

Resolving the Israel-Palestine Conflict with Activism

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An immediate consideration when discussing avenues for resolving a conflict are the underlying grievances of the parties involved. If we fail to sincerely address these grievances, a successful and just resolution will prove impossible. So is the case with the Israel-Palestine conflict. Often described as one of the most complex and controversial conflicts in the world, we go in circles with endless “peace talks” and a general sense that it is irresolvable. Yet, if we pinpoint the outstanding grievances, we can then refer to already existing and accepted ways for addressing them. In the case of Israel-Palestine, we find that the underlying grievances relate to basic tenets of international law that are not complex or controversial, and it is here that we find a workable basis for resolving the conflict. As history will show, our greatest hope for a just resolution will lie with dedicated public activism rather than state-led initiatives. [*Article copies available for a fee from The Transformative Studies Institute. E-mail address: journal@transformativestudies.org Website: http://www.transformativestudies.org ©2013 by The Transformative Studies Institute. All rights reserved.*]

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There are some conflicts in the world that prove difficult to resolve because they challenge us with the task of devising new institutions or moral principles. Class warfare or political struggles restructuring power

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and governance are quintessential examples. An attempt to resolve such a conflict usually develops in periods of revolution. Other conflicts, however, such as the Israel-Palestine conflict, challenge us in a different way. While the “final status” issues of the conflict – borders, settlements, Jerusalem, and refugees – relate to previously established and widely accepted tenets of international law, a resolution to these grievances proves to be out of reach as a revolution. In this case, and in others like it, the conclusions drawn by applying the rule of law and established principles are unacceptable merely because they fly in the face of particular power interests in global affairs. Yet, if we honestly wish to resolve the conflict in a just manner we could pursue widely accepted legal and moral principles established under international law, which was created to prevent and resolve issues such as those underpinning the Israel-Palestine conflict.

In a new book entitled *The Five Percent*, Peter Coleman, a professor at Columbia University and specialist in conflict resolution, argues that five percent of conflicts, including Israel-Palestine, are complex enough to seem intractable. (Coleman, 2011) Curiously, while providing some useful insight into strategies for conflict resolution using Israel-Palestine as one example, Coleman’s Attractor Landscape Model (ALM) for helping resolve the “five percent” of conflicts does not provide a workable framework in which to address grievances present in the conflict. In cases of international disputes, the framework that we must use to provide a just and legal resolution is embodied in international law. Unless we hold ourselves to a concept like the rule of law, a settlement on the outstanding issues of the Israel-Palestine conflict can prove intractable and favor the more powerful party in the conflict. It’s for this reason that the concept of the rule of law is widely accepted, and, at the same time, disregarded when it doesn’t work in our interests.

It is common in global affairs to ignore underlying grievances in conflicts and standard principles of international law when it doesn’t fit our interests. For example, South African apartheid persisted and continued to get backing from the United States through the 1980’s despite statutes under international law stipulating apartheid as a crime against humanity and a war crime. Led by the Reagan Administration, the United States went as far as to attempt to undermine international economic and arms sanctions against the apartheid regime, and label the ANC and Nelson Mandela as an international terrorist organization. Near the end of the decade, Reagan pleaded with Congress to support our economic and strategic interests by opposing sanctions against South Africa to no avail. The White House was the last apartheid-supporter

standing as Congress agreed to join the call for international sanctions. The conflict to end apartheid was impossible to overcome until, under international and public pressure, the laws against apartheid were enforced. This in itself does not solve further internal disputes related to racial and economic disparities, which remain close to apartheid levels, but it does dismantle an illegal and immoral system that resulted in terrorism and other conflicts within South Africa, and, thus, provides an opening for further steps toward a just peace. The same principle is at work in the case of the Israel-Palestine conflict.

