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## **ADDING A STONE UPON A STONE<sup>1</sup>**

### **The Next Steps for Palestine at the UN**

Paper hosted by the Institute of Arab & Islamic Studies (IAIS)/European Centre for Palestine Studies (ECPS), University of Exeter, and Delivered at the at the "Visiting Speakers Series" in Honour of the Author's co-Founding the Exeter-based Palestine Studies Trust and in Celebration of His 70th Birthday.

#### Abstract

After defining the key terms of his Paper (What is Palestine?; What is political-Zionism?; What are Zionist Institutions?; What is ethnic cleansing?; What is apartheid?) and after considering the analogies and the specificities of Israeli apartheid versus past South African apartheid as well as the political implication of declaring Israel an apartheid state under international law - the Paper discusses future dangers and ambiguities underpinning the partial diplomatic victory of the PLO/State of Palestine in the UN and concludes that the next best step for Palestine in the UN could very well be: pressing the UNGA to reduce the status of Israel from a Full-Member state to an Observer-Member state so long as the core of strategic Israeli apartheid legislation is not dismantled, and in this connection declare the borders of Observer-Member "Jewish" (or better Hebrew) state to be the borders designated in UNGA Resolution 181(ii) of 1947.

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<sup>1</sup> Title borrowed from Marzuk Halabi's lyrics performed by Amal Murkus, "A Tale"/"Hkaye".  
<http://mas20.bezeqint.net/wm/mail/genimage/01%20%201רצוניה.wma?sessionid=0e5599c9eaddc3d58afb0795193d4e6af&uid=301466&off=9914&len=4243512&enc=1&type=VIDEO&sub=X-MS-WMA&mbox=user.uridavis>

## Preface

As the Programme you have at hand suggests you have been invited here today by the Institute of Arab and Islamic Studies/European Centre for Palestine Studies to hear me talk on the subject of "The Next Steps for Palestine at the UN" on the occasion of my 70th birthday.

I believe I am not the only person here today whose next birthday is 71, and as the Programme suggests, one's 70th birthday is an occasion for a retrospective. In this connection I wish to thank the Institute and the Centre for honouring me in this way and for inviting me to talk to you on this auspicious an occasion.

As given in the Summary Biographical Note at the bottom page (p 17) of the text of the Paper sent-out by the Institute towards this occasion, I graduated with a PhD from the Department of Anthropology, the New School for Social Research, Manhattan New York. At the New School I was privileged to be a student of the late Professor Stanley Diamond and to be introduced to the academic discipline of anthropology, notably to the philosophical/critical anthropological school. As a PhD student I was taught (and that teaching has guided and inspired my life-time work) that a decent anthropologist working among the "wretched of the Earth" is also a voice of "his people", namely the people without whose trust and hospitality he or she would not be able to do their work.

Thus towards this occasion I saw it fit to bring the literal voice of my Palestinian people to this august platform, represented by the lyrics of Marzuk Halabi's and performed by the internationally renown voice and person of Amal Murkus, "A Tale/"Hkaye".

One bright morning  
(No one remembers when and why)  
Adding stone upon stone  
people started building a home  
And around it they planted raspberries  
and laurels  
And soon the courtyard filled up with  
children playing  
And the garden held an abundance of  
flowers  
And every night birds came to visit  
People started building a home  
Simply by adding stone upon stone...

Thus, directed by the voice of my conscience and inspired by the voice of my people please consider my Paper to be entitled "ADDING A STONE UPON A STONE: The Next Steps for Palestine at the UN".

## Introduction

On 29 November 2012, Palestine achieved an important partial diplomatic victory at the UN with the General Assembly voting 138 Yes, 9 No and 41 Abstain to endorse Resolution A/RES/67/19 on the status of Palestine in the United Nations, and according to Palestine Non-Member Observer State status in the United Nations, without prejudice to the acquired rights, privileges and role of the Palestine Liberation Organization in the United Nations as the representative of the Palestinian people.

Palestine achieved this partial victory 65 years after UN General Assembly (UNGA) Resolution 181(ii) of 1947 (recommending the establishment of a bi-national “Jewish state” in Palestine, a bi-national “Arab State” in Palestine and a bi-national corpus separatum of the City of Jerusalem under UN administration) and after the ensuing catastrophe of the Palestinian Nakba (the 1948 ethnic cleansing of Palestine); 90 years after the League of Nations vested with His Britannic Majesty the Mandate for Palestine (a nation provisionally recognized as independent, but receiving the advice and assistance of a Mandatory in its administration until such time as it is able to stand alone), and 95 years after the Balfour Declaration (it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country).

The credit for this partial victory goes to Palestinian diplomatic efforts orchestrated by President Mahmoud Abbas (Abu Mazin), steadfast at the helm, declining to change PLO diplomatic course despite massive internal and external pressures to do so. This partial victory assumes added significance against the backdrop of the steadfastness of the people of Gaza in the face of the recent Israeli attack on the Gaza Strip (dubbed “Pillar of Cloud”), the tectonic changes undergoing across the area of the Middle East, and the failure of the “Oslo Accords”.

## Palestine, Political Zionism, Ethnic-Cleansing, Apartheid, Israel

What is Palestine?

The country of Palestine is the territory mandated to His Britannic Majesty by the Council of the League of Nations in 1922 (otherwise known as "Historic Palestine". See map below).



