

## **THE MARGINALIZATION OF PALESTINIAN RIGHTS**

The primacy assigned to geo-politics over international law in the so-called peace process has resulted in the marginalization of Palestinian rights, particularly refugee rights, said Dr. Naseer Aruri during a briefing to the Washington, DC chapter of Al-Awda, the Palestine Right to Return Coalition. International law does provide a principled framework for a durable resolution of the Palestine-Israel conflict, however the peace process did not, he said during the briefing, which was held at the Palestine Center to honor the International Day of Solidarity with the Palestinian People on Nov. 29. Instead, the issue must be placed within the larger context of old-fashioned imperialism and settler colonialism.

Aruri explained that from the 1969 Rogers plan to the 2003 Geneva Initiative, the diplomatic emphasis has always been on what is "possible" and "practical" - that is, what Israel will accept - rather than on what is just and legal by international standards.

Putting geo-politics over international law is the name of the game, which has eroded the earlier consensus built around Article III of UN General Assembly Resolution 194 (Dec. 11, 1948), plus numerous resolutions affirming the rights of the Palestinian people to sovereignty, international protection, and the freedom to struggle for independence by all necessary means, including armed struggle, as was seen during the 1960's and 70's.

The issue of refugees has been marginalized over the better part of the past 50 years, despite the fact that Israel's admission to the United Nations was contingent upon protection for and repatriation of Palestinian refugees, as outlined in Article 11 of Resolution 194. Resolution 273 on May 11, 1949 made Israel's admission to the UN conditional on its unambiguous commitment to respect "unreservedly" UN resolutions pertaining to the Arab-Israeli conflict, including Resolution 194. Twenty-five years later, Resolution 3236 of Nov. 22, 1974 reasserted the "inalienable right of the Palestinians to return to their homes and property from which they have been displaced and uprooted." Resolution 52/62 reaffirmed that principle, saying in 1997 that the "Palestine Arab refugees are entitled to their property and to the income derived there from, in conformity with the principles of justice and equity."

Aruri contends that while the grounding of Palestinian rights in international humanitarian law - especially refugee rights - is self-evident, such rights have been marginalized by three factors at least: the Palestine Liberation Organization's (PLO) unwitting complicity due to its focus on sovereignty and its own rise to power, Israel's rejectionism and distortion of UN resolutions for its own purposes, and a peace process that domesticated Israel's occupation and allowed it to continue unchecked despite Palestinian concessions.

## **THE PLO AND THE FUTILITY OF DIPLOMATIC RESOLUTION**

With the emergence of the PLO during the 1960's, the issue of rights under international law, including those of the refugees, was relegated to a humanitarian, charitable issue. The overarching objective of the PLO became global recognition of its status as the sole legitimate representative of the Palestine people on the question of sovereignty - "a good cause," said Aruri, "but not at the expense of refugee rights and the right of return."

For the following two decades, this quest for international recognition and for the creation of a mini-state in the West Bank and Gaza claimed the largest portion of Arab and Palestinian diplomatic energies, to the exclusion of refugee rights. While the PLO achieved its goal of becoming the focal point of the Palestine Question, in 1993, it ironically became the first Arab party to sign an agreement that effectively deferred internationally recognized rights. More drastically, it agreed in the meetings in 2000 at Camp David not to insist on the right of return.

The PLO and the Arab states associated themselves with the basic elements of the global consensus about the Arab-Israeli conflict, namely a focus on ending the occupation and recognizing a two-state solution, as expressed in countless documents, including the 1971 Sadat offer, the Security Council Resolution of 1976 calling for implementation of Resolution 242 and a two-state solution, the European Council's Venice Declaration (June 12-13, 1980), which recognized Palestinian self-

determination, the 1981 Fahd Plan, the 1988 PLO recognition of Israel. This consensus continues as seen by the 1998 European Union Declaration and the 2002 plan put forth by Saudi Crown Prince Abdullah and adopted by the Arab League in Beirut, offering full recognition of Israel in exchange for ending the occupation.

Nevertheless, the joint Arab-Palestinian pursuit of the two-state solution was never taken seriously either by the United States or by Israel. Despite the PLO's concessions, Israel did not reciprocate by either ending the occupation or discussing the right of return. Instead, they continued the line of rejectionism that extends as far back as the Rogers Plan of 1969, even vis-a-vis U.S. proposals that do not include full withdrawal from the occupied Territories and/or Palestinian sovereignty.

### **THE DISTORTION OF INTERNATIONAL LAW**

In addition to the PLO's emphasis on the issue of sovereignty during the 70's and 80's and Israeli rejectionism, Aruri contended that the peace process distorted the meaning of international law and diluted its effect in the interest of geo-politics. For example, the term sovereignty would appear with adjectives such as "dual" sovereignty, "shared" sovereignty, and a "sense of sovereignty." The concept of withdrawal from occupied territories was rendered as "redeployment," which, Aruri reiterated, is not the same thing. In more than a thousand pages of Oslo documents, one never encounters the term "occupation" or sees any reference to refugees except in the context of final status issues, he pointed out. These terms are governed by international humanitarian law and the law of war.

