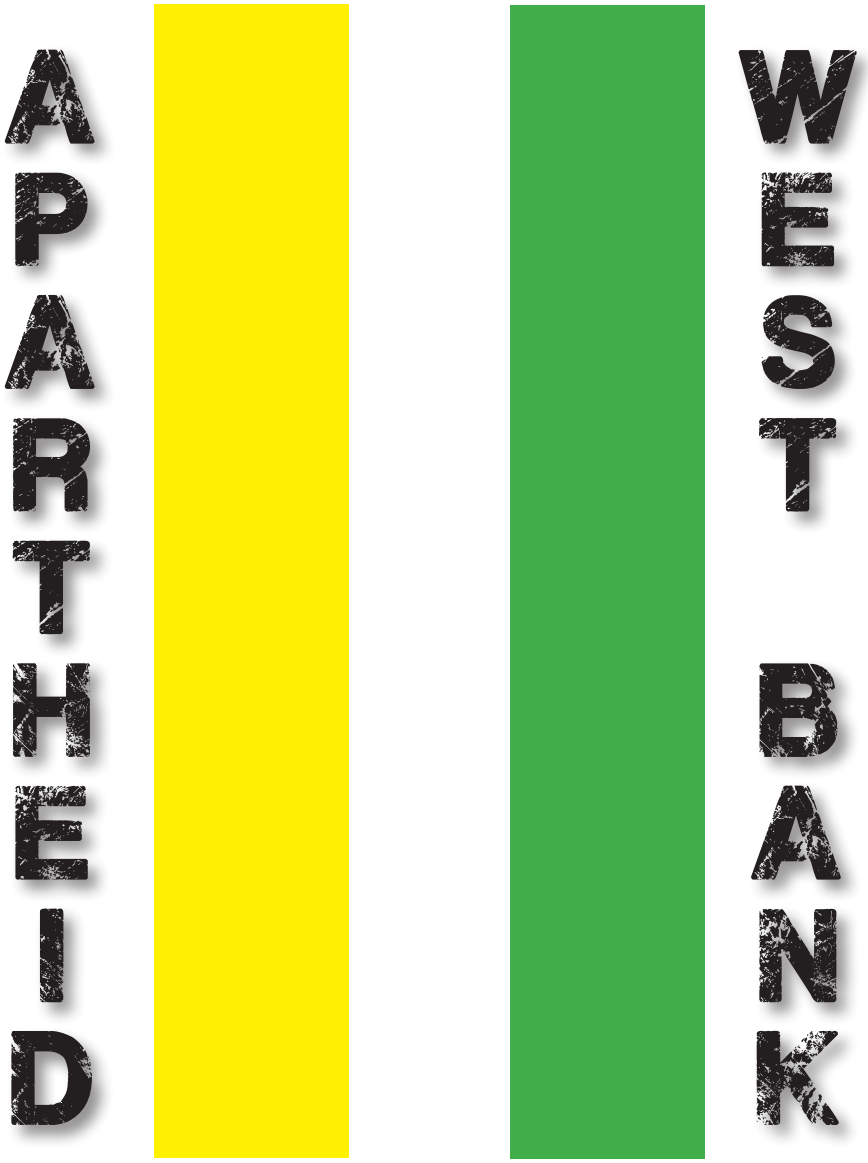
The Link

Published by Americans for Middle East Understanding, Inc.

Volume 51, Issue 3 | *Link* Archives: www.ameu.org | June-July 2018



by

Jonathan Kuttab

AMEU (ISSN 0024-4007) grants permission to reproduce material from The Link in part or in whole. AMEU must be credited and one copy forwarded to our office:

475 Riverside Drive, Room 245
New York, NY 10115
Tel: 212-870-2053
fax: 212-870-2050
email: AMEU@aol.com
website: www.ameu.org

Apartheid West Bank

By
Jonathan Kuttab

The word apartheid has become a lightning rod for criticism of the Israeli regime in the West Bank. The word itself is closely connected with the defunct policies of the white-dominated regime in South Africa that collapsed under international pressure and was replaced with that country's current non-racial political system.

Most of the discussion of apartheid centers around the similarities and differences between the situation in the West Bank and in South Africa, which often tends to become quite polemical, since no two situations are exactly alike.

The South African model of apartheid had some distinctive features such as Pass Laws, and Bantustans and other elements which ostensibly served all the ethnic groups in South Africa, but which in fact served to institutionalize the dominant position of whites and suppress the black majority.

Other forms of apartheid have their own distinctive features, and the form used in the West Bank will be described in this article. It should be noted, however, that an outright comparison is usually unfair, even to South Africa, since some of the features of the occupation in the West Bank are worse than those that pertained in South Africa.

Continued on page 3

About This Issue

This is the second in our series of issues on how the concept of apartheid in international law applies to the different situations in which Palestinians find themselves. Our April-May issue focused on Palestinian citizens of Israel. This issue examines occupied West Bank Palestinians. Our writer is lawyer Jonathan Kuttab, founder of the human rights organizations Al Haq and the Mandela Institute for Palestinian Prisoners.

John F. Mahoney
Executive Director

The term "apartheid" has also acquired a specific legal meaning, and apartheid is now recognized as a crime against humanity in its own right. More to the point, the jurisdiction of the International Criminal Court (I.C.C.) lists apartheid and similar practices as within its criminal jurisdiction.

