

Unmarked Route on a Frail Map: The UNSC Resolutions on the Question of Palestine

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ABSTRACT:

A comprehensive analysis of the UNSC resolutions on the question of Palestine provides a normative framework for a just resolution of the Israel-Palestine conflict. There is a perception that this approach has been tried and has failed. However, to the detriment of the peace process, there has been an almost complete absence of reference to international law and an overriding insistence on negotiations between the two parties that are highly asymmetrical. The international will to resolve the Israel-Palestine conflict has not subsided but increased. It has also coincided with the failure of yet another phase of the US-brokered peace process, on the one hand, and renewed support for the UN as the world's principal organisation for conflict resolution, on the other. A likely consequence is that Western governments will be pressured to find an alternative, which may lead them to the 'neutral' position of endorsing the normative framework established by the UNSC resolutions. This paper offers a comprehensive analysis of the UNSC resolutions on the question of Palestine and examines their potential for contributing to a just and lasting peace between Israel and Palestine.

Introduction

A general assumption is that attempts to resolve the Israel-Palestine conflict within the framework of the UN have been pursued for many decades and have been exhausted. Western publics that rely on media coverage of the conflict are unlikely to be conscious of an alternative approach to a settlement on the basis of the UN resolutions. In their study of Western media coverage of the Israel-Palestine conflict and its implications for audiences, Greg Philo and Mike Berry (2004) document that the coverage of attempts to resolve the conflict focuses exclusively on negotiations and the US' role as 'peace broker'. Moreover, on his historic visit to Israel and Palestine in January 2008, US President Bush reiterated that the unimplemented UN resolutions should be discarded. He stated that "the UN deal didn't work in the past...this is an opportunity to move forward and negotiate a new deal. We can stay stuck in the past, which will yield nothing good for the Palestinian people...or we can chart a hopeful path for the future" (Al Jazeera 2008). US President Obama has not specifically addressed the issue of International law as it pertains to the Israel-Palestine conflict and in his landmark address in Cairo on 4 June 2009, he essentially re-reindorsed the Roadmap.

In spite of Obama's endorsement of the Roadmap and even his demands for the cessation of Israeli settlement expansion, there remains serious doubt over the achievability of a two-state solution given the unabated expansion of Israeli settlements in the West Bank, including Jerusalem. It is time to restate a fundamental question: has the 'UN deal' actually failed or has it never really been pursued? There are three basic landmarks in the peace process: the Madrid conference of 1991, the Oslo Accords of 1993, and the Roadmap of 2003. All of which were premised on a negotiated settlement between Israel and the Palestinians. The role of international law in this process extends only as far as a mention of UNSC resolutions 242 and 338 as a basis for negotiations.

The absence of reference to international law, specifically the relevant UN resolutions, has in recent years become a major theme in the literature on the failure

of the peace process. Cheryl Rubenberg (2003), for instance, finds the fact that the Oslo Accords were “not based on any aspect of international law or UN resolutions relating to the Israeli-Palestinian conflict” to be their “most important defect”. They could not lead to peace because they were “not based on law, rights, or precedent but on a political agreement between two parties that are *depicted* as symmetrical”, she explains (p.87).

Like the Oslo Accords, the Roadmap places a disproportionate emphasis on Israeli security and treats the conflicting parties as if there exists between them symmetry of power and potential. The work of the late Tanya Reinhart (2006) provides a compelling critique of the Roadmap, demonstrating that far from leading to peace, and in contravention of international law, the initiative further entrenches Israel's control over the occupied territories. This is done through settlement construction, a network of roads and highways, and the separation barrier, which have effectively annexed Palestinian land to Israel, making Palestinian self-determination even more distant.

These observations are reaffirmed in Alvaro de Soto's 'End of Mission' report¹ to the UN in which he expresses major objections to the fact that the positions taken by the Quartet were not likely to be supported by a majority in UN bodies, and are “at odds with UN Security Council resolutions and/or international law” (de Soto 2007, p.26-27). De Soto reports that due to US pressure, the Quartet not only failed to hold Israel to its responsibilities under the Fourth Geneva Convention, or enforce the advisory opinion of the International Court of Justice (ICJ) concerning the barrier, but even accepted Israel's non-compliance with its Roadmap obligations,² and its AMA obligations.³

For a number of observers, the assertion that the relevant UN resolutions must form the framework of a peace initiative if it is to be successful has been a long-standing one. Francis Boyle (2003), states that “there is no way anyone can even begin to comprehend the Israeli-Palestinian conflict and how to resolve it without developing a basic working knowledge of the principles of international law and human rights related thereto” (p.23). Others, such as William Mallison and Sally Mallison (1974), assert that a just peace “will have to employ the principled criteria of international law” while a “practical settlement based upon naked power bargaining and calculation will, at best, provide a short interlude between intense hostilities” (p.79). Indeed, over thirty years later, the authors' predictions have continued to be proven correct.

Thus, John Quigley (2005) remarks that “most writers on the Israeli-Palestinian conflict find an emphasis on legal entitlement to be unrealistic, even

¹ Alvaro de Soto was the United Nations Under-Secretary General, United Nations Special Coordinator for the Middle East Peace Process and Personal Representative of the Secretary General to the Palestinian Liberation Organisation and the Palestinian Authority, and Envoy to the Quartet from 1 June 2005 to 7 May 2007.

² Israel's Roadmap obligations include: freezing settlement construction, dismantling unauthorised settlement outposts, opening Palestinian institutions in East Jerusalem, and facilitating the movement of PA representatives.

³ According to the Agreement on Movement and Access (AMA) signed on 15 November 2005, Israel's obligations include: easing West Bank checkpoints, reaching targets for movement through crossing points in and out of Gaza, and facilitating a seaport and airport in Gaza.

counterproductive ...and say that if settlement proposals are confined to propositions based on international law, no agreement will be reached” (p.xii). Encapsulating the sentiments of this paper, he acknowledges the difficulty, but remains convinced that “a peace not based on justice may turn out to be no peace at all” (p.xii).

