Law and Peace in the Middle East: the Palestinian case

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Today it is an undeniable, and well asserted fact, that the occupation and its associated regime are illegal, so as the settlements, the annexation of Jerusalem, the wall, the acquisition of land by force and the denial of the right of return to the Palestinian refugees. It is clear that the occupation in Iraq is also illegal. Quoting resolutions, laws, and international covenants to demonstrate such illegalities is important, but it is also an accomplished task. To discuss the applicability of international law in the Palestinian case is unnecessary because, in principle, nobody denies that.

The Palestinian conflict, born in 1947 out of a legal formality (the Partition Plan), has been for decades against the law and can actually mean the failure of the law. There is sufficient legal development regarding the occupation: from the aforementioned Partition Plan to the Advisory Opinion of the International Court of Justice, one could say that it is a conflict "over-judicially", if such a word existed.

It is clear that the real agenda of the conflict finds answers in the law. When we say real agenda we mean neither the Oslo Accords nor the Roadmap to Peace; the real agenda consists of territory (Occupation, borders and settlements), Jerusalem, and Palestinian refugees. All the rest, including the wall, is a consequence of this agenda. The real agenda has clear statements in the law, without denial of Israel's right to exist or the debate on violence on the Palestinian side.

It is clear, also, that Israel does not accept the principles of international law, not only because Israel violates Palestinian rights to life and freedom of movement, health and work, not only because Israel violates and promotes violation of political rights by denying the electoral result that gave victory to Hamas, not only for this, but for three structural reasons: a) the claim to be Jewish and democratic state at the same time; b) the occupation, because the occupation is incompatible with international law; and c) the regime of Apartheid against Palestinians.

It is clear, moreover, that the Palestinians are excluded from the law. Palestinian refugees, due to the paradoxes of the configuration of UN agencies, are entitled to assistance but not to the protection of their rights, as guaranteed -theoretically- to the rest of the world's refugees. Palestine was denied its request to be part of the Geneva Conventions, on the grounds that it is not a state, although it was recognized as such by more than 100 countries, member countries of the Geneva Conventions. The diplomatic role of the Palestinians in the international community is as an observer without right to vote; their legal actions depend on third parties, such as Arab countries, and do not lead to the recognition of the Palestinian political maturity.

It is obvious that respect for international law is not demanded, at the same level, from all the parties into conflicts; it was the case of the war of summer 2006, between Hizbollah and Israel. In those days, the international community did not react to the indiscriminate and massive use of explosives by Israel against the Lebanese civilian population. In the same way, the rights of the civilians are not implemented in Iraq; there is a constant denial of the basic principles of humanitarian law.

It is also clear that, especially after 9/11/2001, international law has dropped into a severe crisis. It is morally difficult to mention the Convention on Prisoners of War after Guantanamo and the jails in Iraq, the Protocol on internal armed conflicts after seeing the situation in Colombia and in Darfur, the rules for the protection of civilians after Iraq, the constraints on the use of force after the latest attack on Lebanon by Israel. And, of course, after seeing Palestine, it is difficult to mention, without flushing, the rules regarding occupation.

Thus, the dilemma of international law goes beyond the Palestinian conflict. The problem is to establish the current place of law in conflicts, wars, occupations, and in the construction of just

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and lasting solutions. Is it possible to speak of justice without standard references? In the Palestinian case, the legal diagnosis of the conflict is clear, but the law is not incorporated in its solution. Neither the Oslo Accords, nor the Roadmap to Peace reflects the principles of international law.

From the Palestinian side, with its internal crisis, we have another dilemma that also concerns the law: the construction of a Palestinian social contract or the extension of structures, clientelism and corruption, outside the law. Arafat dreamed of a state and Abu Mazen offers two governments without power, one in Gaza and one in the West Bank. On the Israeli side of the struggle against the occupation, some sectors refer to the law while still believe they are the chosen people possessing special rights, that no one can be equal to others and to be “the elected” at the same time. Assuming the law should have implications beyond the slogan.

It is a curious paradox that in both the Israeli peace plans and the Palestinian governments, the means become an end: peace plans are validated on themselves as well as Palestinian governments, and both are essentially useless because there is no real will for peace on the part of Israel, neither is there a Palestinian State to be governed. Evo Morales once stated that to be government is one thing; another quite different is to be in power, which applies to the Palestinian case.

We urge for a return to the law on at least three levels: a) the full enjoyment of human rights, including the right to elect and be elected, women's rights, the right to be civilian, b) the explicit inclusion of the law in the negotiations, without which there can not be a just and lasting peace, and c) the recovery of law in foreign affairs.

These three steps have faced a series of obstacles. The first obstacle is that the international human rights law remains, in many respects, a "soft law". Curiously, being younger, the law for the World Trade Organization is stronger. Hobbes said that a covenant without a sword to defend it is just words. Then, it is imperative to provide the law with a more effective sword.

The second obstacle is the "para-legal" language. There are no "illegal combatants" to justify Guantanamo, and Gaza is not an "enemy territory" but an occupied territory. There are many examples to illustrate this, such as the use of the term “collateral damage” to designate war crimes. We must return to the basics legal concepts, such the concept of civilian population in Palestine as well as in Iraq.