In this article I will outline the elements of apartheid as a crime; explain in detail the current situation in the West Bank; then apply the objective criteria of "apartheid" to the reality on the ground today.

The Crime of Apartheid

The International Convention on the Suppression and Punishment of the Crime of Apartheid, adopted by the General Assembly of the United Nations on November 30, 1973, states in Article II: "For the purpose of the present Convention, the term 'the crime of apartheid,' which shall include similar policies and practices of racial segregation and discrimination as practiced in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group:..." The article goes on to describe a variety of ways in which apartheid is practiced, and the inhuman acts which are prohibited, including:

> (c) any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association.
>
> (d) any measures, including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof.

Protocol 1 of the Geneva Convention of 1977, which was signed by 169 countries, designated apartheid as a war crime and a "grave breach" of the Convention.

The Rome Statute of the International Criminal Court, in Article 7, lists apartheid as a Crime Against Humanity and defines it thus: The 'crime of apartheid' means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime. [The crimes referred to in paragraph 1 include enslavement, deportation or forcible transfer of a population, torture, rape, persecution against any identifiable group or collectivity based on political, national, ethnic, cultural, or gender grounds.

West Bank Apartheid: How It Came About

The seminal feature of the crime of apartheid seems to be systematic or legislative actions providing for (a) a regime of domination over one group and (b) the creation of a separate and unequal system of governance to the detriment of the victim group or its members. Mere violations of human rights and oppression of individuals or groups are not enough to make this charge.

In the context of the West Bank, therefore, our inquiry must go to the practices and legislative scheme perpetrated by the Israeli authorities, and to the oppressive and discriminatory treatment of the Palestinian Arab population as compared to the Jewish civilian population living in the Occupied Territories. These include: the use of ID cards that must be carried at all times and that are far more invasive than the "pass law" system of South African apartheid; the pervasive system of permits required for all aspects of life; the Separation Wall; the myriad checkpoints and travel restrictions throughout the Occupied Territories; the extensive use of administrative detention (no charges/no trial); and various other instruments of control. All these elements are actually enacted into laws and military orders in an elaborate legislative system.

To understand this legislative scheme, it helps to know how it came about.

Israeli rule over the West Bank commenced 51 years ago, at the conclusion of the June War of 1967. Israel claimed that its initiation of that war by a devastating attack on the air forces of the surrounding Arab countries was a preemptive action, in anticipation of a war Israel alleged was about to be launched by Arab armies against it. Israel claimed it had no territorial ambitions and that its actions were purely defensive, and that it was holding such territories as a temporary measure until peace treaties with the Arab countries involved would lead to the return of the territories. The status of these territories was "belligerent occupation" and the Israeli High Court to this day holds that position. One exception to this was East Jerusalem, whose area was expanded to add a number of surrounding areas that were effectively annexed into Israel by joining them to the Jerusalem municipality and declaring that henceforth "Israeli law and administration" will be applied there, rather than the Military Law and legislative scheme applicable in the rest of the Occupied Territories.

This action was roundly condemned as illegal and null and void by no less than 7 unanimous U.N. Security Council Resolutions, and it remains a serious point of contention. No country has acknowledged or accepted this annexation, and even the current U.S. administration considers East Jerusalem to be "disputed." This article will only deal with the remaining area of the West Bank, primarily because Israel has applied a different legal scheme to that area, and not because the annexation of East Jerusalem is either legal or legitimate under international law.

The situation of the rest of the West Bank was acknowledged by a consensus of legal scholars, including Israeli legal scholars and the Israeli High Court, to be that of "belligerent occupation." This status by its very nature is temporary, and international law imposes clear restrictions on how Israel, as an occupying power, ought to act towards such territory and its inhabitants.

The Israeli government and its apologists have sometimes argued that the most comprehensive law on this subject (the Fourth Geneva Convention on the treatment of Civilians in Occupied Territories) is not legally binding on Israel. This is important because of its impact on the presence of Jewish settlers in the Occupied Territories, which clearly violates the Geneva Convention. The Israeli Government uses a variety of arguments to avoid such application, which are worth listing here. Among them are:

> The territory did not belong to a recognized sovereign, as Egypt never claimed sovereignty over Gaza, which it only administered from 1948-1967, and Jordan's annexation of the West Bank was only recognized by Britain, Iraq and Pakistan, and was quite weak, while the Palestinian Arabs never had an independent state in Palestine and therefore could not claim to be the legitimate sovereign there.
>
> Israel is the real sovereign in the Occupied Territories by means of the novel theory of "Missing Reversioner," advanced by Israel's then representative at the United Nations, Yehuda Z. Blume. Under that theory, in the absence of any legitimate sovereign, the Jewish people can assert their ancient claims and declare themselves to be the only ones competent to claim sovereignty there.
>
> The Geneva Convention is treaty law which has not been ratified by the Knesset and therefore only the Hague Conventions are applicable. This argument was used by the Israeli High Court to avoid applying the Geneva Conventions when petitioned to do so.
>
> Israel voluntarily applies the "humanitarian provisions" of the Fourth Geneva Convention of 1949 but is not required to apply the "political" provisions. Of course, no listing existed as to which provisions Israel considers to be "humanitarian" and which "merely political."