This paper examines the extent to which the UNSC resolutions on the question of Palestine provide a viable alternative to a negotiated settlement within the framework of a ‘just peace’. The analysis presented below focuses on the resolutions of the UNSC concerning the so-called ‘final status’ issues, including territory, Jerusalem, settlements, water resources, and refugees. Finally, this paper explores the limitations and prospects for an approach based on the UNSC resolutions among the parties involved and the international community.

A just peace

This paper uses the terms ‘just peace’ and ‘just resolution’ in reference to a settlement of the conflict on the basis of law rather than power. Within the field of conflict resolution, there is acknowledgement that solutions need to be ‘just’ if peace is to be genuine and lasting. Highlighting the necessity of a just solution, Louis Kriesberg (2005) explains that “simply ending a conflict may not be the correct objective in the eyes of many people” for their concern will be “justice and morality regarding the terms of the accommodation” (p.95).

Detailing this view, Paul Salem (1997) examines some of the salient philosophical, moral, psychological, and cultural foundations of conflict and conflict resolution within a Western context and how they contrast with the Arab-Islamic context. He asserts that while Western conflict resolution theorists focus on the ‘suffering’ of the people as the most important element in need of resolution, “the justice and morality of the cause” are of particular significance in the Arab-Islamic context (p.15). Salem explains that peace is conditional and circumstantial in the Arab-Islamic context. Suffering then is a culturally relative term; unlike in the West where suffering is associated more with the physical and material, in the Arab world it is more closely associated with a ‘loss of honour’, ‘loss of patrimony’, and ‘loss of face’.

The late Edward Said (1992) conveys the sentiments of almost all Palestinians when he writes that “nothing less than Palestinian self-determination will do; and only that will ever diffuse the already far too explosive Middle East” (p.244). The many Palestinians with whom I spoke during my field research in Israel and Palestine in 2006 impressed upon me the importance for them of at least some measure of justice if peace is to be considered genuine and, therefore, lasting. For these Palestinians a just peace involves the right of return of the Palestinian refugees, a Palestinian capital in East Jerusalem, either the dismantling of Israeli settlements or an equitable land exchange, and above all, self-determination. Most are willing to accept a Palestinian state on 22 percent of their historical homeland provided there is contiguity between Gaza and the West Bank and that the state of Palestine is genuinely independent of Israeli control. Overwhelmingly, they do not see the current peace process as leading to even this modest view of a just peace, however.

These concerns were reiterated by the Neve Shalom – Wahat al-Salam (Oasis of Peace) director, Abdessalam Najjar, who stated in an interview with me that “for

Palestinians, peace means just peace, 'restorative justice' involving the sharing of power and resources and most importantly equality". However, he contends that "Palestinian demands for justice or equal rights and disagreement with the status quo is seen by Jews as being aggressive, refusing to cooperate, and being obstructionist". Abdessalam Najjar highlighted that "peace and justice are understood differently by Jews and Palestinians". When Jews say peace, he explained,

...they are referring to human relations, mutual empathy. They admit injustice has been committed but because they regard it as having been committed by all sides, they believe there should be peace before any restorative justice in terms of equal rights. They basically define peace as Palestinian acceptance of the status quo. Even pro-peace Jews have concerns about losing control of the situation or a change in the status quo.⁴

The UNSC resolutions

The UNSC is the international organ with primary responsibility for international peace and security, whose pronouncements both reflect and constitute international law. The decisions of the UNSC, and also those of the UNGA, do not merely reflect the political interests of certain member-states. Contained within the body of resolutions on the question of Palestine are established facts of the conflict and the norms and obligations of Israel, the Palestinians, and the international community. Additionally, these resolutions document the findings of investigations commissioned by the UN pertaining to the most critical issues of the Israel-Palestine conflict, including territory, resources, settlements, refugees, and Jerusalem.

Final-status issues:

To identify the UN resolutions concerned with the Israel-Palestine conflict, I have utilised the website of the UN (www.un.org), which has a dedicated section to *The Question of Palestine*. Linked to this webpage, among other resources, is a complete list of all UN resolutions, including the UNSC resolutions, concerning the Israel-Palestine conflict and the broader Arab-Israeli conflict.⁵ Just over sixty of these resolutions relate directly to the conflict between Israel and Palestine and are the specific focus of this paper. The UNSC resolutions have addressed all of the so-called 'final status' issues – those commonly regarded as the most complex in terms of resolving the conflict, including the acquisition of territory, status of Jerusalem, Israeli settlements, and the right of return of Palestinian refugees; they provide a normative framework for a just peace.

Acquisition of territory

The UNSC unambiguously asserts that Israel's acquisition of the Palestinian and other Arab territories, including Jerusalem in 1967 is inadmissible. This principle has been repeated in numerous resolutions, particularly those concerned with the status of Jerusalem as well as Resolution 242. Furthermore, the UNSC repeatedly refers to

⁴ Interview conducted with Abdessalam Najjar on 15 March 2006 at Neve Shalom – Wahat al-Salam (Oasis of Peace).

⁵ UNSC resolutions on the Arab-Israeli conflict. Retrieved 10 January 2007, from <http://domino.un.org/UNISPAL.NSF/vCouncilRes>.

Israel as the 'occupier' or 'occupying power' in respect to its presence on Palestinian and other Arab territories, including Jerusalem, which it specifically refers to as 'occupied' territory.

In not a single resolution does the UNSC recognise the annexation of any of the territory, including Jerusalem, which Israel has occupied since 1967; nor is Israel's presence in these territories ever referred to as administrative. To this end, the UNSC is also unambiguously clear that the Fourth Geneva Convention is applicable to, and must be implemented by Israel in the Palestinian and other Arab territories it occupies, including Jerusalem. In spite of this demand, violations of international humanitarian law by Israel against the Palestinian people are extensively documented in the resolutions and are consistently regarded by the UNSC as constituting serious obstructions to achieving peace. The unwillingness of states to recognise the acquisition of territory by force, sometimes referred to as the 'Stimson Doctrine', is of central importance to the question of Palestine as the entire territory that the Palestinians are claiming for their state (22 percent of historical Palestine - Gaza Strip and West Bank, including East Jerusalem) is land occupied by Israel since 1967.

