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Towards a Democratic State in Palestine/Israel

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Abstract:
International law provides guidelines for the acceptable behavior of states and, ideally, sanctions. It does not prescribe, however, political solutions to conflicts or set out blueprints for reconstituting an unjust political situation in forms that conform to it. While taking international law as a fundamental element defining the parameters of political settlements, this paper asks: what political program best translates its norms and values into concrete form? It explores the two-state solution, apartheid and the prospect of a single democratic state, the last conforming to international law and supported by the One Democratic State Campaign (ODSC).

International law in its various forms (international humanitarian law, international human rights law, and general public international law) provides guidelines for the acceptable behavior of states and, ideally at least, offers sanctions against countries who do not abide by them. It does not prescribe, however, political solutions to conflicts or set out blueprints for reconstituting an unjust political situation in forms that conform to it. Thus such instruments as the Universal Declaration of Human Rights, the UN Charter, Four Geneva Conventions (and especially the Fourth), their Additional Protocols, the Fourth Hague Convention, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the UN General Assembly's Declaration on the Granting of Independence to Colonial Countries and Peoples specify the fundamental rights of Palestinians: to self-determination, to the return of the refugees, to various protections as Protected Persons, among others. They also limit Israel's actions as an Occupying Power: from looting the Occupied Territory's resources, from violating the various provisions regarding Protected Persons, and from taking actions that alter fundamentally the status of the Occupied Territory, also among others. But international law does not and cannot constitute a political program. This paper, which concluded the conference on *International Law and the State of Israel*, while recognizing international law as a fundamental element defining the parameters of political settlements, then went on beyond it to ask: What political program would best translate the norms and values embedded in international law into concrete form, given the political realities adhering to the Israel/Palestine situation?

1 Three Options for Resolving the Palestinian/Israeli Issue

Within the framework of international law, two forms of political settlement suggest themselves in Palestine/Israel: a two-state solution or that of a single democratic state. A third, however, is possible, even though it stands in stark opposition to the vision of international law: apartheid. And, in fact, it is this that best characterizes the present situation and Israel's vision of the future.

Since this paper focuses on the third option, let us begin by considering – and eliminating – the other two.

1.1 The Two-State Solution

The two-state solution signifies a political settlement that is not just but is – or rather, was – workable and in accordance with international law and human rights. Although the Palestinians will be the majority between the Mediterranean and the Jordan River, the two-state solution envisions an Israel on 78% of the country, with the Palestinians confined to a truncated territory on only 22% of their historic homeland – a small area expected to receive all the returning refugees. Still, the Palestinians could have a somewhat sovereign state (it would be demilitarized, Israel would exercise veto power over Palestinian foreign relations, and the Palestinians would not have full control over their borders, their airspace or the communications sphere) and a modicum of self-determination. They would have had territorial contiguity (except for the disconnection between the West Bank and Gaza, which might be bridged by an extraterritorial "safe passage" such as briefly existed during the Oslo

peace process, although Israel never agree to an extraterritorial status which rendered it unsafe for free Palestinian passage), Jerusalem and Bethlehem as major tourist resources (although Israel has formally annexed and heavily settled Palestinian East Jerusalem, which it refuses to negotiate over), borders with Jordan and Egypt (although, again, supervised by Israel), an airport and seaport in Gaza (also supervised by Israel) and, helped by Diaspora investment, a shot at some degree of economic development, if far from parity with Israel. The international community has supported the two-state solution since 1967; the Palestinians thought enough of it to formally accept it in 1988 (and *de facto* much earlier); the Arab League followed suit in 2002; and until today the Palestinian Authority considers it the only acceptable solution. Although Israel is on record as accepting it (Prime Minister Netanyahu's "Bar Ilan speech" in 2009 being the most formal declaration), continued settlement, the collapse of negotiations and declarations by Israeli government officials that Israel will accept nothing more than limited Palestinian "autonomy" in enclaves on some 10% of the country casts Israel's acceptance of a genuine two-state solution in grave doubt.

In fact, a number of elements indicate that Israel has no intention of allowing a sovereign and viable Palestinian state to emerge in the Occupied Palestinian Territories (OPT):

1. *The process of "Judaization."* For the past 120 years the Zionist movement, the pre-state Yishuv and all Israeli governments have actively and explicitly pursued a policy of "judaization." Writ large, it is the campaign, now largely completed, of transforming Palestine into the Land of Israel. Specifically, it has proceeded by phases as the opportunities emerge (the judaization of the Galilee, of Jerusalem, of Judea and Samaria, etc.). This policy rests on the principle, fundamental to ethnocracy, that the Land of Israel belongs exclusively to the Jewish people. "Arabs" – the term "Palestinian," which would admit the existence of a collectivity with national rights that Israel denies, is used only selectively in reference to the residents of the OPT or to refugees – reside in "*our*" country by sufferance, not by right (Halper 2010, 100–125).