Those arguments were definitively and unanimously rejected by the July 9, 2004 Advisory Opinion of the International Court of Justice in the case of the Wall, by all 15 justices. Even the single U.S. Judge who wrote a dissent in that 14-1

opinion, agreed with the majority that the status of the West Bank is "belligerent occupation" and that the Geneva Conventions apply and are binding to that territory.

This is of vital importance to the question at hand because, contrary to the Geneva Convention, Israel began introducing into the territories members of its civilian population who started to reside there under a very specific legislative scheme, which will be described below. Aside from the clear illegality of such settlers and settlements, about which there is an international consensus, Israel's desire to permit the continued residence of such settlers in the Occupied Territories, and to have them live under a separate and distinct regime, is what gives rise to the charge of apartheid. It is therefore important to understand how this came about, and where it is heading in order to properly determine whether this behavior does or does not constitute the crime of apartheid.

Initially, Israel and its apologists claimed that such settlements were only temporary and that, as long as a state of war persisted, these settlements were needed for security purposes, and that once peace comes they will be removed.

Israel also argued that the settlements constituted useful "bargaining chips" to induce Arabs to come to the peace table and negotiate favorable terms. And indeed, many of these settlers first moved into army bases, and appeared to be integrated into the army presence. Later, however, they took on an independent civilian character. The Israeli army sometimes confiscated land for settlements "for security reasons" and only later did it became clear that some of the settlements were not needed for security, and indeed were a security burden rather than an asset.

The famous case of the settlement of Elon Moreh was one of the rare victories in the struggle against settlements in the High Court of Justice. In that case, Israeli generals belonging to the Labor Party, which was not then in power, presented affidavits that the location of that settlement, built on proven private Arab lands, constituted a burden to the army and would be difficult to defend during times of war. As such, the "security" justification could not be used in that particular case. Thereafter, other justifications for the acquisition of private land were proffered. Among these was the claim that the land taken was Absentee Property, or that it was needed for a public purpose, or that it was not really private but public or state land.

From the beginning, however, the Jewish settlers made it clear that they were not there to serve as a temporary security measure, but as part of their Zionist ideology: their desire to return to the land after two millennia in exile and to live there permanently. Israeli governments and politicians of the right and of the left gave different explanations for the settlement activities, but it was clear from the start that these settlements were intended to be specifically Jewish (not Israeli) settlements, and that their residents expected massive support and cooperation from the Israeli army and government, and that they wanted all sorts of privileges, and were NOT satisfied to live under the same conditions as the Palestinian residents of the West Bank. They claimed access and control over "public" lands as well as exclusive residential rights in their Jewish settlements, rights that were not open to the Arab inhabitants, or even to Arab citizens of the state of Israel.

The result was that from the beginning, the Israeli army, which controls all aspects of life in the West Bank, had to develop two separate systems of governance for the civilians under their control: one for the local Arab residents, who were placed under Military Law, the other for the Jewish settlers, who were, as far as possible, to be under Israeli law.

Given the vast differences in legal systems, services, educational structures, health care and social services between Israeli and Jordanian legislation, as it existed in the West Bank on the eve of the occupation, this created a logistical problem, and required legal procedures and mechanisms to administer.

The first military order in the West Bank stated that all existing laws and regulations and administration currently in place will continue, until amended or changed by the Military Governor. This referred to the Jordanian Laws and Regulations then in effect. The Military Governor then took upon himself all legislative, judicial and executive powers, and proceeded to amend the existing Jordanian laws through military orders that have numbered over 1,750 as of this writing. These military orders facilitated the process

of governance of the West Bank, the acquisition of much of its land, the oppression of its people, their control by the Israeli army, and the establishment of a separate structure for governance of Jewish settlements. (See Raja Shehadeh's book, *Occupiers' Law*.)

This control extended into all areas of life and was intended to serve not only the interests of the State of Israel, as an occupying power, but also the interests of the Jewish settlers, who were organized into "Regional Councils" with their own separate administrative and juridical structures. Each Regional Council contained a number of Jewish settlements, and all lands and Palestinian villages in their area. In effect, this was a parallel structure to the existing Governates that existed already. Most of the Ramallah Governate, for example, with its over 90 Arab villages and Ramallah as its center, was also now included in the Benyamin Regional Council.

After the First Intifada, the State of Israel entered into a number of agreements with the Palestine Liberation Organization (P.L.O.). The first of these was the Interim Agreement of 1994 (sometimes referred to as the Gaza-Jericho Agreement). It was hoped that these agreements, collectively known as the Oslo Accords, would pave the path to Palestinian statehood. A five year Interim Period was declared and elections were made to the Legislative Council of the newly created Palestinian National Authority (P.N.A., or P.A.). The entire West Bank (excluding East Jerusalem) was divided into three categories of land, as seen in the map on page 7.

I was the head of the Legal Committee of the P.L.O. during these negotiations. From the beginning, it was clear that the scheme could either evolve into a Palestinian state, or it would create an apartheid regime, with Palestinian collaboration and consent. The late Professor Edward Said was one of those who argued that the Oslo Accords were a catastrophe imposed on the Palestinians that would solidify the occupation and make it permanent, while most observers wanted to give it a chance and believed it could lead to a two-state solution. The issues of borders and the settlements (as well as Jerusalem and refugees) were conveniently left to be negotiated later as part of a permanent peace agreement that was to be concluded within five years.