The UNSC has upheld this principle of international law in its resolutions on the question of Palestine. Not less than eight UNSC resolutions reaffirm this point. The first to be passed was Resolution 242 (22 November 1967), "*emphasising* the inadmissibility of the acquisition of territory by war" and the "need to work for a just and lasting peace in which every State in the area can live in security". A subsequent six resolutions confirming the principle were passed between 1968 and 1980 (252, 267, 271, 298, 476, and 478). All were passed in relation to 'legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem' which the UNSC adds 'are invalid and cannot change that status'.

The eighth resolution to be passed stating the principle of the inadmissibility of acquisition of territory by force was Resolution 681 (20 December 1990), in which the UNSC was "*Gravely concerned* at the dangerous deterioration of the situation in all the Palestinian territories occupied by Israel since 1967, including Jerusalem, and at the violence and rising tension in Israel". The Council was also "alarmed by the decision of the Government of Israel to deport four Palestinians from the occupied territories in contravention of its obligations under the Fourth Geneva Convention, of 1949" (Resolution 681, 20 December 1990).

The UNSC's support for the principle of the inadmissibility of the acquisition of territory by force is critical to the question of a Palestinian state. Although implicitly confined to the territory Israel acquired by force in 1967 and not the 23 percent of historical Palestine it acquired in the war of 1948 (beyond the 55 percent accorded to it in the 1947 UN partition plan – UNGA resolution 181), the principle certainly gives credence to Palestinian claims to territory beyond the 1967 borders. The only question remaining is whether the UNSC has recognised the political rights of the Palestinians.

Resolution 242, the most frequently recalled UNSC resolution on the question of Palestine, did not mention the political rights or aspirations of the Palestinians.

However, Resolutions 1397 (12 March 2002) and 1515 (19 November 2003) both affirm “a vision of a region where two States, Israel and Palestine, live side by side within secure and recognised borders”. Additionally, Resolution 672 (12 October 1990) reaffirms that “a just and lasting solution to the Arab-Israeli conflict must be based on its resolutions 242 (1967) and 338 (1973) through an active negotiating process which takes into account the right to security for all States in the region, including Israel, as well as the *legitimate political rights of the Palestinian people*” [emphasis added]. Resolution 672 not only affirms the political rights of the Palestinians as legitimate, but by basing this affirmation on Resolution 242, it is invoking the principle of inadmissibility of acquisition of territory by force and the requirement for Israel to withdraw from territories it has occupied since 1967.

It should be recalled that the territory Israel has occupied since 1967 (Gaza Strip and West Bank, including Jerusalem) is only part of the territory that Israel illegally occupies according to the principle of ‘the inadmissibility of the acquisition of territory by force’. Numerous historians, including Ilan Pappé (2007), have provided detailed documentation that Israel acquired the 23 percent of historical Palestine it currently controls (beyond the 55 percent it was allotted under UNGA Resolution 181 in 1947) by way of armed force. While this illegal acquisition of territory is not specifically addressed by the UNSC, the principle of ‘the inadmissibility of the acquisition of territory by force’ has been repeatedly invoked by the UNSC in reference to Israel and could be utilised at some future point by Palestinian and transnational advocacy groups seeking restitution for the ethnic cleansing of 1947-1949.

Jerusalem

Israel’s occupation of Jerusalem has been addressed by the UNSC in the same terms in no less than ten resolutions. The UNSC has maintained that the acquisition of territory by force is inadmissible. It has repeatedly called on Israel to rescind the alterations it has made to the cultural, physical, and demographic character of Jerusalem, and it regards these alterations made to the status of Jerusalem as ‘null and void’. Again, the Council has requested the international community to not recognise Israel’s alterations to the status and character of Jerusalem, specifically the establishment of its capital there.

All ten resolutions concerning Jerusalem state that the actions and activities of Israel to change the physical, demographic, and cultural character of Jerusalem have ‘no validity’ or are otherwise ‘null and void’. The UNSC has required Israel to rescind or desist from its activities in Jerusalem in nine resolutions. In seven of its resolutions, the Council has stated that Israel’s policies and practices in Jerusalem constitute an obstruction to peace.

No UNSC resolution has made any provision for Israeli control over Jerusalem or supported its capital to be moved there. In fact, the UNSC has not altered the position taken by the General Assembly in 1947 (Resolution 181), which confirms Jerusalem’s status as *corpus separatum*. UNSC Resolution 452 (20 July 1979), which was passed on the basis of the findings of a UN Commission established ‘to examine the situation relating to settlements in the Arab territories occupied since 1967, including Jerusalem’, emphasises “the *specific status of Jerusalem*”, and reconfirms the relevant UNSC resolutions concerning Jerusalem and in particular

“the need to protect and preserve the unique spiritual and religious dimension of the Holy Places in that city [emphasis added].

There are six UNSC resolutions that specifically address the status of Jerusalem, which contain the ‘Stimson Doctrine’ or the principle of international law which asserts that the acquisition of territory by force or war is inadmissible. The first UNSC resolution to address the status of Jerusalem (252, 21 May 1968), states “the need to work for a just and lasting peace” and then emphasises that “acquisition of territory by military conquest is inadmissible”. Resolution 252 requires Israel to comply with General Assembly Resolutions 2253 (ES-V) of 4 July 1967 and 2254 (ES-V) of 14 July 1967 and asserts that “all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status”. It also “*urgently calls* upon Israel to rescind all such measures already taken and to desist forthwith from taking any further action which tends to change the status of Jerusalem” (Resolution 252, 21 May 1968).

