

**Enforcement of International Law in the Occupied
Palestinian Territory: The Only Real Roadmap for Peace**

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This is unfolding as yet another year in which international law and human rights law continue to be breached by Israeli Occupation Forces in the West Bank and Gaza Strip with impunity. In fact, the international reaction to the results of the Palestinian Legislative Council Elections in January 2006, which were held in a free and fair manner, has underlined the international support Israel enjoys regardless of its actions in the Occupied Palestinian Territory (OPT), while exposing the lack of international political will to support the Palestinian people in any meaningful way. The Hamas victory in these democratic elections has led to the international community and Israel imposing collective punishment on the Palestinian people in the form of a crippling economic boycott, as well as a refusal to engage with this new government in any way. This reaction has also completely sidelined the real issues pertaining to this protracted conflict, namely the continued occupation of Palestinian land and the continued disregard for international law by Israel.

The territory of the West Bank and the Gaza Strip has been occupied by Israel since 1967. Over this period of time, Israel has engaged in a series of ever-escalating human rights violations and, more significantly, violations of international humanitarian law. Israel has been engaged in a systematic policy of: establishing, by transfer of its willing civilian population, settlements inside the OPT; the destruction of civilian property not warranted by military necessity; the arrest and detention, without trial, of Palestinian civilians; a policy of conducting torture of Palestinian civilians which has been sanctioned at the highest levels of the Israeli government; carrying out large scale ground, air and sea incursions into the OPT, in which the resultant destruction, loss of life and serious injury to civilians has caused physical and emotional hardship that is beyond reparation over the course of many generations; refugees, in areas like Rafah refugee camp, uniquely positioned on the border with Egypt, from the wars of 1948 and 1967 have been turned into refugees for the second and, in some cases, third time; simultaneously the protection of Israeli settlements in the OPT has resulted in wide-spread destruction of agricultural land, the establishment of no-go areas for Palestinians and roads designated only for Israeli settlers and for their military.

The escalation in the scale and ferocity of these human rights violations peaked over the course of the recent second Palestinian *Intifada*, which began in September 2000. Over the course of this time, inside the Gaza Strip alone, the Israeli military held 21 settlements, sealed 4 Palestinian villages into permanent enclaves from which freedom of movement was virtually impossible, they completely demolished 2919 homes, rendered another 2886 uninhabitable and killed 1752 Palestinian civilians. Inside the West Bank and occupied East Jerusalem the Israeli military accelerated its construction of settlements, constructed a towering series of Walls and electronic fences designed to annex Palestinian land to Israel and intensified the policy of carrying out major incursions and extra-judicial executions of Palestinian civilians.

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The aspirations of Palestinian civil society, since the inception of this belligerent occupation, have been simple:

- (a) the end to the Israeli occupation;
- (b) the realisation of Palestinian self-determination;
- (c) the full implementation of international humanitarian law, in particular the Fourth Geneva Convention.

This position has been held by Palestinian civil society, political and legal experts for a considerable amount of time. The international community has supported them through various UN resolutions, which have confirmed that these rights should be accorded to the Palestinian people. However, despite this, the Palestinian people have seen a gradual slipping away of the right to self-determination and the institutionalisation of the occupation and so the denial of any possibility of a real peace based on human rights and human dignity. While the chief cause of these problems has been the belligerent occupation, the international community has to take its share of responsibility for eliminating international law from the peace process and so tipping the balance of the equation in favour of the occupation and away from the three aspirations I have outlined above.

The most recent manifestation of this balance tipping exercise was the unilateral decision by the Israeli government to redeploy its forces from the Gaza Strip, while simultaneously dismantling the twenty-one illegal Gaza settlements and four small settlements in the northern West Bank. In a further move towards unilateral action, Israel's new Prime Minister Ehud Olmert has recently announced his proposed unilateral Convergence Plan.

Peace plan after peace plan has been brought to the table throughout this conflict. Turning points have been reached - only for the parties to turn back again. In each case, on each occasion, the same key element is lacking: the inclusion of international law as the foundation of each peace agreement. As outlined above, both Palestinian civil society and the international community have called for the full implementation of human rights and humanitarian law. The key party with ideological differences over the implementation of international law is Israel.

The Israeli government, under any and each administration, has never departed with its position that international law is not applicable to the territory it has occupied since 1967. In practise, this has had grave consequences for the Palestinian civilian population who have suffered from a litany of breaches, grave breaches and violations of IHL and human rights law, while Israeli authorities refuse to acknowledge that there is anything astray in their policies.

This failure to acknowledge poor practise, and the tolerance by the international community of Israel's actions, has provided an international context where the behaviour of the Israeli military, on both a command level and an individual level goes unquestioned, unchallenged and consequently unpunished. The impunity granted to Israel, in the full knowledge of what the Israeli military is doing in the OPT, must be seen as part of a broader picture in which a conspiracy of

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silence permeates the international political culture. It is this very conspiracy which allows international humanitarian and human rights law to be ignored and to be omitted in each peace plan.