As it turned out, the five year period was extended indefinitely while the situation of the Palestinians grew worse and worse. It is now commonly accepted by most observers that the Oslo Accords had failed and that a genuinely independent Palestinian state is not in the cards, if it ever was.

The essence of the Oslo arrangement was to divide the West Bank into three types of areas:

Area A consists of the densely populated main cities of the West Bank. These were to come under the control of the P.A., but would be subject to significant restrictions. Israel, in theory, would not move into these areas although, as it turned out, Israeli forces frequently do enter to patrol or to make arrests.

Area B consists of the built-up areas of the villages and is said to be jointly administered, with the P.A. taking charge of civilian affairs and services, while the Israeli army has "security" responsibility and authority. Policemen of the P.A. cannot travel through, from or into territory labeled Area B without the need to coordinate their activities with Israel.

Area C consists of the settlements, the army bases and all land in between and is totally under the control of the Israeli army; the P.A. has no authority here. Areas labeled as C currently include over 60% of the West Bank.

The plan was to expand the authority of the P.A. by turning more and more of areas C into B and B into A, eventually leading to a Palestinian state and, in fact, two such transfers of territory were made, until Benjamin Netanyahu was elected prime minister and the process was brought to a halt.

A number of joint Israeli-Palestinian coordinating committees were created, where each side has veto power. All matters of importance to Israel or to the settlers remained within the exclusive control of Israel, and Palestinians had no say in them whatsoever, while matters of interest to the Palestinians were kept within the Joint Committees, where Israel had veto power. This meant that even in things where Israel had no direct interest, it could still control and pressure Palestinians by refusing to agree to or accept decisions where its agreement was needed in Joint Committees. This

Oslo II Map
Outlining Areas A, B, and C

www.Researchgate.com

included, for example, travel permits and radio frequencies for broadcasting and telecommunications, which could only be issued to Palestinians through the Joint Committees.

Over the years, Israel and the settlers consolidated their control over Area C while weakening the control of the P.A. within its designated territory (Areas A and B). For example, under the Oslo Accords, Israel collects tax and customs payments on behalf of the P.A.. When the P.A. does not act in accordance with Israel's wishes, Israel delays or refuses to transfer these payments, or deducts sums from them. More frequently, Israel publicly threatens to withhold payments if, for example, the P.A. were to proceed with its efforts to obtain international recognition of statehood, or to bring charges against Israel at the International Criminal Court, or failed to "do enough to fight terrorism and incitement" within Area A.

While the P.A. bravely claims its status to be a "state in the making" and labors to obtain and maintain symbols and appearances of statehood and sovereignty, Israel continues to treat it as a subcontractor, primarily in charge of controlling its Arab population, even as Israel holds effective control and power exclusively in a number of vital areas. Among them are:

- Entry and exit from the West Bank, for both residents and visitors wishing to visit the West Bank.
- Export and Import of all goods.
- All subterranean water sources
- All communications with the outside world, including postal services, cyberspace, electricity, and telephone communications. Israel recently, after many years of requests, allowed the Palestinian communications companies to offer 3G services to Palestinians.
- Currency (Israeli shekel) and banking transfers and dealings, imports and exports, and the like