The follow-up resolution on the matter a year later (Resolution 267, 3 July 1969), noted that “since the adoption of the above-mentioned resolutions [252, 2253 (ES-V) and 2254 (ES-V)] Israel has taken further measures tending to change the status of the City of Jerusalem”. Resolution 267 confirms that “all legislative and administrative measures and actions taken by Israel which purport to alter the status of Jerusalem, including expropriation of land and properties thereon, are invalid and cannot change that status” and “*urgently calls* once more upon Israel to rescind forthwith all measures taken by it which may tend to change the status of the City of Jerusalem, and in future to refrain from all actions likely to have such an effect”. It also contains a request to Israel “to inform the Security Council without any further delay of its intentions with regard to the implementation of the provisions of the present resolution”.

An arson attack on the Al-Aqsa Mosque on 21 August 1969 led to the subsequent resolution, 271 (15 September 1969), which “*condemns* the failure of Israel to comply with the aforementioned resolutions [252 and 267]” and “*reiterates* the determination in paragraph 7 of Resolution 267 (1969) that, in the event of a negative response or no response, the Security Council shall convene without delay to consider what further action should be taken in this matter”. Despite this provision, the fact that the subsequent resolution (298, 25 September 1971) notes ‘with concern’ that “since the adoption of the above-mentioned resolutions Israel has taken further measures designed to change the status and character of the occupied section of Jerusalem”, the UNSC failed to include any statement about ‘further action’ to be taken on the matter. Resolution 298 ‘confirms’, however, “in the clearest possible terms that all legislative and administrative actions taken by Israel to change the status of the City of Jerusalem, including expropriation of land and properties, transfer of populations and *legislation aimed at the incorporation of the occupied section, are totally invalid* and cannot change that status [emphasis added]. The inclusion of the statement about ‘incorporation’ of the ‘occupied section’ being ‘totally invalid’ and not being able to change the ‘status’ of Jerusalem, clearly demonstrates the unwillingness of the UNSC to recognise an Israeli annexation of Jerusalem, a point reinforced by Resolution 478, discussed above. In sum, the position of the UNSC is that Israel illegally occupies the city of Jerusalem.

Israeli settlements

The UNSC has determined, by way of resolutions 446, 452, 465, and 471, that the Israeli settlements on the Palestinian territories occupied since 1967 are 'illegal', 'null and void', and should be 'dismantled' as they constitute a "violation of the Fourth Geneva Convention" and "a serious obstruction to achieving a comprehensive, just and lasting peace". Moreover, the Council has called on the international community not to support Israel in the pursuit of its settlement policy.

The four UNSC resolutions specifically address the issue of the Israeli settlements on Occupied Palestinian and other Arab Territories. Each of the four resolutions state that the settlements are an 'obstruction to peace' and have 'no legal validity'. Three resolutions state that the settlements have 'no validity' or are otherwise 'null and void'. Three resolutions also have required Israel to rescind or desist from construction of the settlements.

By way of Resolution 446 (22 March 1979), the first resolution to specifically address the matter, the UNSC determined 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 [emphasis added]. This resolution, also identifying that the practice of population transfer involved in the settlement process constitutes a violation of the Fourth Geneva Convention:

Calls once more upon Israel, as the occupying Power, to abide scrupulously by the 1949 Fourth Geneva Convention, to rescind its previous measures and to desist from taking any action which would result in changing the legal status and geographical nature and materially affecting the demographic composition of the Arab territories occupied since 1967, including Jerusalem, and, in particular, not to transfer parts of its own civilian population into the occupied Arab territories (Resolution 446, 22 March 1979).

Moreover, Resolution 446 also established a commission consisting of three members of the UNSC "to examine the situation relating to settlements in the Arab territories occupied since 1967, including Jerusalem".

The recommendations of the report prepared by this commission (contained in document S/13450) were accepted by the Council in the following resolution (452, 20 July 1979). Resolution 452 begins by strongly deploring "the lack of co-operation of Israel with the Commission" and reaffirms the point that "the policy of Israel in establishing settlements in the occupied Arab territories has no legal validity and constitutes a violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949". It also draws attention to the "*grave consequences* which the settlements policy is bound to have *on any attempt to reach a peaceful solution* in the Middle East" [emphasis added] and "*Calls upon* the Government and people of Israel to cease, on an urgent basis, the establishment, construction and planning of settlements in the Arab territories occupied since 1967, including Jerusalem". It is noteworthy that the UNSC requested the commission, "in view of the *magnitude of the problem of settlements*, to keep under close survey the implementation of the present resolution and to report back to the Security Council" [emphasis added].

The subsequent resolution on the matter (465, 1 March 1980) accepts the conclusions and recommendations of the second report prepared by the Commission (contained in document S/13679). The resolution begins by “*strongly deploring* the refusal by Israel to co-operate with the Commission and regretting its formal rejection of resolutions 446 (1979) and 452 (1979)”. It restates the fundamental determination of the UNSC with respect to the settlements that:

all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have *no legal validity* and that Israel's policy and practices of settling parts of its population and new immigrants in those territories 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 [emphasis added] (Resolution 465, 1 March 1980).

Resolution 465 goes further than its predecessors to call for the ‘dismantling of existing settlements’ and for “all States not to provide Israel with any assistance to be used specifically in connexion with settlements in the occupied territories”.

The matter of the settlements was again specifically addressed by the UNSC in Resolution 471 (5 June 1980) when assassination attempts were made against the Mayors of Nablus, Ramallah, and Al Bireh. The UNSC was “*deeply concerned* that the Jewish settlers in the occupied Arab territories are allowed to carry arms, thus enabling them to perpetrate crimes against the civilian Arab population” and expressed “*deep concern* that Israel, as the occupying Power, has failed to provide adequate protection to the civilian population in the occupied territories in conformity with the provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War” (Resolution 471, 5 June 1980). Quite significantly, the UNSC again called upon “all States not to provide Israel with any assistance to be used specifically in connexion with settlements in the occupied territories” and reaffirmed “the *overriding necessity* to end the prolonged occupation of Arab territories occupied by Israel since 1967, including Jerusalem” [emphasis added].

