palestinians.

I believe the Zionist Project always had on its agenda—which was then a prime goal of Israeli public policy, the recovery of the so-called “Promised Land,” the cultural/secular conception of Palestine as a biblical entitlement of the Jewish people. This sense of biblical entitlement produced an additional kind of tension, which is very often overlooked in commentary on why the political impasse has never been broken. Feelings of entitlement to the land are a fundamental part of the self-justifying narrative affirmed not only by Israel, but also by Jews around the world. This claim of right is not one of self-determination or rooted in international law, or even international morality, although these elements are not entirely ignored in Israeli legitimization discourses. Read the Israeli proclamation of independence and the relevant

provisions of the Basic Law of Israel as formulated in 1948 makes evident this emphasis on the Jewish return to a land that was contained in a sacred promise to the Jewish people.

Even after 1967, when Israel first occupied Jerusalem and the West Bank, it never accepted the international language of “West Bank” or “occupied territory.” Israeli politicians of all political persuasions consistently referred to the West Bank by its biblical names of “Judea” and “Samaria” (provinces of the original ancient Jewish state). I believe that calling the West Bank Judea and Samaria was a signal that this land is part of the biblical entitlement, and hence is part of the incomplete Zionist project, and always been part of the unacknowledged political agenda, and not subject to negotiation with the Palestinians. If this is correct it means that the image of a two-state solution was never accepted on the Israeli side and the diplomatic impasse was a convenient way to gain time to establish reinforcing facts on the ground, which is one way of interpreting the settlement movement.

After the 1967 ceasefire Israel almost immediately declared Jerusalem as the eternal capital of Israel and by its law enlarged the area of the city. This contradicted the UN partition resolution, General Assembly Resolution 181 that proposed Jerusalem as the joint capital of Israelis and Palestinians and as an international city. There were many changes in expectations reflecting changing power balances and due to the fact that the Zionist Project publicly revealed its full extent only gradually. With tactical ingenuity Israel took what it could get away with at any moment in time, while not treating the last phase of expansion as satisfying the overall vision of the Zionist Project. In reaction, the Palestinians seemed innocent and naïve, and were consistently outmaneuvered, yet helpless. To some extent, the Palestinians didn’t seem to realize that Oslo diplomacy was basically a trap, giving Israel time to alter realities on the ground, mainly through the expansion of the settlement process and the building of the separation wall.

A number of developments created a new set of expectations. The failure of the Oslo diplomacy to find the sustainable peace played very strongly into the favour of Israel and very much to the detriment of Palestine. That, to me, is part of the recent story. One thing I have emphasized throughout is the degree to which the Zionist movement successfully swam against the anti-colonial current and managed to create this, essentially, colonial-settler state in a historical period, where colonialism was discredited and collapsed. This discrediting was reinforced by the United Nations, which was, originally, neutral about colonialism. Gradually, the UN adopted an anti-colonial posture. Partly, this was a result of the outcome of the colonial wars and the anti-colonial movements. Partly, the Soviet pressure always hostile to colonialism, ever since the Russian Revolution, and partly because the United States was ambivalent towards European colonialism, despite its own imperial background, having a certain national pride in being the first movement to an anti-colonial war in its War of Independence. Looked at more critically, the victory was rather hollow. It was the settlers repelling the colonizers, not the native or resident population.

Jacobsen: Regarding expulsions and colonialism, two things come to mind from the history and the description there. You mentioned “colonial-settler state” in a time in which colonialism was in a state of discrediting.

Falk: And collapsing, as well as delegitimizing the whole project of colonizing a foreign people.

Jacobsen: Within some of the anti-colonialist movements or adaptations, and modernizations, to the present, they may not use the phrasing of “colonial-settler state.”

They will use the phrase “settler-colonialism.” In other words, they will look at societies like Canada or the United States with some or much of their history as settler-colonialism playing out. If there is a discrediting and collapse in the 20th century of colonial-settler states or settler-colonialism, by and large, yet, we have the Israeli-Palestinian issue grounded in that history since the inception of the United Nations. Does this make that issue, in particular Israel, the state of Israel, the last remnant of a colonial state, settler-colonial state, from the 20th century in the 21st?

Falk: I think, Israel is the last important remnant of the settler colonial political dynamic. What you raise leading up to that issue is interesting because, as you point out, Canada, Australia, the United States, New Zealand, are all settler-colonial states, that have essentially, established their international legitimacy and de facto control long before colonialism was delegitimized. They established kind of closure with respect to their legitimacy essentially by effectively neutralizing the native populations in their respective countries. One way of looking at Israel-Palestine: Israel, despite the ethnic cleansing of 1948 and again in 1967, hasn't been able to establish that kind of sufficient control to be able to dispose of the native population, that is, the Palestinian population. Also, the historical context was different. When these successful settler-colonial movements occurred, colonialism did not have a negative connotation; in national or international law, or even from most ethical perspectives. Colonialism up to and including World War I was endorsed by the international legal system, reflecting the self-interest of the colonial powers themselves. So, the separation of these countries – United States, Canada, Australia, and New Zealand – was something ambiguous from a de-colonization perspective. These countries were treated as independent sovereign states with only ritualistic ties to their mother country, and spared a colonialist taint. In one respect these countries that broke with colonialism were ironically the most abusive toward the native populations. Their hegemonic control over the native population was sufficient to result in marginalizing the native population, which enabled the erasure of both the discrediting settler and colonialist identity.

The issue hasn't disappeared altogether in any of these countries. I have been to all of them at one time or another, and have been academically interested in supporting the rights of Indigenous peoples, as they are generally called, there have been different strategies emerging in each of these countries. You could say, “Israel is trying to find some kind of strategy for dealing with the Palestinian people without acknowledging their equality, yet without the ability to marginalize the Palestinian presence. Yet they are being denied the benefits of belonging to their own country of residence, their own homeland.” Of course, such a denial is something in the anti-colonial international atmosphere existing now that is hard to imagine the Palestinian people swallowing without resisting to the extent of their capacity. Indigenous people, as you know in Canada, the United States, Australia, and New Zealand seem a lost cause politically, yet still challenge the established order culturally and socially. The representative voices of the Indigenous communities refuse to accept the legitimacy of the arrangements that exist. These indigenous movements are helpless to challenge, except emotionally and in terms of expressing their sense of being victimized by the historical process by which these states have consolidated their power. Their self-assertion is an expression of spiritual resilience, a refusal to surrender of identity despite an acceptance of powerlessness.

Jacobsen: Different countries will have different ‘outcomes.’ In Canadian society, we have had protests around pipelines. In the United States, they had protests at Standing Rock,

which became violent to some degree with militarized police coming into the situation. In general, since you have been to these places, read more, seen more, had more authoritative positions, and had conversations with the individuals who would have authoritative synoptic judgments about these issues, if you're looking at the Aborigines in Australia, the Maori (in New Zealand), the First Nations, the Metis, the Inuit in Canada, or just any of the number of Native American tribes in America (e.g., Iroquois, the Hopi, etc.), what cases come to mind that mirror some of the issues of the Palestinians and the ways in which there was some leverage of equality for that "sustainable peace"?

Falk: Yes, we are on territory that I have not explored very much recently. However, these experiences are certainly very interesting and somewhat relevant. I think, the Palestinians, unlike the Indigenous peoples of the white settler-colonial countries, were not pre-modern. There was a difference in their political consciousness, an identity that was aligned to modernity. The Palestinians had a sophisticated intellectual class. Palestine was considered the most educated Arab population when the *Balfour Declaration* was issued in 1917. There was intellectual concern and a sense of foreboding within Palestine from the beginning of the Zionist penetration at the beginning of the 20th century. Although there are similarities, there are important differences. This made it more difficult for Israel to address the resident population in the ways these other governments managed to do prior to the decline of colonialism, which partly reflected the changed historical situation and increased support for self-determination. These values precluded the methods used in the United States, Australia, Canada, and, to a lesser degree, in New Zealand, as far as I know. I spent some time in New Zealand talking with some of the Maori. They, interestingly, said, "We are able to preserve our way of life to a greater extent than the Australian aboriginal people have done because we are like the Vietnamese. We were never defeated in war. We retreated to the mountains. We signed a treaty." The dominant white population in New Zealand acknowledged the cultural equality of the Maori. I remember, when I was there, even the Prime Minister was studying the Maori language. There were something like 18 Maori language schools in Auckland alone. This does not alter the reality of political marginalization, but rather expressed cultural resilience.

There was a different kind of feeling, as recently as the end of the last century. There could be a cultural accommodation, and a sense of mutuality and equality between settlers and indigenous people. In Australia, you get this feeling that meetings and conferences begin with almost an apology and a prayer. It is a gesture, an expression of guilt. It seems a little hypocritical, but is very much a part of the living sense of how the excesses of the colonialist background should be addressed. You could never imagine this kind of acknowledgement of guilt happening in the United States in the manner of Australia and New Zealand. Americans have written and talked movingly about the injustice done to the Native Americans, there are important Indigenous leaders who have articulated the injustice and founded movements seeking some kind of self-determination within the modern political landscape. I was a friend of Russell Means who was one of the leading voices of the Sioux people and a major figure in the American Indian Movement that captured the nostalgic moral imagination of many Americans projecting a different image of the past than that portrayed in cowboy and Indian movies that often disclosed genocidal patterns of thought and behaviour.

Jacobsen: If you look at the amount of land the Hopi kept, contiguous land, one hunk (surrounded by the Navajo), if you count the square mileage there, it's about as much as

1/5th of all the land combined that Canadian Aboriginals kept. So, there was something in the history of the dynamic that played out much differently, at least in Canada compared to the United States, in the case of the Hopi compared to the 600+ bands in Canada. So, another topic on the agenda is the Great March of Return or the Great Return March. Depending on the person that you talk to, the phrasing will be different. The most frequent one that I have heard is the “Great March of Return.” So, with regards to it, there is a day, for those who may not know reading this, called Nakba day. For the Great March of Return, what has been the reaction of the international rights community?

Falk: First of all, the Great March Return should be perceived and understood as a largely non-violent movement among the people Gaza who are claiming the right to return to their homes from which they, their parents, or their grandparents were expelled or fled decades ago. The basic image of “return” is a sense of legal, moral, and political entitlement. They are not trying to enter a society in which they have no legitimate claims. They have many serious grievances, painful experiences, and long records of having rights denied. These Palestinians sought to dramatize those grievances so long denied by confronting Israel at its border. Israel responded with live ammunition, use of snipers that targeted medical workers and others, and, definitely, engaged in or relied upon tactics that were excessive from the perspective of international humanitarian law by reference to Israel’s right to defend its borders and prevent unauthorized individuals from breaking the fence and crossing into Israel. On the Palestinian side is the issues related to seeking visibility and international support for unacknowledged grievances that have persisted over such a long time and have been accompanied by the blockade of Gaza for more than twelve years, accompanied by a very harsh form of confinement and occupation. It is misleading to separate the protest activity from the overall oppressive conditions: an overcrowded living space, an impoverished population with the great majority of inhabitants jobless and dependent on humanitarian assistance just for survival. Gaza has been the target of periodic military incursions or armed operations by Israel in 2008/09, 2012, and 2014, as well as pervasive daily uses of force that have traumatized the entire society; a civilian population confined in these very difficult circumstances, which I have witnessed. I was able to travel to Gaza via Egypt before al-Sisi limited access in 2012. It is difficult to imagine living in for a week, much less a lifetime.

This initiative was not started by Hamas, which is in control of the administrative processes of Gaza. The Great March was at the start a spontaneous civil society initiative of coming together every Friday to protest. This was an impressive movement because it mobilized a large number of Palestinians in spite of the violent Israeli response by way of sophisticated weaponry and excessive uses of force directed at basically unarmed demonstrators who lacked any means of self-defence. These Palestinian protestors continued to show up on successive Fridays for more than a year in spite of enduring heavy casualties and the deliberate crippling of protestors caused by snipers shooting at and below the knees. A very shocking pattern of Israeli response that wasn’t responsibly dealt with by the international community, especially if proper account is taken of Israel’s obligations as an Occupying Power in relation to the civilian population of Gaza. The Palestinians have long been lectured by liberals in the West: Since Israel is a democratic society it would be responsive to non-violent protests by Palestinians. This experience once more showed Israel’s iron fist tactics as applied to the Palestinian people no matter how their opposition was manifested. Despite these concerns, as far as I could tell, there was virtually no sympathetic coverage of the Great March in the mainstream media. What

attention was given was devoted to reporting on how many people were killed, what happened week-to-week as to the size of demonstrations. So, it's a very dispiriting outcome, which reinforces the conception that Israel thinks it can defeat militarily the Palestinian challenge and, basically, create a situation not so unlike the situation that exists in these other settler-colonial states that are no longer criticized because of their treatment of the natives. Once the native population becomes so demoralized, humiliated, and defeated, Israel can then govern the whole of Palestine as part of an apartheid one-state solution.

This kind of Israeli endgame was set forth in the Trump-Kushner so-called peace proposals, which incorporated the persistent advocacy of Daniel Pipes who is one of the prominent Zionist militant intellectuals who had been developing an argument for an Israeli victory scenario during the past several years on his website *Middle East Forum*: diplomacy had been attempted in relation to the conflict and failed to reach agreement. In light of this, the only way for this conflict to end if diplomacy fails is to allow one side to win and the other side to lose. The challenge to Israel, according to Pipes, is to make the Palestinians accept the reality that their struggle had become a lost cause. Pipes urged Israel to increase its coercion so as to convince the Palestinians of the futility of their further resistance. Of course, the Great March of Return was defying that defeatist attitude. That Pipes approach is adopted, in my view, in the extremely one-sided proposals contained in this Trump-Kushner plan endorsed by both Gantz and Netanyahu who together represent the large majority of Israeli public opinion. One of the things that has happened over the course of this prolonged struggle is that Israeli internal politics have move steadily to the right. By "to the right," I mean embracing the maximal Zionist vision to a solution is more or less uncontested in Israel, although there are ambiguities, including an Israeli majority that still favours a two-state solution if it were viable. This move toward a victory scenario amounts to an annexationist approach to the West Bank, which has been, from an international law and United Nations perspective, occupied territory. Over the years, especially Area C that is 60% of the West Bank, has been treated more and more as *de facto* Israel. Again annexation has been given, more or less, a green light by the Trump presidency. Although such encouragement by Washington has no legal status, it exerts a political influence that reinforces Israeli expansionism.

I think, the Israeli leadership, the Likud leadership, and even the Blue and White opposition to the Likud, see the Trump presidency as a time-limited opportunity to complete the Zionist Project by proclaiming that the conflict is over. Some Palestinian communities will be somewhat self-governing, a policy comparable to what South African tried to do in the last phases of South African apartheid. Israel, facing different conditions, has shaped its own form of apartheid. It is helpful to recall that in South Africa a minority elite created structures of racial domination to subjugate the large majority African population. One can learn, in several ways, from this earlier apartheid experience, particularly the connection between dismantling apartheid and achieving racial peace. South Africa only moved toward ending the struggle when it decided to release Nelson Mandela from prison as a symbolic step toward the dismantling apartheid. Without that dismantling, that struggle would still be happening. That's my central point with respect to Israel: If Israel wants peace, then it must get rid of apartheid. There's no other way for these two peoples to live together in some coexisting and peaceful manner.

Jacobsen: The last two points were the Golan Heights and Area C of the West Bank. Any points for the audience there?