<http://www.palestineremembered.com/Acre/Maps/Story583.html>

What is political-Zionism?

Political-Zionism is a settler-colonial movement founded at the First Zionist Congress convened in the Swiss city of Basle in 1897, in response to European anti-Jewish racism (“anti-Semitism”) by aiming to establish in the country of Palestine initially “a publicly and legally assured home” for the "Jewish people", and subsequently a sovereign state, a “Jewish state”, the State of Israel, that will attempt to secure in law and in practice a demographic majority of ethnic "Jews" (persons of Jewish “race or descendency”, that is of Jewish tribes) in the territories under its sovereignty and control, that is, an apartheid state. Some 50 years later the said State of Israel was declared established and admitted as a Full-Member State with the UN General Assembly.

What are Zionist Institutions?

Partially overlapping the State of Israel Government Ministries and Departments, political-Zionist institutions (voluntary until the establishment of the State of Israel in 1948 and, since 1952, parastatal institutions regulated in law, that is, by Acts of Parliament/the Israeli Knesset) have been chartered by the State to institutionalize and operationalize superior rights and distinct responsibilities exclusively (exceptions notwithstanding) for people classified in law as “Jews” inside Israel. These institutions - the World Zionist Organization (WZO), the Jewish Agency for the Land of Israel (JALI), the Jewish National Fund (JNF) and their affiliates (notably, the United Israel Appeal/the Foundation Fund) - have institutionalized the concept of the ethnic (or better: tribal) Jew

as “the Jewish people” (of “Jewish race or descendency”).<sup>2</sup> The official platform of the World Zionist Organization and the Zionist movement is directed to bestow discriminatory privilege on members of these tribal groups self-defined as a "Jewish people" in political-Zionist parlance. Since the establishment of the State of Israel in 1948, they largely control land, natural and human resources and development planning inside Israel-controlled territories for “Jews” only<sup>3</sup>.

The principal political-Zionist parastatal institutions also operate internationally, registered in some 50 other states as tax-exempt charities, where they mobilize financial and other (notably, human) resources to implement the political-Zionist settler-colonial and ("Jewish") population transfer project into all parts of historic Palestine. In their extraterritorial operations, the parastatal institutions play a role that public international law strictly prohibits for states.<sup>4</sup>

The activities of these parastatal institutions inside the state of Israel and beyond are complicit with the blatant violation by the successive Governments of the State of Israel of peremptory norms of international law, notably denying self-determination for indigenous peoples, practicing racial discrimination and carrying out population transfer, (including the implantation of colonial settlers and settlements). These activities are prohibited in public international law, international humanitarian law, human rights treaties and international criminal law.

By operating as tax-exempt charities in some 50 countries, the activities of these political-Zionist parastatal institutions are harmful to the indigenous Palestinian-Arab people, to people of Jewish origin, and to citizens of states in which these political-Zionist parastatal institutions operate, because they:

- Assume a racist classification of Jews;
- Claim to act on behalf of all Jews;
- Impose “Jewish nationality” on citizens of other states;
- Establish a chartered/treaty basis for apartheid discrimination in Israel controlled and Israel-occupied territories;
- Manage continuing dispossession of the indigenous Palestinian-Arab people;
- Pursue programmes contravening international human rights, humanitarian and criminal law.

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<sup>2</sup> As asserted in the Jewish National Fund Charter, Article 3(c).

<sup>3</sup> The term “Jew” or any of its derivatives when referred to in quotes designates the political-Zionist interpretation of “Who is a Jew”.

<sup>4</sup> W. Thomas Mallison and Sally V. Mallison, The Palestine Question in International Law and World Order (London: Longman, 1986), “Juridical Status and Political Activities of the Zionist Organization/Jewish Agency” Chapter 2, pp. 79–141.

What is ethnic cleansing?

Ethnic cleansing is a practice contrary to international law that involves the attempt of rendering geographical areas ethnically homogeneous by using criminal force (such as massacres) or intimidation (such as threats of rape or massacre) to remove persons of given groups from the area and their replacement through the implantation of settlers and settlements in that territory.<sup>5</sup>

Ethnic cleansing can involve the attempted removal of all physical vestiges of the targeted group through the destruction of entire localities, including their monuments, cemeteries, and houses of worship, as well as the transformation of place names and erasure of historic records and memory.

The ethnic cleansing of Palestine was by political-Zionist militias began already prior to the declaration of the establishment of the State of Israel in 1948, and by the forces of the Israeli army in the course of the and in the wake of the 1948-49 war (the Palestinian Nakba) and thereafter with the complicity of the parastatal institutions listed above, regulated in law, that is, by Acts of Parliament (the Knesset of the State of Israel) since 1952.

The ethnic cleansing of Palestine as defined above has been pursued relentlessly inside the territories under Israeli sovereignty bound by the 1949 armistice lines (lines otherwise known as the "Green Line", and territories otherwise known as "pre-1967 Israel" or as "Israel proper"). Thus, for instance, the continuing concentration of the Palestinian-Arab bedouin population that survived the Palestinian Nakba in southern Palestine (the Naqab, referred to in political-Zionist parlance as the "Negev") embarked upon in the enclosure (siyāj) area of 1951–1953 has now culminated with Jewish National Fund complicity in the programme of "Blueprint Negev", referred to by the JNF as "Israel's last frontier".<sup>6</sup>

What is apartheid?