The contradiction between the presence of the settlements on Palestinian land and the UNSC’s vision for two states, Israel and Palestine, side-by-side in peace and security, has been highlighted by the findings of a report, ‘Ruling Palestine: A history of the Legally Sanctioned Jewish-Israeli Seizure of Land and Housing in Palestine’, conducted by the Geneva-based Centre on Housing Rights and Evictions (COHRE) and BADIL Resource Centre for Palestinian Residency and Refugee Rights (Dajani 2005). One of the main conclusions of the research is that a two-state solution has been made practically impossible due to Israel's continued expropriation of Palestinian property and its denial of Palestinian refugees their right to recover their original homes and lands. A combination of confiscated land for settlements and what Israel refers to as its ‘security barrier’ is estimated to result in the reduction of Palestinian land within the occupied West Bank and Gaza to less than eight percent of the territory comprising Mandate Palestine. The report warns that even in the event of a negotiated settlement, a viable Palestinian state would not be feasible due

to the shortage of available land and infrastructure and lack of territorial contiguity, all a result of, and compounded by, the extent and positioning of the settlements on the West Bank.

It is also noteworthy that survey research has found that a majority of Americans are opposed to the construction of Israeli settlements on Palestinian land. Interestingly, prior to 2002, no data was published regarding American views of Israeli settlements. In May 2002, however, when a PIPA poll asked Americans whether they think it is right or not for Israel to build settlements in the West Bank and Gaza, 52 percent said they should not, while 35 percent said it was all right (12% were unsure). Moreover, research has found that opposition to the settlements increases when the question is framed in the context of international law (WorldPublicOpinion.org 2006).

Palestinian refugees

In the war of 1948, over half the Palestinian population were made refugees. Under the Universal Declaration of Human Rights, the Palestinians have a right to return to their homes and land. This right has been repeatedly reaffirmed by the UN General Assembly since Resolution 194 was passed in 1948. It is also reaffirmed in UNSC resolutions 89, 93, 237 and 242.

To return to one's homeland is a right of refugees established in international law. To support this point one may cite Article 13 of the Universal Declaration of Human Rights (1948), Article 12 of the International Covenant on Civil and Political Rights (1996), and Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (1966). The right of return enshrined in these documents applies to the Palestinians as it does all human beings.

Most frequently cited in the literature on the issue of the right of return specifically of the Palestinian refugees is the General Assembly Resolution 194 (11 December 1948). It provides for 'the right of return for those wishing to do so and the right to be compensated for those not wishing to exercise this right'.

In terms of status in international law, General Assembly resolutions are not normally considered to have the authority of those passed by the UNSC. However, this particular resolution has been reaffirmed by the United Nations on over 100 occasions. Mazzawi (1997) asserts that the almost annual reaffirmation of Resolution 194 by the UN (and sometimes more than once annually) strongly demonstrates the international regard for the resolution and gives it a status beyond what may normally be attributed to a General Assembly resolution.

With respect to the UNSC resolutions concerned with the issue of Palestinian refugees we first find Resolution 89 (17 November 1950), which "*requests* the Egyptian-Israel Mixed Armistice Commission to give urgent attention to the Egyptian complaint of expulsion of thousands of Palestine Arabs". It calls upon both Egypt and Israel "to give effect to any finding of the Egyptian-Israel Mixed Armistice Commission regarding the repatriation of any such Arabs who in the Commission's opinion are entitled to return." What is apparent from this resolution is support for the return of those made refugees in the 1948 war.

Similarly, in Resolution 93 (18 May 1951), which was passed the following year in response to the Syrian complaint about the evacuation of Arab residents from the demilitarised zone, the UNSC decided “that Arab civilians who have been removed from the demilitarised zone by the Government of Israel should be permitted to return forthwith to their homes and that the Mixed Armistice Commission should supervise their return and rehabilitation in a manner to be determined by the Commission”.

It is Resolution 242 (22 November 1967), however, that is frequently quoted as representing the UNSC’s position concerning the issue of Palestinian refugees. While this resolution ‘affirms’ the ‘necessity’ for “achieving a just settlement of the refugee problem”, it certainly does not use the clear and unambiguous language of General Assembly Resolution 194 and other UN resolutions.

It would appear though, that the resolution preceding 242 has been overlooked. Resolution 237 (14 June 1967) begins by affirming that “essential and inalienable human rights should be respected even during the vicissitudes of war”. Recall that return to their homelands is an inalienable right of refugees enshrined in the Universal Declaration of Human Rights (Article 13). Resolution 237 clearly supports the right of return of the Palestinian refugees as it calls upon “the Government of Israel to ensure the safety, welfare and security of the inhabitants of the areas where military operations have taken place and to *facilitate the return* of those inhabitants who have fled the areas since the outbreak of hostilities” [emphasis added].

UNSC Resolution 242 affirmed the necessity for “achieving a just settlement of the refugee problem”. It is noteworthy that this affirmation was made in the context of the resolution’s requirement for “establishing a just and lasting peace in the Middle East”; however, the “just settlement of the refugee problem” it required was not met. Seven years later, to the date, by way of UNGA Resolution 3236 (22 November 1974), the UN reaffirmed its position on a “just settlement” of the problem. The resolution clearly established the “return” of the Palestinian refugees “to their homes and property from which they have been displaced and uprooted” as an “inalienable right”. It also reaffirmed the Palestinians’ right to “self-determination without external interference” and “national independence and sovereignty”, as “indispensable for the solution of the question of Palestine” and “the establishment of a just and lasting peace in the Middle East” (Resolution 3236, 22 November 1974).

The UNSC defines the resolution of the Israel-Palestine conflict in terms of a ‘just peace’. The position of the Council is that justice is a fundamental condition of peace, which is intended to be both comprehensive and lasting. The conditions for a just peace determined by the Council are based on the norm of the restoration of rights. This comprehensive content analysis of the UNSC resolutions concerning the Israel-Palestine conflict has identified certain basic facts of the conflict that are pertinent to the achievement of a just and lasting peace as determined by the Council. The norms and obligations incumbent upon Israel, the Palestinians, and the international community have also been identified. Furthermore, this analysis has established a normative framework on the basis of which a just solution of the conflict can be pursued.