Falk: I think, the Golan Heights and Area C are part of the expansionist vision of the Zionist Project. Israel feels it is now strong enough that can incorporate these territories into its state control in ways that will bring it to some kind of new reality. In other words, the Golan Heights has already been annexed with the explicit approval of the Trump presidency, which is appropriating Syrian territory going against the basic rules of post-1945 international law: no territory can be acquired by uses of force. As for the West Bank, specifically Area C, as I said earlier, is part of the Zionist sense of biblical entitlement. This was part of the Promised Land. Israel feels that it's entitled to include within its sovereign domain. In this sense, I think, religion as fused with cultural traditions has been relevant to the modern Jewish political sensibility, including even the secular political class. Jews worldwide generally assume that respecting their religious and cultural roots should take precedence over Palestinian claims based on law, secularism, and modernity. So, it is an odd thing. On the one side, Israel is claiming to bring the benefits of modernity to Palestinians and the Arab population. If only the inhabitant would accept benevolent Israeli governance, they would benefit from this Europeanized way of organizing social and economic life. At the same time, Israel's claims ultimately rest on this pre-modern idea that they, on the basis their religious and cultural tradition, have a superior claim to consider the land their homeland to that of the people living there. That's the radical nature of the Zionist claim. In effect, the Jewish diaspora deserves precedence over the claims of the native population, the resident population, when it comes to delimiting national homelands. In that way, the period before World War II, the Zionists turned against their original colonial sponsors, the British, and succeeded in making the British regard Palestine ungovernable. Zionism then claimed to be an anti-colonialist movement of the Jewish nation. When you read the influential Exodus narrative that glamorized Zionism and erased the Palestinian you understand the process better by which fiction became fact. The Zionist Project succeeded in appropriating the anti-colonial ethos as the core event of their emancipatory history while persuading much of the world to overloo the cruelty of the Nakba and the displacement of the Palestinians.

Jacobsen: Thank you for the opportunity and your time, Professor Falk.

Extensive Interview with Professor John Dugard – Fmr. (4th) United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967

May 6, 2020

Professor John Dugard is the Fmr. (4th) United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967 (2001 to 2008). He is Professor Emeritus at the Universities of Leiden and the Witwatersr, who remains one of the most important legal and investigative voices in the history of rights and law reportage for the United Nations on this issue of Israel and the occupied Palestinian territories. As with the interview with Professor Richard Falk, this remained another humbling experience because of the depth of history, knowledge, subject matter expertise, and the South African heritage and nationality relevant for the instigation of the comparison with and discourse on apartheid on this topic. Their importance in the legal and rights history of this subject matter cannot be understated. In many ways, they set the tone and calibre of human rights and international humanitarian law reportage to this day. In addition, this exists as a conversation with the last United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967 with extensive access for reportage on ground zero, i.e., setting foot and observing, of Israel, Gaza, the West Bank, and East Jerusalem. He was the last permitted this form of access while the United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967 for first-person analysis of the human rights violations and breaches of international law in Israel and in the occupied Palestinian territories, as the subsequent three were not permitted entrance into the occupied Palestinian territories in any significant capacity. Indeed, former (6th) United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, Makarim Wibisono, resigned/quit from the post, while Falk (5th) and Professor S. Michael Lynk (7th) only remain (Lynk), or only remained (Falk), able to report mostly or completely from surrounding territories and Member States with world-class coverage, fact-finding, and analysis from INGOs, NGOs, CSOs, and others in Israel, the occupied Palestinian territories, and internationally, to support the experiential lack grounded in denial of access.

Here we talk about the counter-responses to serious human rights advocacy and formal charges with documentation of human rights violations, non-criticism ‘criticisms,’ “frank criticism” as a problem for European representatives, individual organizational representatives mouthing state propaganda and not believing the propaganda themselves, South African heritage and nationality as a factor in analysis, common themes in some of these settler-colonial states or domains of European-Christian settler-colonialism, white supremacy as backed by religion in South Africa and the transition from this, Falk’s concept of “biblical entitlement” among some Israeli settlers, the Law of Occupation and the Fourth Geneva Convention in relation to an Occupying Power, distraction from political engagement, creationism, anti-evolutionism, apartheid, and the Evangelical movement, and apartheid discourse, the case of Dr. Norman Finkelstein, Palestine Non-Member Observer State status in regards to Canadian hypocrisy and Canadian complicity in the occupation, and the diverse nature of influences on the conflict or the Israeli-Palestinian issue.

Interview conducted on April 9, 2020.

Scott Douglas Jacobsen: Let's start on some of the issues of when individuals historically to the present have critiqued human rights violations in the occupied Palestinian territories or in Israel, and the responses individuals have gotten for those, what came your way? What do you know comes people's ways when they engage in serious human rights advocacy and charges, formal charges, with documentation, of human rights violations?

John Dugard: At the outset, you must distinguish between my role as special rapporteur and of the role as special rapporteurs of Richard Falk and S. Michael Lynk. That's because I was allowed to visit the occupied Palestinian territory.

Jacobsen: [Laughing].

Dugard: I think that's a very important distinction. I was appointed after 3 or 4 previous special rapporteurs who were sympathetic to Israel and resigned because they were opposed to the office of the special rapporteur. They thought; it was one where Israel was singled out for special attention. I think the Israeli government felt that they were on safe ground when I was appointed. I, recently, together with Richard Falk and Kamal Hussein compiled a report on the Second Intifada in 2001. Looking back at it, it was, generally, a very kind report – very kind to Israel. In the following sense, we were not sharply critical of select issues. We did not question, whether Israel practiced apartheid in the occupied Palestinian territories or not. Israel had reason to believe I was not going to be much of a threat coupled with the fact that ties between Israel and South Africa were very good. Certainly, the ties were very good before the end of South African Apartheid. So, the Israeli ambassador to Geneva, at the time, said to me, "We will not cooperate with you at all as special rapporteur. But as a South African, you will not require a visa and are very welcome to visit Israel and occupied Palestine territories." I was allowed into the occupied Palestinian territories throughout my term as special rapporteur for seven years, which meant I was able to report the facts on the ground. Both Richard and Michael have had to take evidence in neighbouring countries. In this manner, I was very different from Richard and Michael. My reports were based on what I had observed in occupied Palestine territories.

Jacobsen: What about non-criticism 'criticisms' coming to individuals who point out human rights violations of all parties? For instance, some might get charges of anti-Semitism if they critique policy or the illegal settlements.

Dugard: First of all, I was the special rapporteur at a time when the charge of anti-Semitism was not as developed as today. For instance, I was never accused of being anti-Semitic by the Israeli government. I was accused of anti-Semitism by the American Anti-Defamation League, U.N. Watch, and other pro-Israeli NGOs. However, the Israeli government never went that far. You must bear in mind that when I started, I focused very much on violations of human rights and violations of humanitarian law. It was only near the end of my term as special rapporteur in 2007 that I said, 'I have a sense of *déjà vu* being in the occupied Palestinian territory,' because apartheid is practiced there. Then I made the comparison with South African Apartheid. Thereafter, I became heavily criticized, particularly by the Israeli government and United States in the Human Rights Council and the United Nations in New York. They never levelled a charge of anti-Semitism at me. Although, they were heavily critical of my reports. The vitriolic criticism came from NGOs and individuals. I had a very strange experience on one occasion. I was at a protest in Bil'in when the IDF fired a tear gas canister in my direction, which exploded fairly near to me. I got a whiff of tear gas and moved away. But it was misreported in the Palestinian

press that the ‘special rapporteur was hit by a tear gas canister.’ I got a profuse apology from the Israeli Foreign Ministry. I had to write back, “I was not injured at all.”

It was a very strange relationship. The Israeli Foreign Ministry kept a watch over us. If we had a difficulty with the IDF, for instance, if we were held up for several hours at a checkpoint, we would phone the Foreign Ministry. It would intervene on our behalf. I can’t say that I was well-treated, but I was treated in a fairly civil fashion. I was, of course, regularly criticized by the Israeli government, by pro-Israeli NGOs and other governments. One representative of the European Union said I was not part of the solution; but part of the problem. Europeans didn’t like my reports because they didn’t like frank criticism of Israel or the European States.

Jacobsen: When you say, “Frank criticism,” what, in general terms, constituted “frank criticism,” which amounted to a problem for the European representatives?

Dugard: Most of my reports were from observations of the situation in the West Bank, Jerusalem, and Gaza, where I travelled freely until the end of 2007. I reported very frankly on what I had seen involving violations of human rights and humanitarian law; and, in later years, I described it as apartheid, which was embarrassing to some European states. Others were more supportive. I consulted frequently with diplomats from the European Union and got a mixed response. Of course, the Israelis and the United States were equally critical. Once, in the Third Committee of the General Assembly in New York, the U.S. delegate savagely criticized me, accusing me of bias and distorting the facts. During the coffee break, she came up to me and quietly apologized. She said that she had been obliged to read a speech prepared by the State Department.

Jacobsen: [Laughing].

Dugard: [Laughing] She clearly didn’t believe the statement read aloud by her.

Jacobsen: Is this common? In that, an individual United Nations special rapporteur dealing with one of the more difficult contexts. They acquire criticism from representatives of governments or organizations who do not even believe the criticism coming from them. They’re reading a script.

Dugard: That’s true. Many diplomats will carry out their government’s instructions of what to say in public. Others will inject personal opinions. It is important to bear in mind. I received a lot of criticism from the U.N. Secretariat. There is a tendency to think the U.N. is united in its response to the situation in Palestine with the exception of the Security Council, where the veto prevails. The U.N. Secretariat has been heavily infiltrated by the state of Israel. For instance, when I spoke to some of the senior officials during the proceedings before the International Court of Justice on the Wall, they were highly critical of the fact that the court was considering the matter at all. In fact, the Deputy Secretary-General for Political Affairs, Kieran Prendergast, from the United Kingdom, told me quite frankly; he had never been in favour of the advisory opinion. The Deputy Legal Counsel of the United Nations gave an opinion advising Kofi Annan, Secretary-General, that he was not obliged to follow the advisory opinion. I don’t think one can underestimate the influence of members of the Secretariat who are very sympathetic to Israel.

Jacobsen: When did the charge of anti-Semitism become more politically useful and, indeed, powerful against those who critiqued Israeli actions as a state?

Dugard: I would identify two reasons. First of all, I think the charge that Israel practices apartheid is very serious. Israel does not like to be accused of being an apartheid state. Although, one must bear in mind; that it kept very close relations with Apartheid South Africa. So too, its supporters abroad. The attempt to define anti-Semitism in terms of the International Holocaust Alliance definition of anti-Semitism has given rise to the present situation in which there is a determination to expand the scope of anti-Semitism to include vigorous criticism of Israel's practices. For instance, one of the provisions of the International Holocaust Alliance definition provides that it is anti-Semitic to demand of Israel a higher standard of behaviour than other states. But that's what was the precise problem with the Apartheid South African regime. Here it was, a white regime professing to aspire to Western values, which was behaving badly. So, the international community clearly demanded of the South African government a higher standard of conduct than other States, particularly developing States. However, now, in the case of Israel, we are told if you do so that it is anti-Semitic. The definition of anti-Semitism has been widely expanded. The problem is, of course, most public figures – and ordinary persons – do not like to be accused of being anti-Semitic. So, if one starts to talk about Israel-Palestine, it is much wiser to change the subject and talk about the weather. Otherwise, you will get into trouble. If you say anything highly critical of Israel, then you will be accused of anti-Semitism.

Jacobsen: Also, as a footnote to the commentary to Apartheid South Africa – two footnotes, it was a minority white population dominating the rest of the population. Another footnote to that. You are South African. So, how does this influence personal opinion and professional substance?

Dugard: I was part of the struggle against apartheid in South Africa. I directed a human rights NGO in South Africa. No one questions my credibility or my credentials as an opponent of apartheid, or someone who knew what apartheid was or wasn't in South Africa. At the same time, I was allowed into occupied Palestinian territory for seven years by the Israeli government with permission to examine and observe the situation. So, I was given a rare opportunity to compare and contrast the two situations. I enjoy a special status when it comes to comparing apartheid in occupied Palestine territories with South African Apartheid.

Jacobsen: If we look at the history of Canadian society, of the four major settler-colonial societies – New Zealand, Australia, United States, and Canada, there was a long history of anti-Indian, in terms of the former phrasing, or anti-Indigenous peoples ideologies, actions, and policies within Canadian society. It was endorsed by the state and carried out by the churches in the cases in the Residential Schools. Our first colony in New France. There were slaves. 2/3rds were Indigenous. If we look at the educational outcomes, formal educational outcomes, of the Indigenous or the Aboriginal population today, it is different, on health, in both lifespan and healthspan. This is echoed in New Zealand, Australia, and the United States. Although, I am aware New Zealand moved farther in reconciliatory efforts with the Maori. If we look at these countries, it seems similar to the situation in South Africa Apartheid. In that, it was white racists, who were the settler-colonialists in many ways. What are some common themes in some of these settler-colonial states or domains of European-Christian settler-colonialism, which was carried out in a long-term, significant, and comprehensive manner?

Dugard: I think there were similar features in all those societies, so-called white dominions – Australia, Canada, New Zealand, and South Africa, until the end of World War Two. It was

accepted that their policies were in line with the behaviour at the time. The first criticism of South Africa came from India with the treatment of the Indian minority in South Africa, not the treatment of black South Africans. Mistreatment of black South Africans came later in 1952. So, yes, there are common features. Today, it is no surprise to me that Israel claims its strongest support from Australia and Canada, apart from the United States, because these are both settler-colonial societies. New Zealand, thankfully, dissociates itself.

Jacobsen: Some commentary in the United States and in Canada media caters to certain sensibilities from previous eras. The demographics were different. The racist and sexist ideologies were ascendant. When examining some of the commentary, we're seeing in the rise of ethnic nationalism (or white nationalist movements) as one form of strongmanism. How is the diminishment of that ideology akin to some of the things in Apartheid South Africa? These have been catalogued by the Canadian Anti-Hate Network or the Southern Poverty Law Center in the United States. Often, it is tied to some fundamentalist interpretations of Christianity alongside the ethnic supremacist ideological leanings. How was this combatted in South Africa?

Dugard: After the 1960s, one seldom heard justification for Apartheid in terms of religion or in terms of racial superiority. This is another thing, which I find very troubling. We are seeing the opposite happening in Israel. Israeli society is becoming more and more racist in terms of beliefs and racial superiority. That is what seems to drive the likes of Benjamin Netanyahu. One looks at the behaviour of Israeli settlers, Israelis. They are clearly guided by religious sentiment into believing in racial superiority. So, they are, in fact, practicing apartheid as originally practiced in South Africa in the first ten or fifteen years of Apartheid, when it was openly a policy of racial domination.

Jacobsen: Does the concept proposed by Professor Richard Falk of "biblical entitlement" come into play with ethnic supremacism as a bubbling or rising phenomenon among Israeli settlers?

Dugard: Yes, I would agree with Richard. That clearly was the position in South Africa in the first ten or fifteen years of Apartheid. Many white South Africans believed in Apartheid as a policy of racial domination. They got some comfort from religion. However, government spokesmen were clear about "Separate Development" not being a policy of racial domination. Apartheid in South Africa was terrible. There was racial discrimination. There was oppression. But at the same time, there was a sense of idealism in that the South African government wanted Bantustans to exercise self-determination. Thus, the government established schools, clinics, and industries to encourage blacks to move to the homelands. In my opinion Israeli apartheid, at present, *is, in many respects, worse than South African because there is no idealistic element to it.* The Israeli government unashamedly leaves all of the humanitarian work in Palestine to foreign donors. UNRWA and individual European states have projects in the West Bank and Gaza. So, they do take the place of Israel's obligations. They are fulfilling an obligation, in which, under the Law of Occupation, rests with Israel.

Jacobsen: The Law of Occupation here, we're referencing the Fourth Geneva Convention about Occupying Powers or the Occupying Power. In terms of something mentioned earliest in the interview, the United Nations Security Council, the use of veto power, and in the highly biased use of veto power in the favour of Israel as a Member State of the United Nations.