Since the creation of the state of Israel in the former state of Palestine in 1948, a conflict has brewed over its territory. On the one hand you have the Palestinians, who had no decision over the creation of Israel in their land and were ethnically cleansed to make way for a Jewish National Home causing the infamous refugee exodus of 1948-49. On the other hand you have the Israelis, who have sought to create a Jewish National Home in Palestine to escape anti-Semitic persecution in Europe (stemming from the eerily reminiscent idea for a German National Home). The only way to create a Jewish National Home in an overwhelmingly Muslim Arab country is to forcibly uproot the native population in order to acquire territory – biblical Judea and Samaria according to Israeli Jews. It may be helpful to remember that this is fundamentally how the United States was founded – forcibly remove the native population to make way for the Anglo-Saxon race. Unfortunately for supporters of Israeli expansion into Palestinian territory, this form of settler colonialism has been delegitimized, rejected by public opinion, and outlawed under international law. Following further confrontations with Palestine and other Arab nations throughout the 1950s, Israel prepared for a fresh attempt at territorial expansion for their Jewish National Home. In June of 1967, the Six Day War allowed Israel to occupy the Sinai Peninsula, Golan Heights, Gaza, and areas in the West Bank. Despite a peace settlement with Egypt in 1979 that withdrew Israeli troops from the Sinai, Israel continues to occupy the Golan Heights, West Bank (including East Jerusalem), and, through a blockade and effective control, Gaza. This is what underpins the ongoing Israel-Palestine conflict.

In 2004, at the request of the United Nations General Assembly, the International Court of Justice (ICJ) gave its advisory opinion on the legality of Israel's construction of a wall in Occupied Palestinian Territory (OPT). While discussing the legality of the wall, the ICJ was forced to also consider the issue of borders, settlements, and Jerusalem. If we include the refugee question, which was not specifically brought up

by the ICJ, these four topics are referred to as the “final status” issues for a peaceful settlement of the Israel-Palestine conflict.

On the issue of “the construction of the wall being built by Israel, the occupying power, in Occupied Palestinian Territory, including in and around East Jerusalem”, the ICJ found it to be “contrary to international law.” Furthermore, the ICJ decided that “Israel is under obligation to terminate its breaches of international law . . . , to make reparation for all damage caused by the construction of the wall . . . , [and that] 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.” (ICJ, 2004)

The court’s reasoning behind the illegality of the wall relates to the broader issue of the legal borders of Israel and Palestine. Following the Six-Day War in 1967, Israel began occupying and acquiring Palestinian territory past the 1949 Armistice “Green Line”. A basic principle of international law holds that it is illegal to acquire territory by war. Therefore, the ICJ cited “Article 2, paragraph 4, of the United Nations Charter” and “General Assembly resolution 2625 (XXV), the principles of the prohibition of the threat or use of force and the illegality of any territorial acquisition by such means, as reflected in customary international law.” (ICJ, 2004) This means that Israel and Palestine’s legal borders are the pre-1967 borders.

Since the construction of the wall is within OPT acquired following armed conflict, it is illegal. Similarly, it would be illegal for me to build a fence on my neighbor’s property, but, if I find it necessary, I could build a fence along my own property line.

The court continued in its advisory opinion by pointing out that “the route of the wall as fixed by the Israeli Government includes within the ‘Closed Area’ (between the wall and the ‘Green Line’) some 80 percent of the settlers living in the Occupied Palestinian Territory.” (ICJ, 2004) This brings us to what is usually considered the crucial question of the conflict – the settlements. The ICJ recalled the finding of the U.N. Security Council, regarding the construction of settlements in OPT as a “flagrant violation” of the Fourth Geneva Convention, which prohibits an occupying power from transferring its civilian population into occupied territory, and matched that with its own finding “that those settlements have been established in breach of international law.” (ICJ, 2004) Recent figures released by the United Nations in 2011 documented 296,586 settlers living in the West Bank, not including East Jerusalem, located in 123 settlements and approximately 100 “outposts”. (Secretary-General, 2011) The ICJ also added that the route out of the wall around the

settlements lends itself to a permanent acquisition of territory by Israel, and, therefore, the construction of the wall “would be tantamount to annexation.” (ICJ, 2004)