During the formulation of past and suggested peace plans, particularly the notorious Oslo Accords, human rights and international law have been sacrificed to ‘make way for security requirements’. However the fundamental principle of human rights is human security, the core of international humanitarian law is security for civilians. Human rights must not be seen as an obstacle to security, not even seen as a complement to security, but rather as the basis of security.

The OPT is currently facing an economic and security crisis, exacerbated in no small way by the cutting of funds and refusal to engage in dialogue with the new Hamas government by the international community. It is difficult to see how this policy to punish the Palestinian people and isolate the democratically elected Hamas government will result in anything except renewed tensions and a deterioration of security for both Israel and the OPT.

Given this uncertain climate, the only certainty in the conflict at the present time is that the continued Israeli failure to act to implement and apply international law will only bring further instability to the OPT and, indeed, the entire region.

If Israel continues to fail to apply international law in its daily attacks against the Palestinian civilian population, how can it be expected to accept the implementation of international law in any peace deal?

It is also increasingly clear that Israel wishes to act alone and unilaterally impose an Israeli “peace” deal on the Palestinian people. Sharon’s Disengagement Plan, and more recently Olmert’s proposed Convergence Plan, are clear moves in this regard. Israel continues to reiterate that it has no partner for peace, aided in no small way by the international reaction to the Hamas election victory, and despite repeated efforts by President Abbas in particular to urge Israel to engage in peace talks. Israel wishes to act unilaterally but the international community must realise that any further unilateral moves taken by Israel to impose final borders will only prolong the conflict – it cannot lead to a peaceful solution. It is abundantly clear that the only peaceful solution to this conflict will be an agreement based on International Law and International Humanitarian Law

The aim of this paper is to highlight the fact that the fundamental need to base peace initiatives or plans on International Law and International Humanitarian Law has been neglected by the International community and completely rejected by Israel to date. It will be impossible to avoid further deterioration in the current situation if this policy continues. This paper will provide an analysis of various peace projects which have been heralded in the post-Oslo period. It will focus on three substantial projects: the People’s Voice plan, much celebrated because of the people who formulated it include an ex-Israeli member of the security services; the Geneva Accords also celebrated because of its sub-state, supposedly grass-roots nature; and, finally, Sharon’s

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disengagement plan, a unilateral plan which led to Aerial Sharon, one of the most cumbersome of all Israeli war criminals, being proclaimed as a man of peace.

Throughout this paper PCHR will contend that without reference to international law, either in broader terms or in the specifics of the individual plans, these plans are either doomed to failure or, in the case of the unilateral disengagement plan designed to inflict further suffering on the civilian population of the OPT.

The proposed peace plans detailed in this paper must serve as a warning to the international community: peace can not be built without the implementation, integration and application of human rights as an integral part of any plan: peace can not be built on partition of Palestine: peace will only come with an end to the occupation.

From the Outbreak of the Intifada to the Geneva Accords

The Roadmap¹ was initiated in June 2002 by the United States government, following a period when no peace initiative whatsoever existed. It was intended to restore calm in the OPT and set in place a series of measures intended to accompany the creation of a Palestinian State. It is remarkable given this intention that the initiative places much more responsibility on the Palestinian Authority than the Israeli authorities. Indeed, the conditions for the implementation of the Roadmap is, at the first stage, for the Palestinian side to implement a full end to violence and terrorism, along with a very impressive set of reforms, while on the Israeli side only a withdrawal from Palestinian areas occupied from September 28, 2000, and a freeze of settlement activity is envisaged. In this respect, it is worth noting that it is the only process Israel has agreed to since the beginning of the second Intifada², although this fact did not prevent Sharon from making no less than fourteen reservations to the Quartet initiative³. Apart from a complete dismantlement⁴ of

Hamas, Islamic Jihad, Popular Front, Democratic Front and Al-Aqsa brigades organisations, Israel asked for a waiver of any right of return for Palestinian refugees, and accepted a reference to Resolutions 242 and 338 only as an outline for the conduct of future negotiations on a permanent settlement. Any such permanent settlement would be an autonomous one, deriving its authority from the Roadmap alone, which means that any commitments Israel makes would not hold fast in

¹ The Roadmap follows President Bush's speech of 24 June 2002. It was welcomed by the EU, Russia and the UN in the 16 July and 17 September Quartet Ministerial statements. It is available on the US Department of State's website.

² The US agreed with Israel on the matter: "The United States ... promised to prevent any attempt to impose on Israel any other agreement or agenda which is not the Roadmap". PM Ariel Sharon's Address at the Herzliya Conference, 16 December 2004.

³ See Haaretz, *Israel's road map reservations*, May 27, 2003.

⁴ Israel now claims that these reservations are "part of the Roadmap process" despite the fact that even the government of the U.S.A. has only stated that it will "consider them" but has not accepted them as part of the text or the obligations of the Roadmap.

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another context if the Roadmap process failed. The US promised to “fully and seriously address” these concerns. This shows how reliable and steadfast the Roadmap is.