Dugard: The United States has cast over 40 vetoes in favour of Israel. So, it effectively ensured the Security Council is unable to act against Israel. That's why Resolution 2334 on settlements adopted in 2016, in the last years of the Obama regime, was so important because the United States government decided to withhold its veto. However, as a footnote, one is led to believe Joe Biden was strongly opposed to the United States dropping its veto on that occasion. The United States was much stronger in its resolutions after the 6-Day War. It gave its approval to Resolution 242, which provided the parameters for peace. Thereafter, the United States became very pro-Israel. It has become even more so today. Now, we have the strange situation. The United States promoted the establishment of the Quartet comprised of the United States, the Russian Federation, the U.N., and the E.U. to further the peace process in the Middle East. The Quartet made a number of half-hearted attempts at formulating some policy for the Middle East. However, today, it no longer operates because the United States ensures its inoperability. The United States has managed to change the attitude of member States of the Security Council towards Israel. The US has furthermore encouraged States, including Canada, to reject the jurisdiction of the International Criminal Court in respect of the Palestinian issue.

Jacobsen: There's a phenomenon probably in all developed nations. It has social and political consequences most seriously seen in distraction tactics as a cultural phenomenon. For instance, there are very large followings of conspiracy groups, conspiracy theory groups. There are very large followings of fundamentalist religious groups who think the End Times are coming, or ghosts are haunting them, or demons and the Devil will be coming after them, or some secret cabal is coming to destroy the way of life for them. Does this perform a particular function with distracting some publics away from serious political engagement on issues?

Dugard: You're talking about strange religious beliefs. I don't think one needs to go that far. I think that the United States Evangelicals have gone a long way in formulating policy towards Israel. The Jewish community in the United States is divided, but the Evangelical community is not. Of course, the Evangelicals in America have the most anti-Semitic view of all. They believe: if the Messiah comes again, the Jews will be exterminated if they do not accept him.

Jacobsen: To clarify, we're talking about tens of millions of Americans.

Dugard: Oh, exactly.

Jacobsen: Even as a peripheral comment, I read *all* – literally all – of the commentary and organizations, and articles, on creationism in Canada, and some in the United States and North America. If you look at this stuff in general, especially Intelligent Design and some others, they will say, "It is not about God or the Christian God," and so on. It is obvious, even from leading proponents. They still state this is based on John 1:1 or the God of Intelligent Design is, ultimately, the Christian God, etc. It is the presentation of a neutral orientation. Then when one reads formal publications of the individuals coming out of these organizations, they have an explicit Christian bias. If you look at the leadership, almost all are middle-aged to elderly white males who are Christian. You see rhetorical flourishes, dissimulation, and misrepresentation to the public. It is mendacious. I think some of this rhetoric around white nationalism and religious fundamentalism is similar.

Dugard: I think there is a pretty close correlation between creationism, anti-evolutionism, and apartheid, and the Evangelical movement. Let me, by way of digression, mention, the Apartheid

regime was bitterly opposed to evolution, to the teaching of evolution. It was not allowed to be mentioned in schools. So, one sees the same creationist attitude replicated in the Evangelical movement in the United States. It is the same in many of the religious communities. There is a close relationship between creationism and support for apartheid. However, that's your subject.

Jacobsen: We see this in the United States with voter disenfranchisement, poorer schools, and stark differences in levels of poverty. These have lifelong and intergenerational effects. It may be a convenience factor to ignore the issues or to demonize particular pockets of a population, or keep people distracted with various forms of fundamentalism, whether ethnic, religious, or secular – worship of the state. Anyhow, how does this conversation around apartheid apply, not in the abstract but, in the concrete to Israeli society, Israeli settlers?

Dugard: Apartheid is, today, designated as an international crime in the Rome Statute of the International Criminal Court. It is a species of crime against humanity. It is carefully defined. So, it is, in that context, important to the International Criminal Court because the Government of Palestine has referred the practices that prevail in occupied Palestinian territories to the International Criminal Court for examination with a view to investigation and prosecution. The Government of Palestine argues that the practices of Israel in occupied Palestine meet the necessary requirements for the crime of apartheid. Basically, there are three requirements. In the first case, there should be two ethnic or racial groups, the Jewish-Israelis and the Palestinian-Arabs. So, there's no question about two racial groups. Second, there should be certain very serious inhumane acts such as murder, extermination, torture and persecution. Third, these inhumane acts should be carried out by one racial group with the intention to suppress and dominate the other group. When one looks at the policies of Israel in occupied Palestinian territories, it is easy to find that these requirements are met. That's why Palestine has asked the International Criminal Court to investigate the crime of apartheid. Of course, the Court has other crimes before it for examination. The most obvious of these is the war crime of transferring Israeli civilians into the occupied territory of Palestine and the construction of settlements. Today, there are between 700,000 and 800,000 settlers in occupied Palestine that provide the basis for the policy of apartheid.

You have two racial groups with Jews in settlements and Palestinians who are treated differently, in much the same way blacks were treated in South Africa. The International Criminal Court is required to confront crimes of this kind – apartheid, the war crime of construction of settlements and violations of international humanitarian law. It is a difficult decision for the International Criminal Court. When one thinks about the European countries that provide the major funding for the International Criminal Court, they are very hesitant to give support to the label of apartheid being applied to Israel and Palestine because Israel may retaliate and label them as anti-Semitic. Many states and the Israeli government have sought to deflect attention from Israel's crimes by arguing that Palestine is not a state and, therefore, has no right to bring this case before the International Criminal Court. I want to look at the whole question of apartheid in a broader perspective and to raise the question, "Why it is that Western states are unwilling to confront the evidence that apartheid is applied in the occupied Palestinian territory?" That is really what concerns me. These states are prepared to accept that Israeli settlements are unlawful; that Israel acts disproportionately in its attacks on Gaza. Even though such states are prepared to

accept that Israel practices torture and demolishes Palestinian houses, they are not ready to confront the question of whether Israel practices apartheid.

I think that once most Western states accept that Israel practices apartheid that will be the end of occupation of the Palestinian territory.

Jacobsen: If we take a step back and zoom out from some of the commentary so far, with the U.N. Security Council, we have the United States using, potentially abusing, veto power 40 or more times. We have UNRWA, the European Union, various individual Member States of the United Nations, and organizations (NGOs, INGOs), funding or giving humanitarian aid to Palestinians in the occupied Palestinian territories. Also, we have a deflection of criticism with charges of anti-Semitism or, in prior times, during your tenure as the U.N. Special Rapporteur, of “strong bias.” In a sense, this is a context in which Israel occupies Palestinian territory since the June, 1967 war followed by attempts to bring formal critiques and then the United States blocking in the U.N. Security Council, then the European Union, individual Member States, and NGOs and INGOs, funding through humanitarian aid the individuals who are most in need. Another side of that coin being the funding of the results of the hemorrhaging of human lives and an occupation, and then using charges of a particular type of racism to deflect any form of formal criticism. Is this a unique situation in the setup to favour of occupation for Israelis against Palestinians in the Palestinian territories?

Dugard: I think one has to recognize that Israel occupies a very special position in today’s world. The South African Apartheid regime after some time lost the support of Western states completely. It had no Godfather, so to speak, to wave the magic veto wand. Ultimately, the United Nations did impose sanctions and an arms embargo. That was the situation in South Africa. In the case of Israel, there are a number of factors, which provide full protection for Israel. First, the fear of the label of anti-Semitism. Second, Holocaust guilt. Many Western European nations believe, rightly, that they behaved badly during the Second World War, as they could have done more to protect Jews. So now, they are doing their best to protect Jews in Israel. Norman Finkelstein is the expert here.

Jacobsen: As a small note for readers today, the *Holocaust Industry*, by Dr. Norman Finkelstein, is a seminal and important text, which Professor Noam Chomsky, formerly at M.I.T. and, currently, at Arizona State University, warned him against making any moves forward there. Although, he left him open to freely do it. If he did, he would have pissed off people in high places. It would not come consequence free.

Dugard: And that happened.

Jacobsen: Yes, Noam Chomsky wrote an article called “The Fate of an Honest Intellectual.” It was a similar case with the Joan Peters book. He went through the citations, showed it was a fraud, and this was when Chomsky was particularly warning him, ‘If you point this out, you’re going to show the American intellectual community as frauds. They’re not going to like it. They’re going to come after you. And they’re going to destroy you.’ He listened, didn’t take the advice. Now, someone who should be Professor Norman Finkelstein is a Dr. Norman Finkelstein with a doctorate from Princeton University in Political Science, who has, for his intellectual integrity, and really solo adventure and careful scholarship, paid the price for his entire life.

Dugard: I know Norman well. There is another fact that I have not mentioned. In addition to Holocaust guilt and anti-Semitism, there is the strength of the Israeli lobby. Not only in the United States, but also in other Western countries. It is very powerful and has strategies in order to advance its cause ranging from outright bribery to blackmail. Those three factors ensure that Israel is protected. South Africa tried desperately to get lobbies in foreign countries. It had no arguments such as anti-Semitism, and Holocaust guilt to fall back on. In short, the South African regime was unprotected while Israel is very, very strongly protected. It is difficult to see how Israel will ever be held to account. That's why apartheid is important because once it is accepted that Israel applies the policy of apartheid in the occupied Palestinian territory; it will become untenable for some Western states to support it.

Jacobsen: In 2012, there was a resolution to give Palestine Non-Member Observer State status. 130+ Member States were for, 9 were against. 1 of those was Canada. So, Canada says the right things in terms of alignment with international consensus, international morality, international law, and international rights, it does the opposite based on the voting record. How are Canadian government and policy complicit in the occupation? There is a consensus in the international community on the existence of an occupation.

Dugard: The Canadian government is complicit in the sense that it supports Israel completely. The attitude of the Canadian government in the case of Palestine before the International Criminal Court (ICC) is unusual, confusing and duplicitous. Seven states have made submissions to the pre-trial chamber of the ICC stating that they are opposed to the exercise of jurisdiction by the International Criminal Court in respect of Israel's crimes against Palestine. These countries are Germany, Austria, Czech Republic, Hungary, Uganda, and Brazil. Canada has not made such a submission. But Canada has written a letter, a confidential letter, to the pre-trial chamber giving its reasons for not supporting the exercise of jurisdiction. No one knows what is in that letter; there is a suggestion that is largely circulated that Canada has said, 'Look, we are one of the major financial contributors to the International Criminal Court. If you proceed, you might not get a contribution from us.' That is pure speculation. However, we know that Canada has written this letter to the pre-trial chamber opposing the exercise of jurisdiction by the Court. This is a very devious approach on the part of the Canadian government. It would be good if you could find out what that letter contains.

Jacobsen: If the occupation ends, how will this change the discourse in settler-colonial societies, settler-colonial states?

Dugard: I think one must see the ending of the occupation as the first step because this will lead to the acceptance of Palestine as a separate state. Then, of course, the relation between Israel and Palestine will be the next step. Settler-colonialism will be brought to an end when the occupation is brought to an end, as far as Palestine is concerned. The Palestinian minority in Israel is another question, which we have not mentioned. But I do think the ending of the occupation is the important issue one needs to address.

Jacobsen: There are members of the secular community, even prominent ones, who make extremely ignorant commentaries and statements. In other words, they boil down all the contextualizations, all the history, all the human rights violations, all of the issues, down to one variable: religion. What would be the response to the argument or representation of the entirety of the Israeli-Palestinian issue or the Israeli-Palestinian conflict?

Dugard: On the subject of religion, it is important to stress that different religions pose a particular problem in the case of the Middle East. This was not a problem in the case of South Africa because the black South African community is predominantly Christian and the white elite was Christian too. Islam was never accepted on a large scale in South Africa. There's a relatively small Islamic community, largely Indian. So, religion was not a divisive factor in South Africa. The liberation struggle was led by Christian leaders. Whereas in the case of Israel-Palestine, we have two different religions. It only complicates the issue, which is another story.

Jacobsen: Mr. Dugard, thank you so much for your time, sir.

Dugard: I've enjoyed the conversation.

Extensive Interview with S. Michael Lynk – (7th) United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967

August 4, 2020

Professor S. Michael Lynk is the current (7th) United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967 (March, 2016 to Present). He is an Associate Professor at the Faculty of Law, Western University, in London, Ontario, who works in one of the most important legal and investigative positions in the history of rights and law reportage for the United Nations on this issue of Israel and the occupied Palestinian territories. As with the interviews with Professor Richard Falk (5th United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967) and Professor John Dugard (4th United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967), who held the positions prior to Lynk, this became another humbling experience because of the living reality of the human rights abuses Lynk investigates in a professional capacity. Their – Dugard’s, Falk’s, and Lynk’s – importance in the legal and rights history of this subject matter cannot be understated. In many ways, they set the tone and calibre of human rights and international humanitarian law reportage to this day. In addition, this exists as a conversation with the current, as opposed to a former, United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967. He has not been permitted access while the United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967 for first-person analysis of the human rights violations and breaches of international law in Israel and in the occupied Palestinian territories (the Gaza Strip, East Jerusalem, and the West Bank).

Here we talk about why he took this position, the very specialized form of human rights advocacy, what has happened to some in the past in the same position when they tried to get into relevant territories or nations, phrases including “occupied Palestinian territory” or “occupied Palestinian territories,” the Fourth Geneva Convention “Occupying Power” phrase and settler-colonial states, a Canadian national self-critical reflection or examination, United Nations report published on companies in illegal settlements, a short-term economic benefit from business finances and goods coming from Israeli settlement businesses, a trust or hope rather than stepwise extension of a solution, countries with settler-colonial histories, moves being made by the Chief Prosecutor of the International Criminal Court (Fatou Bensouda), the unlivability of the Gaza Strip in which 2,000,000 live, a global pandemic, attempts to simplify the entire Israeli-Palestinian issue or the entire Israeli-Palestinian conflict to religion, advice given by Richard Falk and John Dugard, appropriate responses to both of those charges, the alliance of Benny Gantz of the Blue and White Party and Benjamin Netanyahu of the Likud, some of the violations that we’re seeing from Fatah, Hamas, or the Palestinian Authority, terms from Israel including “terror tunnels,” “Iron Dome, or “rockets,” the reality on the ground of the efficacy of the Iron Dome for Israel, etc., the “hugging” of international law, and some of the more robust authoritative organizations, authors, or speakers on the Israeli-Palestinian issue.

Interview conducted on April 6, 2020.

Scott Douglas Jacobsen: This is the second U.N. Special Rapporteur interview, S. Michael Lynk. Let's start with the length of time that you have been in this position, and why you took this position, I ask because this position has a checkered history in what comes at people when they do this very specialized form of human rights advocacy.

Professor S. Michael Lynk: I was voted unanimously to the position by the U.N. Human Rights Council in March of 2016. It is a 6-year unpaid position. So, I keep my day job as a Law Professor at Western University's Faculty of Law, where I teach Labour Law and Constitutional Law. I will have been in the position for exactly four years on May 1, which is when the position officially started. As part of my work, I draft two substantive reports each year. I deliver them to the Human Rights Council in Geneva, Switzerland. I deliver the second to the U.N. General Assembly in New York, the Third Standing Committee of the General Assembly in New York. My reports are usually on specific themes. My report in 2019 in New York was on the issue of accountability and the responsibility of the international community to confront Israel with respect to its serial violations of human rights. My report in March 2019, a year ago, was on the Israeli exploitation of water and natural resources in the occupied Palestinian territories, which are forbidden to be done by an Occupying Power. I choose specific themes. I try to rely on work both the U.N. does, and work done by civil society. I have to say; my work is made an awful lot easier by the top-drawer civil society organizations, human rights organizations, that exist both in Israel and in Palestine, and internationally. Human Rights Watch and Amnesty International, activists and organizations in Europe, and human rights defenders – both Israelis and Palestinians, produce excellent reports, high-level advocacy. I sit on their shoulders in being able to write my reports to the international community.