Third, the model of international cooperation based primarily on humanitarian aid, as the prevailing logic. Such confusion between "rights and rice" only serves the enemies of law. The actions in Palestine, before 2006, were in many cases against hunger, when there was no famine; now that hunger has appeared it is used, as in the past, as a pretext for a fake neutrality of some of our NGOs.

Fourth obstacle: the tendency to talk to the occupied people as if they were something of a myth. We have to talk to the Palestinians as equals; their divinization only produces an arrogant victim. When the struggle among Palestinians erupted in Gaza, the solidarity movement was confused and paralyzed. Its lack of criticism had built an imaginary and “perfect” Palestinian. No solidarity should be unlimited, nor transfer the principles of law.

Fifth obstacle: to understand international law as a guide for NGOs, but not a duty for the States. The most illustrative case is the Advisory Opinion of the International Court of Justice. On July 9, 2004, we celebrated in The Hague the Advisory Opinion. Two months later in the framework of the UN General Assembly in New York, we saw that the Advisory Opinion had become a dead paper. The wrong proposal was to try to see what the NGOs could do with the Advisory Opinion than what the States should do.

Sixth: the false optimism. Since the time of the Ottoman Empire, the Palestinians were promised a bright future. Since 1947 the Palestinians are hearing that peace is near, and that it is just a matter of stages. Since 1967, the Palestinians have been told that the occupation is temporary; since the day after the first settlement was established, they have been told that the settlements are illegal and must be dismantled. Historically it has been told to the Palestinians that the

international community is seriously concerned and works in progressing peace. Lies. Neither the Palestinians nor the Darfurians are relevant today in the foreign affairs. We must renounce the siren song that is a process, that there are signs of optimism; it is not useful to say "settlers be scared, your centuries are limited." A conference that does not produce concrete results on the items on the real agenda is not useful.

So what can be done? I dare to suggest some concrete measures and possible -but not easy- not to solve the overall crisis of international law but to ensure progress in its recovery in the area of the Palestinian conflict.

One, the appropriation of international law, to study it, to bring it to the streets of Ramallah and Gaza, as another instrument in the struggle against occupation; to put international law into Israeli society for reflection, without fear to explore the possibilities offered by the law. Despite what is said, the law's possibilities have not been sufficiently utilized. International law can be as real or as unreal as the people want (or let) it to be.

Two, require of some of our European NGOs to stop their presence with our money, in the name of our societies, in Palestine, on the basis of the action against hunger; renounce the agenda of rice and impose the agenda of the law.

Three, demand from our governments seriousness with the law, to discuss in the parliaments the duties of each country in respect of the Geneva Conventions by third countries like Israel and USA, legally prescribed duty; to tell us what our governments have done to implement the Advisory Opinion adopted by the UN General Assembly.

Fourth, promote an international diplomatic conference, neither of donors to collect money, nor discuss the applicability -indisputable- of international law in Palestine, but a diplomatic conference to advance in mechanisms of implementation of the rules in the occupation, respect for civilians and the punishment in the cases of breaches of these rules. If not now, When? Palestinian and Iraqui peoples need an international law according to their human dignity.

Five, a coordinated campaign before European courts against Israeli political and military leaders, in order to start legal processes for war crimes; Israel fears more to see a single general arrested in Europe that the demonstrations against the occupation on the streets of Europe. War crimes comited by USA and its allies in Iraq should not remain in the impunity.

Six, Israel has a membership at the UN depending on the fulfilment of the resolutions 181 and 194, plus the UN Charter said that the systematic disregard for its principles can lead to losing the membership. That is, legally speaking, there are all the ingredients for promoting the expulsion of Israel. We know that this will not be possible, but by no means must stop attempts. Just to start an action in this regard would be a success. We have to be creative. The calls for a boycott and demonstrations for peace are more than fair but do not achieve the anticipated results.

In conclusion, I firmly believe that there will be no just or lasting solution without looking at what international law says. If the law fails in Palestine it will not succeed in Darfur or Colombia, or Iraq. If the European Union rejects, once again, the law, it puts itself in danger of losing a significant feature that would differentiate the EU from the United States. If international law fails, the UN will further step on the path that began particularly after 9/11, to become a caritative, assistentialist NGO.

In January 2006, the hope for many Palestinians was Hamas; in July 2006, the hope was Hizbollah; regarding any massive attack in Gaza the hope would be Iran. Unfortunately for the cause of peace, Hezbollah showed that Israel is more sensitive to a missile than to a UN resolution. So are we wrong that there is no hope for the law or the international community? If the law fails, there will be no moral authority to speak of international law to Iran, Hezbollah or Hamas. If the law fails all of us will pay the price, but especially the Palestinians.

Just a final question; a question for Israel; a question based on international law: Israel says that the settlements are non-negotiable, that they are part of the natural growth in Israel, that

they are an essential part of Israel, and therefore are not on the agenda. Israel says that Jerusalem will be the undisputed capital of the State of Israel, and therefore is not on the agenda of negotiations. Israel says that the right of return of Palestinian refugees would be the end of Israel for what they represent demographically. Neither the occupation nor Palestinian prisoners, not even the path of the wall is negotiable, nor its associated regime. Then I ask a single question: What is negotiable for Israel?