Given the partial overlap between the standards of the International Convention on the Elimination of All Forms of Racial Discrimination of 1969 and those of the International Convention on the Suppression and Punishment of the Crime of Apartheid of 1973, I suggest that for the purpose of this Paper the term "racism" be clearly differentiated from the term "apartheid" and conceptualized as synonymous to "popular xenophobia", reserving the term "apartheid" to designate a political system where racism is regulated in law through Acts of Parliament and carried out through institutions of the state implementing racial discrimination.

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<sup>5</sup> Interim Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), 55, para. 55.

<sup>6</sup> <http://www.jnf.org/about-jnf/in-your-area/western-zone/orange-county>

Racism (popular xenophobia) is an ugly feature prevalent in varying degrees in all member states in the United Nations, including liberal democratic states such as the current western liberal democracies. But in liberal democratic states, those victimized by racism have legal recourse to seek the protection of the law under a democratic constitution, namely a constitution that embodies the values of the Universal Declaration of Human Rights and establishes citizenship as the common status representing equal access to the resources of the state, notably: equal access to the civil resources of the state (e.g., courts of law); the power-political resources (e.g., the vote and elections); social services resources (e.g., welfare and education); and, notably in the context of this Paper, material resources (e.g., land and water) as well as sharing equally in all rights. In an apartheid state, on the other hand, the state enforces racial discrimination through the legal system, and the law enforcement instruments of the state (police, prison, army) criminalize expressions of humanitarian concern and obligate the citizenry through Acts of Parliament and the courts to make racist choices and conform to racist behaviour.

As far as I am aware, after the dismantlement of the apartheid regime in the Republic of South Africa, and its replacement in 1966 with a liberal democratic regime under a democratic constitution – the State of Israel remains the only apartheid state that is a member in the United Nations Organization.

The standard legal definition of apartheid is enshrined in Article II of the International Convention on the Suppression and Punishment of the Crime of Apartheid (1973). For the purpose of that treaty, "the crime of apartheid" includes policies and practices of racial segregation and discrimination similar to those practiced in southern Africa. Rather, the term "the crime of apartheid" applies to a range of "inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them", regardless of geographical location<sup>7</sup>.

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<sup>7</sup> It is in order we interpret the term "racial group" in the light of the definition of the term "racial discrimination" in the International Convention on the Elimination of All Forms of Racial Discrimination of 1965, namely: "In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".

These include:

- (a) Denial to a member or members of a racial group or groups of the right to life and liberty of person:
  - (i) By murder of members of a racial group or groups;
  - (ii) By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;
  - (iii) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups;
- (b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;
- (c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;
- (d) Any measures, including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;
- (e) Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour;
- (f) Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.<sup>8</sup>

### Israel and South Africa: Analogies and Specificity

Israel is a state that has settler-colonized and occupied the country of Palestine that was unilaterally declared established by members of the People's Council, representatives of the Jewish Community of Palestine (Eretz-Israel in Zionist parlance) and of the Zionist Movement on the day of the termination of the British Mandate for Palestine (14.5.1948) and admitted as a full-member "peace-loving" state in the UN.

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<sup>8</sup> International Convention on the Suppression and Punishment of the Crime of Apartheid, G.A. res. 3068 (XXVIII), 28 U.N. GAOR Supp. (No. 30) at 75, U.N. Doc. A/9030 (1974), 1015 U.N.T.S. 243, entered into force July 18, 1976. The Convention has 31 signatories and 107 parties. The Convention's negotiation history indicated that its scope is broad enough to apply to perpetrators and states other than South Africa for their policies and practices of racial discrimination. Twenty-eighth session of the General Assembly, Summary record of the 2004th meeting of the Third Committee, held on 23 October 1973, (A/C.3/SR.2004), paragraph 4).

It is beyond the scope of this Paper to attempt elaborate the contingencies of how Israel's admission in the UN was achieved in 1949 despite the perpetration of the Palestinian Nakba, the crime-against-humanity of ethnically cleansed much of that country's indigenous people, the Palestinian-Arab people, perpetrated by the political-Zionist militias prior to the declaration of its establishment and by the Israeli army after the said declaration, and despite Israel's violation of most, if not all, United Nations resolutions on the question of Palestine since United Nations General Assembly (UNGA) resolutions 181(ii) of 1947 and 194(iii) of 1948.

As noted above, to the best of my knowledge, after the dismantlement of apartheid legislation in the Republic of South Africa and its replacement with a liberal-democratic Constitution in 1996, Israel remains the only full-member-state with the UN that is an apartheid state.

And the Israeli Parliament (the Knesset) likewise wasted little time following suit and began formulating the strategic bundle of Israel's apartheid legislation almost immediately after the conclusion of the Armistice Agreements with the neighbouring Arab states in 1949 beginning with the Absentees' Property Law, Law of Return; Development Authority Law, all of 1950; World Zionist Organization - Jewish Agency Status Law of 1952; Keren Kayemeth Leisrael (Jewish National Fund) Law; Land Acquisition (Validations of Acts and Compensation) Law, both of 1953; Covenant between the Government of Israel and the Zionist Executive, also known as the Executive of the Jewish Agency for the Land of Israel of 1954; Prescription Law of 1958; Basic Law: Israel Lands; Israel Lands Law; Israel Lands Administration Law, all of 1960; Covenant between the Government of Israel and the Jewish National Fund of 1961 – and more.