The establishment of the wall and settlements also brings into consideration the question of Jerusalem. Under international law, East Jerusalem is legally Palestinian territory. With the construction of the wall and settlements, Israel is proceeding to annex areas in East Jerusalem with the establishment of 50,000 residential units (not including a July 2011 proposal for 900 more) in at least 12 Israeli settlements occupied by around 192,000 Israeli settlers. (Secretary-General, 2011) It should be noted that a prerequisite for constructing Israeli settlements is the demolition of Palestinian homes, which is also prohibited under international law. Moreover, it is recognized that East Jerusalem is a primary center for Palestinian economic activity and remains the most viable option for a capital to a future Palestinian state. The situation being created by Israel in East Jerusalem, says the ICJ, “severely impedes the exercise by the Palestinian people of its right to self-determination, and is therefore a breach of Israel’s obligation to respect that right.” (ICJ, 2004)

Even though the settlements themselves take up a fraction of the West Bank, the ICJ notes that the construction of the wall includes within its boundaries not just Israeli settlements, but the primary agricultural lands, water resources, and roads which are then cut off from the Palestinians. This leads the ICJ to conclude that the wall would “impede the liberty of movement of the inhabitants of the territory ... and they would also impede the exercise by the persons concerned of the right to work, to health, to education and to an adequate standard of living.” (ICJ, 2004)

With all these findings, the court reiterated a long standing basis for a peaceful settlement of the Israel-Palestine conflict embodied in U.N. Security Council and General Assembly resolutions since 1967. As the ICJ concluded, “the tragic situation in the region can be brought to an end only through implementation in good faith of all relevant Security Council resolutions.” Concurring with the U.N. General Assembly, the court also called for “efforts to be encouraged with a view to achieving as soon as possible, on the basis of international law, a negotiated solution to the outstanding problems and the establishment of a Palestinian State, existing side by side with Israel and its neighbours, with peace and security for all in the region.” (ICJ, 2004)

The fourth “final status” issue, refugees, was not specifically addressed in the advisory opinion although the ICJ would have us refer to UN Security Council resolutions. The relevant document that deals

with the rights of refugees is UN Resolution 194 of 1948. In specific regard to Palestinian refugees, the resolution states that “the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under the principles of international law or in equity, should be made good by the Governments or authorities responsible.” (General-Assembly, 1948) This is known as refugees’ “right of return”. A Conciliation Commission led by the United Nations would also “facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation”. (General-Assembly, 1948) The same principle applies to other refugees around the world. Since the transfer of all Palestinian refugees to the current state of Israel would totally change the demographics of the Jewish National Home, it is, given current political concerns, necessary to negotiate on the largest number of refugees who can return, while also ensuring “compensation ... of those choosing [or who cannot] return”. After other tensions of this conflict have been resolved or eased, it may be possible in the future to renegotiate on the issue of refugees if a process of integration between the two states takes hold. Admittedly, at present this seems unlikely.

The combination of the findings from the ICJ on the issues of borders, settlements, and Jerusalem as well as the “right of return” for refugees, cover all of the “outstanding problems,” as the ICJ puts it, to the Israel-Palestine conflict. Like all other conflicts, this merely resolves the immediate matters of dispute and allows for further reconciliation and progress to a more sustainable and stable peace. If we disregard international law on this issue, we not only scrap the basic principle of the rule of law, but lose any sense of justice in conflict resolution.

For approximately four decades, the U.N. General Assembly has reiterated the same peace settlement with the same standards of international law as the ICJ found. As one can tell from the ICJ advisory opinion, the principles outlined are not very complex or controversial. In fact, the crucial question of the settlements was unanimously found to be a “flagrant violation” of international law by the ICJ, including by the U.S. judge. One can also find the same pattern of near unanimous opinion when reviewing the record of votes on the “Question of Palestine” at the U.N. General Assembly.