Once again, Palestinians were being asked to put armed struggle aside and wait for a better future. But what is the credibility of assurances given by a US-led initiative, when one recalls how reluctant the American government is to pressurise Israel when it does not comply with its own obligations? Despite the very precise and detailed schedule drawn in the plan, it was not clear, from the start, whether the US had any real intention to force the parties to respect it. This initiative is further evidence that the international community is ready to accept supporting any move towards peace, insofar as no political involvement is required. The lack of international concern for the situation in the Occupied Palestinian Territory paved the way for a series of ‘peace plans’ which will be examined in more detail in the following pages.

The first of two supposedly grassroots’ initiatives, the People’s Voice, was intended to provide a general framework on which a peace settlement could develop. It consists in a Statement of Principles agreed upon by Ami Ayalon, former head of the Shin Beit, and Sari Nusseibeh, a Palestinian academic and President of Al Quds University in Jerusalem. The Statement aims at obtaining the maximum signatures⁵ from Palestinians and Israelis, in order to initiate a dynamic which would result in a more comprehensive draft.

Although it is very short and doesn’t go into details, the text presents serious flaws regarding international law. Supposedly based on “the June 4, 1967 lines, UN resolutions, and the Arab peace initiative”, it nonetheless provides for border modifications “based on an equitable and agreed-upon territorial exchange (1:1) in accordance with the vital needs of both sides including security, territorial contiguity, and demographic considerations” (emphasis added by PCHR). Given the settlements’ location in the West Bank, *demographic considerations* are likely to be very prejudicial to the Palestinian side. Even if territorial exchange is envisaged on a 1 to 1 basis, it is hard to foresee how the future map of Palestine could be acceptable for its citizens – and it will be almost impossible to achieve *territorial contiguity*.

Furthermore, the Statement of Principles, regarding “the capital of two States”, says that “Arab neighbourhoods will come under Palestinian sovereignty, *Jewish neighbourhoods under Israeli sovereignty*”. Looking at a map of *Jewish neighbourhoods*⁶ in Jerusalem suffices to convince anyone that in fact East Jerusalem, supposedly Palestinian according to UN resolutions, is now mostly inhabited by Israeli Jews. The implementation of the Statement of Principles, as a result, would create a Palestinian capital deprived of most of its quarters. A solution that would indeed be impossible to put in place, and that would, last but not least, be fully inconsistent with international law, both regarding the right of self-determination and humanitarian law, which prohibits the transfer of its own population, by the occupying power, into occupied territory.

⁵ So far, the People’s Voice claims to have collected around 135,000 Palestinian and 170,000 signatures.

⁶ In fact, Jewish settlements, which are of course illegal under international law.

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Another very important flaw lies in the fact that the Statement says: “upon the full implementation of these principles, all claims on both sides and the Israeli-Palestinian conflict will end”. It implies granting full impunity to soldiers and settlers responsible for crimes committed against the Palestinian people and their properties, which is inconsistent with human rights law and the duty to prosecute criminals.

In many aspects, the People’s Voice resembles the peace initiative which followed, and the same flaws appear in both texts, undermining the pretence that they would solve the Israeli-Palestinian conflict, as will be shown now.

The Geneva Accord, an unofficial peace proposal drafted and endorsed by a group of Palestinian leaders and Israelis, including former members of the Israeli government (with the sponsorship of the Swiss Foreign Ministry, who should be acting in their capacity as depositories of the Geneva Conventions), was released in October 2003 and promoted as the “realization of the permanent status peace component envisaged in ... the Quartet Roadmap process”⁷.

The document intends to give a detailed and comprehensive overview of the ‘compromises’ that are required for a “reconciliation between Palestinians and Israelis”⁸ to occur. Despite the fact that it has been totally overlooked by the Israeli government - which found it unacceptable - it has been seen as a “breakthrough” in peace negotiations. Presented as a grassroots’ initiative with wide support among both populations, it has yielded considerable backing from many governments and from the media. It has been described as a fair, just and balanced plan for both Palestinians and Israelis, although it has very often not been read thoroughly. The Geneva Accord is the best example and illustration of the fact that too many, in the international arena, are ready to sell Palestinian rights at a low price when it comes to reaching a peace agreement. But in fact, only a just and fair solution, that is one conforming to international law, can bring a lasting peace. There are many reasons to think that the Geneva Accord if implemented would inevitably collapse due to its failures in this regard.

The territorial sovereignty regime drawn in the Geneva Accord, for example, is a very worrying shortcoming. While the aim of a final settlement should be to get rid of any Israeli presence in Palestinian areas (and, in so doing, allow the Palestinians to realise their right to self-determination), the text provides that “Israel will maintain a small military presence in the Jordan Valley under the authority of the MF [Multinational Force] and subject to the MF SOFA as detailed in Annex X for an additional 36 months”⁹. Moreover, paragraph 8.(a) of the same article provides that “Israel may maintain two EWS [Early Warning Stations] in the northern and central West Bank at the locations set forth in Annex X”. Not only would the future Palestinian State be fully

⁷ Geneva Accord (G.A.), preamble, paragraph 11.

⁸ G.A., preamble, paragraph 12.