Jacobsen: What has happened to some in the past in the same position when they tried to get into relevant territories or nations in the area to make sure that they can get the most accurate feel for the areas that they're doing human rights reportage on?

Lynk: Sure, my prior two predecessors as Special Rapporteur; both were denied access by Israel into the occupied Palestinian territories. Richard Falk flew into Israel with an understanding that he was being permitted to enter and to go through a week or two-week long schedule visiting the occupied Palestine territories. He was arrested and detained overnight and sent back to North America. The same thing happened with my immediate predecessor. An Indonesian, Makarim Wibisono, who took the position with the presumption that Israelis would let him in. He resigned after 20 months because the Israelis would not let him in, and did not fulfill their promise. So, I've been obstructed in the ability to do my work. I think I would be able to do a better job if I was able to be let in and meet with Palestinians and Israelis, and with Israeli governments and with the Palestinian Authority as well, to do my work. But if I am not allowed in, as I am not, I have a pretty decent Plan B, which is to rely on the top-drawer work being done by civil society with their work and analyses, when I issue reports, commentary, and press releases on Israel and more specifically the occupied Palestinian territory.

Jacobsen: Following from the last phrase, "occupied Palestinian territory" or "occupied Palestinian territories," as well as one of the earlier phrases "Occupying Power," what is the contextualizations for those terms, for those who may not know when reading this?

Lynk: It is an important question that you ask. The world community has, since the West Bank, East Jerusalem, and Gaza Strip, among other territories, were occupied by Israel in the June 1967 war. The international community reflected through the United Nations has been very clear. In

that, the *Fourth Geneva Convention* applies to these territories. The *Fourth Geneva Convention* is, of 1949, designed to protect civilians under occupied territory. It learned from the bitter lessons of the first and second world wars. That there has to be a detailed codified regime that spells out the extensive responsibilities that an Occupying Power has when they take a territory, not their own sovereign territory. These kinds of responsibilities focus on a range of issues. But the most important issue reflected in the *Fourth Geneva Convention* and in international humanitarian law is that an Occupying Power is simply a temporary sovereign over the territory. It gives the Occupying Power no right to annex even a square inch of the territory occupied. It must return the territory in as reasonable and as speedy a time as possible back to the people who are being occupied.

So, when we examine the very strict measures outlined in international humanitarian law and the *Fourth Geneva Convention* to how Israel has conducted its occupation. The international community has been very clear. There has been a range of violations of fundamental tenets of international law, including, obviously, the transfer or encouragement of civilian populations, Israeli-Jewish civilian populations, to settle in settlements in East Jerusalem and the West Bank and once upon a time in Gaza as well. Israel has annexed East Jerusalem and parts of the West Bank in 1967 and reaffirmed that in 1980. The annexation of East Jerusalem is illegal under international law. An Occupying Power cannot do that. The creation of 240 or so settlements in East Jerusalem or the West Bank, where approximately 650,000 to 680,000 Israeli settlers now live is illegal under international law. In fact, it has been a war crime for the last 20 years under the 1998 *Rome Statute*, which set up the International Criminal Court. The conduct of its occupation such as diverting water from the West Bank into Israel's water resources, building quarries in the West Bank, using West Bank land to dump sewage and other environmental waste, the range of human rights violations through curfews, through the unequal treatment of Palestinians under occupation. There is a range of different violations that the international community, primarily through the United Nations have been identifying, those are the responsibilities given to me during my tenure as a Special Rapporteur: to comment on, to issue reports on, to investigate to the best of my ability, and to work with civil society and universities, and other international organizations to bring these human rights violations to an end.

Jacobsen: Some commentary will focus on the settler-colonialism. In the sense that, Israel will be defined, as per the *Fourth Geneva Convention* "Occupying Power" phrase, as a settler-colonial state. That's a larger context and terminological issue of settler-colonialism. One of the ironies when colonialism was being discredited in the '30s and '40s. This was a time when Israel was formally being defined by its formal geographic boundaries and instantiated and then was passed off from the British to the United Nations, not necessarily in the cleanest of ways [Laughing]. So, this makes it one of the longest-standing human rights issues for the bureaucratic juggernaut known as the United Nations. Is this one of the last remnants of settler-colonialism from the 20th-century into the 21st?

Lynk: I am aware of the literature that talks about Israel being a settler-colonial society or a settler-colonial state. I've read a variety of commentary that, obviously, dates that beginning with the *Balfour Declaration* continuing to today. Certainly, wherever else that debate may lead us with Israel before 1967, Israel's creation of settlements, colonies. The settlement and the encouragement of them, this has to be the biggest economic enterprises initiated by Israel. The creation of the 240 settlements in East Jerusalem and the West Bank, maintaining them,

sustaining them, growing them. This would be a classic example of settler-colonialism. Settler-colonialism is the movement of people from the metropole, from usually a European nation. Although, in this case, it comes within Israel into the conquered or colonized territory. In order [Laughing] not to benefit the Indigenous people being displaced, but in order to establish a colonial sovereign claim or an independent sovereign claim over that territory, certainly, when you look at the patterns of Dutch and British settlement in South Africa, British settlement in Rhodesia and in other parts of Africa, Spanish settlement in Latin and South America, these differ in some ways from what's going on since 1917, particularly 1967. But I think there probably are different branches of the same tree going on. Certainly, I know in the academic literature on settler-colonialism. Israel's settlement of colonies in East Jerusalem and the West Bank is commonly referred to as a classic modern example of a 20th-century problem that was, by and large, done and resolved in the 20th-century to allow colonies to become independent nations. You're certainly right with respect to your location of timelines. Just at a time when decolonization was sweeping the world, particularly in the Caribbean, in Africa, and in Asia, in the 1960s and 1970s, Israel was launching upon a colonization project by initiating these settlements within a few months after it conquered the territories in the June, 1967 war.

Jacobsen: In terms of some of some of the war crimes, and the violation of the *Fourth Geneva Convention* mentioned before, how, as a national self-critical reflection or examination, is Canada complicit in this?

Lynk: There was once a quote from an unnamed – never got the name – Liberal Cabinet Minister who said, ‘We would aspire to be Israel’s best friend. We realize someone else has that title. I would be quite happy to be Israel’s second-best friend.’

Jacobsen: [Laughing].

Lynk: Certainly, our policy since the 1940s with having a Canadian, the first dean of my law school actually, Ivan Rand, sitting on the United Nations Special Committee on Palestine in 1947, which recommended the partition of a very small country. Not only was the partition against the wishes of the majority Indigenous population at the time, it was also, even on the elements of partition, a very unfair partition with a third of the population assigned 56% of the territory, including some of the very best agricultural land and, certainly, most of the coastline. From Canada's initial support in 1947, through Ivan Rand's participation on the UNSCOP committee, to the 1947 vote in November of that year and Canada's vote in favour of partition, to its early recognition of Israel, through or since 1967. Canada has been articulating a 15-year statement, it believes there should be a Palestinian and Israeli state. It believes in a two-state solution. It believes that there should be a Palestinian and Israeli state. That annexation and settlements are against the *Fourth Geneva Convention* and against international law. It won't agree to any change in the boundaries, except for those agreed to by the parties. That statement is actually quite good.

But when you compare this to the Canadian actions, whether the United Nations General Assembly every year in the basket of resolutions that come up to vote every December by every Member (State) of the United Nations or others. Canada, beginning with Paul Martin's regime, certainly, intensified under Stephen Harper and really left unchanged under Justin Trudeau. Our voting record has been to vote in a very tiny minority in 6 to 9 nations.

Jacobsen: Right.

Lynk: Israel, the United States, sometimes the Czech Republic, Canada, and then a handful of the island (Member) States in the Pacific that were once ruled by the United States: the Marshall Islands, for example, or Vanuatu. These countries are a very small minority who end up voting “No” to these resolutions. Even though, these resolutions offer a fair, balanced approach to wanting to solve the Israeli-Palestinian conflict in a manner that is consistent with international law. When our former Foreign Secretary, Minister of Foreign Affairs Chrystia Freeland, made an official visit to Israel in November of 2018, she spoke to the Israeli Council on Foreign Relations, a very prestigious body. Prime ministers, presidents, top diplomats, top academics, who are routinely invited to speak to that council. She delivered an address in Israel. It is a matter of public record, where she spoke about the relations between Israel and Canada. She was only a few kilometres from occupied Palestinian territory. She never used the word “occupation,” never criticized Israel for its settlement policy, or for its annexation. She was *very brief* in her speech, in the delivery of her speech, with respect a two-state solution. Essentially, what foreign ministers over the past 17 to 18 years have said in Canada, Conservative and Liberal alike, is to urge the parties to go back to the negotiating table. That’s the only solution they say.

It will not be achieved through the International Court of Justice (ICJ) or through the International Criminal Court (ICC), or through votes in the United Nations. It has always struck me as very similar to a policeman at a complaint entry desk at a police station having a battered woman, a battered wife, come in to complain about the beating that she is receiving from her husband or partner and asking for police action, and the police asking her to go back and settle things by herself. It has the very same ring to it. I think, in many ways, when Canada says it is a defender of human rights. That it believes in a global-based, rules-based system. That is standing by international law as a means to resolve international conflicts. It has a blind spot when it comes to Israel-Palestine. That, when it was meaningfully meant, it was going to apply international law. It would not have signed a new free trade agreement with Israel in the last 15 months, which did not have a human rights clause in it. Unlike, the European free trade agreement with Israel. It would not allow Israeli settlement goods to enter into the Canadian market as if it were Israeli goods. Those are two examples of the assistance Canada winds up giving to Israel, winds up deepening the occupation, not helping it to redirect on a path that will bring the occupation to a complete end.

Jacobsen: A United Nations report was published on companies in settlements, illegal settlements. 188 were reviewed. 112 met the criteria for inclusion in the formal database. Some consider this a conservative database. Nonetheless, it is coming from the United Nations Human Rights Council. So, it is coming from a reliable, authoritative, international human rights body. Canada was not in that listing. Ones that were: Luxembourg, the United States, the United Kingdom. Israel with 94 of the companies, naturally. What is the importance of such a database? What, in practical terms, can be done?

Lynk: Sure, think of it this way, the issue that we have with Israel and Palestine is not a lack of international law. International law has been pronounced by the International Court of Justice, the United Nations Security Council, the United Nations General Assembly, among other bodies for years and years with respect to the violations of international law that is going on predominantly by Israel in its conduct of the occupation. The issue is not the lack of international law. The issue is the lack of international accountability. When we think of the mechanisms we

have presently, the countermeasures the international community could use; that's available to it, in order to bring Israel back into line with international law and to end the occupation. There hasn't been that many initiated. Those that have been initiated have been by primarily the Palestinians themselves. The data is one. The International Criminal Court proceedings are an important second part or accountability measure. The database is important because it sheds a spotlight on the settlement economy. We know, given Israel's small size, heavy dependence upon international trade, that if the international community was serious about its pronouncements on international law and their application to the Israeli-Palestinian conflict. It could with effective use of countermeasures, particularly economic or diplomatic countermeasures; Israel would very quickly realize that the international community meant what it had been saying all along and bring the occupation to an end. I see the database as one small step.

If we shed a spotlight on the companies, Israeli and international companies, involved in furthering the entrenchment of the settlement economy and then international action is taken to consider sanctions against those companies, prohibitions against those companies, boycotts against those companies, then we will have done a great deed towards slowly reversing the entrenchment of the settlements in the West Bank and East Jerusalem. I think you're right regarding the database. I don't think the database had a broad enough mandate in terms of the companies that you could wind up looking at. To name a couple of examples, there is a major German company, Heidelberg Construction, which has a number of quarries in the West Bank for housing materials. They are meant for housing developments in the settlements (West Bank and East Jerusalem) and for housing and construction in Israel itself. Heidelberg was not mentioned in the database. There are two Israeli companies, which operate wineries in the West Bank: Psagot and Shiloh. They, among other places, ship their settlement wines into Canada tariff-free under the free trade agreement as products of Israel. There is presently litigation ongoing in the federal court, in the Federal Court of Appeal, seeking to mandate that those settlement products coming into Canada, namely the settle wines, should be labelled as products of Israeli settlements, not Israel. The Canadian government is leading the litigation to defend the practice of allowing these goods to come in tariff-free with the label "Products of Israel."

This probably gives you an indication of where Canada lies in terms of drawing a line in the sand. My most recent report calls for – and I will call for – is the international community to focus on accountability measures. I think the database is an important first step. It has to be continued. It has to be a living tool. It has to be properly resourced financially and staff-wise. It has to have a broader mandate, so it can look at any significant contributor to the settlement economy to be able to give out an accurate economic picture of foreign and Israeli companies; that is giving economic oxygen to the Israeli settlements.

Jacobsen: By analogy, if individuals want to relieve some anxiety or gain some temporary pleasure, they will take a toke of the cigarette. They will smoke in spite of the warning labels on the package. Similarly, if a short-term economic benefit from business finances and goods coming from Israeli settlement businesses, illegal settlement businesses, are these statements on the packaging, in practical terms, effective? Will they just be ignored?

Lynek: That's up to civil society to determine. If Israeli wines coming in from the settlements have a more accurate label on them in terms of their origin, then civil society's next step is to bring to attention discerning wine connoisseurs as to the political problems of buying Israeli

settlement wine. Certainly, that worked – you’re not old enough to know this, but this worked 35 years ago with respect to South African wines. Many wine connoisseurs like South African wines. Once it was pointed out what they contributed to, the installment of the Apartheid regime in South Africa, we first boycotted them. They wound up not being allowed into Canada. As a constitutional law professor, I finished teaching my class several cases with respect to the constitutionality and government legislation requiring mandatory health warnings on tobacco products.

We don’t probably give enough credit. But the effect of the work done by any tobacco activist over the last 35 or so years to bring health warnings into society with respect to what it means to consume tobacco products. We have significantly cut the use of tobacco in Canadian society in a substantial fashion. In part, not because we banned cigarettes, but because we introduced significant healthcare measures together with the banning of tobacco advertising, and putting graphic warnings on tobacco products, over time, they all had a significant impact, significant positive impact, on the levels of Canadians who wound up smoking. That was a major governmental effort to try to bring down smoking rates. It will have to be left to civil society on Israeli products coming into Canada from Israeli settlements. But if we get the proper labelling on the wines, it opens the door for civil society to begin to take positive action around settlement products coming into Canada.

Jacobsen: I see a split there. On the one hand, civil society comes in national forms described before. So, that’s one example. We have evidence of it. International, we’re talking civil society in terms of a lot more countries. That’s a massive scaling of that type of solution to this. It is a statement, basically, based on trust or hope rather than, maybe, a kind of stepwise extension of that kind of solution.

Lynk: When you do polling of Canadians, or polling of Americans as well, you’ll find, certainly in Canada, a significant degree of Canadians expressing the sympathy of the Palestinian aspiration to self-determination and a significant proportion of Canadians expressing criticism towards Israeli policy towards occupied Palestinian territories. That’s not reflected in elite government opinion in what our government ends up doing. I think there is a latent empathy or a sympathy towards the injustice going on in the Israeli-Palestinian conflict. What we need is more mobilization in civil society and civil society organizations that would in Canada ensure that we hold governments to account with respect to their policies towards Israel and Palestine, certainly, that’s what you see in Europe. I am impressed with activists in some of the countries that I deal with, say in Belgium, or in the Netherlands, or in Ireland, or in Great Britain, with respect to their influence on high-level political and diplomatic decision-making with respect to Israel and Palestine. Certainly, they are more effective than we are in Canada. They even have large “C” “Conservative” governments more willing to criticize Israeli settlements in the occupied territories than the Canadian government.