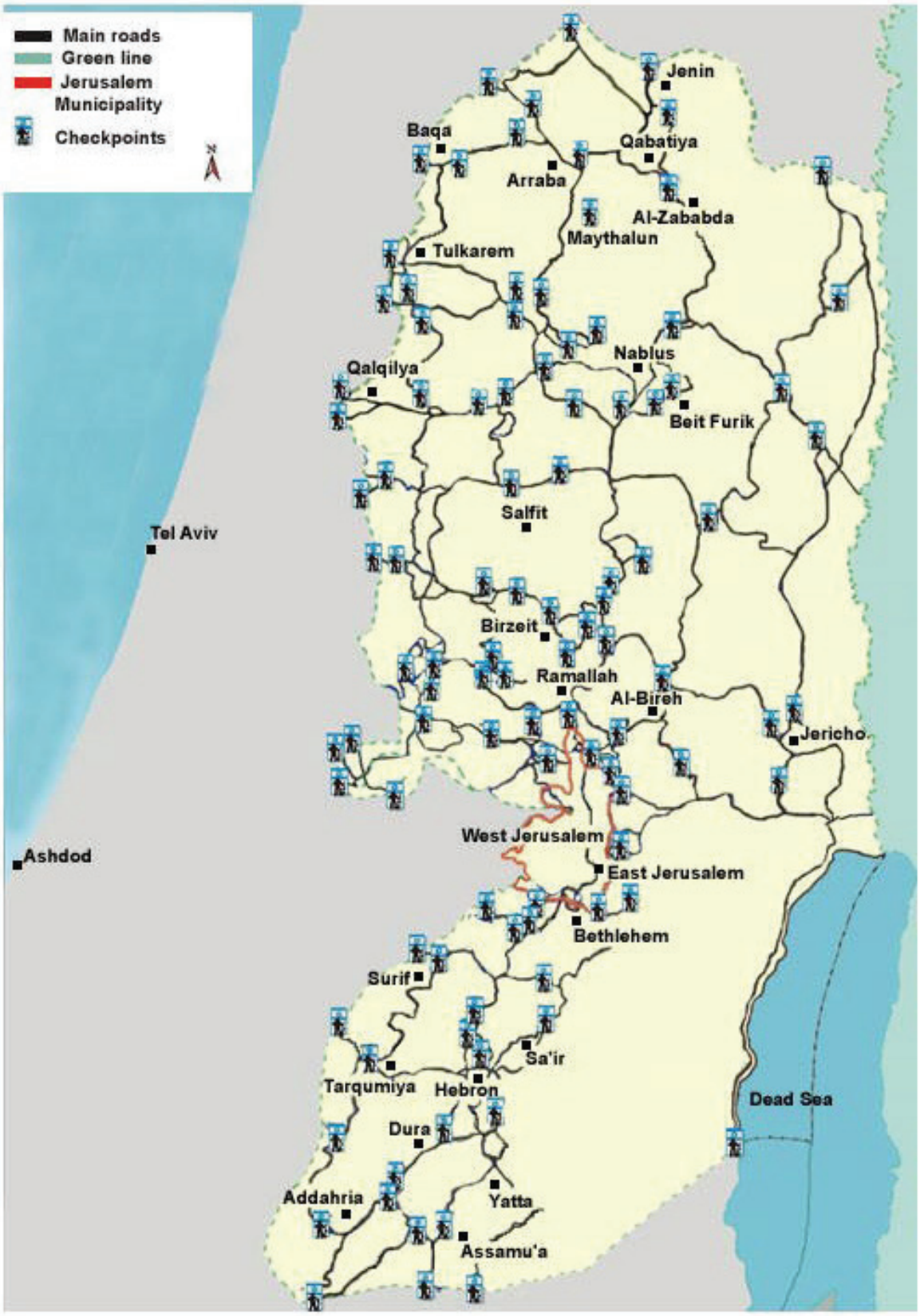
Furthermore, by using both the Wall, and many fixed and mobile checkpoints, both manned and unmanned, throughout the West Bank, Israel controls movement within and between the areas designated A and B, as well as between them and Israel, the outside world, and other sections of the Occupied Territories (such as East Jerusalem and Gaza). The map on page 9 by OCHA shows the variety and location of restrictions on freedom of movement within the West Bank. The reader is invited to take special notice of the scale of the map, which will show how Palestinians cannot travel even a few miles without needing to pass through one or more of the controls and restrictions Israel has placed on their movement.

Many of these obstacles are placed at the entrances of Palestinian villages and cut off their access to the separate system of roads that serve Jewish settlers exclusively. Soldiers at other checkpoints routinely wave through Israeli vehicles (with their distinctively colored license plates) while subjecting Palestinian vehicles, including ambulances, to lengthy and onerous inspections. Some of the "gates" are also opened only at certain hours, further delaying or restricting access of Palestinians to their own lands or forcing them to take longer routes, thereby wasting time and money to carry out their daily living requirements. It is perhaps these travel restrictions and the discriminate way they are implemented that most visibly give rise to the charge of apartheid when describing how Palestinians experience the daily task of access to travel and movement, as contrasted with the ease with which settlers and their visitors move to and from and throughout the West Bank.

West Bank Apartheid: the Currrent Situation

Behind all the confusing political statements and absent any peace negotiations, the situation in the West Bank after 51 years of occupation seems to have solidified into a permanent state of affairs, where two distinct populations reside in the West Bank under totally distinct and separate systems, with one party lording it over the other and committing the very specific violations that are defined in international law as characteristic of apartheid.

The Arab population of the West Bank (again, excluding East Jerusalem) is about 2.8 million, and the Jewish civilian population is about 450,000. This does not include the soldiers, border guards and other army personnel. The two populations not only live in separate locations, but the



www.itlSapartheid.org

system of governance, formally administered by the Israeli army, is different for both of them. Among the clearest and most incontrovertible aspects of this system, we note the following:

1. Applicable Law: Palestinians are, in theory, subject both to Jordanian laws as they existed in 1967 and as amended by over 1,750 military orders, and by new Palestinian legislation and presidential decrees. Jewish settlers, however, are subject to Israeli laws and the internal regulations of their Regional Councils. They are not subject to military law, or the provisions of Jordanian and Palestinian civil legislation. Military orders achieve the result of imposing certain aspects of Israeli laws on Palestinians, such as its customs regulations and the complex Value Added Taxation system on all goods and services within the Occupied Territories. But the applicable law for each community is basically different.

2. Court Jurisdiction: Palestinians are subject both to their local civilian courts in civil and criminal matters, as well as to Israeli military courts. Palestinian civilian courts, on the other hand, have no jurisdiction over Jewish settlers or visitors to settlements, and Israeli military courts do not try Jewish settlers, who are routinely referred to Israeli civilian courts.

3. Police and Enforcement: Palestinians are subject both to the Palestinian police and to Israeli soldiers and military personnel who man checkpoints and often enter areas A and B to arrest Palestinians in their homes. Palestinian police are not allowed to stop or deal with Jewish settlers, nor are Israeli soldiers, but only blue uniformed Israeli civilian police. The most outrageous example of this was when Israeli soldiers, who were present, failed to stop the massacre by a settler of 29 worshippers in the Ibrahimi Mosque in Hebron. As a result, a special post for Israeli civilian police was later erected inside the mosque, allegedly to deal with potential settler violence. Palestinians routinely claim, and have documented, that whenever incidents involving settler attacks occur, the army only interferes to protect Jewish settlers, but never to restrict or restrain their violence against Palestinians.

