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CHECK AGAINST DELIVERY

PLENARY I

**The situation in the Occupied Palestinian Territory,
including East Jerusalem**

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Israel dislikes comparisons between the situation in Occupied Palestinian Territory (OPT) and apartheid South Africa. Usually, as Special Rapporteur on Violations of Human Rights in the OPT, I carefully avoid any reference to apartheid SA. In May 2004, however, at the time of Operation Rainbow - the Israel Defense Forces (IDF) invasion of Rafah - I called on the United Nations Security Council to consider the imposition of a mandatory arms embargo on Israel as had been done in the case of South Africa in 1977. The response was immediate. I was condemned for comparing the incomparable.

Today I intend to violate this taboo and to speak about the similarities and the differences between Israel in the OPT and apartheid SA. I do so because I believe that this is the best way of making a SA audience understand what is happening in the OPT.

At the outset let me stress the main difference, Apartheid was judged by the International community by the standards of human rights, particularly those relating to non-discrimination, political freedom and self-determination. Israel's conduct in the OPT is also judged by human rights standards. But in addition it is judged by the standards of International Humanitarian Law (IHL) which deal with the rights and duties of an occupying power.

IHL is to be found in the four Geneva Conventions of 1949, the two protocols to these Conventions of 1977, The Hague Regulations of 1907 and rules of customary international law accepted by the States. For our purposes the most important instrument in the Fourth Geneva Convention of 1949 which limits the powers of the Occupying Power (Israel), obliging it to promote the welfare of the inhabitants of the occupied territory and, inter alia, prohibits the settlement of its own people in the occupied territory.

The international community (including the USA) maintains that Israel is fully bound by the Fourth Geneva Convention. Israel, although it is a party to this convention, argues that for some specious reason, it is not binding. Nevertheless it accepts that it should act in accordance with customary international law and the "spirit" of the Fourth Geneva Convention.

SIMILARITIES

Let me begin with similarities.

1. Land.

You will recall that apartheid SA set aside 13% of the land of SA for occupation by black South Africans.

Strangely, this is the percentage of the original Palestine that is likely to be left to the Palestinians for their State - if ever it is created. As a result of the 1948/9 and 1967 wars and, now, as a result of settler expansion and what has come to be known as THE WALL, a future Palestinian State will comprise only 13% of the territory of Palestine as it existed in 1948.

The territorial expansions resulting from the 1948/9 and 1967 wars are well-known to all. Less well-known is the present land grab resulting from settlements and the Wall.

Jewish / Israeli settlements are prohibited by Article 49(6) of the Fourth Geneva Convention. Despite this there are some 400,000 settlers living in some 190 settlements in the West Bank and Gaza. Israel's promise to "freeze" settlement growth in 2000 has long been abandoned. The settler population increases by about 10,000 each year as a result of natural growth, the expansion of existing settlements and the creation of new settlements. To aggravate matters, settlements are linked to Israel by a system of by-pass roads that have wide security zones and are limited to Israelis only. (As I repeatedly stress to Israelis, apartheid SA did not practice road apartheid !!)

In 2003 Israel started to build a wall around the West Bank. This wall is ostensibly being built for security reasons. That Israel has legitimate security concerns cannot be denied. Hundreds of Israelis have been killed by suicide bombers that have created a state of terror in Israel. But if the wall was really a security measure it would have followed the course of the Green Line - the recognized 1967 border between Israel and Palestine. Instead the wall cuts deep into Palestinian territory and most of it is in Palestinian territory. I have visited the wall on four separate visits over the past two years and, in all honesty, I cannot say that security considerations appear to have determined the course of the wall.

On the contrary, the course of the wall seems designed to protect settlements and to extend the land of settlers. At present Palestinian villages and farms remain within the so-called "seam-zone" - the zone between Green Line and Wall but it is only a question of time before farmers will abandon their farms and villagers will leave, the Seam Zone as a result of constant harassment by the IDF and settlers and by the application of an arbitrary permit system - described below.