2. *"Facts on the Ground." The Matrix of Control.* The operational side of judaization, creating massive and irreversible "facts on the ground" that render Israeli control of the OPT permanent and prejudice any negotiations, finds expression in what I call the Matrix of Control (Halper 2010, 150–174). Through a layered system of control imposed on the OPT for the past 50 years (but having been largely conceived and constructed by the military administration over Palestinian citizens of Israel between 1948–1966), the Matrix consists of politically-motivated administration, bureaucracy, planning and law; economic controls and sanctions, physical "facts on the ground" such as settlements, settlement blocs, the "Separation Barrier" and infrastructure (highways, electricity, water, communications, sewage, etc.) *selectively* incorporated into the Israeli national grids; and military controls and ongoing operations. The effect, I would argue, has been the elimination not only of the two-state solution but of the occupation itself. Occupation is defined in international law as a temporary military situation that can only be resolved through negotiations. Article 42 of the 1907 Hague Regulations states that a "territory is considered occupied when it is actually placed under the authority of the hostile army." In addition, the law of occupation is guided by the principle that the *status quo ante* has to be preserved as far as possible within the occupied territory, since occupation is defined as "a temporary military situation" disposable only through negotiations, which unilateral "facts on the ground" are intended to thwart. After more than 50 years of occupation in which close to 800,000 Israeli civilians have been moved into the OPT (in violation on Article 49 of the Fourth Geneva Convention), East Jerusalem annexed to Israel and the West Bank fully incorporated into Israel, and more than 90% of the Palestinian population of the OPT confined to Areas A, B and Gaza (some ten percent of historic Palestine), it is impossible to argue that the occupation remains a "temporary" situation. *De facto* a single state exists between the Mediterranean and the Jordan River, controlled in its entirety by Israel.

3. *"Security."* The assumption driving of Israel's political and military leadership, as well as the vast majority of its population, is that the Arabs – Palestinians and other Arabs, and by extension the entire Muslim world – are Israel's permanent enemies. Throughout the history of Zionism, says Shlomo Gazit, a somewhat more critical military thinker, in his book Gazit (2003, 8–9), "Israeli leaders did not see a Palestinian people with political aspirations of their own, but rather intransigent enemies whose only hope was the destruction of the State of Israel." Says Moshe Yaalon (2014), a former IDF Chief of Staff and Minister of Defense, the readiness of the Zionist leadership to reach an historic compromise has failed to convince the Palestinians to forgo their commitment to "armed struggle" and other forms of opposition to the right of the Jewish people to live peacefully in a nation-state of their own in their historic home, the Land of Israel … . The lessons learned … is that the Palestinians have adhered to their historical narrative of armed struggle that denies Israel's right to exist as a Jewish nation-state, regardless of signed agreements or unilateral Israeli withdrawals.

Since the enmity of "the Arabs" is a permanent reality, the logic goes, it must ensure a qualitative military edge over them. And key to ensuring Israel's security is its retaining permanently control the entire Land of Israel. Yaalan continues (2014, 8):

[The JCPA conference] is a corrective to the widely-held view in many international quarters and even in limited circles in Israel about the "need" and even the "inevitability" that peace requires Israel to withdraw to the perilous 1949 armistice lines (erroneously called the 1967 "borders"). These borders would not achieve peace – they would weaken Israel and invite war by denying the Jewish state strategic depth and topographical protection against Palestinian rocket and other attacks. The 1949 armistice lines enabled Israel's enemies to deploy and operate in dangerously close proximity to Israel's main population centers to such an extent that they constituted an existential threat to Israel … . Israel's security depends on its retaining defensible borders. This means maintaining control over key areas of Judea and Samaria and certainly over an undivided Jerusalem.

4. *Economic*. Another reason why Israel would not relinquish the OPT is its utility as a laboratory for the development of arms and security systems, key to the Israeli economy (Halper 2015). The Occupied Palestinian Territory has been transformed into probably the most monitored, controlled and militarized place on earth. In a situation where the local population enjoys no effective legal protections or privacy, they and their lands become a laboratory where the latest technologies of surveillance, control and suppression are perfected and showcased, giving Israel an edge in the highly competitive global market. Labels such as "Combat Proven," "Tested in Gaza" and "Approved by the IDF" on Israeli or foreign products greatly improves their marketability.

The laboratory that is the OPT emerged during Operation Defensive Shield, when the West Bank became "a giant laboratory of urban warfare … keenly observed by foreign militaries, in particular those of the USA and UK, as they geared up to invade and occupy Iraq" (Weizman 2007, 188). The pitched battles in Nablus and especially in the Jenin refugee camp updated the "template" of Israeli urban warfare and militarized security (Graham 2010, 2). From there new technologies were regularly added as evidenced in the three assaults on Gaza between 2008–2014. Weaponized UAVs and other forms of precise weaponry came into use as did optics and robotics (Esposito 2009, 175–191).

The sheer scale of arms exports is astounding for a small country, especially one that does not produce major platforms. Since the early-1980s Israel has been among the top twelve arms exporting nations; in 2016 its security exports amounted to $7.9 billion, placing it among the world's 10 leading defense exporters ((2017)). Israel itself claims to vie with Britain, Russia, China and France, if upgrades in military equipment and other forms of servicing are taken into account. Israel's Ministry of Defense claims that if sales include upgrades and other services, Israel would place third among arms exporting countries, well behind the US and Russia but tied with France.