Needless to say, in so doing, Israel is in violation of most, if not all standards of international law and UN resolutions relevant to the peremptory norms related to the rights of peoples, in general, and the question of Palestine, in particular. Notably, Israel's terms of admission as a Full-Member State in the UN in 1949 require implementation of UNGA Resolution 194(iii) of 1948, resolving that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so, with attendant rights to rehabilitation, resettlement and compensation at the earliest practicable date.<sup>9</sup> UNGA Resolution 181(ii) of 1947 ("Plan for Partition with Economic Union"), requested the UN Security Council to take the necessary measures to implement the said plan, ensuring, inter alia, that Palestinian citizens residing in Palestine, as well as other Arab and/or Jewish residents, shall become citizens of the State in which they are resident and enjoy full civil and political rights, upon the recognition of that State's independence.

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<sup>9</sup> "Palestine - Progress Report of the United Nations Mediator", A/RES/194 (III), 11 December 1948, para. 11.

In other words, the world community, as represented in the UN, endowed international legitimacy to the idea of a bi-national “Jewish state”. That world community, however, did not legitimate the idea of a “Jewish state” to be predicated on the outcomes of already-established war crimes and crimes against humanity, bringing about the ethnic cleansing of Palestine. Nor do the norms of international law permit the subsequent strategic settler-colonial apartheid legislation and the establishment of “national” institutions in their political-Zionist interpretation, resulting in 93 per cent of the territory under the control of pre-1967 Israel being reserved in law for “Jews” only. Equal access to the soil resources as well as sub-soil resources (first and foremost: water resources) is denied in law to any person defined under Israeli apartheid legislation as “non-Jew”.

*At core, Israeli settler-colonial apartheid is more radical (in the negative sense of the term) than that South African settler-colonial apartheid, which sought the subjugation, but not the expulsion of the indigenous peoples of the land. Whereas South African apartheid reserved in law 87 per cent of the territory to “Whites”, denying in law equal access for “non-Whites” to the country’s soil, sub-soil resources - apartheid Israel reserves 93 per cent of the territory of pre-1967 in law for “Jews” only. In law, “non-Jews” are denied equal access to the soil, sub-soil resources.*

Whereas the standard for the juridical divide legislated by the Parliament (Volksraad) of the former apartheid Republic of South Africa was “White” versus “non-White” – the standard for the juridical divide legislated by the Parliament (Knesset) of apartheid State of Israel is “Jew” versus “non-Jew”.

As noted above, to the best of my knowledge, after the dismantlement of the apartheid regime in the Republic of South Africa, and its replacement in 1966 with a liberal democratic regime under a democratic constitution – the State of Israel remains the only apartheid state that is a member in the United Nations Organization.

As such, the State of Israel in its political-Zionist interpretation is an apartheid state. As such, apartheid State of Israel is an antagonist of the United Nations’ three essential purposes: international peace and security, human rights and sustainable development. In this regard, the State of Israel has progressively singled itself out as the outstanding violator of the peremptory norms established under the International Convention on the Suppression and Punishment of the Crime of Apartheid of 1973.

#### Declaring the State of Israel and apartheid state

Numerous legal authorities have recognized the State of Israel as a state practicing a system of apartheid. Not least of those authorities are UN human rights treaty bodies and Special Procedures, including the Committee on the Elimination of Racial Discrimination (CERD) finding breaches of State of Israel’s Article 3 obligations to “to prevent, prohibit and eradicate all practices” of racial segregation and apartheid in territories under its jurisdiction, as required of States Parties to the International Convention on the Elimination of All Forms of Racial Discrimination of 1969.

The analogy to South African legal and diplomatic history is instructive. In a series of debates and resolutions of the General Assembly in the early 1950s, the principal of subjecting apartheid and its practices to the international agenda and UN engagement was affirmed, against South African protestations of domestic sovereignty, in so far as that domestic situation of a given state threatened international peace and security. In turn, South Africa ceased cooperation with certain bodies and specialized organizations of the UN. However, that reaction did not absolve the apartheid state of South Africa of its public international law obligations or permit its violation of peremptory norms of international law incumbent upon all states. Key to upholding its chartered purpose of upholding peace and security, progressive development and human rights, the UN subsequently established an effective Special Committee against Apartheid (1962), reporting to the GA and Security Council.

Over time, the Special Committee's mandate expanded to include promoting an "international campaign against apartheid". The Special Committee soon became one of the most dynamic and tangible action-oriented committees in the United Nations. It also became a locus for campaigners of and within the UN system. It continued to press for mandatory economic sanctions, and promoted a range of projects such as assistance to political prisoners and their families, education and training programs, and arms and oil embargoes. The Committee gave much attention and encouraging antiapartheid movements and other nongovernmental organizations (NGOs) to inform the public about the struggle for freedom in South Africa, organizing various boycott/divestment/sanctions (BDS) activities involving the cancellation of sports, cultural, and other relations with South Africa, and persuading universities, local authorities and other institutions to divest.

The Special Committee's numerous annual reports reflected its particular concern about the state's political trials and repression of defenders against racist policies, the expansion of military and police forces to repress them, as well as acts of aggression beyond the apartheid State's borders. The Committee consistently advocated boycott of apartheid sports teams and other racist institutions, and called for other actions by governments, multilateral agencies and NGOs to exert pressure on the South African government and to assist the local struggles for liberation.