The International Court of Justice in The Hague will rule on the legality of the wall on 9 July 2004. If the court finds the wall to be illegal, I trust that the United Nations will have the courage to take meaningful actions to enforce this legal opinion.

The ambivalence of the European States on this subject is a matter of serious concern. One only hopes they will find the strength to enforce the Rule of Law.

2. Freedom of Movement

You will recall that apartheid was characterized by serious restrictions on freedom of movement. The pass laws which determined the right of Africans to move and reside in so-called white areas acquired international notoriety.

Israel has set up its own pass-law system in the seam zone - between Green Line and Wall. While Israelis may travel freely in this zone, Palestinians require special permits to live in their own homes in the seam zone, to farm their lands in this zone and to visit family.

The South African Pass Laws were administered brutally, but uniformly. The Israeli pass laws are administered in an arbitrary manner. Permits are issued for limited time periods and are withheld for various reasons - particularly security reasons. Men between the ages of 25 and 45 are generally regarded as security risks. A recent study carried out by B'Tselem shows that 25 per cent of the applications for permits are refused - mainly for security reasons.

Entry to the seam zone is through gates controlled by the IDF. However, these gates are frequently not opened at the scheduled times with the result that farmers are unable to access their land, school children reach their school and the ill reach hospitals and clinics on the other side of the wall.

The construction of the wall in the Jerusalem area brings with it a different kind of pass law. Special privileges relating to social security, access to hospitals and schools, attach to Palestinians who live in the Jerusalem area and hold " Jerusalem IDs". The partitioning of East Jerusalem by the Wall will result in Jerusalem ID holders living on the wrong side of the Wall - that is the West Bank side of the Wall - losing their rights as Jerusalem ID holders.

What about Palestinians who live in Gaza and the West Bank? First, Gazans have no freedom of movement. They are effectively imprisoned within the walls of Gaza; and, within the small territory of Gaza, their freedom of movement is further restricted by road blocks which frequently make travel within Gaza itself impossible. Second, West Bankers are likewise subjected to severe travel constraints. A resident of Ramallah requires a permit from the IDF to visit Nablus or Jericho. This system is enforced by IDF-staffed checkpoints whose principal purpose seems to be to humiliate the Palestinian population rather than promote security.

3. House Demolitions

Homes were demolished in apartheid South Africa to clear "black spots" - that is black communities in areas designated for exclusive white occupation - and to create group areas for different races. But homes were not destroyed with the ferocity that characterizes the Israeli occupation.

Homes may be destroyed for administrative reasons - that is where they have been built without a licence from the Israeli authorities, in a land in which licences are reluctantly granted. This justification is today used for demolishing houses in the seam zone to clear the land for ultimate settler occupation.

Homes may also be destroyed as a punishment for political activities. The family homes of suicide bombers and militants are destroyed in this way.

But by far the greatest number of homes are destroyed for "military necessity". And military necessity generally means the creation of buffer zones around settlements and settler bypass roads or the creation of a massive buffer zone between the Egyptian border and Rafah - along the Philadelphia Route. Since the start of the intifada in September 2000, 1476 buildings have been demolished in Rafah affecting 14,666 people. From 1 to 24 May 2004, 277 buildings were destroyed, housing 641 families or 3,451 individuals. The reason given by the IDF for this destruction in the presence of tunnels between Egypt and Rafah used for the smuggling of arms, but it is widely believed that it is part of a deliberate strategy to create a buffer zone of 300 to 500 metres along the Philadelphia Route between Gaza and Egypt.

I was in Rafah last week. The refugee camp there appears to have been hit by an earthquake. In fact, it has been destroyed by Caterpillar bulldozers.

4. Security laws

Security laws were a brutal component of the apartheid legal order. Emergency powers and regular law authorized indefinite detention without trial, tolerated torture and gave the security forces wide power to use force to suppress political activity.

So it is with Israeli law and practice in the Occupied Palestinian Territory.

As I have already said, Israel does have legitimate security concerns. However, there is a real danger today that security measures will be abused in the name of counter terrorism.