Military sales are but a part of arms industry, however, which also includes homeland security, surveillance and policing. In the realm of domestic security, the Israeli government and private companies work with security agencies the world over on issues of counter-terrorism, crime, border controls, prison management and disaster control. Israel's experience in controlling the Occupied Territories and its population, as well as insulating its own population from resistance and terrorism, has become a major selling point. Israel has moved aggressively in turning homeland security into one of its biggest exports. Some 600 Israeli companies export about $1.5 billion annually in domestic security goods and technology (2017). Just as the military shades into homeland security, so does homeland security shade into policing, yet another branch of the Israeli arms industry exported throughout the world.

5. *Security Politics*. In his book *Israel's Global Reach: Arms Sales as Diplomacy*, published in 1985 when Israel's arms exports were a sixth of what they are today, the Israeli military scholar Klieman (1985, 30) spelled out clearly the logic of Israel's security politics. Arms sales, he wrote at that time, "represent a central component of Israel's external relations, defense posture, and foreign trade … . [T]he manufacture and transfer of Israeli arms can be expected to figure prominently in the search for security, economic viability, and also as an independent course of diplomacy." He identifies five major ways in which arms diplomacy contributes to Israeli security politics: arms as influence and prestige; Israeli arms and their connection to Western security and American interests in particular; arms as independence; arms as military contacts; and arms as commerce. Trade has followed not the flag," he observes sardonically, "but, symbolically, the Uzi submachine gun" (Klieman 1985, 36–46).

6. *No International will to make Israel leave*. Finally, the two-state solution is dead because the will to force Israel out of the OPT so that a viable Palestinian state may emerge is completely lacking. On the contrary, despite occasional criticism from the international community, it comes without sanctions. Steadfast US support, reaching an extreme in the administration of Donald Trump, effective shields Israel from any meaningful international pressure as it continues to impose political, physical, social, economic and military "facts on the ground" that foreclose the two-state option.

1.2   A Single Apartheid State

Not only has Israel effectively and deliberately eliminated the two-state solution, but it has already created a single functioning state apparatus between the Mediterranean and the Jordan River. The entire country is effectively ruled by the Israeli government, the Palestinian Authority being confined to enclaves on about ten percent of the land and vulnerable to every manner of Israeli *dictat*. One cannot enter the country's territory without passing through Israeli border controls, and the IDF operates as the only effective military force, despite the existence of a dependent Palestinian Authority militia. All economic life is subsumed under a single economy with one official currency, the shekel, regulated through the Bank of Israel, and one Israeli-controlled set of tax and trade policies. All cities, towns, settlements and villages have been incorporated into a single infrastructure that includes a country-wide network of highways, a single electrical grid and an Israeli-controlled water system.

This single Israeli regime that rules over almost 5 million Palestinians of the OPT without extending them citizenship conforms to an apartheid regime. The International Convention on the Suppression and Punishment of the Crime of Apartheid defines such a regime as when "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." Taking the term "racial" in its broadest sense to include ethnic, national, religious or other group-based differences, apartheid may be defined by two main elements (though not expressed in this way in international law): (1) when one population separates itself from the others (apartheid means "separateness" in Afrikans), which Israeli Jews have clearly done. The preamble to the 1965 International Convention on the Elimination of All Forms of Racial Discrimination expresses concerns about "manifestations of racial discrimination still in evidence in some areas of the world ... such as policies of apartheid, segregation or separation" (Falk and Tilley 2017, 11); and (2) when that population then imposes a permanent and institutionalized *regime* of domination over the others; the formally constituted legal and state system privileges the rights of one group over others. The effective end of the two-state solution and the extension of a single regime over a population with no civil rights, citizenship or effective means of protection constitutes apartheid.

And apartheid is exactly where Israel wants to be. Under such a regime it is able to control the entire country, settle its civilian population in the OPT (Israel's formal position is that there is no occupation, only "administered" or "disputed territory," and thus the Fourth Geneva Convention does not apply) and confine the Palestinians to bantustans. By casting its rule as "self-defense" against terrorism and Palestinian intransigency and by perpetuating it through endless negotiations, "peace processes" with no clear goals and extended periods "between" peace processes, Israel believes it can perpetuate such a regime indefinitely.

1.3   A Single Democratic State

If a two-state solution conforms to international law but has been effectively eliminated by Israel, and if the existing apartheid regime in unacceptable under international law, then only one option consistence with international law appears to remain: the transformation of the single apartheid situation Israel has created into a democratic state with equal rights for all its citizens. A democratic regime would, on one level, be a straightforward affair. One person, one vote. A single parliamentary regime based on equal citizenship, accompanied by a robust and inclusive civil society, the full integration of the army and security forces, return of all the Palestinian refugees who choose it (accompanied by land redistribution, financial compensation, housing and affirmative-action education and hiring), and an economy that offers equal opportunities for all. In the new state of Palestine/Israel, all citizens would enjoy all the normal rights of living wherever they pleased. Since settlements will be integrated, they will lose their exclusive and controlling character, becoming normal places of residence. The Occupation ends by the very fact of Palestine/Israel becoming one integral country belonging to all its citizens. "Ending the Occupation" and settlement construction, the main obstacles to any political settlement, dissolve as issues (although compensation for Palestinian land taken or return of the land would necessarily be a part of the normalization process, just as it is for the resettlement of the refugees).