Each year the General Assembly votes on the international consensus for a peaceful settlement to what they refer to as the “Question of Palestine”, and every year you have approximately the entire world in

favor, a few states abstaining, and a few states opposing. The year 2011 proved no differently. As the General Assembly summarized:

As in previous sessions, the Assembly adopted, by 167 in favour to 7 against (Canada, Israel, Marshall Islands, Federated States of Micronesia, Nauru, Palau, United States) with 4 abstentions (Australia, Cameroon, Cote d'Ivoire, Tonga), a broad-based resolution on the peaceful settlement of the question of Palestine. (General-Assembly, 2011)

The General Assembly also voted on support for the Middle East peace process, Palestinian self-determination, and a halt to Israel's expansion into East Jerusalem and control of the Golan Heights, with a similar outcome in votes. Glaringly, we see that the largest global power, the United States, sides against the international consensus. As a result of its overwhelming amount of political power, the United States is in effect vetoing a peaceful settlement of the conflict. As was the case with South African Apartheid, if the U.S. chooses to block a settlement that addresses the underlying grievances (in this case borders, settlements, Jerusalem, and refugees), the conflict is likely to continue. Considering recent U.S. actions that included opposing Palestinian membership to the United Nations, vetoing a U.N. Security Council resolution for a settlement freeze, and supporting Israel in its latest bombing of Gaza, the U.S. position is all too clear.

The central U.N. document that provides the basis for the "Question of Palestine" is U.N. Resolution 242, which reaffirms the "inadmissibility of the acquisition of territory by war," and calls for a "withdrawal of Israel armed forces from territories occupied in the recent conflict" and a "just settlement of the refugee problem" as a precondition for "peace within secure and recognized boundaries free from threats or acts of force." (General-Assembly, 1967) The Palestinians have accepted this resolution with their endorsement of the Arab League Proposal and further negotiations with Israel over the past decade, as was made clear by the Palestine Papers (leaked internal documents) released by Al Jazeera, even calling for full normalization with Israel. If Israel accepts the international consensus, Palestinians and Israelis must adhere to each others' "right to live in peace with secure and recognized boundaries free from the threats or acts of force." (General-Assembly, 1967)

Since there is an international consensus that is opposed by Israel and the United States at the United Nations, it's curious that these two countries lead separate negotiations typically referred to in the media and

intellectual culture as the “Peace Process”. The 2011 negotiations with the U.S. acting as mediator unsurprisingly produced another dead end. Jonathan Freedland, who was present at the negotiations, reported in *The Guardian* that although Israel continues to deny Palestinian refugees’ right of return or compensation, the U.S. text included the “1967 lines and Jerusalem,” which are two of the “final status” issues (a position rejected by Israel in public), but, at the same time, “repeatedly insisted that we recognize Israel as a Jewish State ... No such demand had been made for past peace agreements: to demand it now was surely a wrecking tactic.” (Freedland, 2011)

The demand for recognition of a “Jewish State” has some problems. For one, what does it mean to be a Jewish State? What will it mean for the non-Jewish peoples, particularly Arabs, living in Israel? From the position of Palestinians, it suggests a hint of racism and, furthermore, a demand that is not forced upon any other state or entity as a condition for peaceful relations. Flabbergasted by such a demand, Abbas explained how, “they started talking to me about a ‘Jewish State’ only two years ago ... It is not my job to give a description of the state. Name yourself the Hebrew Socialist Republic – it is none of my business.” (Seidl, 2011) A similar “wrecking tactic” was Israel’s insistence on Palestine recognizing its “right to exist,” which has no basis under international law and is vague in that it doesn’t define the parameters around “exist” unless we were to once again refer back to the “final status” questions and the international consensus.

Obama added another “wrecking tactic” by insisting on “mutually agreed swaps” of land. This undercuts any success at a settlement since Israel’s position is to acquire Palestinian land and not “go back to the 1967 lines ... Those are indefensible,” as Israeli Prime Minister Benjamin Netanyahu explained. (Knickerbocker, 2011) As with the U.S.-Israeli “Peace Process” in general, this “wrecking tactic” rejects international law as a workable basis and favors Israel, who could decide not to “mutually agree”, making the “Peace Process” moot. And so the conflict proceeds.

The question then becomes: how do we proceed to resolve the conflict if the two crucial parties – Israel and the United States – reject the international consensus and proceed with a “Peace Process” that consists of “wrecking tactics”? Similar to overcoming South African Apartheid, it is up to an active citizenry among the international community to apply, through non-violent activism, the necessary political pressure to enforce international law. Being a citizen of the United States, it is my responsibility, and our task in conflict management, to see to it that the

U.S. shifts its position of rejection to acceptance of the international consensus.