*With this hybrid model of UN-based diplomacy and activism, the ample analogies and legal precedents provide the occasion to reinstate the Special Committee against Apartheid, based on appropriate resolutions within the UNGA's supreme authority. The new Special Committee's potential engagement of current human rights mechanisms and Special Procedures in the UN system makes possible a wider significance and potential effectiveness as an agent within the UN system today.*

The serial Concluding Observations of UN treaty bodies concerned with Israel as a State Party - in particular, the Human Rights Committee, Committee on Economic, Social and Cultural Rights (CESCR) and CERD - have provided important findings, already reported to the UNGA, that give cause to consider reinstatement of the Special Committee against Apartheid.

## The State of Palestine's partial diplomatic victory at the UN

With the historical crossroad of the admission of Palestine as a Non-Member (Observer) State at the UN General Assembly (A/RES/67/19, 4 December 2012, 67th session, Agenda item 37), Palestine is now recognized as a state under occupation, and the spurious apartheid Israel claim that the post-1967 Israeli occupied territories are “disputed territories” is, thereby, unequivocally foreclosed to Israel by the world community.

Even Germany abstained this time, notwithstanding its past record of the support of the succession of its post-war governments for Israel, due, in good part, to the suppression of legitimate criticism of Israel by political-Zionist specious allegation of “collective guilt” for the holocaust perpetrated by the Nazi occupation of Europe. This may also apply to the United Kingdom, which also abstained.

With the exception of the Czech Republic (Against) and Ukraine (Absent), all European states either voted in favour or abstained from voting on said UNGA Resolution, with politically weighty European states such as France, Italy and Spain voting in favour. Also voting in favour were three of the five permanent members of the UN Security Council, namely China, Russia and France – all of which underlines the isolation of the United States, Canada, Panama and Israel, joined by the four island states of Marshal Islands, Micronesia, Nauru and Palau. Thus, in the face of Palestinian perseverance and the justice of the Palestine cause, the US-Israel alliance was defeated at the UN despite the massive avenues of exercising pressure available at its hands.

Given the situation on the ground and in the world community, the battle against political-Zionism can be won step-by-step, partial victory by partial victory; that is, by cumulative points rather than by knockout. Correlatively, following this partial victory, Palestine is establishing relations with the peoples of the world and with international institutions on a new basis, winning the support of world community and exposing the core of Israeli apartheid.

In parallel, apartheid Israel recoils, retreating behind an apartheid wall and intensifying its illegal colonial settlement policies. It is distancing many of the Member States at the UN General Assembly and increasing its international isolation by its continuing violation of international law.

As pointed out by Francis Boyle, additional to the significant international and legal gains afforded to the cause of Palestinian rights by the said UNGA Resolution and Palestine can now join a range of international bodies.<sup>10</sup>

Needless to say that the procedures of joining the said international bodies and processes are protracted and could be lengthy, requiring investment of considerable diplomatic efforts bolstered by first League of Arab States support and then international support – all with the view to reinforcing Palestinian rights and a better future for the Palestine people through effective self-determination as first priority. Also needless to say that given that the said procedures are protracted and could be lengthy, Palestinian efforts ought to be informed by the priorities of the concrete needs of our Palestinian people at each stage lest we invest inordinate diplomatic and other resources and have them wasted fetching poor results.

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<sup>10</sup> Palestine can now join the Rome Statute for the International Criminal Court and file a Complaint with the ICC against the illegal settlements and settlers; Palestine can now join the Statute for the International Court of Justice and raise general questions of international law such as challenging the illegal siege of Gaza; Palestine can now join the Law of the Sea Convention and get its fair share of the enormous gas fields lying off the coast of Gaza; Palestine can become a High Contracting Party to the Four Geneva Conventions; Palestine can join the International Civil Aviation Organization (ICAO) and gain legal sovereignty over its own airspace; the International Telecommunications Union (ITU) and gain legal sovereignty over its own airwaves, phone lines, bandwidths; the International Civil Aviation Organization (ICAO) in defence of its airspace and aviation environmental protection; the UN Food & Agriculture Organization (FAO) securing regular access to enough high-quality food to lead active, healthy lives; the International Atomic Energy Agency (IAEA) challenging apartheid Israel's illegal stockpiles of illegal nuclear weapons and works with its Member States and multiple partners worldwide to promote safe, secure and peaceful nuclear technologies; the World Tourism Organization (UNWTO) promoting of responsible, sustainable and universally accessible tourism; the World Bank helping reduce poverty; the International Fund for Agricultural Development (IFAD) contributing to eradicating rural poverty in developing countries; the International Labour Organization (ILO) endeavouring to shape policies and programmes promoting decent work for all; the International Monetary Fund (IMF) working to foster global monetary cooperation and sustainable economic growth; the International Civil Aviation Organization (ICAO) promoting the safe and orderly development of international civil aviation throughout the world; the International Maritime Organization (IMO) securing the safety and security of shipping and the prevention of marine pollution by ships; the World Health Organization (WHO) providing leadership and essential services to states on global health matters; the Universal Postal Union (UPU) helping to ensure a truly universal network of up-to-date products and services; the United Nations Industrial Development Organization (UNIDO) promoting sustainable industrial development to improve the living conditions of people and global prosperity; the World Intellectual Property Organization (WIPO) stimulating innovation and creativity; and the World Meteorological Organization (WMO) affiliating to the authoritative voice on the state and behaviour of the Earth's atmosphere, its interaction with the oceans, the climate it produces and the resulting distribution of water resources. Palestine also can join the Busan Process on Aid Effectiveness, in particular the "New Deal for engagement in fragile states".