1.4   The Issue of Bi-Nationalism

The main difficulty confronting this option is the issue of bi-nationalism. Whatever the history (a crucial element, but one that must be bracketed for the post-resolution stage of reconciliation), historic Palestine has become a bi-national country. For the past century both the Palestinian Arab and Israeli Jewish peoples have struggled for *national* self-determination. It seems impossible to pursue a workable solution that affords only individual rights and ignores national ones; indeed, such a proposition would grossly distort the society, driving national identities and agendas underground into conflicting and destructive relations. Acknowledgement

of the national existence of Israeli Jews is hard and bitter for Palestinians. For many, it smacks of legitimizing Zionism and settler colonization. Yet bi-nationalism was accepted by the PLO when it accepted the two-state solution, and that cannot be undone. It is a necessary ingredient if we want any Israeli buy-in at all to a one-state program. It addresses the implications arising from the fact that Israeli Jews will be a minority in the country. The first question *any* Israeli Jew will ask is: How do I know that a Palestinian-majority parliament will not enact laws that discriminate against me, even expel me from the country? How can I be sure a Palestinian-dominated parliament will not do to us what we presently do to them?

But there is a Palestinian dimension as well. After all these decades of struggle, Palestinians, too, seek official recognition of their existence as a nation, a people with rights of self-determination, a collective that can actually celebrate and express its *national* identity and heritage? Indeed, Edward Said argued that a people needed its narrative and its national life before it can go on to other forms of identity, integration and civil life. Acknowledging Palestinian national rights constitutes the very basis of resolving the refugee issue and a process of acknowledgement and restitution for what was done to the Palestinians since the Naqba *as a people*.

The bi-national element is perhaps the thorniest issue of all to resolve, and it deserves searching consideration (Bashir 2016). The elimination of the two-state solution means the elimination of various federal schemes as well, at least as initial solutions. Within the only workable option still open, a single democratic state, two main variations are available: outright bi-nationalism within a consociational state, and backgrounding bi-nationalism in favor of a constructing a common civil society. Both are consistent with international law.
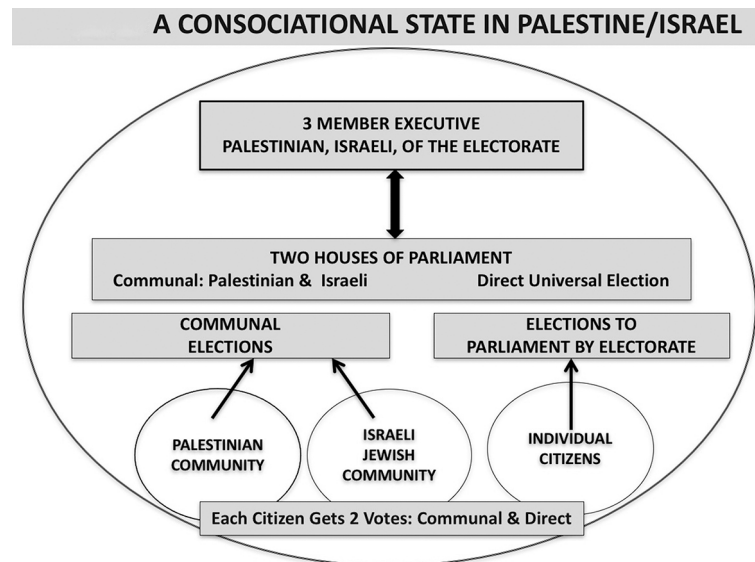
1.4.1   Option 1: A Consociational Democracy

A bi-national, democratic state most directly addresses the two most fundamental issues facing Palestinians and Israelis in a shared polity: To whom does the state "belong"? And how can national self-determination be reconciled with democracy within a single state?

The usual answer to the question of whom does the state "belong" is that it belongs to the people living within its borders, presuming that the state is capable of and entitled to determining a common "national" identity based, if not on one that existed before the state, then one that will be forged after. The unhappy experience of states, however, reflect the resilience and resistance of national, ethnic and religious identities, especially those of minorities, to incorporation into a state-defined nationality. There is certainly no overarching "national" identity between Palestinian Arabs and Israeli Jews in Palestine/Israel, and their shared experience and history, while it exists, can hardly be considered a positive one that lends itself to a perceived common future. This, indeed, is what lent validity to the two-state conception, based as it is on the notion of "separate but [formally] equal." With that option eliminated by Israel, however, we are left with just one other: to forge a common state framework that ensures individual civil liberties for all its citizens within a democracy yet also gives a meaningful measure of self-determination to the two national groups that compose it.

"Consociational" states are based on power-sharing amongst major political, national, ethnic and religious collectivities rather than a forced majoritarian or unitary democracy. In particular they suit post-conflict situations in which competition for power undermines cross-communal trust and the possibility of once-antagonistic communities to come together to meet common, transcendental issues of joint governance – although they also hold the opposite danger of perpetuating collective differences and engendering unstable coalitions of some groups *against* others.