⁹ Article 5.7.(f)

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demilitarized¹⁰, it would also have to accept a foreign military presence on its soil, for an indefinite period. Also, in the same vein, paragraph 9.(b) provides that “the Israeli Air Force shall be entitled to use the Palestinian sovereign airspace for training purposes in accordance with Annex X, which shall be based on rules pertaining to IAF use of Israeli airspace”. Though such agreements might be passed by sovereign States if they felt that it is in their interest, it is doubtful whether they would please a Palestinian population severely harmed by the Israeli Air Force shelling.

More importantly however, the Accord provides for the construction of a ‘corridor’ linking the two parts of Palestine, Gaza Strip and West Bank. Although the Accord states that this ‘corridor’ shall be permanently open, article 4.6. further explains that it “shall be under Israeli sovereignty”¹¹. One can wonder on what basis a sovereign State would have to rely on a neighbouring State for its territorial contiguity. Permitting that Israel keeps sovereignty over the ‘corridor’ amounts to saying that the legal right of a Palestinian to travel from one part of the country to the other is not absolute, and this is highly problematic¹².

When it comes to the borders of the future Palestinian State, the Geneva Accord states that “in accordance with UNSC Resolution 242 and 338, the border between the states of Palestine and Israel shall be based on the June 4th 1967 lines with reciprocal modifications on a 1:1 basis as set forth in attached Map 1”. But a glance at the map reveals that most of the biggest settlements are to be included in the Israeli State! In full contradiction with international law, which prohibits the acquisition of territory by force, contrary to international humanitarian law, which forbids the transfer of part of the occupying power’s population into an occupied territory, and despite the numerous United Nations Security Council resolutions which call for an unconditional withdrawal from territories occupied during the Six Days war of 1967, the Geneva Accord negotiators have simply decided to annex important parts of the West Bank.

Besides, it is interesting to note that the Palestinian negotiators for the Geneva Accord did not get *any* of the land they were asking for as part of the 1:1 swap. It is underlined by Nick Kardahji, who characterizes it as an “extremely unjust arrangement”¹³. Indeed, in return for the annexation of fertile lands rich in water resources and wells, Israel would give uncultivated wild land, unsuited to any productive use, southwest of Hebron, and some land adjacent to the Gaza Strip.

¹⁰ Article 5.3.(a) provides that “no armed forces, other than as specified in this Agreement, will be deployed or stationed in Palestine”. Paragraph 3.(b) reads further: “Palestine shall be a non-militarized state, with a strong security force. Accordingly, the limitations on the weapons that may be purchased, owned, or used by the Palestinian Security Forces (PSF) or manufactured in Palestine shall be specified in Annex X”.

¹¹ Article 4.6. of the Geneva Accord.

¹² As Nick Kardahji recalls, “under the terms of the Oslo Agreements, Israel was supposed to open such a route from Gaza to the West Bank, but it was frequently closed, cutting off the two areas from one another and seriously harming the fragile Palestinian economy. Past experience regarding ‘safe passage’ corridors is therefore not very encouraging”, *The Geneva Accord: Plan or Pretense?*, PASSIA, Jerusalem, 2004, p.31.

¹³ *Ibid*, p.30. The author further notes that “the fact that the Palestinians negotiators were prepared to accept it is deeply worrying”.

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Finally, the Accord is very ambiguous in its formulation. Regarding “Israel’s capacity to relocate, house and absorb settlers”, the agreement states that “while costs and inconveniences are inherent in such a process, these shall not be unduly disruptive”¹⁴. Although the wording of the Article is not clear, it would seem to imply that if the costs became too important, Israel would have the right not to carry out evacuations. According to a critic of the Geneva Accord, “furthermore, the nature of such “costs” and “inconveniences” are not spelled out; they could be economic or political, meaning that political turmoil might be regarded as sufficient reason for not carrying out the withdrawal”¹⁵.

But the real question lies here: why should Israel be rewarded for having occupied Palestinian lands for so long? Why would it be the only ‘realistic’ choice for Palestinians, as if it wasn’t ‘realistic’ to expect the Israelis to leave areas which are not theirs? Is it coherent, moreover, for countries like Switzerland to support such annexations after having denounced the occupation of the very same areas?

The question of the borders of Jerusalem is of the same nature. The Accord envisions the Holy City as the capital of two States, but provides for a strict border regime, factually dividing Jerusalem in two parts, East and West Jerusalem, with special arrangements concerning the Old City. Apart from the fact that it is undesirable, such a regime might also prove unworkable given the close ties linking the two parts. The Accord appears like “an attempt to cement Jewish dominance of the city and prevent any serious revival of the Palestinian districts”. Indeed, it would annex several settlements blocs in East Jerusalem. Although it is not too clear from the wording of the Accord, one can expect the largest settlements to be integrated to Israel, along with tens of thousands Israeli citizens. On the other hand of course, Palestinian quarters in the western part of the city would remain under Israeli sovereignty, which highlights the unbalanced nature of the deal the Palestinian negotiators have agreed on.

Regarding the issue of refugees, the Accord is not any more acceptable. If article 7.1.(a) rightly claims that “an agreed resolution of the refugee problem is necessary for achieving a just, comprehensive and lasting peace between them”, it does not place the responsibility of the ‘problem of refugees’ on Israel and on the large-scale expulsions that were carried out by the Israeli forces during the 1948 war and those which followed. Admitting the moral responsibility of Israel, however, is a necessary condition if one really intends to reach a ‘just and lasting peace’. But the Israeli side refused to do so, and Yossi Beilin, one of the initiators of the Geneva Accord, felt free to say that “the authors did not dwell on ‘narratives’, mutual recriminations and assigning responsibility for the past”, as if such issues are peripheral.