There are two strategies that can help achieve a just resolution: Continued mediation through the United Nations, and nonviolent activism. The United Nations route has been taken frequently in the form of Security Council and General Assembly resolutions only to be vetoed by the United States. Most recently, the Palestinian Authority led by Mahmoud Abbas confronted the “Question of Palestine” head-on as they brought the issue of self-determination and state-hood before the United Nations. Staring at yet another U.S. veto at the Security Council, Palestinian representatives merely sought and received recognition through the United Nations Educational, Scientific, and Cultural Organization (UNESCO). As punishment, the U.S. decided to sanction the Palestinians – one could say again considering U.S. support for the blockade on Gaza – by withholding aid, as well as cutting \$80 million in U.S. annual dues to UNESCO (a quarter of its budget) causing a crisis within the agency. (Ganley, 2011) The Palestinian Authority will bring up statehood again with even greater support this year. Relying on state actors alone, and considering the overwhelming power of one of them – the United States – U.N. negotiations and resolutions based on international law are blocked and unenforceable. Similarly, a resolution to end apartheid in South Africa proved impossible through the U.N. until public pressure forced the U.S. to change its position. It’s therefore necessary to review the role of non-violent activism to bring about a resolution to the Israel-Palestine conflict as it has for so many other conflicts throughout history.

Non-violent activism can include many tactics. The goal, indeed the reason protest is protected and considered essential in a democracy, is to foster an active citizenry that can influence, if not formulate, policy. Activism has played a significant part in overcoming slavery and apartheid to gaining civil rights, human rights, women’s rights, and environmental rights, amongst other great changes in history.

One tactic that’s reminiscent of the anti-apartheid movement is called Boycott, Divestment, and Sanctions (BDS). This has had some effect with the Israel-Palestine conflict, but not to the extent of influencing policy. Part of the reason might be the lack of a clear target and goal – a reoccurring argument among activists today. One line of thinking argues that BDS should target any Israeli institution indefinitely or until a solution is reached, while the other side argues for specific BDS campaigns targeting those institutions directly involved in the occupation of Palestinian land until arriving at the two-state international consensus.

As regards conflict resolution, the latter of the two options seems to have the best possibility for success using BDS as a tactic since it offers a clear and feasible goal. The one state solution, or bi-national state, may be the most moral and make the most sense, but has no acceptance on the international level or among Palestinians and Israelis. The only way to get from the current conflict to a bi-national state would be ceasing the current hostilities through the acceptance of the two-state international consensus and then organize a reconciliation process aimed at integration. For the reasons of history, power interests, and global affairs, this could prove to be a long and difficult process in and of itself.

The other reason for limited success using BDS as a tactic is that while there is some headway made on boycott and divestment, there isn't much progress on sanctions. In a military occupation, sanctioning arms sales and military aid, as was done with South Africa, is an important piece to BDS in having an effect on policy. Strikingly, the U.S. and other nations are at the point of sanctioning humanitarian aid and allowing a blockade on Palestinians, but will not sanction aid to the Israeli military. This would be similar to sanctioning black South Africans while funneling aid to the white apartheid regime – similar to what the U.S. and Europe did, in fact. Until sanctions can be targeted against the Israeli military for their occupation of Palestinian land, acquisition of territory, and subsequent violence – a task that will be far more difficult than in the South African case if only because Israel is far more important to U.S. strategic interests – BDS as a tactic will continue to have limited effect.

A second tactic used with nonviolent activism is direct action. There are many forms of direct action, which have recently culminated in the Gaza Freedom March, international peace envoys, Freedom Flotillas and Flytillas, and the Arab Spring and Occupy Movement.

In 2009, on the one year anniversary of Israel's military invasion into Gaza that killed about 1,400 Palestinians, I traveled with the Gaza Freedom March (GFM) to Egypt in order to challenge the blockade on Gaza through the Rafah Crossing. The blockade is one of those issues, like Israel's wall, of a conflict inside of the conflict. On the basis of international law, and spelled out by leading human rights organizations and the United Nations, the blockade on Gaza amounts to collective punishment against a civilian population, which, not surprisingly, is outlawed under the Fourth Geneva Convention.