The following consociational model (Figure 1) offers one approach to reconciling the potentially contradictory demands of Palestinian and Israeli-Jewish nationalism within the framework of a single democratic state.

A CONSOCIATIONAL STATE IN PALESTINE/ISRAEL

Figure 1: Consociational democracy in Palestine/Israel.

In this model, the country is thoroughly democratic, its parliament elected by universal suffrage an invested by a Constitution with the authority to make laws and policies crucial to proper governance. It also acknowledges, however, and even foregrounds, the two national communities that share sovereignty: Palestinian Arabs and Israeli Jews. The country's Constitution would guarantee the cultural integrity of each, as well as protecting the collective rights of all cultural communities, ethnic, religious, linguistic and gender-based. To give substance to the overall bi-national character of the country, a second house of parliament would seat representatives of each national community elected by its members. While having less authority to govern as the parliament itself, the role of the communal house would be to safeguard the principle of bi-nationalism and the right of self-determination within the common polity. It would articulate the needs and concerns of each national community, and have veto power over legislation that harmed the integrity of either national group (or any of the others). On the contrary, the Communal House would enhance each people's national heritage and self-expression, thus vitiating the need of any community to assert its identity or agenda against the others. It could recommend to Parliament the creation and funding of a national university, a national museum and a national theater for each community, for example, and would articulate concerns of the religious communities within each national group. By providing a layer of protection for collective rights, the principle of bi-nationalism embodied in a Constitution and given expression in a Communal House of Parliament would also address the fears of Israeli Jews who will be the minority population in the future state from any parliamentary "tyranny of the majority."

In elections, then, every Jewish and Palestinian voter would have two votes: one for a normal parliament elected by all citizens and one for a communal house that represents the concerns of each community and acts as a watchdog of their integrity. (Citizens who are neither Palestinian nor Jewish would vote only for parliament.)

As in Switzerland, where the identities of the cantons outweigh a single Swiss national identity, the issue of "who does the state belong to" could be relieved by installing a Federal Executive Council of administrative technocrats to run the country, instead of a prime minister. Switzerland has an Executive of seven rotating members; Palestine-Israel might have three: a representative of the Palestinian community, a representative of the Israeli Jewish community, and a representative of the general electorate. This, instead of the state being the repository of national identity as in most countries, the weight of collective identity would devolve to the two national communities that comprise the state, Palestinian Arabs and Israeli Jews. The state, then, would "belong to" neither of the national groups. Citizens would have the option of identifying with and living within their collective entities or of mixing with others as a common identity emerges.

A consociational model would be easiest to "sell" the Israeli Jewish public, since it institutionalizes and protects their national identity together with that of the Palestinians, within the framework of a common state. A bi-national democratic state conforms as well to the sentiments of the Future Vision of the Palestinian Arabs in Israel (2006), the Haifa Declaration (2007) and the Democratic Constitution (Adalah 2007), all issued by '48 Palestinians, which envision either a bi-national or multicultural state comprised of national, civil, political, religious, regional, clan-based and other associations. While they all refer to a vision of a future Israel, the principles they embody can easily be expanded to a single state in all of Palestine/Israel.

1.4.2   Option 2: A Multi-Cultural Democracy (ODS+)

In its Munich Declaration, the One Democratic State Movement (ODS Movement 2012) puts forth another model of a single democratic state in all of Palestine/Israel, but one that denies bi-national or even collective rights to Palestinians and Israeli Jews alike. It builds instead solely on a majoritarian democracy comprised of individual citizens:

> one country that belongs to all its citizens including all those who currently live there and all those who were expelled over the past century and their descendants, … a democracy in which all of its adult citizens shall enjoy equal rights to vote, stand for office and contribute to the country's governance.

While affirming that "No State law, institution, practices or activities may discriminate among its citizens on the basis of background, color, gender, language, religion, political or other opinion, national or social origin, property, birth or other status," the Munich Declaration does not reference any collective or national rights of self-determination.

In this sense, the ODS approach holds out a positive vision of a thoroughly democratic state of equal citizens in which no group enjoys special privileges, rights or the ability to leverage dominance over the others. No less inspiring, it directs the thrust and primary energy of nation-building towards the creation of a common civil society that is genuinely equal, secular (in the sense of a state that is "neutral" in terms of its religious identity) and democratic. The promise is that as the years pass and both citizens and communities of Palestine/Israel develop a sense of mutual trust, inter-connectivity and security, the younger generations, for whom a shared life is normal, will engender a shared civil identity. Attracting primarily the younger generation and the more secular middle classes, an inclusive civil society would take root as a shared national life becomes routinized through common citizenship and political life, collective experiences arising out of daily life, civil marriage, integrated communities and schools (for those who choose them), shared languages, a common media, common holidays and symbols that arose from shared national existence, etc., etc. Jordan is a working example of a common national identity, society and polity arising out of an artificial colonial creation, in all its complexity. These new associations, fluid and cutting across cultural, class and gender boundaries, especially in the younger generations, cannot and should not be frozen into unchanging and compulsory national or cultural categories. Such a model also resembles "democratic confederation," a grassroots-based approach to multicultural egalitarianism championed by Abdullah Ocalan and applied in Rojava, the Kurdish-dominated Democratic Federation of Northern Syria (Ocalan 2011).