4. Public Land: Jewish settlements are built on Arab land that is either confiscated or otherwise obtained in a variety of methods. Israel sometimes claims that land that it takes for settlements in particular cases is not private, but state or "public land." Even if this were true, this itself is an aspect of apartheid in that public land should benefit the public of the occupied territory not the civilian population of the occupying power. Settlers act as if all public land in the West Bank is there for their exclusive benefit, and vigorously object when such land is used for public purposes that also benefit Palestinians. For example, when land was needed for water pipes carrying water to the newly built Palestinian neighborhood of Al Rawabi in the Ramallah region, and the pipes passed through Arab land within Area C, Jewish settlers objected and halted the digging of trenches for the water pipes on the grounds that Area C was "theirs" and should not be used to help Palestinians.

5. Road Network: The Jewish settlements are connected to each other and to Israel by a modern road network that allows quick and free

Yellow (Israeli) can travel within the 1948 borders of Israel and within the West Bank and Gaza.

Green (Palestinian) can travel only within the West Bank or Gaza, but not both and not within the 1948 borders of Israel.
Credit: Wikimedia Commons

movement and continuity. Bridges, tunnels and high walls cut off Palestinian villages from this network, as well as from easy access to each other and to their agricultural lands. For large stretches, these roads are not accessible to Palestinian vehicles, that have to carry distinctive license plates. This restriction is separate and distinct from the general restriction that prohibits Palestinian vehicles and individuals from entering Israel or East Jerusalem without a permit.

6. Health, Education and Social Benefits: Jewish settlements enjoy a network of health services, schools, kindergartens, public parks, community centers, and National Insurance (social security) benefits that are at least as good as , and generally preferable, to those which exist in Israel itself. These benefits are heavily subsidized and the Jewish settlements are granted the preferential status of "preferred zones" or "development towns" for taxation and receiving public support from the Israeli budget. Local Palestinian Arabs have a vastly inferior system of services in health, education, national insurance, and social benefits.

7. Water Consumption: Settlers enjoy access to publicly available water and utilities and consume three times as much water as Palestinian Arabs in the West Bank (250 vs. 85 liters per person, per day). The Israeli national water carrier, Mekerot, provides this water and is granted by the military government full control over the subterranean waters of the West Bank. Palestinians are severely restricted in the amounts of water they can withdraw from their own existing wells, and cannot drill any new wells without permission from the joint water committee, where Israel has veto power. Palestinian towns routinely suffer water shortages in the summer, and water reservoirs on top of homes for storing water for residential use when it is available for purchase from Israel are a basic feature of Palestinian houses.

8. Imports and Exports: All imports and exports from the West Bank must pass through Israeli customs controls. Products from Jewish settlements are treated as Israeli goods and often carry false labels indicating they are "Israeli" and can therefore benefit from bilateral Israeli agreements with other countries. Palestinian goods, on the other hand, have difficulty obtaining access either to the Israeli market or to outside markets. Furthermore, they cannot freely access Gaza, East Jerusalem or even the entirety of the West Bank itself for their products, due to Israeli checkpoints.

9. Daily Oppression: Perhaps more critical than all these legal and economic structures is the crushing, day-in, day-out feeling Palestinian Arabs endure from the oppressive humiliations of midnight home searches, daily intimidations, maddening checkpoints, the threat of arbitrary arrests, interminably long waits for permits and authorizations to carry out the most mundane and necessary acts of living, and the knowledge implicit and explicit that all aspects of one's life depend on whether he or she is an oppressed occupied-Palestinian-Arab, or a privileged occupying-Jewish-settler. This reality is known and understood both by the Palestinian Arabs and the Jewish settlers as well as the Israeli army that enforces the system. It is only the apologists abroad who, far removed from the situation, try to deny the reality of apartheid, because they are not willing to accept the legal and moral consequences of such admission.

Israel's Response

The present situation in the West Bank clearly fulfills the conditions of apartheid, both in the practices used to oppress one group by another, and in terms of applying different legislative systems to two different communities: Jews and Arabs. In response to these charges, Israel offers the following defenses:

1. The privileges given to the settlers are not based on their being Jewish, but are related to their being Israelis. According to this argument, the access to the "settlers only" sections of the roads is restricted to Israeli vehicles, not to "Jewish" vehicles. Similarly, the applicable laws, the access to courts, the police protections, and the educational and social services benefits are all predicated on the recipient being an Israeli citizen, rather than on his/her Jewish identity. In this fashion, the Israeli apologists try to avoid the glaring racism and discrimination that is practiced against Palestinian Arabs, and avoid the patently racist nature of these practices.

   This argument, however, fails to deal with the fact that residence in the "Israeli" settlements is specifically limited to Jewish individuals, rather than being based on Israeli citizenship. Israeli Arab citizens (who constitute about 20% of the Israeli population) are not permitted to live in and benefit from the Israeli settlements in the West Bank, while Jewish individuals, who may not yet have obtained Israeli citizenship, or who wish to retain their foreign citizenships, are welcome residents in these settlements.