It has of course a direct effect on the solutions provided for in the Accord. If the Accord states that “the Parties recognize that UNGAR 194, UNSC Resolution 242, and the Arab Peace Initiative

¹⁴ Article 5, Section 7 (c) of the Accord.

¹⁵ *Op.cit.* note 7, p.38.

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(Article 2.ii.) concerning the rights of the Palestinian refugees represent the basis for resolving the refugee issue”¹⁶, it offers no viable solution for the refugees themselves, which is in return not consistent with the proclaimed aim to respecting international legality. Let us recall that Resolution 194 in fact reads: “Resolves that the refugees wishing to return to their homes and live in peace with their neighbours should be permitted to do so at the earliest practical date and that compensation should be paid ... [to] those choosing not to return”.

Of course, refugees would be allowed to settle in the Palestinian State or to foreign countries ready to host them. But all that Israel offers in regard to refugees, who would like to come back to their homes in what is now Israel, is a right of return “at the sovereign discretion of Israel and [that] will be in accordance with a number that Israel will submit to the International Commission”. In other words, Israel would be entitled to refuse any refugee at her borders. It is scarcely believable to imagine Israel acting otherwise. Of course, this would be the final word of Israel in respect of the refugees. As the Accord puts it, “this Agreement provides for the permanent and complete resolution of the Palestinian refugee problem. No claims may be raised except for those related to the implementation of this Agreement”¹⁷. Here lies clearly a case of distorting international law to fit to political preferences of Israel, which sets yet another worrying precedent.

On the important issue of compensation for Palestinians who have suffered as a result of Israel’s policies, the Geneva Accord is utterly silent. The demolition of property, confiscation of land, destruction of orchards groves, detention without trial, loss of income due to Israeli closure and curfew policies, death and injuries caused by the Israeli security forces, and many other illegal deeds for which Israel should be held accountable, would be thrown into the abyss for ever. After all, this last aspect shows how justice, based on international humanitarian and human rights laws’ provisions, is simply dismissed as irrelevant in this so-called ‘peace plan’.

Rejected out rightly by the Israeli government, with Prime Minister (PM) Ariel Sharon quoted as saying that these kinds of initiatives were the greatest danger Israel could face in the present time, the Geneva Accord was soon considered ancient history, after having enjoyed so much publicity. Instead, the Sharon government chose to adopt the so-called ‘disengagement plan’.

Disengagement Plan

The Disengagement Plan was the most recent initiative implemented in a supposed attempt to bring peace to the region. It yielded wide international support, despite tremendous flaws regarding international law, and despite the declared aim, which was to ensure Israeli control over most of the West Bank.

¹⁶ Article 7.2.(a) of the Geneva Accord.

¹⁷ Article 7.7.

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The ‘disengagement plan’ was first announced by Prime Minister Sharon during a conference in Herzliya on December 18, 2003¹⁸. The context was that of a continuous war being waged by the Israeli army in the Gaza Strip, very costly in terms of lives and detrimental to the Israeli image on the international scene. It was designed to be a unilateral action, to be taken outside any negotiated settlement with Palestinian counterparts¹⁹. It followed the adoption by the Quartet of the Roadmap, based on President Bush’s June 2002 speech. The initiative gained more support with American approval, following an exchange of letters between PM Sharon and President Bush, on April 14, 2004. A first draft of the content of the ‘disengagement plan’ was communicated by the Prime Minister’s Office on April 18 of the same year. It was then revised and a final draft was approved by a Cabinet resolution on June 6, 2004. The Knesset voted on the text on October 25, 2004, and adopted it thanks to the support granted by the Labour Party.

The plan was implemented in August and September 2005 and resulted in the dismantling of all Israeli settlements in the Gaza Strip, and four isolated settlements in the northern West Bank, as well as the redeployment of the Israeli Occupying Forces along new ‘security’ lines. It was portrayed in the media and by politicians worldwide as a real disengagement, i.e. a full withdrawal of Israeli presence from the Gaza Strip, and therefore praised as a step towards peace.

Regarding international human rights law and humanitarian law, the adoption and the implementation of the Sharon initiative posed two very serious questions. The first question regarded the genuine content of the ‘disengagement plan’. Was it a *full* and *permanent* withdrawal? Did it allow Israel to consider that there would no longer be a “basis for claiming that the Gaza Strip is occupied territory”²⁰, once the plan was implemented? As has been seen since implementation of the plan, and given the content of the plan, the Gaza Strip has in fact remained under belligerent occupation and humanitarian law continues to apply. The second important issue concerned what was expected in return, by the Israeli government, in exchange for their partial withdrawal from the Gaza Strip. As we will see, the steps taken by PM Sharon occurred at a time when Israel didn’t have much choice but to *propose* something. This meant, and became abundantly clear in Sharon’s speeches, that the plan was seen as permitting Israel to keep other settlements in the West Bank. The danger faced by the Palestinians was therefore manifest.