Jacobsen: Do countries with settler-colonial histories – New Zealand, Australia, the United States, Canada – harbour the possibility, as they, at least, develop some reconciliation efforts – New Zealand has done more than the other three? Could this then potentially be an extension from the sympathy you’re noting in some of the survey data towards the Palestinians and, maybe, a change of policy at elite levels?

Lynk: One can be hopeful. The fact that in New Zealand, as you point, and we’re going through the early parts of the conversation for the last 5 or 10 years here in Canada. There’s a greater

recognition that we are a settler-colonial population. I hear terms, particularly when I hear Indigenous leaders in Canada talk about the history and politics today that they're confronting, about the settler-colonial background or the harms of colonialism. In a way, the people who are interviewing them, generally white, do not challenge them anymore. We have moved the needle in Canada on the hugely adverse impact European colonialization had on the Indigenous population and continues to have today. At some point, I would like to think that as we make stronger and stronger links here in Canada between European settlement and Indigenous populations and the harms done to the Indigenous populations; that we will make the same parallels with respect to European colonization in Palestine in the first part of the 20th century and the harm done there to the Palestinian population, and particularly with respect to the harm being done to the Palestinians in the occupied territory since 1967.

Jacobsen: What is the status at present of the moves being made by the Chief Prosecutor of the International Criminal Court, Fatou Bensouda? How are things proceeding?

Lynk: Right now, we are at an interesting stage. She is finished her preliminary review. She thinks there is enough evidence to move forward with a formal war crimes investigation, into the Israeli conduct in the 2014 war on Gaza with respect to the Israeli shooting of largely unarmed Palestinians since March, 2018 at the Gaza frontier, with respect to the settlements, and with respect to the conduct by Hamas and other armed groups within Gaza in shooting rockets into populated Israeli civilian areas. She said there is one procedural question, the jurisdictional question, which needs to be answered by the pre-trial chamber. It is about whether Palestine is a state for the purposes of the 1998 *Rome Statute* in order to be able to join the *Rome Statute* and to be able to initiate a request for an investigation of war crimes committed in occupied Palestinian territory. Because of the coronavirus, there has been a delay in the submission of various written arguments to the pre-trial chamber. So, what we were hoping for was an answer by May, it may well be delayed into the Summer. But there is a hope that it will be the Summer when the pre-trial chamber may issue a ruling on the jurisdictional question.

If it rules in favour of what the Chief Prosecutor has asked for, i.e., there is jurisdiction at the International Criminal Court to investigate. Then it will proceed to the formal investigation stage. If she says at some point down the road, "I have enough evidence to proceed to trial. We're going to charge these individuals." Remember, the International Criminal Court's focus is on individual war crimes, not states. If she says, "I will identify these military leaders, militia leaders, or political leaders." Then it will proceed to the third and final stage, which is trials before the International Criminal Court. That's the other major accountability measure actively in place at the present time. Certainly, I think it will have military and political leaders worried in Israel. Certainly, Israel has been trying to coordinate, the government of Israel has been trying to coordinate, its reaction to the Chief Prosecutor's stance towards the United States. The United States, presently, has made it very clear. Even though, it is not a member of the International Criminal Court; that it will do what it can do to thwart the ongoing proceedings involving the Palestinian complaint against Israel. To me, what is going on at the International Criminal Court, perhaps, at the moment, the most important accountability measure. We won't be expecting the cavalry coming in from the General Assembly [Laughing] or from the Security Council to bring a positive end to the occupation.

It will have to come from the Palestinians themselves on the international diplomatic and judicial front and/or by civil society organizations, such as the launch, in Canada, of the wine labelling

case. Those are the kinds of initiatives that we wind up needing to hold Israel up to the full extent possible for its ongoing defiance of international law and international consensus.

Jacobsen: Even if all of these measures are put in place, come to fruition, e.g., labelling of goods in the wine case, the court case going through the charging of particular individuals through Fatou Bensouda at the International Criminal Court, more reportage with more straightforward commentary with shooting at the kneecaps of journalists, medical personnel, civilians, children, and so on, there have been reports, for some time, at least 2015, probably earlier, about the unlivability of the Gaza Strip in which 2,000,000 live. Is there enough time even if these are put in place for some form of sustainable dignified livelihood?

Lynk: Gaza, in 2012, the United Nations released a report raising the question as to whether Gaza would be livable by 2020. We are there now. It released a subsequent report in 2017 on Gaza, saying, ‘Almost all of the social and economic and health markers had gotten worse since 2012.’ So here we are, 2020, I think, probably, somebody could make a very good argument that Gaza has become rather unlivable. No, there isn’t starvation there. Yes, there probably would be hunger and starvation if it weren’t for the international community. The money support from UNRWA’s operations. Money coming in from Qatar. Money coming in from the European Union. The money coming in from Turkey, which just built a brand-new hospital in Gaza. These are all important humanitarian gestures, but these are not bringing the Gazan-Palestinians any closer to salt land. They are keeping its head above water and not allowing it to go underwater with respect to this. Gaza has a collapsing healthcare system. It has regular supplies of power for only 10 to 14 hours per day. It has among the very highest unemployment rates of any economic unit that the World Bank winds up following. That’s despite having a fairly well-educated population, particularly well-educated younger population. It is ruled by Hamas with other Palestinian militias there, which are cruel and wind up ignoring human rights issues – have serious human rights violations of their own. But the primary issue has to be the almost 13-year-old massive blockade that Israel imposes on the Gaza Strip. It blockades Gaza by land, by sea, and by air. Nothing and nobody gets in, and nothing and nobody gets out of Gaza, except without Israeli permission.

That means with a collapsing healthcare system. Palestinians who are too sick to get care in Gaza, e.g., may get sick from cancer, have to seek permission from the Israelis to travel from Gaza to Palestinian hospitals in East Jerusalem or the West Bank to wind up dealing with those particular issues. Israel has had a recent record documented by the World Health Organization that it winds up denying a significant number of those applications. I believe the year was 2017, may have been 2018. But there were 54 Palestinians from Gaza who had applied to have travel permission from the Israelis to go to Palestinian hospitals in East Jerusalem or the West Bank who needed treatment and winded up dying. It is impossible to say whether their lives would have been lengthened had they received permission to go. But certainly, it is an indictment that those people couldn’t go in the first place when they, obviously, were making applications based on the fairly serious nature of their health. There has been an inability of Palestinians in Gaza to import high-tech machinery to conduct some of the high-level healthcare. Because the Israelis would refuse to allow some of the healthcare equipment in because it may be used for “dual-use.” It may have a military use as well. So, the Palestinian hospitals are not only relatively ill-equipped due to a shortage of doctors and nurses, but also ill-equipped due to a shortage of

equipment to do diagnostics. Equipment to do radiation. Drugs to do a wide variety of health treatments. Basic health equipment, as well, such as gauzes and masks. These have all, at one time or another, been in short supply in Gaza in recent years in large part due to the blockade and the need to obtain Israeli permission for every single item that winds up coming into Gaza.

Jacobsen: Also, we're in the midst, based on the World Health Organization statement, of a global pandemic. Something comparable, apparently, to the Spanish Flu of 1918/1919. In other words, this is a once-in-a-century occurrence. It is surprising to many, but ongoing. This is SARS-CoV-2 giving symptoms of COVID-19 or C-19. With this verge of collapse or extraordinarily inadequate healthcare system situation for the Palestinians in general, if SARS-CoV-2 does spread in the occupied Palestinian territories, what would be a predictable outcome?

Lynk: Sure, keep in mind, we talk about the occupied Palestinian territories. We're talking about three different geographic areas ruled by three different authorities and have three different standards of living. But all of them all well, well, well below the Israeli standard of living: Gaza, East Jerusalem, and the West Bank. There are hospitals in East Jerusalem. There are hospitals in the West Bank. They can give care comparable to a lower-middle-income country. They don't have the budgetary resources or the staff resources, or the equipment resources, to handle a large-scale pandemic. If COVID-19 ends up getting a deep grip into West Bank society, things are even worse in Gaza, where the annual per capita income the West Bank would be somewhere, probably, in the range of \$3,000 or more than \$3,000 per year American. It is probably a little more than \$1,000 in Gaza and has been declining over the last number of years, ever since the blockade was imposed. The big worry, in Gaza, is the 2,000,000 with a small stretch of land with an entirely inadequate healthcare system that is extraordinarily under-resourced. That, in terms of the specifics of COVID-19, the inability to be able to test, let alone effectively treat, let alone effectively isolate, let alone have enough ICU beds, that would wind up managing a crisis if there was a stampede going to the hospitals. Gaza has had weeks and weeks of preparation.

Keep this in mind, the international community still considers Gaza to be occupied territory. Even though, Israelis, actually, left or moved its army more than 15 years ago. It is still occupied territory. Israel still has a number of responsibilities under the *Fourth Geneva Convention*, including significant health responsibilities to ensure that epidemics don't take hold and that there is a satisfactory level of healthcare provided to the people there. That means Israel would have responsibilities that there are adequate treatment facilities there, adequate drugs, adequate materials such as gloves and masks, and of other forms of equipment and, maybe, even ensuring that there are adequate numbers of staff who are there to, maybe, respond to COVID-19, should it take hold in Gaza. So, the worries, I have read a fair amount on COVID-19 and Gaza. All of them are expressing concern or alarm as to what would happen there. It hasn't happened yet. But we do know COVID-19 doesn't obey boundaries. We know the persons with COVID-19 have already appeared in Gaza. All we can do is hold our breath and make sure that it doesn't find itself entrenched in there. Also, that pushes Gaza and the international community to make sure there are enough people and medical goods to deal with COVID-19 should it attack Gaza.

Jacobsen: Some of the secular community, in spite of that is all said and in other interviews and in publications over decades, attempt to simplify the entire Israeli-Palestinian issue or the entire Israeli-Palestinian conflict to religion. This seems, if I am frank, extremely

ignorant and... other things. When talking to Richard Falk, who held the position before, as we both know, he speaks of a notion of “biblical entitlement” as part of the issue. What role does religion or even biblical entitlement play in this overall issue?

Lynk: I think he is probably correct in the identification of that term. Certainly, Jews who have been part of the movement to Israel and the establishment of the state of Israel and the occupation after 1967. Some Israeli-Jews have used religion as a justification that the Bible is a form of real estate deed to be able to claim sovereignty over the mandate Palestine and, perhaps, beyond those boundaries. At the end of the day, I think religion winds up being a smokescreen or an argument to use, but what is fundamentally at work here is human rights and the denial of human rights. I remember when I first became aware of the Israeli-Palestinian conflict when I was going to McGill for graduate work in the mid- to late-1970s. I encountered young, very liberal American Jews studying at McGill in those days who were joining committees in support of Palestinians. To me, that was an eye-opener. It was an astonishing revelation that this wasn't a struggle over ethnicity, ultimately. It wasn't a struggle over religion. If young American Jews could wind up thinking through the particular issue and identify what was missing as the bottom-line harbinger of conflict was, then it was a struggle *over rights*. Then it seemed to me anybody could wind up identifying that. Certainly, I feel reinforced by that today in my role as Special Rapporteur when I deal with progressive and liberal Israeli organizations and individuals who wind up spending a large part of their professional life or their personal life agitating against the occupation and wanting to seek some kind of just, fair, equitable settlement based on international law and based on mutual respect between Israelis and Palestinians. Let's face it, there are approximately 13,000,000 predominantly Israeli Jews and Palestinian Arabs, Muslim and Christian, who live between the Jordan River and the Mediterranean Sea. Neither is going anywhere.

The only long-term hope for any of them is to find a way of living equitably under the rule of law with a deep respect for human rights and a finding a way of developing a constitutional order, whether a two-state or a democratic one-state, for them to live in prosperity and harmony with one another. I think when there finally is a respect for human rights in Israeli society, in Palestinian society, and between Israelis and Palestinians; you have the basis for a cooperative society or a cooperative two societies living either with each other or side-by-side each other. It would probably be a model for the rest of the Middle East. That's where my hope winds up going to, probably because I am so immersed in the issue of human rights. I see that as a primary issue that supersedes what religious differences there are and what ethnic issues there wind up being. Because at the end of the day, in a world that's divided by religion, by class, by ethnicity, it is a human-made phenomenon, human rights and international law, that have the best chance of bringing us together. International rights and international relations, the spine of these are international law. The heart of this international law is international human rights law and international humanitarian law. If those wind up being respected and wind up putting curbs on avaricious behaviour on either Palestinians or Israelis, then they have a chance of finding themselves in an orderly, equitable, and just society or just societies. That will learn to use whatever tensions are between them in a cooperative and positive way rather than in an almost entirely negative way as it is right now.

Jacobsen: Some of the advice given to you, prior to entering the position, from others who held the position before, e.g., Richard Falk and John Dugard, etc. They mentioned one thing in particular, which is to be fearless. Why?

Lynk: [Laughing] They, actually, said two things to me. I would be curious where you found that.

Jacobsen: One was fearless. The other one was to make sure that, basically, what you say is as robustly substantiated as possible.

Lynk: Right, that was given to me by Richard Falk. Richard said to me. It's the best. He and John Dugard gave me lots of words of very wise advice. But the best advice of all was to be fearless on the one hand. That I should stand up for human rights when I see them violated. That I should be outspoken in my defence and my advocacy for that. But he said the other thing was to be responsible. In that, to make sure that when you make a criticism or make a defence of human rights, I'm basing it on well-documented events and evidence. That I can back up what I wind up saying. That's the best advice for a whole range of different things that you want to do in life that Richard wound up giving me. When I sit down to write a report, to give a press statement, to sit down to speak to governments, to sit down with civil society organizations, or other academics with respect to my work as Special Rapporteur, "fearless" and "responsible" govern virtually everything that I wind up saying.

Jacobsen: In terms of the responsibility and in terms of the fearlessness, granted, many have come before. Many have come under a lot of pressure. I'm sure. We're both aware of several cases on that front. To those who document human rights violations and advocate human rights violations, in this particular issue, if someone critiques Israeli policy as a violation of international human rights or of international humanitarian law, they can be charged as an anti-Semite. In other words, they are given the charge of anti-Semitism. Or if someone is not of Jewish background, they have an Arab background. Then they can have a charge of being biased because of having an Arab background. What are the appropriate responses to both of those charges?

Lynk: I think it is to hug international law as much as possible. I am not saying this just because I am a lawyer. Because there are many people who do very good work on law, international law, with respect to Israel and Palestine who are not lawyers, but who understand the legal framework is the one common human-made platform that we've all wound up creating; that every country, at least on paper, is committed to wind up obeying and putting into practice. If you can show that you are operating from international law, and in particular human rights law and humanitarian law, you apply that in the analysis that you wind up conducting on Israel-Palestine. Then you end up putting yourself in as irreproachable a position as you can with respect to the inevitable criticism that will come back. John Dugard has been heavily criticized for his claim for apartheid. Boy, there are not many people on the planet, given his background (South African), who would know better what apartheid looks like than him. Richard Falk, particularly Richard Falk perhaps, because he is Jewish as well as a phenomenal human rights lawyer and scholar. He gets inevitably attacked for his views and because he is probably seen as defying organized Jewish community – not consensus because the Jewish community in Canada, the United States, and elsewhere (in particular on Israel and Palestine) – and institutions have been fierce in their criticism of him. [Laughing] I can only imagine how much that winds up hurting. Myself, I was

criticized when I was first given this appointment by the current government, the new liberal government in Canada by the Foreign Minister.

Jacobsen: Also, this is in spite of unanimous voting from the United Nations Human Rights Council.