1.4.3   ODS+: The Program of the One Democratic State Campaign (ODSC)

The Future Vision, the Haifa Declaration and the Democratic Constitution all stress, however, that Palestine/Israel is *not* comprised solely of individual citizens. It is a bi-national and multicultural. As depicted below, it consists of national groups (Palestinian Arabs and Israeli Jews); religious communities (Muslims, Jews, Christians, Druze, Samaritans, Bahai and others), many of them divided in turn into a denominations or, as in the case of Hamas, the more secular Fatah or religious Zionists, into political communities as well; ethnic groups (Mizrahi and Ethiopian Jews, Druze, Bedouin, the African asylum-seeker community, foreign workers who remain, non-Jewish Russian immigrants, naturalized citizens, emigrants and others), all of whose communities connect to a class, clan, geography and political identity as well; gender-based communities; and other collectivities. To the degree that people find them meaningful and choose to adhere to them, cultural identities and associations must not only be protected, they must sanction space in which to find expression.

In the hopes of bridging the differences over ODS, a group of Palestinians and Israelis (including the author) have produced a program that might be described as ODS+; it conforms in its basic elements to the ODS vision but insists on adding constitutional protections for the collective rights of Palestinian Arabs and Israeli Jews – without, however, going so far as to institutionalize a bi-national regime. Essentially it backgrounds national self-determination to the creation of a common civil society, yet does not deny the right to a collective identity to either (or any) community.

The ODSC Program, then, rests on the following principles:

1. *A Single Constitutional Democracy*. One Democratic State shall be established between the Mediterranean Sea and the Jordan River as one country belonging to all its citizens, including Palestinian refugees who will be able to return to their homeland. All citizens will enjoy equal rights, freedom and security. The State shall be a constitutional democracy, the authority to govern and make laws emanating from the consent of the

governed. All its citizens shall enjoy equal rights to vote, stand for office and contribute to the country's governance.

2. *Right of Return, of Restoration and of Reintegration into Society*. The single democratic state will fully implement the Right of Return of all Palestinian refugees who were expelled in 1948 and thereafter, whether living in exile abroad or currently living in Israel or the Occupied Territory. The State will aid them in returning to their country and to the places from where they were expelled. It will help them rebuild their personal lives and to be fully reintegrated into the country's society, economy and polity. The State will do everything in its power to restore to the refugees their private and communal property of the refugees and/or compensate them.

3. *Individual Rights*. No State law, institution or practices may discriminate among its citizens on the basis of national or social origin, color, gender, language, religion or political opinion, or sexual orientation. A single citizenship confers on all the State's residents the right to freedom of movement, the right to reside anywhere in the country, and equal rights in every domain.

4. *Collective Rights*. Within the framework of a single democratic state, the Constitution will also protect collective rights and the freedom of association, whether national, ethnic, religious, class or gender. Constitutional guarantees will ensure that all languages, arts and culture can flourish and develop freely. No group or collectivity will have any privileges, nor will any group, party or collectivity have the ability to leverage any control or domination over others. Parliament will not have the authority to enact any laws that discriminate against any community under the Constitution.

5. *Immigration*. Normal procedures of obtaining citizenship will be extended to those choosing to immigrate to the country.

6. *Constructing a Shared Civil Society*. The State shall nurture a vital civil society comprised of common civil institutions, in particular educational, cultural and economic. Alongside religious marriage the State will provide civil marriage.

7. *Economy and Economic Justice*. Our vision seeks to achieve justice, and this includes social and economic justice. Economic policy must address the decades of exploitation and discrimination which have sown deep socioeconomic gaps among the people living in the land. The income distribution in Israel/Palestine is more unequal than any country in the world. A State seeking justice must develop a creative and long-term redistributive economic policy to ensure that all citizens have equal opportunity to attain education, productive employment, economic security and a dignified standard of living.

Article 4 represents that compromise between a fully bi-national state and a unitary majoritarian one. It accepts the need to acknowledge and protect the collective rights of the country's cultural groups, including the national identities of Palestinians and Israeli Jews, if the program has any chance of being accepted by either of the major communities. It falls short of a consociational state in that it does not give formal power to collectivities, but by granting communities their cultural space as guaranteed in the Constitution, it provides the security of bi-nationalism without forcing the Palestinians to explicitly recognize and legitimize Zionism and settler colonialism. The Constitution will limit Parliament's ability to pass laws harming the integrity of any national, ethnic, religious, gender-based or cultural group, or to pass laws that privilege one community over the others (except in the realm of affirmative action), just as it does in the consociational option, but without formal representation in parliament. Collective rights are mediated instead through such institutions as the Arab Higher Committee, the Chief Rabbinate, local councils, museums, festivals and even universities.