   A group of Druze Israeli citizens who had served in the Israeli army attempted once to set up a settlement in the West Bank, and Israel refused to allow them to do so. On the other hand, American Jewish youth often come for a few months and reside in West Bank settlements, enjoying their privileged status and often participating in attacks on their Arab neighbors before returning to the U.S. without ever obtaining Israeli citizenship.

   Furthermore, Israel often declares itself to be a Jewish state or a state of the Jews, rather than a state of all its citizens. The apartheid elements of the state of Israel itself are beyond the scope of this article, but there is no doubt whatsoever as to the nature of the Jewish settlements in the West Bank, where even foreigners visiting those settlements enjoy a separate and privileged status and are immune to the laws and procedures imposed on non-Jewish residents.

2. Another argument often used is that West Bank Palestinians are really "citizens" of the Palestinian Authority, and therefore the P.A. is the appropriate body for handling their affairs, and that this is a proper exercise of their right of self determination. If the services and laws and treatment of Palestinian Arabs are different from or inferior to those prevailing for Israeli Jews residing in the West Bank, any complaints about this should be taken up with the Palestinian Authority, not with Israel.

   This argument is well worth addressing, since it is likely to be used increasingly in the future. Just as Israel claims it ceased occupying the Gaza Strip in 2005 and that it has withdrawn its settlers and soldiers and now only Hamas is responsible for whatever goes on there, so Israel tries to claim that as far as Palestinian residents of the West Bank are concerned, particularly those in Areas A and B, where most Palestinians reside, the occupation is effectively over and only the P.A. has authority, thus no apartheid exists.

   A similar argument was attempted by the South African apartheid regime when it argued for the "independence" of the Bantustans, and even tried to get these Bantustans international recognition and U.N. membership under the principle of self determination. If that argument had been accepted, South Africa could legitimately claim that the Bantustans were independent African states to which the majority of the blacks belonged, and that the presence of blacks in the rest of South Africa (the white areas) was on a visa basis, and that therefore there was no discrimination, but normal treatment that every state is allowed to grant to its "foreign workers" and "visitors," who cannot claim rights to equality with the citizens of the "host country."

At the time, the world rejected this approach and recognized the situation for what it truly was: a subterfuge to hide the essential discrimination between blacks and whites that was the bedrock of the apartheid (Separateness) regime. The seminal elements there, as here, were the total and effective control of the entire area by the South African regime. The acceptance or acquiescence of the subject population was not seen as changing the essentially illegal and racist nature of the arrangement.

In the West Bank today, real power resides not with the P.A., but with Israel and its armed forces. It is true that the Palestinian leadership cooperated in this arrangement, which was intended to be an Interim Measure for five years, under the Oslo Accords, in the anticipation that it would naturally morph into a genuinely independent state. But the current situation is far from this. President Abbas recently announced at the United Nations that his administration has become an "Authority with no authority; for an Occupation at no cost (to the Occupier)."

The relevant factors in determining that this is not a genuine state but a variant of an apartheid regime are as follows:

1. Israel effectively controls all access to the area, and the P.A. has no authority to issue visas, or authorize the entry (or even the exit) from the Palestinian areas to its own residents or to any visitors.

2. Israel controls imports, exports, currency, and trade in the Occupied Territories. It controls the airspace, the subterranean waters and the ether space over all the West Bank, and the authority of the P.A. is strictly limited to what Israel specifically delegates to it.

3. Even within Area A, which is supposedly under Palestinian control, Israeli forces frequently enter, make arrests, and take persons and property as they choose.

4. The obligations under the Oslo Agreement are seen as binding on the Palestinians alone, while Israel openly flaunts them at will, whenever its interests require it to do so. One example is the "safe passage" between Gaza and the West Bank, which Israel has unilaterally suspended, and another is the unilateral restriction on the fishing zone in Gaza, reducing it from 12 nautical miles to 6, in order to create a "security zone" for the gas fields off the Gaza shore.

5 Israeli politicians, including the prime minister, have recently made public statements that they have no interest in leaving the Occupied Territories or in recognizing its sovereignty, but plan to hold onto large sections of it, and even annex large portions of it. Similarly, they have stated that they have no interest in removing the existing Jewish settlements.

6. Israel has many levers of power to impose its will, including withholding customs and taxes it collects at the borders. Furthermore, under its current right wing government, it blatantly uses this power with little subtlety.

As a result, the Palestinian Authority's acquiescence and participation in the current arrangements do not negate the essential elements of the crime of apartheid, any more than slavery can be made legitimate if accepted by the slaves.

Consequences of the Crime

Under the current regime, Israel clearly fulfills the conditions and elements of the crime of apartheid. This is not merely a political and public relations embarrassment for Israel, but can carry specific consequences for Israeli politicians, generals, and decision makers.

Israel has used its influence to delay and stave off any actual measures to pressure it to alter its policies concerning this situation. The United States has been firm in using its veto power at the Security Council to prevent the imposition of sanctions under Article 7 of the U.N. Charter, even when

the specific issue involved (usually settlements) not only violates international law and meets with the unanimous condemnation of other countries, but also when it runs against declared U.S. policies.