With the progressive affiliation of Palestine as a Non-Member (Observer) State to the international bodies listed above the international weight and presence of Palestine on the world stage will be amplified and the Palestinians people will have gained progressively better popular and official support culminating in the imposition of international sanctions against apartheid Israel, boycott of all modes of Israeli produce and divestment in Israel.

In parallel, apartheid Israel has been working continually to reduce Palestinian presence in their homeland Palestine and constantly has attempted to make the best use of opportunities that come its way to further limit the presence of the Palestinian people in their homeland. Unless our Palestinian leadership is careful, smart, highly informed in the law and human rights, and visionary in pursuing them, the premature admission of Palestine as a Full-Member State alongside an apartheid State of Israel may afford Israel just such an opportunity.

*Though the implementation of these advantages on the ground will not be achieved unless Palestine is admitted as a Full-Member State, an independent and sovereign state, with the United Nations General Assembly – the consequences of premature admission of Palestine as a Full-Member state can be disastrous. For example: as a legally sovereign state, the State of Palestine will be authorized to grant Palestinian citizenship to all Palestinians wherever they may reside, and, unless properly timed, this could result in exposing the legal/political status of Palestinian-Arab citizens of apartheid Israel to additional dangers.*

It is at this juncture that future ambiguities and dangers of the current admission of Palestine as a Non-Member (Observer) State and its likely future admission as a Full-Member State.

### Current Ambiguities

Whereas, until the admission of Palestine as a Non-Member (Observer) State above, the international community has regarded, affirmed and re-affirmed as one single bundle the inalienable rights of the Palestinian people to self-determination without external interference; to national independence and sovereignty; and to reparations, not least including return to their homes and property from which they have been displaced and uprooted, and calls for their return (UNGA Resolution 3236 of November 1974) - the said UNGA Resolution A/RES/67/19 of December 2012 on the status of Palestine in the United Nations according to Palestine non-member observer State status segregates the said rights in a manner that could jeopardize the said inalienable rights.

Thus, the said UNGA Resolution 67/19 reaffirms the right of the Palestinian people to self-determination and to independence in their State of Palestine on the Palestinian territory occupied since 1967 (Article 1), while affirming its determination to contribute to the achievement of the inalienable rights of the Palestinian people and the attainment of a peaceful settlement in the Middle East that ends the occupation that began in 1967 and fulfils the vision of two States: an independent, sovereign, democratic, contiguous and viable State of Palestine living side by side in peace and security with Israel on the basis of the pre-1967 borders (Article 4).

*Assuming that the UN Security Council will consider favourably the application submitted on 23 September 2011 by the State of Palestine for admission to full membership in the United Nations (Article 3), and assuming that the implementation of the right of the Palestinian people to self-determination and to independence in their State of Palestine on the Palestinian territory occupied since 1967 alongside a State of Israel bounded by the 1949 armistice lines (the so-called “Green Line” of 1949) fetches a legally sovereign State of Palestine (a questionable assumption in itself) – it is not presumptuous to further assume that the presence of a Full-Member State of Palestine at the UN General Assembly will much weaken the PLO as the representative of the Palestinian people.*

Thus the textual formulation of the said UNGA Resolution 67/19 allows the ambiguous interpretation to the effect that the achievement of the inalienable rights of the Palestinian people on the basis of the pre-1967 borders will be relegated to a now-marginalized PLO, notwithstanding the caveat of Article 2, according to Palestine non-member observer State status in the United Nations, without prejudice to the acquired rights, privileges and role of the Palestine Liberation Organization in the United Nations as the representative of the Palestinian people, in accordance with the relevant resolutions and practice.

### Future Dangers

As noted above, Palestine as a legally sovereign and Full-Member State within the UN General Assembly will be able to grant Palestinian citizenship to all Palestinians wherever they may reside within the terms of international and respective national laws. The prospects of this taking place prior to the dismantlement of the bundle of strategic apartheid legislation in pre-1967 Israel listed above, first and foremost Absentees’ Property Law of 1950, carries on its wings at least two horrendous possibilities—both prohibited in international law—whereby such omission would grant Israel additional pretext, in spurious legal garb, to:

- Manipulate the granting of citizenship to all Palestinians wherever they reside to effectively evade its duties to implement the reparation rights of 1948 Palestine refugee and IDP families including the right to return, rehabilitation of their inheritance rights, and to the repossession of the titles to the properties inside pre-1967 Israel, as well as compensation for loses, costs and damages not possible to be regained through restitution;<sup>11</sup>
- Suspend or annul the Israeli citizenship of the Palestinians living inside pre-1967 Israel.

The core of the political-Zionist/apartheid settler-colonial project in the country of Palestine is anchored in apartheid settler greed and represented by the classical political-Zionist adage “A land without people for a people without land”. Not satisfied with the Palestinian territories ethnically cleansed under the cover of the 1948–49 war (territories otherwise referred to as “Israel proper” or “pre-1967 Israel”) it had wasted no time in embarking upon the settlement of the territories occupied in the 1967 war an odd two decades later. Like other settler-colonial projects the core message of the settler-colonial leadership to the indigenous peoples is basically: “You go away”.