Potential Legitimacy, limitations and support

Legitimacy

The problems associated with the UNSC are well documented, particularly in terms of the Council's lack of impartial and effective mechanisms for enforcing its decisions and for being 'closer to power than justice' in its organisation and operation (Allain 2004). However, on the issue of Palestine, Allain (2005) considers that "international law and the United Nations should be considered as instrumental in this struggle". While he acknowledges that they do not in themselves provide a solution, he argues that they do provide "a normative framework and fora within which such a solution can emerge" (p.8).

The UN, particularly the Security Council, has also been criticised for being a political body and therefore unable to provide an objective position on an issue where the interests of members are at stake. However, according to Steven Ratner (2004), the UNSC's status as a political organ "does not" relegate it to a "subsidiary status in the formation and application of international law" (p.602). Rather, he asserts, "it is a central player by virtue of its capacity to make legal declarations, interpret the [UN] Charter's text, promote the relevance of legal norms in resolving disputes, and require states to follow legal rules, even those outside the Charter" (p.602). He explains that the Council's role in promoting international law is recognised by the UN Charter in three important ways.⁶

The justification for a settlement of the Israel-Palestine conflict within a framework based on the UNSC resolutions is supported by the authority of the decisions of the Council. Ratner (2004) acknowledges the potential power of UNSC resolutions and asserts that "they stand a greater chance of influencing state decision-making than do many other pronouncements of international law" (p.602). While he also acknowledges that the Council's pronouncements have been frequently ignored, he observes:

A Council pronouncement on a legal issue signals that powerful states are endorsing the legal claims embodied in the resolution. When those states choose to take measures to make the resolution really stick, the Council's legal pronouncements are not merely law on the books but law on the ground (p.602).

Moreover, international norms, which have the capacity to constitute national interests of even the most powerful states (Klotz 1995), become established not necessarily because of 'great powers', but the campaigning of transnational advocacy networks on the basis of international law (Risse, Ropp, and Sikkink 1999). The normative framework for a just peace based on the UNSC resolutions is potentially a vital resource for transnational Palestine advocacy networks in terms of pressuring Israel to adhere to the terms of a just peace. It is noteworthy that there

⁶ Ratner notes: Article 1, paragraph 1, in which the purpose of the UN is stated as being an organisation for peacemaking "in conformity with the principles of justice and international law"; the Charter's requirement for all states to comply with the Council's decisions, which are considered legally binding in all circumstances; and the Council's responsibility to observe the basic norms of the Charter in its decision making (p.592).

exists an extensive network of Palestine advocacy groups globally. Transnational advocacy networks play an important role in reminding Western governments of their own values and of their identity as liberal, democratic societies (Sikkink 1993). The diffusion of human-rights norms internationally depends on the ability of domestic and transnational advocacy networks to inform public opinion and Western governments (Risse, Ropp, and Sikkink 1999).

Limitations

The normative framework for a just peace contained within the resolutions of the UNSC provides a necessary, but not a sufficient, basis on which the international community and transnational advocacy networks can pursue a resolution of the Israel-Palestine conflict. A fundamental flaw of the UNSC has been its failure to account for the vast power imbalance of the conflicting parties in advocating a negotiated settlement. Recent scholarly debates and opinion polls, however, suggest that the issue of Israel-Palestine is moving in a direction favourable to a resolution based on the UN framework.

The continuity of the Israel-Palestine conflict is not due to indecision on the part of the UN as to what constitutes a just peace, but rather, Israeli non-compliance with these terms. The international community has been unable to compel Israel to adhere to the terms of a just peace. In addition to being the main, almost exclusive, broker for peace, the US has also been Israel's primary diplomatic, financial, and military supporter. Ramsbotham et al (2005) find US support for Israel to be the "lynchpin of the conflict" and argue that a resolution requires a modification of US economic, political, and military support for Israel.

In his 'End of Mission' report to the UN, Alvaro de Soto (2007) advises the Secretary-General to either take a stand on the status quo or "seriously reconsider membership in the Quartet" (p.24). He states that the Quartet's ability to resolve the conflict is fundamentally undermined by the US' "very serious qualms about exerting pressure on Israel" (p.25). He documents that the US "usually floats proposals with the Israelis before presenting them to the Palestinians" and that "Israelis also take advantage of their unique ability to influence the formulation of US policy" (p.26).

Consistent with these observations, John Mearsheimer and Stephen Walt (2006) assert that an end to the Israel-Palestine conflict is dependent on US pressure and in this context they consider the Israel lobby to be a central factor in its continuation. They state that "by preventing US leaders from pressuring Israel to make peace, the Lobby has also made it impossible to end the Israeli-Palestinian conflict". The authors see the US as "complicit in the crimes perpetuated against the Palestinians".

One of the most revealing points of de Soto's report concerns the influence of Israel over not only US officials but also those in the UN. De Soto discusses "the tendency that exists among US policy-makers and even amongst the sturdiest of politicians to cower before any hint of Israeli displeasure, and to pander shamelessly before Israeli-linked audiences" (de Soto 2007, p.48). He writes that within the UN, there is a seeming reflex "to ask first how Israel or Washington will react rather than what is the right position to take" (p.49). De Soto is not alone in his realisation that this tendency to 'tread softly' where Israel is concerned "may lower the attack by one

decibel in certain press circles, but it doesn't actually contribute much to pushing Israel to resolve the conflict with the Palestinians or its Arab neighbours" (p.50).

Has politics triumphed over international law? Christian Reus-Smit (2004) contends that in "the modern era politics has given the institution of international law a distinctive form, practice, and content" but that "international law has also 'fed back' to condition politics" (p.5). Politics structures law and law conditions politics. He notes that strong states do not invariably ignore international law, and when they choose to deliberately violate it "they do so in the knowledge that as well as incurring political costs their actions will have to be justified as 'legal'" (p.5).