This watering down of U.N. resolutions and international law by the self-designated honest broker was aggravated by Israeli domestication of international law. Rather than rejecting it outright, Aruri argued that Israel has been utilizing international humanitarian law and legal discourse to justify its own policies and actions in the occupied territories, in a way that the U.S. is emulating now in matters relating to its declared "war on terror."

For example, while Israel agrees that the Fourth Geneva Convention's rules apply to "occupied" territories, it holds that the West Bank and Gaza are not occupied, but rather "administered" and "disputed." Consequently, it argues that the Conventions are not applicable to Israel's rule on de jure basis, but rather that Israel abides by them on de facto basis, namely to respect its "humanitarian provisions." Such claims have been put to rest in the recent advisory opinion the International Court of Justice (ICJ) provided to the United Nations' General Assembly on the issue of the wall Israel is constructing inside the Green Line that separates the West Bank from Israel, as discussed below.

### **OSLO AND PALESTINIAN CONCESSIONS ON BASIC RIGHTS**

Aruri contended that the peace process has not only undermined and distorted international law in the Occupied Territories, but it has pressured Palestinian officials to concede aspects of Palestinians collective and individual rights which they do not have right to concede. Abu Mazen (Mahmoud Abbas) and the late Yasser Arafat, for example, then number one and two in the PLO and Palestinian Authority (PA), stripped the right of return and restitution of all meaning by publicly recognizing Israel's demographic "concerns." Arafat wrote the following in The New York Times op-ed piece (Feb. 3, 2002):

"We seek a fair and just solution to the plight of Palestinian refugees who for 54 years have not been permitted to return to their homes. We understand Israel's demographic concerns and understand that the right of return of Palestinian refugees, a right guaranteed under international law and United Nations Resolution 194, must be implemented in a way that takes into account such concerns."

The secret agreement negotiated by Abu-Mazen and Israeli Labor minister Yossi Beilin on Oct. 13 1995 not only nullified ipso facto UN Resolution 194 but also all other key international instruments and provisions of refugee law, human rights law, and humanitarian law in which refugee rights are enshrined. For example, Section I of Article VII of the Beilin-Abu Mazen agreement, also known as

the Framework, requires the Palestinian side to reconsider its refugees' rights under international law in light of the changing realities on the ground since 1948:

"The realities that have been created on the ground since 1948 have rendered the implementation of this right (ROR) impracticable. The Palestinian side, thus, declares its readiness to accept and implement policies and measures that will ensure, insofar as this is possible, the welfare and well being of these refugees."

In Section 2 of Article VII, Israel acknowledges "the moral and material suffering caused to the Palestinian people as a result of the war of 1947-949," even as in practice, Israel accepts neither legal nor moral responsibility for that "suffering." The right of return as articulated by international law is, therefore, declared null and void inasmuch as its implementation falls on the shoulders of the PA, with Israel shirking any and all of its responsibility for the plight of the refugees.

Former Israeli Prime Minister Ehud Barak reiterated the gist of the Framework as he was departing for the negotiations of Camp David 2000. He assured the Israeli public that "Israel will not recognize any moral or legal responsibility for the Palestinian refugee problem."

This agreement between Beilin and Abu Mazen negates fundamental rights guaranteed by former agreements, including Article 13 of the Universal Declaration on Human Rights and the 1949 Fourth Geneva Convention, which provides that: "Everyone has the right to leave any country, including his own, and to return to his country"; the International Covenant on Civil and Political Rights' provision that "no one shall be arbitrarily deprived of the right to enter his own country" was arguably eliminated; and the International Convention on the Elimination of All Forms of Racial Discrimination's provision that a state may not deny, on racial or ethnic grounds, the opportunity "to return to one's country."

Perhaps we should recall, Aruri said, that the creation of the refugee's problem in 1948 was intended to assure a permanent Jewish majority in the Jewish state. Today, more than a half century later, the overwhelming majority of Israelis consider the return of Palestinian refugees as a mortal danger and a demographic threat to Israel. No change has occurred in the Zionist movement's reliance on ethnic cleansing as an instrument to insure that all of Palestine is its own domain, clean of non-Jews. The indigenous Palestinians can be tolerated only as a scattered minority living in enclaves under the overarching matrix of Jewish control.

The question of return has been also marginalized by the fact that it has already been considered by Oslo's Declaration of Principles (DOP) as a regional matter affecting all refugees, including Jews who left property in Arab countries when immigrating to Israel. That is why both Camp David I (1978) and the DOP (1993) call for a committee consisting of Israel, Jordan, Egypt, and the Palestinian Council to settle that problem, with Israel retaining an effective veto.