Lynk: Look, I wouldn't have taken this position without knowing what the blowback could potentially be. I am not naïve to wind up thinking that you could criticize Israeli practices in the occupied territories without some people have a strong contrary view to who you are, what you're saying, and what your motivations may wind up being. As long as I can attach myself to excellent Palestinian civil society and Israeli civil society, and international civil society reports and advocacy on this, as long as I can document my critical commentary with respect to the growth of the settlements, with the rise of annexation in the air, with respect to the lack of accountability being demonstrated by the international community towards Israeli practices, and base that all on what we commonly agree is out litmus test – international human rights law and international humanitarian law, then I have gotten thicker skin, certainly, in the last four years, but I can wind up living with what I wind up putting up. Obviously, I want to find language that will get the greatest number of people to pay attention to what I am writing. I try to do that. But I also try to do this in a manner that doesn't downplay the very real patterns of human rights violations that are ongoing there. They have to be called out in that way.

I am lucky. Certainly, when I go to Europe, when I go to Geneva to the United Nations, or New York and meet people from the United Nations, doors open for me. I get to meet high ranking diplomats, civil society organizations, and top scholars, with respect to this. I get fairly prominent platforms to speak at universities and through the media on this. It's a wonderful privilege that I have to be able to do this. But as we find out a few minutes ago, I get to do this. I try to be as fearless [Laughing] and responsible for putting forth what I think is the truth and the stance of international law to examine Israeli practices and, sometimes, Palestinian practices as well.

Jacobsen: Israel had an election.

Lynk: Had many elections [Laughing].

Jacobsen: [Laughing] Right, I was about to say, "Another election." A surprise to many was the alliance, coalition, joining of Benny Gantz of the Blue and White Party and Benjamin Netanyahu of the Likud. Also, the Joint List had more seats than ever before with 15 out of 12, which is 2 more than before. What is the stance of this new partnership on oPt?

Lynk: If you'd asked me last week, and if you ask me a week from now, the politics in Israel seem exceptionally fluid, even more than regular Israeli politics.

Jacobsen: [Laughing].

Lynk: All I can say, as to the latest of what I've wound up reading; Benny Gantz has been tempted into a coalition government with Benjamin Netanyahu. It split his own party. It split the other minor Jewish party on the left, which is the coalition between the Labour Party and Meretz. Where two members, I believe, of the Labour Alliance are going over into the government as well, the issue, right now, seems to be everyone using the argument, 'Oh, we need an emergency national government because of the COVID-19 challenge to Israeli society.' But, certainly,

Prime Minister Netanyahu is saying, ‘As a condition for joining the government, you have to agree to some form of annexation coming up. It was part of my promises in the last 3 elections. Certainly, it is within my own party and the parties right of Likud. They all expect annexation measures to be taken for this coalition government.’ Who wouldn’t expect that? He not only has his own 58 seats all expecting annexation. But certainly, there are annexation drives by other parties to the left of Netanyahu that were elected. Also, he has the American government on the annexation side as well. We will see in the next couple of days what the ongoing negotiations are to complete a government.

There are subtle issues still left to be resolved. But the pressure from the Israeli right, which is substantial – has a substantial size in the Israeli Knesset – is saying, ‘Look, we may not have this chance again for the next foreseeable future, where with an American president who has endorsed a plan named after him, substantial annexation of parts of the West Bank for all of the Israeli settlements, all or almost all of the Jordan Valley. After January 2021, we cannot waste this singular opportunity to be able to go forth and annex.’ My sense is how Benjamin is a much more skilled political operator than Benny Gantz, than any Israeli politician in government now. We are getting very close to annexation now. That’s what I am expecting will be the final core in the agreements among all the different parties. I know one thing is who gets what Cabinet post. The policies that will guide this government over the next 18 to 24 months; I would be surprised if immediate annexation was not part of the agreement.

Jacobsen: What about the oPt side? What are some of the violations that we’re seeing from Fatah, from Hamas, from the Palestinian Authority?

Lynk: Sure, some of them have to do with torture, arbitrary arrest, with respect to the degree of surveillance on their own populations, with respect to probably or particularly the need for democracy. They lack democratic institutions. They are 14 years into a 4-year mandate. They haven’t had elections. I want to acknowledge the difficulty in trying to organize elections when you don’t have control over East Jerusalem and don’t have control over Gaza and don’t have control over large parts of the West Bank. The Palestinian Authority has control, full military and civil control or security control, over 18% of the West Bank. Basically, the large Palestinian cities, they share security control with the Israelis over another 22% over Area B. Over Area C, which is 60% of the West Bank, that’s over sole Israeli military and security and political control. So, holding elections, it is a great challenge and a great difficulty. I think the reason why you don’t see a greater international push for Palestinian elections is that they might wind up being content with the leadership that’s there now. You have a Palestinian leadership that wants to see a resolution. You have a Palestinian leadership in the West Bank not engaging in violence against Israeli settlers and the Israeli military. Yet, also, you have a Palestinian Authority, which is pretty much hemmed into a pretty very area. Not unlike Gaza in the 18% of the West Bank that they wind up controlling, keep in mind, the West Bank is 165 different islands of control under the Palestinian Authority. It is completely surrounded by Israel. They have no ability to be able to go into Israel.

Palestinians in the West Bank, they have no ability to go into Jordan across the border, except with Israeli permission. Many of the blockade measures mentioned about Gaza also exist in the West Bank as well. But as much as they can, you would expect the Palestinians would have greater international legitimacy and greater legitimacy with respect to their own people if they were able to have *bona fide* elections to be able to renew their political leadership. That seems, to

me, as a significant issue with respect to human rights and democracy going to the Palestinians. With respect to Hamas, it is worse. They hold no elections. Even though, there is nothing preventing them from holding elections in the Gaza Strip. They are blockaded externally, but do have some control within Gaza. They have some control to hold elections if they wish. It diminishes their ability to be able to claim to speak on behalf of the Palestinian population by not having elections either. To me, those are basic democratic rights; the Palestinians, in soccer, it is an “own goal” by not trying to pursue the establishment of elections and democratic institutions and popular control over their political leaders.

Jacobsen: Other phrases or terms coming to the public, come in more dramatic statements or news, or press releases, etc. In the media, we will see phrases like “terror tunnels,” “Iron Dome.” We will see terms like “rockets.” What is the reality on the ground, for instance, of the efficacy of the Iron Dome for Israel? What is the reality of terror tunnels? Are these rockets coming from Gaza, for instance, being launched at Israel truly rockets in any conventional military sense?

Lynk: Sure, with respect to the rockets, whether or not they’re – and you say, ‘Rockets in a conventional sense,’ certainly, they have the power to damage. A lot of them are being shot into, and this is part of the negligence of this, from Gaza into Israel. Some of them reach Israeli civilian territory. You could argue that these are the places that these are meant or intended to land. If you send military shells or rockets onto a civilian population indiscriminately, that, certainly, is a war crime. I do not have a hesitation using the same standards to say, “Those are wrong. Those should be investigated by the International Criminal Court. They should be tried. If convicted, they should be punished because of that.” We also have to acknowledge that there is an *extraordinary* asymmetrical relationship militarily, economically, and politically between the Israelis and the Palestinians, more specifically between Israel and Gaza. Whenever damaging rockets can be launched from Gaza and can land in Israel, and have the potential to do harm for Israeli citizens, the Israeli military’s ability, in terms of their possession of advanced state of the art rockets, planes, artillery, tanks, and so on, *far* outnumbers what the Gazans can wind up doing in return.

We have seen that in the wars in 2008/2009, 2012, and 2014, and the periodic retaliation Israel may launch against Palestinians when rockets come out of there. Their firepower, their ability to cause huge civilian tolls in terms of wounded and dead, and damage and destruction of civilian centers such as homes and organizations and hospitals, is extraordinary in comparison to what the Gazans are capable. We have to keep this in mind with respect to this. Anyone who ends up firing in a disproportionate way at civilians is guilty or likely guilty of a war crime. That’s whether or not you are a Palestinian Hamas Jihad supporter or an Israeli military/political leader conducting that as well.

Jacobsen: This would be the “hugging” of international law. What have we not covered?

Lynk: If you have one more question, I am happy to cover it.

Jacobsen: Who/what would you consider some of the more robust authoritative objective, in as much as that is possible, organizations, or authors, or speakers on the Israeli-Palestinian issue?

Lynk: When I think of civil society organizations that I work with; this is not an exhaustive list. I think extremely highly of B’Tselem and Gisha. I have regard for the work that they wind up

doing. On the Palestinian side, I think of Al-Haq. I think of the Palestinian Human Rights Center. I think of Al-Mezan. I think of many others. In Israel, I think of Adalah, which fights for Palestinian-Israeli citizens of Israel to fight for their human rights. The Israel Association for Civil Liberties is an organization whose work I follow and admire internationally. Obviously, Amnesty International and Human Rights Watch do extraordinarily good work with regards to Israel and Palestine. If someone was interested in wanting to explore the issues of human rights and how leading organizations apply those standards to the Israeli-Palestinian conflict, I cannot think of better organizations for exploring their advocacy, and their reporting, than the organizations that I've just listed.

Jacobsen: Thank you for the opportunity and your time, Michael.

Lynk: Very well, Scott, thanks very much for this, you're obviously well, well informed on this. I rarely come across an interviewer as deeply informed, and to have the pleasure to be given such thoughtful and wide-ranging questions as you've done. I am really pleased that you're interviewing people like Richard Falk, John Dugard, among many other people. If I can do 1/10th of the quality of the work that they have done as Special Rapporteurs, I will have this on my tombstone and be very happy. They are extraordinary people. You are aware of the other organizations as well. It is all the people's work who I end up cheering on. So, I'll cheer on your work as well.

Jacobsen: Thank you, sir.

Lynk: [Laughing].

Conversation with John Dugard, Richard Falk, and S. Michael Lynk on the Role of the Special Rapporteur, and the International Criminal Court & Jurisdiction

August 6, 2020

As far as I know, this is the first live group conversation between Professor John Dugard, Professor Richard Falk, and Professor S. Michael Lynk. As such, the subject matter became narrowed to the positions held by Dugard, Falk, and Lynk, and the current context before the International Criminal Court regarding jurisdiction.

Professor John Dugard is the Fmr. (4th) United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967 (2001 to 2008). He is Professor Emeritus at the Universities of Leiden and the Witwatersr, who remains one of the most important legal and investigative voices in the history of rights and law reportage for the United Nations on this issue of Israel and the occupied Palestinian territories.

Professor Richard Falk is the Fmr. (5th) United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967 (26 March 2008 – 8 May 2014). Professor Falk is Albert G. Milbank Professor of International Law and Practice, Emeritus, at Princeton University, the Director of the Climate Change Project, and an Advisor on the POMEAS Project in the Istanbul Policy Center at Sabanci University. He is widely revered as one of the great legal minds in the world today, especially on the issue of Israel and the occupied Palestinian territories, and reviled in other circles as well.

Professor S. Michael Lynk is the current (7th) United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967 (March, 2016 to Present). He is an Associate Professor at the Faculty of Law, Western University, in London, Ontario, who works in one of the most important legal and investigative positions in the history of rights and law reportage for the United Nations on this issue of Israel and the occupied Palestinian territories.

Their – Dugard’s, Falk’s, and Lynk’s – importance in the legal and rights history of this subject matter cannot be understated. In many ways, they set the tone and calibre of human rights and international humanitarian law reportage to this day. As well, this exists as a conversation with the current United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967 and two of the former special rapporteurs. The position of the United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967 isn’t, and shouldn’t, be taken lightly based the depth and length of the human rights issue, and on the level and extent of state and other actions one can encounter against oneself in the position devoted to this long-standing human rights catastrophe seen on the Israel-Palestinian issue. With great pleasure and honour, I present the extensive and narrowed live group conversation with Professors Dugard, Falk, and Lynk.

Here we talk about the role of the United Nations Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967 and the International Criminal Court in regards to jurisdiction.

Interview conducted on May 1, 2020.

Scott Douglas Jacobsen: So, let's begin, this is a 4-way conversation with John Dugard, Richard Falk, and S. Michael Lynk discussing some narrow topics concluding on the International Criminal Court jurisdiction question based on some recent news put out by Fatou Bensouda. Starting with John, beginning, how do you view your prior role as a special rapporteur?

Professor John Dugard: I placed this question on the agenda because my role was so very different from both Richard and Michael because I was allowed to enter the occupied Palestinian territories. So, my role was that of a factfinder. I visited the occupied Palestinian territories twice a year for ten days each. I spent all of the time travelling around the country visiting not only the cities, but also the rural areas and taking evidence from people whose homes had been destroyed. In 2002, for instance, I was shown the beginnings of the Wall. There were stones marking the beginning of the Wall. I alerted the United Nations that the Wall was about to be constructed. My role was very much that of a fact finder on the ground. My reports were, in large measure, reporting what I had seen, and what conversations I had had with ordinary people in both urban and rural areas. Of course, I saw the political leaders too. I had access to the leaders of the Palestinian Authority. Yasser. Arafat gave me an open door as most foreign diplomats were boycotting him at the time. He was delighted to see me. Many members of the small communities I visited liked to see me as representing the United Nations. They tended to believe that I could remedy their situations. I always felt it embarrassing because many Palestinians believed I could change their lives but I could not. The United Nations was fairly oblivious to the reports from me. I also saw my role as that of advocacy, which I suspect is the way Michael and Richard have seen their roles. I reported on the violation of human rights and international humanitarian law. I argued strongly that the occupied Palestinian territory was subject to a system of apartheid. So, this was my role, as I saw it.

Jacobsen: Richard, how about yourself?

Professor Richard Falk: *I did my best to continue in the spirit very successful tenure as Special Rapporteur. I had the disadvantage from, more or less, the outset of being a target of opposition by the governments of Israel and of the United States, and by the fiercely Zionist NGOs in Geneva and New York. This produced a situation in which my first attempt to enter, as John had done previously without incident, the occupied Palestinian territories resulted in my expulsion, and detainment in a prison near Ben Gurion airport. It seemed clearly, not so much a personal attack on me but, a signal to the United Nations that if they appointed someone to whom Israel had objections, there would be adverse consequences, including signals of non-cooperation. They objected to me from the outset. Not only would they refuse to cooperate with the United Nations, but they would make life as difficult as possible for whoever tried to carry out this investigative role on behalf of a UN agency, which they were bound by treaty to respect. My expulsion was at the time a particularly newsworthy event that surprised UN officials because we had submitted our itinerary to the Israel ambassador in Geneva advance without encountering opposition. Visas had been granted to the two people accompanying me. So, the people in Geneva were convinced that I would have no trouble entering Israel for purposes of carrying out the UN mission. As I had been so viciously attacked when appointed, I was more skeptical and hesitant to come from California only to be expelled. So, I am convinced that my impression is correct— Israel wanted to send a signal of non-cooperation with the United Nations to the extent that individuals perceived as critics who were appointed to be Special Rapporteurs*

in the occupied Palestinian territories would encounter endless difficulties. As a result, my missions were lacking the direct experience with people and conditions on the ground in occupied Palestine that were such an important aspect of John's contributions. In contrast, I, and Michael after me, was confined to the neighbouring countries. I listened to the testimony to those who resided outside Palestine, or could cross the border and meet with me in Jordan, Egypt, and Lebanon.