There are some 6,000 political prisoners from the Occupied Palestinian Territory today; some convicted of political crimes, many awaiting trial and others in administrative detention (that is, detention –without-trial). Although the Israeli Supreme Court has denounced torture as an instrument for the collection of evidence, there is overwhelming evidence that brutal methods of interrogation are employed, constituting torture or inhuman and degrading treatment. Frequently such measures are employed against juveniles.

Some 3,000 Palestinians have been killed by the IDF since the start of the intifada. Many have been militants, sometimes killed in targeted assassination (a practice of questionable legality). But the majority have been civilians, whose deaths are described as collateral damage. International humanitarian law seeks to limit harm to civilians by requiring parties to a conflict to respect the principles of distinction and proportionality. The principle of distinction (article 48 of the First Additional Protocol of 1977) requires parties to a conflict to distinguish at all times between the civilian population and combatants and to direct their military operation against combatants. Acts of violence whose primary purpose is to spread terror amongst the population are prohibited (article 51(2)). The principle of proportionality (article 51(5)(b) prohibits an attack on a military target that will cause loss of civilian life or injury that is excessive in relation to the military advantage anticipated. Sadly the IDF frequently fails to observe these principles.

To aggravate the security situation, disciplinary measures are seldom – hardly ever – taken against members of the security forces guilty of torture or the excessive use of force. A culture of immunity from prosecution prevails. So it was in the apartheid State.

Differences

Apartheid was a brutal system designed to maintain white domination. Military occupation is likewise a brutal system, but with a different design. The goal of Israel's occupation of Palestine is unclear. The frequently declared objective is that of security. Israel claims that it must control its borders and this is best achieved by controlling Palestine through occupation. The occupation will not end until Israel's borders are secure.

But there are other explanations. Territorial expansion by means of settlements and the Wall is one. And the subjugation and humiliation of the Palestinian people is another. How else does one explain the deliberate creation of a humanitarian crisis by closures, checkpoints and curfews. Unemployment averages 35 per cent in the OPT and over half the population is below the accepted poverty datum line. Education is interfered with and access to hospitals is difficult as a result of restrictions on freedom of movement. This is not a humanitarian crisis caused by national disaster or by a failed economy. Instead, it is a crisis caused deliberately by a neighbouring State through the instrument of occupation.

Occupation has acquired a bad reputation. Clearly Israel would prefer to secure its borders by other means, but not by the creation of an independent Palestinian State with which it has a satisfactory defence arrangement. So it is looking for a new status for the Occupied Palestinian Territory.

It is in this context that one should see the proposed disengagement from Gaza. Israel plans to dismantle its settlements and to evacuate all settlers from Gaza. But it will retain control by retaining

control of Gaza's air space, territorial waters and borders. This will not result in the end of the occupation for, as the United States Military Tribunal at Nuremberg held in Re List and others (The Hostages Case), the test for the application of the legal regime of occupation is not whether the occupying Power fails to exercise effective control over the territory, but whether it has the ability to exercise such power.

Today there are those, particularly in the United States of America, who would relax the rules of international humanitarian law and not apply it to situations in which it is clearly applicable. There is a danger that in this climate Israel may persuade the United States, and possibly the international community, that the dismantling of settlements in Gaza will result in the end of the occupation. This must be resolutely resisted lest the people of Gaza lose the limited protection they have from the Fourth Geneva Convention.

Conclusion

Let me conclude by saying that Israel is in violation of many principles of humanitarian law and human rights law. It should be held accountable for these violations. Unfortunately there is a growing tendency today – in the United States and Europe – to view the rules of International Humanitarian Law and Human Rights law as “unhelpful” to the peace process. They argue that matters such as boundaries, Israeli settlements in the Occupied Palestinian Territory and the return of refugees should be settled by negotiation free from the restraints of international law; that Israel should be given a wide margin of appreciation in its conduct in the Occupied Palestinian Territory. I do not share this view. The rules of international law should be strictly applied to Israel. It should not be seen as being beyond the law.