In North America and Australia, for instance, the message was successfully delivered by the settler-colonialist through ethnic cleansing and genocide that would be deemed criminal today. In those former instances, the said acts were perpetrated prior to relevant League of Nations resolutions (1932–39), the International Military Tribunals (IMT) addressing the Second World War, the holocaust of the Nazi occupation of Europe, the UN Charter (1945) and the adoption and entry into international customary law of the United Nations’ 1948 Universal Declaration of Human Rights. In Palestine, the already-criminalized acts of population transfer brought about ethnic cleansing by the Zionists only months after the IMT at Nuremberg rendered its pivotal verdicts, and while the IMT for the Far East (Tokyo Tribunal) was still proceeding.

Thus, at core, the said political-Zionist/apartheid settler-colonial project has failed to assert legal legitimacy. The development of international law and related scrutiny in the decades following the establishment of the United Nations in 1945 has further constrained the ability of the settler-colonial leadership of political-Zionism and subsequently apartheid Israel to complete the ethnic cleansing of Palestine. The Palestinian people did not “go away”, nor have the majority refugees or their accumulating rights disappeared. They are very much there, including the odd 1.5 million Palestinian citizens of apartheid Israel, some 20 per cent of the total population of pre-1967 apartheid Israel.

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<sup>11</sup> “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law”, A/RES/60/147, 21 March 2006, at: <http://www2.ohchr.org/english/law/remedy.htm>.

Steadfast Palestinian survival has constituted a thorn in the hide of political-Zionist apartheid Israel ideology and practice and a constant reminder that if the idea of a “Jewish state” can claim a modicum of international legitimacy, it can do so only in said terms of UNGA Resolution 181(ii) of 1947, the said UNGA Resolution 194(iii) of 1948, and the terms of admission of Israel as a Full-Member State with the UNGA in 1949, namely, a “Jewish state” that is a bi-national state, its borders the 1947 borders demarcated by the said Resolution 181(ii) and the City of Jerusalem definitely not under its sovereignty, but rather a corpus separatum administered by the UN.

### Conclusion

Yet, apartheid Israel has been working continually to reduce Palestinian presence in their homeland, Palestine, and has constantly attempted to make the best use of opportunities that come its way to further limit the presence of the Palestinian people in its homeland. Unless our Palestinian leadership is careful, smart, highly informed in the law and human rights, and visionary and proactive in pursuing them, the premature admission of Palestine as a Full-Member State alongside an unchallenged apartheid State of Israel may afford Israel just such an opportunity. And Palestinians and their modest defenders will miss another one.

The leadership of the Palestinian people consists of two levels and of a number of elements of varying access to processes of Palestinian decision-making at each level. The two levels of Palestinian leadership are as follows:

Level One: All-Palestinian level consisting of:

Palestine National Council (PNC), representing all Palestinians as a whole and world-wide, as well as all Palestinian organizations adhering to the Palestine National Charter and to all agreements signed by the PLO as the internationally recognized representative of the Palestinian people.<sup>12</sup> The PNC elects PLO Executive Committee. President Mahmoud Abbas (Abu Mazin) is the Chairman of the PLO Executive Committee as well as the Chairman of the Central Committee of the Movement for Palestinian National Liberation (FATH), the largest Palestinian political faction in the PNC.

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<sup>12</sup> HAMAS and Islamic Jihad reject the PNC National Charter and refuse to adhere to all agreements signed by the PLO, notably the "Oslo Accords", hence, they remain outside the PNC and cannot claim to represent the Palestinian people as a whole.

Level Two: Palestinian Authority (PA) level consisting of:

The Palestinian Legislative Council (PLC), representing and legislating for Palestinian residents in Palestinian Authority (PA) territories, namely: Palestinian residents of the Israeli-occupied West Bank (including East-Jerusalem) and the Gaza Strip. The PLC endorses (or otherwise) the PA executive branch and its key appointees by vote of confidence (or otherwise). The executive offices of the PA Government are appointed by President Mahmoud Abbas (Abu Mazin) in his capacity as Chairman of the PLO Executive Committee, and are ultimately accountable to him. In the event the PLC refuses to endorse his appointed PA Government, it is incumbent upon the president to reappoint an Executive Branch of government and bring the reappointed government before the PLC for yet another vote of confidence.

With so much of executive decision-making powers concentrated in his hands—like all executive presidents everywhere - Palestine’s president and his representatives may be prone to inadvertently making mistakes. It is the duty of his partners in Palestinian leadership, notably his colleagues in the PNC, to assist him/her in avoiding such inadvertence.

Given the above, the mistake that seems to be waiting to happen is that the leadership of the Palestinian people prematurely pursues its application for the admission of Palestine as a Full-Member State with the UN General Assembly before the bundle of strategic Israeli apartheid legislation is dismantled (the “de-Zionization/democratization” of Israel).

The occupied State of Palestine should not assume obligations under various human rights treaties that would dissolve or supplant the occupying Power’s obligations to respect, protect and fulfill equally all human rights of the residence of West Bank, Jerusalem and Gaza Strip. This debate has a long and noteworthy tradition in the human rights treaty bodies. Under no scenario should Palestine assume obligations under an international treaty that it cannot fulfill without the elements of sovereignty, not least involving the effective withdrawal of Israel from all territories acquired by force since the 1967 conflict.