The situation in the International Criminal Court is different, however. There the U.S. has no veto power and Israel does not enjoy immunity. The tactic, so far, has been to avoid the I.C.C. by denying Palestine statehood, or by placing great pressures on the Palestinian National Authority not to approach the I.C.C. on this, or any other issue.

A number of procedural steps have been pursued to also prevent the I.C.C. from hearing such a case. One method is to utilize the fact that the jurisdiction of the I.C.C. is complimentary, meaning that it will not exercise its jurisdiction if local national courts exist to address the issue. For this reason, Israel publicly announces that it is "investigating" any incident, such as the killing of the four Palestinians on the Gaza beach, which it fears Palestinians can use to bring an action before the I.C.C.. This method was used to deflect calls for judging it on its war crimes in Gaza. However, this method cannot be used to deny the I.C.C. jurisdiction over the issue of apartheid and settlements, which are patently clear and written into Israeli legislation and military orders in the Occupied Territories.

Israel's best defense at this point appears to be the use of its influence, especially in the U.S. Congress, in preventing the case from ever being brought up. The question is therefore not whether apartheid exists, but how long can Israel enjoy impunity on this issue and, ultimately, how long will the U.S. be complicit in abetting Israel's apartheid? ■

RELATED READING

See "Apartheid Israel"

by Jonathan Cook

in *The Link*, Vol. 51, No. 2 2018
downloadable on our
website
www.ameu.org

Editor's Note. On page 10, under "Police and Enforcement," our author cites the massacre of 29 Palestinian worshippers in the Ibrahimi Mosque in Hebron as an example of Israeli solders standing around doing nothing to stop Jewish settler-violence on Palestinians.

Prior to going to press, we received a copy of a letter written by the Rev. Dr. Peter G. Liddell, Canon Emeritus of St. Alban's Cathedral in England, sent to Mr. Mark Regev, Israeli Ambassador to the United Kingdom. In part, it read:

On 28th December [2017], Ma'An News reported from Nablus that Yitzhar settlers had descended on the village of Burin and attacked the school. The Israeli Defense Forces was present and allowed the mayhem to proceed. I myself have been present at a similar scene when the IDF ordered villagers in their homes and did nothing to curtail the marauding activities of settlers. I can testify to the conditions of intimidation, threat, fear, humiliation and violence in which villagers live.

I am at a loss to understand how the Israeli Government does not extend a generous protection to the inhabitants of the Territories it occupies and for whom it has a responsibility.

Along with some friends, I have contributed to the underfunded facilities of Burin school. I believe I may therefore ask, Mr. Ambassador: Did the attack by settlers on Burin School happen as described? Will the Israeli Government compensate the school for damage? Will the commander of the IDF detachment be disciplined?

Yours sincerely, Peter G. Liddell

AMEU's Book & Video Selections

All AMEU Prices Include Postage & Handling

☐ Trip'ol'ii Productions, **Occupation 101**, 2007, DVD, 90 minutes, Excellent history of the seizure of Palestinian lands from 1948 to the present. **AMEU: $10.00.**

☐ **Two Blue Lines,** 2015, 98 minutes. Unable to get beyond the multiple checkpoints, filmmaker Tom Hayes finds another way to tell the Palestinians' story —- through eye-witness Jewish accounts. **AMEU: $20.00.**

☐ **The Occupation of the American Mind**, 84 minutes, 2016. Media Educational Foundation, narrated by Roger Walters. Israel's occupation of Palestinian land has triggered a fierce backlash against Israeli policies virtually everywhere in the world — save the United States. This documentary explores why this is so. **AMEU Special Price: $13.00.**

☐ **The Ethnic Cleansing of Palestine** by Ilan Pappe, paper, 2007, 320 pp. Groundbreaking research by an Israeli historian into the events of 1948. **AMEU: 15.00.**

☐ **State of Terror** by Thomas Suarez, paper, 2017, 417 pp, The growth of fascism in Palestine. **AMEU: $20.00.**

☐ **Einstein on Israel and Zionism** by Fred Jerome, cloth, 2009, 334 pp. Einstein's prescient views of Zionism. **AMEU: $17.00.**

ORDER FORM

Number of books/videos checked: _____

Total Amount Enclosed: $_____

Make Checks Payable to "AMEU"

Name_____

Address_____

City _____ State _____ Zip _____

MAIL ORDER WITH CHECK TO:

AMEU, Room 245, 475 Riverside Drive,
New York, NY 10115-0245
Telephone 212-870-2053, or Email: ameu@aol.com

Non-Profit
U.S. Postage
PAID
Permit #155
Deep River, CT

Americans for Middle East Understanding, Inc.
Room 245, 475 Riverside Drive
New York, NY 10115-0245

To Support *The Link*

A $40 voluntary annual subscription is requested to defray cost of publishing and distributing *The Link* and AMEU's Public Affairs Series.

Your Contribution to AMEU is Tax Deductible
Please send recent *Link* issues

A check or money order for $_____ is enclosed, payable to AMEU.

Name _____

Address_____

_____

_____

Zip+4 _____

Please send a one-year gift subscription of ***The Link*** in my name to:

Name	Address	City	ST	Zip

Mail with $20 for each gift subscription to:
AMEU, 475 Riverside Drive, Room 245
New York, New York 10115-0245

Donor Contact Information

Name_____

Address _____

City _____ State __ Zip _____

Email or Phone _____

6/18