Several elements of fact allow us to consider that despite assertions stating otherwise, the Gaza Strip remains under Israeli belligerent occupation. When the members of the Knesset adopted the ‘disengagement plan’, they agreed on a text stating precisely how and when it would be implemented, and to what extent the army would withdraw. It is striking now, in the post-

¹⁸ “Address by Prime Minister Ariel Sharon at the Fourth Herzliya Conference”. The English translation of the speech is available at www.mfa.gov.il.

¹⁹ See Sharon, Fourth Herzliya Conference: “if in a few months the Palestinians still continue to disregard their part in implementing the Roadmap then Israel will initiate the *unilateral security step* of disengagement from the Palestinians”.

²⁰ As stated in the first draft of the plan, April 18, 2004. Interestingly, this comment has been removed from the final draft. The sentence following which “the completion of the plan will serve to dispel the claims regarding Israel’s responsibility for the Palestinians in the Gaza Strip”, however, still appears on the Cabinet Resolution draft from June 6, 2004.

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disengagement period, to read in the text of the plan that despite removal of settlements and army forces from inside the Gaza Strip, “Israel will guard and monitor the external land perimeter of the Gaza Strip, will continue to maintain exclusive authority in Gaza air space, and will continue to exercise security activity in the sea off the coast of the Gaza Strip”²¹.

This has had several huge consequences. First, the border between Egypt and the Gaza Strip remains under Israeli supervision, despite the Border Agreement²² reached in November 2005. Second, no sovereignty can be exercised by the Palestinian Authority on its own airspace. The Plan does not mention a shared air space over Gaza, as it is in some way envisioned in the Geneva Accord: here, Israel maintains an “exclusive authority”, which is hardly reconcilable with the attributes that any State is entitled to enjoy. Finally, the “security activity in the sea off the coast of the Gaza Strip” is also a denial of sovereignty of a State on its own territorial waters. Moreover, fishing activity which has traditionally been a very important element of Gaza’s economy, has continued to suffer in the post-disengagement environment. Fishing boats are prevented by the Israeli Navy from sailing beyond a 6 mile line, which is not even consistent with the Oslo Accords themselves²³. This constitutes a denial of the basic economic rights of the Palestinian people, as set forth in the International Covenant on Economic, Social and Cultural Rights of 1966.²⁴

Significantly, also, the plan states that “the State of Israel reserves its fundamental right of self-defence, *both preventive and reactive*, including where necessary the use of force, in respect of threats emanating from both the “Northern Samaria area” (i.e. Northern West Bank) and the Gaza Strip”²⁵. The notion of preventive self-defence, which has often been invoked by Israel in the past, is contrary to international law, and the fact that this country feels confident enough to mention it in a public document is worrying. It amounts to saying that Palestinians will continue to live under the constant threat of Israeli incursions and indiscriminate shelling. This has been the reality in the Gaza Strip since the disengagement plan was implemented in 2005, particularly in relation to indiscriminate shelling, which has led to numerous civilian injuries and deaths, as well as the continued policy of carrying out extrajudicial executions in the Gaza Strip, the most recent of which on 20 May 2006, led to the death of three members of one family, along with the targeted militant.

With regard to the border with Egypt since the Israeli redeployment, under the “Agreement on Movement and Access” reached in November 2005, the border crossing at Rafah is controlled by the Palestinian Authority on its side and Egypt on the other side, with a European Union team of

²¹ Addendum A – 3. Security Situation Following the Relocation. Cabinet Resolution Regarding the Disengagement Plan.

²² *Agreement on Movement and Access and Agreed Principles for Rafah Crossing*, November 2005, agreement reached by negotiators from Israel and Palestinian Authority on 15 November 2005, facilitated by US Secretary of State, Condoleezza Rice, EU Representative for the Common Foreign and Security Policy, Javier Solana, and the international community’s envoy for Israeli Disengagement from Gaza, James Wolfensohn.

²³ According to the Oslo Agreements, the limit was 20 miles.

²⁴ Article 1.2 of the.

²⁵ Addendum A – 3. Security Situation Following the Relocation. Cabinet Resolution Regarding the Disengagement Plan.

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monitors to oversee procedures. However, despite an improvement in access to the outside world through Rafah, the Israeli Authorities still oversee activities at the border crossing and must be provided with details of those using the border. Crucial aspects of the Access Agreement relating to goods crossings in the Gaza Strip such as Al Mentar (Karni) crossing; transport connections between the West Bank and Gaza Strip; plans for construction of a seaport in Gaza; the easing of internal movement in the West Bank; and plans to discuss the possibility of reopening the airport in Gaza, have been completely disregarded since the agreement was reached in November 2005. In particular, frequent closure of Al Mentar goods crossing at the border between Gaza and Israel has resulted in huge economic losses, due to agricultural exports being prevented from leaving Gaza, in addition to shortages of basic essential commodities in the Gaza market, due to imports being stopped at the border. The closure of goods crossings continues to strangle the post-disengagement Gazan economy.