The current status of Palestine as a Non-Member (Observer) State with the United Nations General Assembly is best conceptualized as an interim status, a stepping-stone toward the implementation of the full complements of rights of the Palestinian people under all UN resolutions relevant to the question of Palestine, the standards of international law and the values of the Universal Declaration of Human Rights.

*It is only after the core of strategic Israeli apartheid legislation is dismantled that that Palestine as an Observer State ought to press for the status of Full-Member State, its sovereignty bounded by the borders designated in UNGA Resolution 181(ii) of 1947 for the “Arab state”*

Palestine as an Observer State out to refrain from pressing for the status of Full-member State, and join the Human Rights Covenants only after the State of Palestine is no longer occupied and able to respect protect and fulfill the rights and obligations under those Covenants, so as to secure that as long as Israel remains an apartheid state it remains the duty holder in the field of human rights within its jurisdiction and territory of effective control.<sup>13</sup>

In the logical development of international law-based problem solving and with the demise of futile Washington-driven bilateral approaches, of the lawless Quartet on the Middle East, and of the current State of Palestine/PLO-Israel "permanent status negotiations" a host of proven international approaches remain available for a new law-based, diplomatic track to resolve the Middle East's central crisis and correct one of the world's most-persistent public law anomalies obstructing global human rights, progressive development and international peace and security.

**(\* I am grateful to Joseph Schechla, Coordinator, Housing & Land Rights Network/Habitat International Coalition for his critical reading of the draft of this text and his constructive comments; for the addition of the section subtitled "What Are Zionist Institutions?"; and for referencing and editing the final draft.**

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<sup>13</sup> In all reviews of Israel under the UN human rights treaties, the treaty bodies have issued the same determination of Israel's treaty obligations applicable throughout areas of the state party's jurisdiction or effective control: "Concluding Observations of the Committee on the Elimination of Discrimination against Women (CEDAW) upon Consideration of Reports Submitted by States Parties", A/52/38/Rev.1, 12 August 1997, para. 170; "Concluding observations of the Human Rights Committee: Israel", CCPR/C/79/Add.93, 18 August 1998, para. 10; "Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel", E/C.12/1/Add.27, 4 December 1998, para. 8; "Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel", CERD/C/304/Add.45, 30 March 1998, paras. 4, 12; Letter of Chairperson Virginia Bonoan Dandan to Permanent Representative of Israel H.E. Ambassador M. David Peleg, 1 December 2000; Letter of CESCR Chairperson Virginia Bonoan Dandan to Permanent Representative H.E. M. Yaakov Levy, Geneva, 11 May 2001. Conclusions and Recommendations of the Committee against Torture: Israel", CAT/C/XXVII/Concl.5, 23 November 2001. "Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel", E/C.12/1/Add.90, 23 May 2003, para. 15. "Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel", CERD/C/ISR/CO/13, 14 June 2007, paras. 3, 13, 32.] "Concluding observations of the Committee on the Elimination of Discrimination against Women: Israel", CEDAW/C/ISR/CO/5, 5 April 2011, paras. 2, 12, 13, 16, 17, 21–24, 26, 28, 38, 40; Concluding observations of the Committee on Economic, Social and Cultural Rights: Israel, E/C.12/ISR/CO/3, 16 December 2011, paras. 8, 16, 19, 24, 28, 29, 32–33, 35–36; Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel, CERD/C/ISR/CO/14–16, 3 April 2012, paras. 3, 4, 10, 23, 24, 26, 28, 29.

## **Uri Davis, Summary Biographical Note**

Dr Uri Davis is a Palestinian Hebrew, citizen of the alleged constitutional monarchy of the UK and of the apartheid State of Israel, born in Jerusalem in 1943. He has been at the forefront of the defence of human rights in Israel, notably Palestinian rights, since 1965 and has pioneered critical research on Zionism and the State of Israel since the mid-1970. He has published extensively in these fields (additional to numerous research and conference papers), including Israel: An Apartheid State (Zed Books, London 1987 & 1990; abridged edition, MRN, Laudium, 2001); (associate author with Walter Lehn, author), The Jewish National Fund. Kegan Paul International, London and New York, 1988; Citizenship and the State: Comparative Study of Citizenship Legislation in Israel, Jordan, Palestine, Syria and Lebanon (Ithaca Press, Reading, 1997); Citizenship and the State in the Middle East: Approaches and Applications (co-ed) (Syracuse University Press, 2000) and most recently Apartheid Israel: Possibilities for the Struggle Within (Zed Books, London, 2003); (with Ricky Romain), A Secular Anti-Zionist COMPANION of an Abridged Passover Haggadah (forthcoming).

Dr Davis is erstwhile Associate Professor at AL-QUDS University, Institute of Area Studies (IAS), Israel Studies Programme, Jerusalem/Abu Dis, Palestine; co-Founder of the Exeter-based Palestine Studies Trust and Honorary Research Fellow at the Institute of Arab & Islamic Studies (IAIS), University of Exeter, UK; member of the Middle East Regional Committee of the international Journal Citizenship Studies; Chairperson of AL-BEIT: Association for the Defence of Human Rights in Israel; member of the Revolutionary Council of the Palestinian National Liberation Movement (FATH); and Member of the Palestine National Council (PNC).