Support

The 21st century has not seen the Israel-Palestine conflict fall from the global agenda, but the opposite. Polls conducted in the Arab and Muslim world have consistently shown that overwhelming majorities regard Palestine as the single most important issue to them personally. In a poll conducted between March and May 2006 by the Pew Research Centre nearly all Egyptians and Jordanians (97%) said that they sympathise with the Palestinians. Almost three-quarters of Indonesians (72%) expressed the same sentiment, while 63 percent of Turks and 59 percent of Pakistanis also support the Palestinian cause (Kohut 2007).

The Israel-Palestine conflict is also of significant concern to the Western world. Over 85 percent of Americans consider that a resolution of the conflict should be an important US foreign policy goal. In a January 2005 Pew poll, just over one-third of Americans stated that a permanent settlement of the Israel-Palestine conflict should be the top US foreign policy priority, while another 42 percent said it should be a high priority. These percentages have remained fairly constant in Pew polls since 1993 (Allen and Tyson 2007). The majority of Americans also believe that there cannot be peace in the Middle East without a resolution of the Israel-Palestine conflict and that a resolution of this conflict is important for winning the 'war on terror' and would reduce the likelihood of terrorism (WorldPublicOpinion.org 2006).

As the debate about the relationship between the Israel lobby and US foreign policy continues, Americans themselves are calling for even-handedness from their government. About 70 percent of Americans say that the US should be even-handed and not take sides in the conflict. However, 57 percent state that this is not happening and that the US favours Israel (Kull 2007). A strong majority of Americans recognise that the US is not a fair broker in the Israel-Palestine peace process. In January 2006, a Public Agenda poll asked if the criticism that 'US policies are too pro-Israel for the US to be able to broker peace between Israel and the Palestinians' was justified or not. Sixty-two percent said that it was justified, while only 25 percent said it was not justified (WorldPublicOpinion.org 2006).

In May 2002, when PIPA asked Americans who should take the lead in the Israel-Palestine peace process, only 13 percent favored the US taking the lead. A very strong majority of 68 percent favored a multilateral approach, with the largest proportion (41%) favoring the UN taking the lead. Moreover, most Americans (56%) believe that the UN is most capable of being even-handed and dealing fairly with both parties, with the EU ranked as the next best option (44%). Perhaps most

compelling, though, is that the same poll also reported that two-thirds of Americans support a resolution of the Israel-Palestine conflict to be decided by the UNSC (WorldPublicOpinion.org 2006). As will be discussed below, this is an internationally-shared view.

These findings come at a time when the perception of Israel around the world is highly negative. A poll conducted by the European Commission in October 2003 with a sample of 7,500 Europeans (500 from each of the then 14 EU member-nations) found that 59 percent placed Israel at the top of the list of nations that threaten world peace (Beaumont 2007). Additionally, in a poll conducted across 27 countries for the BBC World Service by PIPA and GlobeScan in late 2006 and early 2007, respondents were asked to rate 12 countries – Britain, Canada, China, France, India, Iran, Israel, Japan, North Korea, Russia, USA, Venezuela, and the European Union, as having a positive or negative influence. A majority of respondents stated that Israel and Iran have a mainly negative influence in the world (Kull and Miller 2007).

An average of 56 percent across the 27 countries have a mainly negative view of Israel, with only 17 percent having a positive view, which was the least positive rating for any country evaluated. In 23 countries the most common view was negative, with only two leaning towards a positive view (Nigeria and the US) and two divided (Kenya and India). The most negative views of Israel were found in the predominantly Muslim countries surveyed, including Lebanon (85%), Egypt (78%), Turkey (76%), UAE (73%) and Indonesia (71%). However, negative views of Israel were also expressed by large majorities in Europe, including Germany (77%), Greece (68%), France (66%), and Britain (65%) as well as in other countries, including Brazil (72%), Australia (68%), South Korea (62%), and China (57%) (Kull and Miller 2007).

Research published by The Chicago Council on Global Affairs and WorldPublicOpinion.org (2007) found considerable support for the UN, which is seen around the world as the key organisation for conflict resolution according to the report. Across the countries surveyed, most respondents said they were willing to accept UN decisions even if those decisions went against the preference of their own country. Ten countries (four majorities and six pluralities) out of 16 surveyed agreed to accept such UN decisions. Those with the highest proportions of respondents willing to accept UN decisions were China (78%), France (68%), US (60%), and Israel (54%). The fact that 54 percent of Israelis agreed (although 38 percent disagreed) that “when dealing with international problems, Israel should be more willing to make decisions within the United Nations even if that means Israel will sometimes have to go along with a policy that is not its first choice” is highly significant in terms of the viability of a UN-defined resolution of the conflict.

In the absence of external pressure on Israel, particularly from the US, a just and lasting resolution of the Israel-Palestine conflict is unachievable. Pressure for a resolution of the conflict is likely to continue to mount, however. Western governments will need to find a ‘neutral’ position between such demands and the pressure of Israel lobby groups to maintain the status quo. Though not favourable to the current status quo that tends towards Israel’s advantage, Western leaders may find endorsement of the UNSC resolutions on the question of Palestine to be a viable option.

Conclusion

The UN has been engaged in the Israel-Palestine conflict almost since its inception but its decisions have not been the basis on which peace has been pursued. An emphasis on negotiations between two highly asymmetric parties coupled with an almost complete absence of reference to international law has been to the detriment of achieving a just and lasting peace between Israel and Palestine. The UNSC resolutions on the question of Palestine passed over the last 60 years offer a normative framework for a just peace. The UNSC has recognised that peace must be just if it is to be genuine and lasting, and this is reflected in the decisions it has made on all of the final status issues. Based on these resolutions, Israel must end its illegal occupation of Palestinian and other Arab territory, including Jerusalem. The settlements it has constructed on these lands are illegal and must be dismantled. The Palestinian refugees driven from their homes and lands, not only in 1967 but also between 1947 and 1949, have the right to return. International public opinion is in support of a resolution of the Israel-Palestine conflict on the basis of international law. That such a framework may result in an alternative vision of Israel and Palestine from what has been conceived under the conventional two-state model is not an outcome that should be rejected out of hand but assessed in terms of its contribution to a genuine and lasting peace.