Any reasonable resolution to the conflict would be impossible with a blockade on Gaza that prevented basic humanitarian supplies, and materials for post-war reconstruction and independent development from entering, while completely separating Gaza from the West Bank and the

rest of the world – amounting to what the U.N. called “a protracted human dignity crisis.” (United Nations Office for the Coordination of Humanitarian Affairs, 2009) Therefore, the Gaza Freedom March, peace envoys, flotillas, and “flytillas” were a form of non-violent direct action by international civil society to apply pressure to those responsible for the blockade and put the issue front and center for the international community to enforce international law. The forms of direct action have had varied success, but, if nothing else, were able to force states to react, shift debate and increase public pressure against the blockade.

Unquestionably, the most dramatic direct action has been the Arab Spring and Occupy Movement, which have not specifically focused on the Israel-Palestine conflict, but could potentially have far-reaching effects on the region and, if organized enough, provide a platform for the public to apply pressure on states to accept the international consensus. Most of these movements have been beat back by force, but the threat of mass action is regularly on the minds of governments around the world today. This in and of itself has an impact on policy.

One of the first issues to be brought up with the overthrow of Mubarak was the opening of Egypt’s border with Gaza. Egyptian public opinion remains extremely against the blockade and Israeli military occupation, but, after some early gains following the initial uprising, the border quickly re-closed as the military took control and suppressed protesters. It was fairly clear when I was in Egypt in February 2011 that the military, backed with \$1.3 billion of aid a year from the United States, would attempt to carry on Mubarak’s support for the blockade as they heeded to Israel’s request to station troops in the Sinai to close the border should they take power. On the other hand, Egypt has played a major role in building stronger relations between Hamas and the Palestinian Authority, and, crucially, negotiating a multilateral truce following Israel's 2012 bombing of Gaza. Add this to the deteriorating relations between Israel and Turkey, a powerful actor in the region and United States ally, the possible fall of Bashar Al-Assad in Syria, and schisms over using force in Iran while failing to convince the international community of Iranian nuclear weapons, Israel could lose its unilateral power in future negotiations. International public opinion and Israel's increasing arrogance has become Israel's largest enemy.

In a new book entitled *Knowing Too Much*, Norman Finkelstein argues that the American Jewish population has begun turning against much of Israel's policies in the Occupied Territories. Detailing changes in public opinion, and the proposals from negotiators revealed in the Palestine Papers, there is, he argues, increasing acceptance for a reasonable

resolution to the conflict on the basis of international law. This shift, if organized, could make a significant impact on United States policy in the region. Israel's own actions, as the 2012 bombing of Gaza and subsequent defeat illustrates, Israel's own actions are being turned against itself.

The general framework for resolving the Israel-Palestine conflict is fairly straightforward when principles of international law are accepted. Since progress is blocked by politically powerful nations, it is up to civil society, through non-violent activism, pressure at the United Nations, and reasonable negotiations to bring about the international two-state consensus. If we (particularly the U.S. and Israel) wish to resolve the conflict, steps are available to bring an end to the “final status” issues and provide an atmosphere for a longer sustainable peace through acceptance of the international consensus. If not, we will continue to hold “peace talks” with “wrecking tactics” and not take a principled stance on the acquisition of Palestinian land, which can pave the way for further violence in the region and abroad with the continuation of the conflict.

As has happened so often in history, the hope for a just resolution to the conflict lies in the hands of activists, protesters, and non-violent opposition to crimes being perpetrated. If we succeed, it will be a grand achievement in overcoming a form of settler colonialism and potentially have a civilizing effect in the world. If we fail, we guarantee further bloodshed, suffering, and an unstable region in the ongoing conflict. Considering the protests around the world today and continued international shift against Israeli state policy we could indeed, if properly organized, achieve a peaceful settlement of the Israel-Palestine conflict once and for all.

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