### **ISRAEL AND THE APARTHEID WALL**

The erosion of Palestinian rights by the peace process must be remedied by international civil society action pursuant to the implementation of the International Court of Justice's, released July 9, 2004, on the legality and consequences of the wall Israel is aggressively constructing around the West Bank. Aruri argued that one can look to the ICJ ruling for a remedy to the question of refugee rights and the inevitable clash of discourse, for example between "occupied" and "contested," "withdrawal" and "disengagement," "legality" and "military necessity," "restitution" and "justice for refugees."

It is notable that the ICJ ruling did not mention the right of return. It spoke of self-determination within the 1967 borders and called for a two-state solution in accordance with the U.S. Road Map. Aruri argued, however, that according to legal scholar Susan Akram, the ICJ ruling does help to push the refugee issue. There are five points in the ICJ decision which are significant for Palestinian refugees. They include the Court's:

- affirmation of the applicability of law to the conflict (i.e. it is not a political issue only);

- affirmation of the Palestinian right to self-determination;
- articulation of the appropriate remedy for illegal land confiscation (i.e. restitution and compensation, which the Court argued was based on the law of states' responsibility), which, while not referring to 194, affirms the principles underlying 194 vis-a-vis 1948;
- assertion by a 14-1 vote that Israel is responsible for making reparations for all damage caused by construction of the wall, which gives Palestinians for the first time restitution rights a clear affirmation under international legal doctrine and establishes that restitution (not simply compensation) is the required remedy for wrongful property expropriation (a principle thus applicable to Palestinian refugee property under the 1948 borders); and
- assertion by a 13-2 vote that all state parties to the Fourth Geneva Convention of 1949 have the obligation to ensure that Israel complies with the provisions of international humanitarian law governing the occupied Palestinian Territories.

Aruri argued that this last point may be the most important aspect of the ICJ opinion for the purposes of public activism, strategy, and further negotiation. The obligation to enforce the Fourth Geneva Convention's provisions like Article 49, which prohibits either individual or mass forcible transfers of the occupied population out of the territory or transfers of its own civilian population into the given territory, are not the only provisions to which Israel can be held accountable according to the ICJ. Because the ICJ found that Israel was bound to all aspects of the Fourth Geneva Convention, the provisions requiring a state to permit persons evacuated during hostilities to return to their homes as soon as hostilities have ceased - one of the principles underlying Palestinian right of return - are also enforceable against Israel. Under the meaning of the ICJ opinion, such rights are also to be enforced by the community of states.

## **CONCLUSION**

Aruri concluded that the world is now at a crucial juncture. The present Sharon government views 1948 as an incomplete phase that is perhaps now ready for completion, hence its campaign since 2000 to destroy the infrastructure of the Palestine Authority and the institutions of Palestinian civil society through the confiscation and destruction of Palestinian resources and property. Few would dispute that the ongoing severe repression and economic strangulation are intended to push Palestinians to pursue "voluntary transfer."

Moreover, there is now a cultural-political divide in the world at large due to the Bush doctrine of preventive war. This divide is between the United States and Israel on the one hand and much of the world on the other, which still champions to the rule of law and the diplomatic, peaceable resolution of international disputes. The ICJ's advisory opinion on Israel's apartheid wall underscored this divide. The Court voted 14-1 against Israel, and the General Assembly backed the Court by a vote of 150 to 6. This stands in sharp contrast to the vote in the U.S. Congress whereby 361 Representatives officially deplored the Court's decision, with only 45 in support (13 members were absent and 14 abstained).

Aruri held that the sum result of such callous obstruction of justice will likely be further international isolation of the U.S. and Israel, which could spawn international action to compel Israeli compliance with international law in accordance with the ICJ's ruling, similar to what happened in Namibia during the 1970's and 80's and in East Timor during the 1990's.

While the ICJ ruling does punctuate a new reality per se - that is, a clash between the U.S., Israel, the Marshall Islands, Micronesia, et al. on the one hand versus the rest of the civilized world that insists on applying international law on the other - Aruri argued that such a clash would send shockwaves throughout a world disillusioned by U.S. disregard for the rule of law, multilateralism, and the constitutional principle of checks and balances.

Aruri said that a renewed commitment to genuine peace based on international law and on principled compromises would have to replace the Israeli diktat blatantly shielded by U.S. power. He hoped that the status-quo would be challenged not only by the largely defenseless Palestinian civilians, but also by a global movement that has grown tired of a militarized U.S. foreign policy that defies the principles of secularism, rationalism and multiculturalism. Aruri hopes this movement will

expose Bush's claims of divine inspiration and Sharon's expansionist design, as exemplified by the apartheid wall and as shrouded in misleading claims of self-defense, for what they are: a reincarnation of old-fashioned imperialism and settler colonialism.