This current scenario is hardly reconcilable with the proclaimed Israeli “interest in encouraging greater Palestinian economic independence”. It is also disturbing to read further that the State of Israel “expects to reduce the number of Palestinian workers entering Israel, *to the point that it ceases completely*”²⁶. This process is already being realised with a dramatic decrease in the numbers of workers permitted to enter Israel from Gaza. Once again, the Palestinian economy is fully dependant on Israel’s goodwill, which has been demonstrated not to be in Palestine’s interest.

Finally, to complete the separation between the West Bank and the Gaza Strip, and to prevent any Palestinian from travelling freely from one part of the ‘country’ to another, “the Erez crossing point will be moved to a location within Israel in a time frame to be determined by the Government”. There is every indication that within a few years, the Erez crossing point will only be open for internationals and that no Palestinian will be allowed to cross anymore. There is deep concern that this decision will have a disastrous impact on the Gazan health system. The organisation Physicians for Human Rights has recently issued warnings to this effect, as the medical infrastructure in the Gaza Strip is already insufficient²⁷. It would result in a grave breach of the right to health²⁸.

Apart from what has been said above, the ‘disengagement plan’ presents another kind of danger, namely the fact that it has largely misled the international community on Israel’s real intentions. Sharon was not acting in the interests of peace.²⁹ For many observers however, his intention to ‘withdraw’ from the Gaza Strip was interpreted as a major shift towards a two State solution. The members of the Quartet issued a statement after the announcement of the plan “welcom[ing] and

²⁶ Addendum A – 10. Economic Arrangements. In the first draft of the Disengagement Plan, dated April, 18, 2004, it was stated that Israel would “reduce the number of Palestinian workers entering Israel”. General Outline – 10. Economic Arrangements.

²⁷ See Haaretz article by Akiva Eldar, *Israel warned over impending health disaster in Gaza*, January 27, 2005.

²⁸ Article 12 of the ICESCR.

²⁹ Despite this a typical interpretive commentary in an *Economist* editorial, issue dated 10th of February, described Aerial Sharon as having had “an ephiphany”.

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encourag[ing] such a step, which should provide a rare moment of opportunity in the search for peace in the Middle East”.

In reality, Sharon had something very different in mind. Aware of the fact that the Gaza Strip is of minor importance to Israel, costly in Israeli lives and money, and that the international context (criticism of Israeli behaviour in the OPT, Advisory Opinion of the International Court of Justice, ...) was not favourable to Israel, Sharon decided to enter into blackmail. Basically, in exchange for the redeployment of its army and the dismantlement of the settlements in the Gaza Strip and four minor ones in the West Bank, Sharon sought in return that the international community would turn a blind eye to the Bantustan system he was implementing in the West Bank. This aspect of the disengagement plan, although it was very often hushed up in the media, was both fundamental and publicly acknowledged by Sharon and his closest aides. In his address to the Fourth Herzliya Conference for instance, Ariel Sharon declared that “in the framework of the ‘disengagement plan’, Israel will strengthen its control over those same areas in the Land of Israel which will constitute an inseparable part of the State of Israel in any future agreement”. This shows that Sharon never had in mind to give back the West Bank to the Palestinians³⁰. According to the Chief Advisor to the Israeli Prime Minister, the disengagement plan meant that effectively “this whole package called the

Palestinian state, with all that it entails, has been removed indefinitely from our agenda ... [it] is actually formaldehyde”³¹.

The pact between Israel and the US has already been passed. On April 14, 2004, responding to PM Sharon’s letter explaining the content of the ‘disengagement plan’ and asking for support from the part of the US, George Bush welcomed a step that would “mark real progress toward realizing my June 24, 2002 vision, and make a real contribution towards peace”. He accepted “that after Israel withdraws from Gaza and/or parts of the West Bank, and pending agreements on other arrangements, existing arrangements regarding control of airspace, territorial waters, and land passages of the West Bank and Gaza will continue”. Moreover, he gave full satisfaction to the Israeli side when saying that “in light of new realities on the ground, including already existing major Israeli populations centres, it is unrealistic to expect that the outcome of the final status negotiations will be a full and complete return to the armistice lines of 1949, and all previous efforts to negotiate a two-state solution have reached the same conclusion”³². For the first time ever, the US, the supposedly fair and balanced broker, endorsed the annexation of Palestinian land even before a peace deal was found. Of course, this is a very dangerous precedent, and it could even have far-reaching consequences on the practice of international law itself. After all, it

³⁰ As he quotes himself as saying: “And I wish ... to say that many years before, in 1988 ... I said that I believe that if we do not want to be pushed back to the 1967 lines, the territory should be divided”. See quotation in ‘Prime Minister Ariel Sharon’s Address to the Knesset – The Vote on the Disengagement Plan’, October 25, 2004.

³¹ See Haaretz, *Weisglas: Disengagement is Formaldehyde for Peace Process*, 8 October 2004.

³² See the exchange of letters between PM Sharon and President Bush, available at www.mfa.gov.il.

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undermines the right of the Palestinian people to self-determination³³ and the interdiction of transferring persons into an occupied territory³⁴.