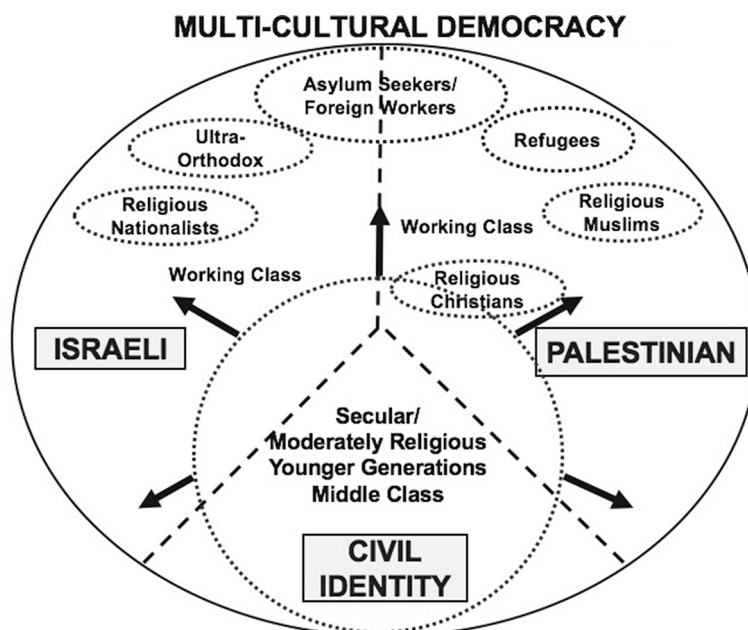The ODS+ model may be illustrated as follows (Figure 2):

Figure 2: Multicultural democracy in Palestine/Israel.

2   A Win-Win Settlement

Guiding the construction of a just and workable political settlement in Palestine/Israel are a number of elements that (in my view at least) must be included in any program that respects the spirit as well as the letter of international law, but which also takes into account such non-legal elements as justice and what is achievable in the actual political context. They are:

1. *A just peace must find a balance between the between collective rights (self-determination) of Palestinian Arabs and Israeli Jews and the identical and equal individual rights of all citizens living in a democracy.*

2. *A just peace and the negotiations leading up to it must conform to human rights, international law and UN resolutions* in respect to both the collective and individual rights of both peoples. If power negotiations alone determine the outcome, Israel wins and the conflict becomes irresolvable.

3. *A just peace requires that the refugee issue be fully resolved.* This requires Israeli acceptance of the refugees' *right* of return as set down in UN General Assembly resolution 194. But for a process of reconciliation to proceed, an additional symbolic step must be taken. Israel must acknowledge its responsibility in creating the refugee issue. Only then will technical solutions involving mutually agreed-upon combinations of repatriation, resettlement elsewhere and financial compensation be negotiable.

4. *A just peace must be economically viable.* All the citizens of Palestine/Israel must have equal access to the country's basic resources and economic institutions. Once viable economic and political structures are in place, the Palestinian Diaspora may well invest in the country, supporting in particular the Palestinian sector and contributing to the attainment of economic parity between the communities.

5. *A just peace must include the thorough integration of the new state's security forces* in order to address Palestinian fears that a single state is a "trick" or offers leverage for continued Israeli domination.

6. *A just peace must address the security concerns of the entire the region.*

7. *A just peace must be regional in scope.* Israel-Palestine is too small a unit to address such regional issues as refugees, water, security, economic development and the environment. Any peace process must provide a suitable regional environment in which Palestine/Israel can integrate.

The evolution of Israel's occupation has led to the elimination of any genuine two-state solution and the implementation of an apartheid regime which cannot be accepted. It appears that we must "bite the bullet": only a single democratic state in Palestine/Israel that ensures both the collective and civil rights of its citizens can fulfill the spirit and letter of international law.

We must not view such an option as merely a default solution. It is true that an asymmetry exists regarding it: the Palestinian population, despite reservations over sharing the country with Israeli Jews (strong especially among the refugee population), can be brought around. After all, in one form or another the one-state solution was always preferred by the PLO, and was seen as the eventual outcome of the two-state solution as well. The "sell" will be much harder among the Jewish population, which will find itself a minority in a country it has ruled in an imperial way for the past 50 years and more. Indeed, the very notion of being a minority contradicts a cardinal principle of Zionism, that Jews must control their destiny. Still, the one-state solution is all *Israel* has left us with; there is nowhere else to go.

In this scenario, both peoples will be required to make major – maybe ultimate – concessions. Both will have to relinquish the aspiration of national self-determination in countries of their own. Balancing that, however, is the prospect of building a new state and society on the basis of a win-win proposition. Once their collective rights are guaranteed by the Constitution and the resulting constraints on Parliament passing laws which discriminate against either (and any) community, Israeli Jews can relax. Their collective existence has been acknowledged and concerns for their collective security addressed.

Building the new state of Palestine/Israel (or whatever it will be called) can then be presented as a genuine and exiting shared project, and in particular the construction of a common civil society based on equal rights and, over time, shared experiences. Indeed, there seems to be no "down side" to this win-win proposition. Citizens are free to live wherever they wish. "Settlements" may stay (subject to compensation for Palestinian lands lost), for if they are integrated they lose their controlling functions. Refugees return – and according to the Palestinian geographer Salman Abu-Sitta (1997), 85% of the lands taken from them in 1948 are still available for resettlement. New communities will have to be built, lands redistributed and financial compensation paid (perhaps reparations as well), but refugees will be able to return to the region of the country from which they came and be truly integrated into society.