My tenure coincided with the Arab Spring that unfolded in my last few years as SR. After the peaceful overthrow of the Mubarak government in 2011, it became theoretically possible to enter Gaza by way of Egypt, although obstacles of various sort remained. After several failed attempts, I managed to do this in 2012. It was the only time during the six years that I was able to set foot in the occupied Palestinian territories as a representative of the UN. This was my only experience of direct access to the occupied Palestinian territories. I had been throughout the occupied territories previously in my role as academic and public intellectual, but never while I was Special Rapporteur. To reiterate, my contribution substantively was an endeavor to continue the work John initiated so effectively. My central intention, aside from reporting on development bearing on human rights, was to alter somewhat, the parameters of discourse on the occupied Palestinian territories within the United Nations and among civil society NGOs. I reinforced John's influential characterizing of the situation in Palestine by indirect, although explicit reference to apartheid, not as in South African but as descriptive of the manner by which the West Bank was being administered under occupation. John also introduced the concept of settler-colonialism to describe the overall relationship between Israelis and Palestinians living under occupation. Combined with some subsequent developments with which I was involved, the allegation of apartheid became normalized in discussion of the essential nature of the occupation. It was a more realistic way of talking about the relations of Jews and Arabs. This was a change in mainstream debate. Previously charges of apartheid were rarely encountered outside of radical student activism supporting the Palestinian. Even when I became SR it was not acceptable to refer to apartheid within diplomatic circles when talking about Israeli wrongdoing as an occupying power within the provenance of public international law. The United Nations has an unappreciated role as legitimating certain ways of describing controversial situations. This role continues to have an impact during the period that Michael has been dealing with so effectively. It is what I have written about in the past under the heading of 'legitimacy wars,' which are often resolved in the meeting rooms of the UN rather than on the battlefield.

Professor S. Michael Lynk: *As you can tell, I do my work on the shoulders of two giants. Both in human rights law, generally, and as special rapporteurs who were exemplary in their analysis with respect to what was happening in the occupied Palestinian territories. I, like Richard, have been granted access to the occupied Palestinian territories. Unlike Richard, I do not even get to go to Gaza. Any requests made to get to Gaza through Egypt has been strongly discouraged by the United Nations and by Egypt with respect as to how to travel across the Sinai with respect to the unstable security situation there. So, I go once a year to Amman (Jordan) and a number of officials from the Palestinian Authority, the various United Nations offices in the occupied Palestinian territories, and various Israeli and Palestinian human rights groups will meet me, in Amman. Or, I will Skype them. I am also constantly in touch with a number of civil society organizations in Israel and Palestine, regionally and internationally, with respect to their analysis of what is happening in the situation. Often, I have said to people who talk about my inability to enter the occupied Palestinian territories.*

I have two answers. I lived there six months a long time ago in 1989 working for the United Nations during the first Palestinian Intifada working out of Jerusalem while going to all of the refugee camps. I have a feel for the topography and the human rights conditions there, albeit somewhat dated. Secondly, I have kept constantly in touch with that since; I think Richard and John would agree with this. There is probably no long-lasting conflict in the world that is as so well covered, so well reported upon, and so well advocated about by civil society as the Israeli-Palestinian conflict. While my Plan A, as with all of us, would have been to spend time in the occupied Palestinian territories, a close Plan B has been to work with the civil society organizations to give me the benefits of their advocacy and to use it, which I use throughout all my reports, comments, and statements. It means, I think, that the human rights situation, which I can work on today, is reflective of the events on the ground in Israel and Palestine with respect to the occupied Palestinian territories.

Falk: *One point, I have to mention. One advantage I had as a result of not being able to get to the occupied Palestinian territories and thus spending time each year in Egypt, Jordan, and elsewhere in the region, was the opportunity to meet several Hamas leaders. It was interesting because of their way of expressing their condemnation of the human rights situations in Gaza and the West Bank, coupled with their seemingly strong support for negotiating a long-term ceasefire lasting up to 50 years. Unlike public dismissal of Hamas as nothing more than a terrorist wing of the Palestinian struggle I found the individuals I met with to be thoughtful, informed, and given to reasonable proposals that moved in the direction of a peaceful resolution, not of the ultimate disposition of Palestine, but of working toward some alternative to the confrontational relationship that has existed, especially in Gaza ever since 2006 elections, which were followed by a harsh and unlawful blockade that has lasted almost 13 years and further inflamed by periodic massive military incursions and almost continuous military harassment.. These contacts were important for me, personally. It enabled me to understand more fully the complexities shaping the overall politics of the situation, which included, at that time, sharp tensions between the Palestinian Authority leadership and the Hamas leadership, and a resultant international projection of Palestinian disunity.*

Dugard: *To Richard and Michael, did you have any difficulties meeting with the leaders of Hamas from the perspective of the United Nations? I say this because when I was in Gaza on one occasion I met with the Prime Minister of Gaza, Ismail Haniyeh, the head of Hamas in the territory at that time. There were strong objections from the United Nations based on meeting an official from Hamas. It was the policy of the United Nations not to speak to a leader of Hamas. I ignored this. I was surprised the United Nations tried to pressure me not to meet with the leader of Hamas.*

Falk: *I did not seek permission from the UN, and the meetings were arranged outside of my itinerary at the initiative of Hamas, and were not reported on in my official presentations at the UN. I do not recall direct objections from the United Nations. There was strong pushback from the Palestinian Authority. They tried to suppress my early reports. They urged me to resign too. They spread some rumours about my non-existent medical problems, which were supposedly preventing me from carrying out the work of the mandate – and a series of other things. My problem resulting from the meetings, which were as I say informal meetings. Unlike John, I did not try to meet the formal leadership in Gaza although I had some friendly and helpful contact during my 2012 visit. I did meet with Mashal, who was, in some ways, at that time, considered*

the most important Hamas leader, but this happened in Doha where I was a speaker at a conference, and not in any way part of my work as SR. There was a second person in Cairo who was considered, at least, as important as Haniyeh, who was the actual lead administrator in Gaza. The United Nations people accompanying me did not try to interfere with these meetings. Also, it would not be accurate to say that, they encouraged them.

Lynk: *I have not had the opportunity to go to Gaza in my capacity as the special rapporteur. I have not met with Hamas nor had to seek a meeting with Hamas. In my dealings with respect to Gaza, I am exclusively dealing with either Israeli or Palestinian civil society organizations. I have not tried to reach out to Hamas.*

Falk: *In my case, they reached out to me. I did not have to take the initiative. They arranged rather complicated logistical ways of making contact, particularly in Cairo, and in Qatar while I was in Doha.*

Jacobsen: **John, what was the main focus when entering into the special rapporteur role during tenure?**

Dugard: *My primary role was that of factfinder. I was the special rapporteur during the Second Intifada. I was, to a large extent, caught up in much of the violence when I visited the occupied Palestinian territories. I attempted to report on what I had seen there. My focus of attention in the West Bank was largely on the construction of settlements and the demolition of houses, especially for political reason. The restrictions of movement were particularly severe during the Second Intifada. When I was in Gaza, there were still Israeli settlements there at the time. I spent a lot of time speaking to Palestinians who had complaints about settlers and talking to people who had been subjected to violence. On one occasion when I visited an UNRWA school in Gaza city I listened to the counselling of young girls whose friends has been shot in one of the many of IDF attacks on Gaza city. My focus was on international humanitarian law in respect of the attacks on civilians and civilian targets, and then, in the West Bank, on settlements and demolition of houses and restriction of people's movement.*

Jacobsen: **Richard, when gathering that baton, what was the central focus carrying forward for you?**

Falk: *It was not much different from John. However, I did not have much occasion for direct witnessing or experiencing conditions on the ground. Similarly to Michael, the way I gathered information was to make comprehensive use of public sources and accessible knowledgeable persons in relation to the main issues in tension. In this period, 2008 to 2014, there were two major military incursions, 2008/09 and 2012, into Gaza. (the 2014 incursion, perhaps the most devastating of the three occurred after my term expired in May), which were very important international developments with all kinds of ramifications for the way in which security was being pursued by Israel, and perceived internationally. After 2005, in Gaza, there was a big dispute as to whether the Israeli disengagement meant Israel no longer was in a position under international humanitarian law of being an occupying state ("Occupying Power"). I tried to address this by agreeing with the international and United Nations consensus that concluded that the idea and implementation of 'disengagement' did not alter the status of Israel as the Occupying Power with its attendant legal responsibilities. Elaborate assessments about the degree of effective control Israel exercised over activities both within Gaza and at the border*

that rigidly regulated the entry and exit of people and goods, as well as exerting direct control over Gaza airspace and access to Gaza from the sea.

So if on balance, the intrusion on the normal existence of the population living in Gaza was greater after this disengagement in 2005, which was misrepresented, in my view, to the international community as a step toward peace and the failure to achieve a peaceful relationship with Gaza. It was more like, in my judgment, a flagrant and continuous violation of Article 33 of the Fourth Geneva Convention that unconditionally prohibited 'collective punishment.' There were disputes about the rockets. Were the rockets retaliatory? Were the rockets fired at the initiative of Hamas and provocative in that way? Were Israeli responses proportionate and discriminatory? In any event, the indiscriminate firing of rockets and other weapons by both side definitely violated international humanitarian law, but were not a fraction as damaging as the massive incursion of 2008/09 by Israel that led to the "Goldstone Report"; that was a very controversial phase in how to view Israeli and Hamas accountability during that period of the military incursion in 2008/09. I was rather involved with the controversy over the interpretation of the "Goldstone Report." Again, I had trouble with the Palestinian Authority, which surprised me by objecting to my strong endorsement of the report and encouragement of the implementation of its recommendations. To my surprise and regret the PA was politically persuaded for tactical reasons to bury the report and not seek its implementation; this created problems for me as I was trying to exert what pressure I could, so as to have the recommendations of the report taken seriously. They included a potential reference to the international criminal court, which finally to have occurred ten years later, but still in a preliminary and inconclusive form.

Jacobsen: Michael, in your particular case, the one individual prior to you resigned. So, less of a smooth transition as from John to Richard inasmuch as one can have a "smooth transition" on this issue. Carrying forward on the legacy that they brought forward, what is the main focus now?

Lynk: To start off, my own appointment was controversial. It was raised in the Canadian Parliament. The Minister of Foreign Affairs had made several statements against my appointment. Even though, Canada has nothing to do with the appointment by the United Nations or by the Human Rights Council of the special rapporteur. To my great relief, both Richard and John were extremely supportive of my appointment and gave great advice during the early weeks and months of my appointment, and how to react to that. Also, the way to do the job. Whatever contributions I have made with respect to this, a great deal is owed to both the predecessors with respect to this (Richard and John). With respect to the role as the special rapporteur, there are two themes. One is what happens on the ground, in particular, with the respect to the events beginning in end of March in 2018 with Gaza with the Great March of Return and the shooting deaths of Israel troops at the Gaza frontier, including the shooting and killing of around 60 Palestinians around the middle of May of 2018. At that time, I was calling for the appointment, by the Human Rights Council, of a commission of inquiry. There was a special convening of the Council. At that point in time, after the shooting of the 60 Palestinian protestors, the High Commissioner of Human Rights made the same call. This was accepted.

The Commission of Inquiry released the report in February of 2019, which was a very strong report. I thought it was a very good report. Notwithstanding, the fact, I do not think any of the

three commissioners had much of a background with respect to the Middle East about Gaza or the occupied Palestinian territories in general. They repeated the claim in the “Goldstone Report” in 2009 and the “Davis Report” in 2015 about lifting the siege on Gaza. All three reports made this present. The immediately retired Secretary-General of the United Nations made the call to lift the siege on Gaza. None of that has happened. While, I think, you may find polite statements emanating from Europe, there was not effective pressure on Israel by the international community to do anything about the full state of the living conditions in Gaza caused overwhelmingly by the siege. The other point or theme in the work is to try to locate aspects of the occupation and provide them a legal framework within international human rights law and international humanitarian law. My report in October, 2017, dealt with the concept of illegal occupation. At some point, an occupation may be legal. I would leave this to the historians to decide at what point the red line may be crossed. Surely, now, an occupation has been on for five decades with every sign given by the Occupying Power; it intends to annex all or some of the occupied Palestinian territories is surely a violation of international law.

Also, I have issued reports in 2018 on annexation. Both the illegal framework and the events on the ground. Most recently, in October, 2019, I focused on the issue of accountability or the duties owed diplomatically, politically, and, particularly, legally to unite or bring to an end an obvious hotspot with respect to human rights violations. What we see, this is what both Richard and John would have confronted during their tenures as special rapporteurs and continuing into mine. The international community will, sometimes, be willing to make rebukes of Israel’s behaviour or conduct in the occupation, or plans to further entrench in its claim of sovereignty in the occupied Palestinian territories while no willingness to do anything about it. There is criticism without consequences; there are resolutions without rebukes. It always astonishes me. The international community, particularly, with respect to Europe could bring about wide sanctions in regard to Russia and its annexation of Crimea in 2014, but can do nothing and remains paralyzed with respect to a much smaller country and over an issue with worldwide attention. So, this, I think, has become the issue of the day for all of the illegal steps Israel has taken and, now, plans to take; to what degree will the international community, particularly the most powerful players, want to hold Israel to account.

Falk: *I want to make one point, which, I think, is important. The focus on the emergent unlawfulness of the occupation. There is a real deficiency in international humanitarian law, which does not put a time limit on the temporal extent of occupation. I argued during my mandate that prolonged occupation is incompatible with the underlying objectives of international humanitarian law. I received very little support for these contentions despite trying my best to get the International Committee of the Red Cross to back a call for reform. The ICRC did not want to touch the international humanitarian law framework, or be seen as engaging with controversial criticisms of Israel’s behavior. It is a real deficiency of the international humanitarian claims made on behalf of the Geneva Conventions. Occupied Palestine has endured five decades or more of occupation reducing the population to a condition of rightlessness and still allow this to remain subject to such an abusive form of militarized administration and, as Michael points out, to be further victimized further by Israel’s annexationist intentions; both de facto annexation by imposing control in a variety of ways, e.g., the settlements, the Wall, and other measures, and, now, a fallacious de jure push for annexation with a strong geopolitical green light given by the United States Trump Administration.*

Jacobsen: I want to take this into fewer individuated responses and more groups discussions. What do you consider the main issues confronting Palestine now?

Dugard: I think; we would all agree. The main issue facing Palestine is the very real threat that Israel will annex large portions of the West Bank, a portion of Area C, and the Jordan Valley. We have to focus on this. We must distinguish between *de jure* annexation, as happened in the case of East Jerusalem and may happen in the case of the West Bank, and *de facto* annexation. It is really clear that over the last few decades, Israel has, in effect, been extending its authority over the West Bank in such a manner that it has annexed large portions of the West Bank. So, this is the reason for liking Michael's focus on the illegality of the occupation. It is clear to me that this is not an ordinary occupation. It is one rendered illegal by reason of the prolonged nature of the occupation, as Richard pointed out, and the acts taken by the Israeli government such as the construction of settlements, the Wall, the establishment of the system of apartheid, and, overall, an annexation *de facto* and *de jure* of large portions of Palestine. This should be our principal focus at present.