The ‘disengagement plan’, and its revised version, consecrated this catastrophic move by the US, stating that “it is clear that in the West Bank, there are areas which will be part of the State of Israel, including cities, towns and villages, security areas and installations, and other places of special interest to Israel”. Sharon was quoted as saying, a few months after, that “the understandings between US President George Bush and me protect Israel’s most essential interests: first and foremost, not demanding a return to the ’67 borders; allowing Israel to permanently keep large settlements blocs which have high Israeli populations; and the total refusal of allowing Palestinian refugees to return to Israel”³⁵. The right of return for those forcibly exiled from their homes is guaranteed by international law. Article 12.4 of the International Covenant on Civil and Political Rights, to which Israel is a state party, provides that “no one should be arbitrarily deprived of the right to enter his own country”. This has not prevented President Bush from assuring Sharon that “it seems clear that an agreed, just, fair and realistic framework for a solution to the Palestinian refugee issue ... will need to be found through the ... settling of Palestinian refugees [in Palestine], rather than in Israel”. The deal is crystal clear, but has raised few protests.

In fact, the international community has responded very enthusiastically to the Sharon plan. The latter has sometimes even been depicted as a ‘man of peace’, or the tough man who was able to make things change. Indeed, that is what Sharon was expecting and hoping for³⁶. It would enable him to claim that in compensation he wouldn’t allow a return to the ’67 borders, while gaining him international political support.

The story of unilateralism now continues in the post-Sharon era, with the new Israeli Prime Minister Ehud Olmert currently in the United States to seek support for his proposed unilateral Convergence Plan. While stating that he will allow six to nine months in order to find a partner for peace on the Palestinian side, the reluctance to find such a partner is clear. The possibility of engaging in talks with the new Hamas government has been completely rejected by both Israel and the international community, while repeated pleas from President Abbas for Israel to engage in negotiations through him, have received at best a lukewarm response. It is difficult to see how this

³³ Enshrined in Article 1.1 of the ICESCR of 1966.

³⁴ Article 49, para 6 of the Fourth Geneva Convention of 1949.

³⁵ See quotation in ‘PM Ariel Sharon’s Address at the Herzliya Conference’, December 16, 2004. in the same vein, PM Sharon said during a speech to the Conference for Advancement of Export on November 11, 2004, that “this plan has yielded a series of unprecedented political achievements for Israel which will help us protect our vital interests in the future ... these achievements are an inseparable part of the Disengagement Plan, and their fulfilment is, of course, conditioned on Israel’s implementation of the plan”. In light of this, it is easily understandable why Sharon apparently took an important political risk in imposing the Plan upon his own party, the Likoud.

³⁶ It is worth noting that the Cabinet resolution regarding the Disengagement Plan shows awareness on this question: “International support for this plan is widespread and important ... this support is essential”, (Addendum A – 1.8.) and expects help from the international community: “The State of Israel will assist, *together with the international community, in improving the transportation infrastructure in the West Bank*”. (Addendum A – 2.A.6.)

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situation will change in the near future, particularly in the light of recent efforts to accelerate completion of the Annexation Wall and plans to further expand West Bank settlements. The danger of Olmert's Convergence Plan going ahead unilaterally seems clear. This would result in completion of the Wall, which will effectively annex the major Israeli settlement blocs, as well as vital Palestinian water and agricultural resources, while also creating Israel's desired border with the West Bank. The plan would impose an Israeli solution on the Palestinian people, denying them their right to negotiate on all crucial aspects of a final status agreement.

To conclude, the situation faced by Palestinians is at its critical point. If nothing is done to prevent Israel from behaving unilaterally and building more facts on the ground, the long-term strategy to annex large parts of the West Bank will succeed.

The international reaction to the aforementioned initiatives has regrettably been the same as that seen following the 1993 Declaration of Principles. The fear of opposing Israel, the short-sighted notion that any step towards ending violence is welcome whatever the return for the Palestinian side, exposes a strategy which does not take into account its ultimate outcome: the more the international community waits and postpones the necessary measures it should impose on Israel, the worse the situation will turn out to be in the future.

Facts on the ground, inflicted on a daily basis, have proven to have disastrous effects on the conflict since the very beginning. It is because the international community has always been so shy in denouncing these *faits accomplis* that Israel has turned them into an infallible strategy. The world prefers to hope for a better future, to spare Israel and believe that a man will come one day who will be ready for a just peace, but it may well never happen. And so the abscess will continue to grow, until it reaches a point of no return.

The US bear a huge responsibility in this matter. Without American support, Israel would certainly have more difficulties justifying its policies in the Near East to the rest of the international community. It does not seem wise to rely on America for solving the Israeli-Palestinian conflict. Rather, the European Union and other prominent actors must take the necessary steps to impose a peace settlement. After all, the EU is the primary trade partner for the EU, and means of coercion exist, awaiting only the political will for them to be implemented. A moral stance in favour of two States won't suffice. As the saying goes, the road to hell is paved with good intentions. How long will it take until the international community understands this? The omission of human rights as the fundamental tenant upon which peace plans are built has already led the Palestinian civilian population to hell many times over – the international community must act over the course of any current and future peace plan to ensure that this is not repeated.

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