In many ways, the Israeli and Palestinian economies are actually complementary, which adds an additional element to the practical possibility of a single state. Hever (2010, 197) calls attention to the fact that a country-wide infrastructure already exists, although it needs to be extended fully into Palestinian society. Many of not most Palestinian men speak Hebrew, the Palestinian workforce is highly educated (if grossly underemployed). The Palestinian literacy rate stands at 96.3%, one of the highest in the world, and despite the constraints of occupation 53 accredited post-secondary education institutions exist in the West Bank and the Gaza Strip, including 15 universities, 18 university colleges and 20 community colleges, with women comprising two-thirds of the university students (PCBS (Palestinian Central Bureau of Statistics) 2014; 2016, 27). Besides traditional sources of employment such as agriculture, the Palestinians also enjoy a developed tourist industry and have made significant strides in such cutting-edge economic sectors as hi-tech. Economic compatibility is a major element in underpinning the emerging civil society, one that is quick acting and not forced. In regard to Palestinians' ability to achieve economic parity with Israelis, we should also note yet another major asset, their highly educated and affluent Diaspora that is likely to invest in the Palestinians sector of the new economy if not beyond.

Again, though the thrust of our proposal is in building a common civil society and civil identity, ample space is provided for those who prefer life wholly or partially within their traditional cultural frameworks. To take two extreme examples, neither returning Palestinian refugees nor ultra-orthodox Jews are likely to jump into an individualized and integrated civil society, which is fine as long as they respect the country's democratic and civil framework. Yet another bone of contention that will have to be resolved is the issue of secularism. While the PLO spoke of a "secular, democratic state" and Israel, too, originally defined itself as secular (despite giving over to the religious institutions that deal with civil status, such as citizenship and marriage), the high majority of Palestinians and the majority of Israeli Jews today define themselves as religious or "traditional." The ODSC Program tries to bridge this issue in Article 1 by placing the authority to govern and make laws emanating from the consent of the governed and not on religious authorities, as well as its prioritizing common civil society institutions.

3 Implementation?

There is a lot of work to be done, but there's a feeling in the air that the one-state solution is a political idea whose time has come (Halbfinger 2018). One can genuinely question how such a plan, just as it may be, can actually be implemented. Indeed, the struggle among the Palestinians, in my view, will be less over the vision, which the vast majority would probably accept, than convincing them that a one-state solution is in reality possible. The greater challenge, of course, is convincing the Israeli Jewish public, which is nigh impossible. We of the ODSC are only now beginning to develop a strategy, but it would resemble that of the anti-apartheid campaign in South Africa. There, too, the white community was not an active partner (despite some key activists); on the

contrary, it opposed and feared the fall of the apartheid regime. It was the alliance of South African blacks and the international community that ultimately isolated the country and led to apartheid's collapse.

By the same token, we need to build upon the Palestinian-international civil society alliance that already exists in order to isolate Israel and force upon it a democratic regime. Jewish activists, both in Israel and abroad, will lend legitimacy to this movement, personifying the fact that we seek to *transform* Israel and the OPT from an apartheid regime to a democratic state of equal rights for all its citizens – while protecting the collective identities and rights of Israeli Jews and Palestinians alike.

It is in this struggle for public opinion that international law might make its greatest contribution. Bringing Israel to international courts would play a major role in shifting public perception of the legitimacy and legally of Israeli rule, although the case of the ICJ's ruling on the Wall having no effect on Israel or support afforded it by governments demonstrates the limitations of such actions. The campaign of boycotts, divestment and sanctions (BDS) seems to have been more effective in delegitimizing Israeli policies. Linking it more strongly with the demands of international law, as well as with a political end-game, may constitute an effective strategy.

The key – and here international law may also be useful – is to frame the issue in a way that holds Israel responsible as the Occupying Power and as the overwhelmingly strong actor. Israeli *hasbara* (PR) is effective in casting Israel as the victim, partially by conflating its supposed vulnerability with the broader Jewish historical experience. By re-framing, we recast Israel as a powerful actor pursuing a pro-active policy of judaization and displacement having nothing to do with security and standing in direct opposition to the requirements of international law. It is *Israel* that eliminated the two-state solution and thereby any chance that Israel may be a "Jewish" country. It is *Israel* that has created *de facto* a single state between the Mediterranean and the Jordan River, and an apartheid regime at that. OK, we must say, we accept the single state you, Israel, have already created. But we cannot accept apartheid. The political task before us seems crystal-clear: transforming the single apartheid regime created by Israel into a democratic state of equal rights for all its citizens. Framed that way, and supported by international law, the political logic is compelling and unassailable. Ultimately, Israeli Jews – whose individual and collective rights are, again, guaranteed constitutionally – will be forced to concede by the very weight of their country's unjust and illegal structures.

And if not, supporters of international law will have to reassess the very assumptions and cogency of their legal regime.

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