Falk: *I would completely agree with the statements by John. I would only add that a secondary focus seems, to me, a recognition of the non-viability of a two-state outcome to any future diplomacy. The extent of de facto annexation and the whole way in which Israel has taken advantage of the occupation makes the prospect of a viable, independent sovereign Palestine state no longer a feasible political project, and it may never have been a desirable solution. This is why I have been emphasizing, since I ended my role as Special Rapporteur, the importance of dismantling the apartheid structures by which the Palestinian people as a whole have been both victimized and subjugated within the occupation and beyond the occupation through fragmentation of their identity as a unified people. So, I participated in a study under the auspices of ESCWA (2017), which examined apartheid in relation to the claim of Israel practices and policies subjugating the entire Palestinian people to an apartheid regime. I know John has some differences with the enlarged view of the relevance of the apartheid analysis. His South African lineage gives him a special authority to talk on it, not only authority, but experience to speak about it. In our academic study for ESCWA, we were convinced that Israel was responsible for deliberate political fragmentation of the Palestinian people as a principle mode of discriminatory subjugation. Unless, apartheid is dismantled as a precondition for racial peace, as was the peacemaking process in South Africa itself. Until the Afrikaner leadership decided to dismantle Apartheid and release Nelson Mandela as a signal of the genuineness of its intention, there was no genuine prospect of reforming this kind of system in some gradualistic way through incremental measures. In other words, thinking constructively about real peace for the two people, for Jews and for Palestinians, it depends, in my judgment, on the centrality of apartheid as an obstacle to a solution more fundamental than even the continuing occupation of the West Bank, East Jerusalem, and Gaza.*

Lynk: *I may build on it. I may be anticipating something you are going to ask us, Scott, which is the Trump plan. It encapsulates everything that has gone wrong over the last 20-30 years in the making of peace in the Middle East. The Trump plan, in my view, changes everything and changes nothing. It changes everything; in that, it is a crack, a substantial crack, maybe, a fatal crack in the continuation of the Oslo process. That there would be a two-state solution in the end. No matter the difficulties of the international community would have in bringing two recalcitrant leaderships to this. More fundamentally, it changes nothing. It is the formal*

blessing by the American patron of this peacemaking process of the culmination of separation. What both Richard and John have described as apartheid in the making, it, probably, shows how ineffectual the international community, particularly the most powerful players, have been in trying to hold a flicker of hope. That some strong American bias towards Israel's position, acting as Israel's lawyer – as has often been reported, would result in a satisfactory solution for the Palestinians. This is what the Trump plan has brought to an end. It, certainly, appears little hope exists for a two-state solution. The only hope is a one-state apartheid reality or a one-state democratic reality. That's where, I think, the future is going to lie.

Jacobsen: Some of the remarks by Gideon Levy and Norman Finkelstein have been on a lack of viability of a two-state solution or settlement to the issue or the conflict.

Dugard: Richard remarked on the apparent disagreement on the scope of apartheid. I have always taken the position that if one looks at the definition of apartheid in the *Rome Statute*, it is a very narrow definition. It would not cover discrimination against Palestinians in Israel itself and in the diaspora because the element of gravity is probably lacking. I am looking at this from the point of view of international criminal law and the jurisdiction of the International Criminal Court. Whereas, Richard has looked at this from the broader perspective of apartheid in general. That's how I see it. It is important to stress that the International Criminal Court has the issue of apartheid before it and the Prosecutor clearly feels uncomfortable with this referral on the part of Palestine. Although, she is clearly prepared to accept jurisdiction, she seems determined to restrict crimes to war crimes and not crimes against humanity, which would include the question of apartheid. The reason for this is, frankly, the West, particularly the European Union, is opposed to the suggestion Israel practices apartheid if only in the occupied Palestinian territories. One has to work hard to persuade the Western states on this score. We are facing a situation of apartheid, which is very similar to what happened in South Africa and, in many respects, is worse.

Jacobsen: Any final thoughts on this particular subject matter before the final question?

Falk: *I would briefly reiterate my view of the scope of apartheid. Also, the sense that a more imaginative jurisprudence would incorporate the deliberate Israeli policy of fragmentation as a mode of racist subjugation into its understanding of apartheid and, thereby, extend the scope beyond occupation to the various domains within which the Palestinians have suffered, which looked at independently wouldn't constitute apartheid. However, if you look at the fragmentation of the Palestinians as a whole which is what we did in our ESCWA study, then the fact that the Palestinian minority in Israel does not seem victimized by a compartmentalized view of apartheid, but it is indirectly being victimized to the extent that its national identity is part of a discriminated ethnicity subject to comprehensive repressive control. It is very important to conceptualize apartheid that include this Israeli combination of discriminatory subjugation and fragmentation of all Palestinians, including refugees and involuntary exiles whose identity had previously been existentially actualized as a unity.*

Dugard: I agree with you, Richard, entirely. However, the contextualization does not fall under the definition of apartheid in the *Rome Statute*. That is where the difference lies. I am looking at this from the perspective of the *Rome Statute*.

Falk: *A more sociological jurisprudential interpretation supports my approach. In my view jurists less attached to positivist conceptions of law would have little difficulty arguing that*

the Rome Statute of the ICC can be interpreted in the way that I favor conceptualizing apartheid.

Dugard: Let us agree to differ and leave it at that.

Jacobsen: [Laughing].

Falk: *Not the first time.*

Jacobsen: **The final question around the recent update, yesterday, through the International Criminal Court with the Chief Prosecutor Fatou Bensouda around commencing investigations into alleged crimes. Any thoughts on this, concisely?**

Lynk: *Start with John.*

Falk: *Maybe, John has the closest familiarity.*

Dugard: Scott, I think, we all agree that the fact that the Prosecutor has reaffirmed the reasoning in her request for the pre-trial chamber to exercise her jurisdiction is encouraging. She was not persuaded by other state parties, in particular, as well as some powerful supporters of Israel who made submissions. By and large, I am very encouraged by the developments in the International Criminal Court at present.

Falk: *I also feel encouraged by this dramatic development. I have not read the Chief Prosecutor's response in any careful way. I note, she excludes the exclusive economic zone off the Gaza coast from the territory of Palestine, which seems, to me, to be a questionable interpretation of the responsibilities and rights of a territorial state. It leaves, in a kind of anarchic way, the situation of Palestinian fisherfolk, who fish beyond the territorial waters off Gaza and whose mistreatment by Israeli coastal patrols forms part of the grievances put forward to justify jurisdiction. It may not be the core issue. Yet it is a disappointing way of confining jurisdiction, but less so than the arbitrary refusal of the Prosecutor to include Crimes Against Humanity in her recommendation to open investigations.*

Lynk: *For me, I am more positive today than two days ago from the perspective of the pre-trial chamber regarding the territorial jurisdiction question. The fact that the Chief Prosecutor made such a strong statement, well-reasoned and very coherent, gives me a lot more optimism that this will turn out successfully. When you think of how few areas there are for accountability presently, there are accountability measures for the CERB. There are accountability measures regarding the database. Although, that is relatively weak with the actions of the International Court of Justice. The most important action would be a positive outcome of the International Criminal Court. This will take a long time to wind its way if the pre-trial chamber agrees with the arguments of the Chief Prosecutor. It does give hope that issues on Palestine and accountability will be positively dealt with by important international forums.*

Jacobsen: Gentlemen, thank you for your time.

Lynk: *Thank you very much, Scott.*

Dugard: Thank you very much, Scott.

Falk: *Thanks, Scott.*

Dr. Norman Finkelstein on the International Criminal Court

August 13, 2020

[Dr. Norman Finkelstein](#) remains one of the foremost experts and independent scholars on the Israeli occupation and the crimes against the Palestinians. His most recent book is [I Accuse!: Herewith a Proof beyond Reasonable Doubt That ICC Chief Prosecutor Fatou Bensouda Whitewashed Israel](#) (2020). Professor Emeritus John Dugard at Leiden University, former Special Rapporteur to the UN Human Rights Council on Human Rights in the Occupied Palestinian Territory and member of the International Law Commission, gave an endorsement, to the previous text [Gaza: An Inquest into Its Martyrdom](#), “Norman Finkelstein, probably the most serious scholar on the conflict in the Middle East, has written an excellent book on Israel’s invasions of Gaza. Its comprehensive examination of both the facts and the law of these assaults provides the most authoritative account of this brutal history.”

Here we talk about the International Criminal Court.

Interview conducted on July 27, 2020.

Scott Douglas Jacobsen: So, we’ve done some interviews before. I have done some interviews with some others with some recommendations from you, or others who are journalists or dealing directly with the human rights violations regarding Israel and the occupied Palestinian territories. You have published another book. It is entitled *I Accuse!*. So, it is focused around the ICC Chief Prosecutor Fatou Bensouda. For those who are not aware of the developments happening at the International Criminal Court, what are some of the pieces of the image that can help sketch things out with regards to the development of the case on rights violations, rights abuse, in regards to Israel and the occupied Palestinian territories, or the Israelis and the Palestinians?

Dr. Norman Finkelstein: Well, the first point to make is it is a little bit confusing. So, I have to go slowly. Also, I have to clarify. At the outset, there are not one but two cases before the International Criminal Court pertaining to the Palestinians. The first case was referred to the court by the Union of the Comoros. The Union of the Comoros is a small country. It happened to be the country to which the *Mavi Marmara*, which was the flagship of the flotilla that went to Gaza in May, 2010, and came under Israeli assault. By the end, 9 passengers had been killed. A 10th died later, he was in a coma and died from his wounds. That case, as I said, was referred to the court by the Union of the Comoros. There are a lot of technicalities about the court, which, unfortunately, I have to go through in order to clarify the status of the cases. The first technicality is the International Criminal Court is not a universal court or does not possess universal jurisdiction. In order to bring a case before the court, you have to be a state. Effectively, what a state does, it says, “We will join the court or we’re requesting that the court take over criminal jurisdiction for this or that situation.” So, the Union of the Comoros is a state party to the ICC, the International Criminal Court. So, it had the option, which it exercised, to refer the case of the *Mavi Marmara* to the ICC.

The case sat in the ICC for quite a long time. Fatou Bensouda, the Chief Prosecutor, was trying to drag out the case. In the end, let me just clarify, there are several stages to any case that comes before the court referral. There are several stages to each situation that comes before the court. The first step is called the preliminary examination. In the preliminary examination, the Chief

Prosecutor decides whether there is enough evidence to support an investigation. And then, after an investigation, there is, again, another stage. Is there sufficient evidence for an indictment? Then after the indictment, there is the actual prosecution, and the decision, whether or not the party or parties are guilty of the crimes. So, we're talking about a *very early stage*, which is called the preliminary investigation. Fatou Bensouda decided that the case or the referral was, to a technical term of the court, of 'insufficient gravity' [Ed. "...the situation would not be of sufficient gravity to justify further action..."] to warrant stage two, an investigation. To now go through, quickly, because I think the basics are now clear for your listeners [Ed. readers], there was a lot of pushback in the court because it was clear the Chief Prosecutor was engaging in a whitewash and cover up. She, basically, simply appropriated all of the arguments and all of the effectively fake evidence that Israel presented in order to justify her refusal to move on to stage two, an investigation.

As I said, there was a lot of pushback in the court. A lot of people inside the court were not happy with the way Bensouda was conducting the case. There was sufficient pushback that she had to reconsider her decision. She alleged that she reconsidered it, but came to the same conclusion. For a second time, she declared the case closed. Then there was pushback again. The case, she was forced to reconsider. The third time, she declared it closed. Now, it is in a new stage of appeal by the lawyers for the victims in the case. So, that case, she's attempted three times to kill it. She closed the case three times. However, now, it's under appeal again. Simultaneously, with that case, the state of Palestine has referred a separate/distinct case to the court. Basically, its essence is the Israeli settlements in the West Bank, which are illegal under international law and a war crime under the *Rome Statute* of the International Criminal Court and the murderous Israeli assault on Gaza in 2014 Operation Protective Edge. Now, what happened there is, to make a long story short, Bensouda switched sides.

Where before, she carried out a whitewash and a cover up for Israel. In this new situation, as it is called, she has fiercely championed the Palestinian side. Now, it is coming under attack from the U.S. and Israel. Where we currently stand is, there are two technical issues in the case currently referred to by the state of Palestine. Each of the technical issues will be very clear to your listeners. So, it doesn't require extensive elaboration. Issue number one, I said it earlier to you. In order to present the case to the court, you have to be a state. Basically, you're delegating to the state. Your sovereign right to prosecute war crimes. You're saying, "We'd rather you prosecute this case." So, the issue arose, "Is Palestine a state?" If it is not a state, it doesn't have the right to refer any situation to the court. So, question number one, "Is Palestine a state?" Question number two, if a court is going to prosecute, it has to know, "What is the territorial extent of the court?" So, you have to know. If a state refers a case, let's say Canada refers a case to the ICC, Canada is a Member State.

Let's say, for arguments sake, the United States launched an unprovoked attack on Canada. So, they attacked Canadian territory. Canada refers the case to the ICC. So, the first thing the ICC has to decide is, "Was the attack on Canadian soil?" Because Canada can only refer cases that occur in its state. So, the court has to know whether or not the attack occurred on Canadian soil or something under Canadian jurisdiction, e.g., a Canadian vessel or a Canadian plane. So, the second issue before the court is, "Even assuming Palestine is a state, what is the territory of that state?" Because, as you know, Israel insists the West Bank including East Jerusalem and Gaza are disputed territories. That there is no Palestinian territory. So, where that second referral now

stands is, it has to be determined a) whether Palestine is a state; and b), if it is a state, what are the territorial demarcations of the state?

Jacobsen: With regards to the definition of a state within the United Nations, and as it is being presented to the court, and for the readers today, the terminology for a state within the United Nations is a “Member State,” as many are aware, for perfect clarity. With regards to the definition of occupied Palestinian territory or the state of Palestine, how is this proceeding in regards to the evidence being presented on a) status as a state and b) the territorial demarcations of said state, if defined as such?

Finkelstein: Okay, I’ll give you the principal arguments on both sides. On the UN question, Palestine is officially defined as a non-member observer state. That’s its status. So, it is not a member of the General Assembly, but it is classified as a state: non-member observer state. I think the only other entity that has that definition is the Vatican. The Vatican also has non-member observer state status. Whether or not Palestine is a state, the essence comes down to the following: technical, under what is called the Montevideo criteria, a state has four characteristics. It has a territory. It has a population. It has an effective government. And it has the capacity to engage in foreign relations to sign treaties and things like that. Those are the four technical criteria of a state. The issue that has been the most contentious between the two sides is the effective government. Israel and its supporters say, “Palestine does not have an effective government. It is under Israeli occupation. The governmental rights of the state, in particular the criminal rights of a state, were handed over to Israel in the Oslo Accord.”

So, the Oslo Accord says, ‘The Palestinians have no criminal jurisdiction over Israelis in the West Bank.’ The Oslo Accord says, ‘The Palestinians have no criminal jurisdiction over Area C,’ which is where most of the settlements are located. So, the argument of Israel is, “In the Oslo Accord, the Palestinians handed over already all criminal jurisdiction to Israel. Having done that, it cannot go and say it will hand over criminal jurisdiction to the ICC. They can’t do it because they signed over the jurisdiction in the Oslo Accord to Israel.” The main argument on the Palestinian side is, “If Palestinians don’t have an effective government, it is because of Israeli criminality. In particular, the building of the settlements, the building of the wall. All of these illegal undertakings are the reason why Palestinians don’t exercise effective government.” So, the argument is, “If you say, ‘Palestinians can’t refer a case to the ICC because they don’t have effective government,’ you’re, in effect, rewarding Israel for illegal behaviour.” The argument being, “It is Israeli illegal behaviour that is responsible for the fact that Palestinians aren’t able to exercise effective government.” So, those are the main arguments on both sides.

After the issue of territory, the main Israeli argument is, “The Palestinians agreed that territorial issues would be resolved in the course of negotiations. So, the Palestinians agreed to defer into the future the question of whose territory is it.” The main argument on the Palestinian side is, “It has already been decided by the International Court of Justice, for example, that the West Bank, including East Jerusalem and Gaza, constitute – to use the nomenclature of the UN including the ICJ, the International Court of Justice, which is the principal judicial body of the United Nations – occupied Palestinian territories.” So, they say, “The issue of territory has been resolved. You want to know what the territorial jurisdiction of the ICC in this case. All you have to do is look at UN resolutions, look at the advisory opinion of the ICJ (the International Court of Justice). They all agree that the West Bank, including East Jerusalem and Gaza, are occupied Palestinian territory.”

Jacobsen: Thank you for the opportunity and your time, Dr. Finkelstein.

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