References

- Al Jazeera, 10 January 2008. Retrieved 18 March 2008, from <http://english.aljazeera.net/NR/exeres/282B2017-CA36-46CB-8BA0-66D84FE99DA3.htm?FRAMELESS=true&NRNODEGUID=%7b282B2017-CA36-46CB-8BA0-66D84FE99DA3%7d>.
- Allain, J. *Beyond the Armed Struggle: The Relationship of International Law and the International Organizations to the Palestinian Cause* (Birzeit: Birzeit University, 2005).
- Allain, J. *International Law in the Middle East: Closer to Power than Justice* (Aldershot: Ashgate, 2004).
- Allen, J. and Tyson, A. 'The US public's pro-Israel history'. Retrieved 12 September 2007, from <http://pewresearch.org/pubs/39/the-u.s.-publics-pro-israel-history>.
- Beaumont, P. 'Israel outraged as EU names it a threat to peace', *The Guardian*. Retrieved 15 November 2007, from www.guardian.co.uk/israel/Story/0,,1076084,00.html.
- Boyle, F. *Palestine, Palestinians, and International law* (Atlanta: Clarity Press, 2003).
- Chicago Council on Global Affairs & WorldPublicOpinion.org (2007). World public opinion 2007. Retrieved 12 September 2007, from http://www.thechicagocouncil.org/UserFiles/File/POS_Topline%20Reports/POS%2007_Global%20Issues/WPO_07%20full%20report.pdf.
- Dajani, S. 'Ruling Palestine: A History of the Legally Sanctioned Jewish-Israeli Seizure of Land and Housing in Palestine' (Geneva: Centre on Housing Rights and Evictions (COHRE) and BADIL Resource Centre for Palestinian Residency and Refugee Rights, 2005).
- De Soto, A. 'End of mission report.' Retrieved 9 August 2007, from <http://image.guardian.co.uk/sysfiles/Guardian/documents/2007/06/12/DeSotoReport.pdf>.
- Klotz, A. *Norms in International Relations: The Struggle Against Apartheid* (Ithaca: Cornell University Press, 1995).
- Kohut, A. 'No global warming alarm in the US, China America's image slips, but allies share US concerns over Iran, Hamas: 15-Nation Pew Global Attitudes survey'. The Pew Global Attitudes Project. Washington D.C: Pew Research Centre. Retrieved 12 September 2007, from <http://pewglobal.org/reports/pdf/252.pdf>.
- Kriesberg, L. 'Nature, dynamics, and Phases of Intractability', in Crocker, Hampson and Aall (eds), *Grasping the Nettle: Analysing cases of Intractable Conflict* (Washington D.C: United States Institute of Peace, 2005).
- Kull, S. and Miller, D. 'Israel and Iran share most negative ratings in global poll'. Retrieved 12 September 2007, from http://www.worldpublicopinion.org/pipa/pdf/mar07/BBC_VIEWSCountries_Mar07_pr.pdf.
- Kull, S. 'The American public on the Islamic world'. WorldPublicOpinion.org. Retrieved 12 September 2007, from http://www.worldpublicopinion.org/pipa/articles/views_on_countriesregions_bt/92.php?lb=btvoc&pnt=92&nid=&id=.
- Mallison W. and Mallison, S. 'The Role of International Law in Achieving Justice and Peace in Palestine-Israel', (1974) *Journal of Palestine Studies*, 3(3).
- Mazzawi, M. *Palestine and the Law: Guidelines for the Resolution of the Arab-Israel Conflict* (London: Ithaca Press, 1997).
- Mearsheimer, J. and Walt, S. 'The Israel lobby and U.S. foreign policy'. Retrieved 9 September 2006, from: [http://ksqnotes1.harvard.edu/Research/wpaper.nsf/rwp/RWP06011/\\$File/rwp_06_01_1_walt.pdf](http://ksqnotes1.harvard.edu/Research/wpaper.nsf/rwp/RWP06011/$File/rwp_06_01_1_walt.pdf).
- Pappe, I. *The Ethnic Cleansing of Palestine* (Oxford: Oneworld, 2007).

- Philo, G. and Berry, M. *Bad News from Israel* (London: Pluto Press, 2004).
- Quigley, J. *The Case for Palestine: An International Law Perspective* (Durham: Duke University Press, 2005).
- Ramsbotham, O. Woodhouse, T. and Miall, H. *Contemporary Conflict Resolution: The Prevention, Management and Transformation of Deadly Conflicts* (2nd ed) (Cambridge: Polity Press, 2005).
- Ratner, S. 'The Security Council and International Law', in Malone (ed), *The UN Security Council: From the Cold War to the 21st Century* (Boulder: Lynne Rienner, 2004).
- Reinhart, T. *Roadmap to Nowhere* (London: Verso, 2006).
- Reus-Smit, C. *The Politics of International Law* (Cambridge: Cambridge University Press, 2004).
- Risse, T. Ropp S. and Sikkink, K. (eds), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999).
- Rubenberg, C. *The Palestinians: in Search of a Just Peace* (Boulder: Rienner, 2003).
- Said, E. *The Question of Palestine* (London: Vintage, 1992).
- Salem, P. *Conflict Resolution in the Arab World: Selected Essays* (Beirut: American University of Beirut, 1997).
- Sikkink, K. 'The Power of Principled Ideas: Human Rights Policies in the United States and Western Europe', in Goldstein and Keohane (eds), *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change* (Ithaca: Cornell University Press, 1993).
- WorldPublicOpinion.org, 'Israel and the Palestinians' (2006). Retrieved 15 September 2007, from http://americas-world.org/digest/regional_issues/IsraelPalestinians/IsrPalest.cfm