



Sadaka Second High-level Forum

Israeli Apartheid: Developing Ireland's Strategy

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Session 1: Israeli Apartheid – the International Legal Framework.

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Apartheid and settler-colonialism:

Mobilising against the root causes of Palestinian oppression.

Chair: Éamonn Meehan, Sadaka.

Thanks to Sadaka for organising this very important conference and Professor Lynk for his six years serving as Special Rapporteur on Palestine and your important report.

My presentation today looks at apartheid and settler-colonialism as root causes of Palestinian oppression. I'd like to first highlight the continuity of Israeli policy towards the Palestinian people since 1948 so I'll look a bit beyond the mandate that is covered in Special Rapporteur Michael Lynk's report, and this will allow us to understand a bit more how fragmentation impacts Palestinians as a whole.

The second thing I'd like to do is talk about why it is not only apartheid but also settler-colonialism and Professor Lynk's report mentions this to some extent, so this is the context in which Israeli apartheid is committed. I think this will allow us to better appreciate what the root causes of Palestinian oppression are.

The third thing I'd like to do is to think about what this means for pursuing accountability and effective measures against Israeli apartheid.

On the first point on continuity of Israeli policy, I think one of the strengths of the apartheid framework is that it allows us to think about how the Palestinian people as a whole are impacted by Israeli policy and to understand why this is important. We need to reflect on the approach to date when it comes to human rights in Palestine. The international community has adopted a largely pragmatic framework when it comes to the human rights of Palestinians, often focusing solely on the situation in the Occupied Territory since 1967 without analysing the root causes of that situation.

Used in isolation this occupation framework was once presented as a temporary milestone in advancing Palestinian rights through criminalising certain practices of Israeli occupation. As a result, decades of so-called legitimate discourse on Palestine fragmented the Palestinian territories occupied since 1967 from the experience of the rest of the Palestinian people, namely Palestinians in 1948 Israel and Palestinian refugees in exile.

The danger is that this over-reliance on fragmented frameworks to discuss Palestine sets the limit of Palestinian political imagination and the terms of the struggle on the ground. The apartheid framework in its use by Palestinian activists, organisers and civil society for over two decades has been employed in order to address this fragmentation of the Palestinian people and to center the ongoing Nakba in the discussions on Palestine.

The Nakba or catastrophe for Palestinians doesn't only refer to the mass expulsion in and around 1948 but it refers to an ongoing experience of Palestinians being denied return to their homes, lands and properties and facing continued dispossession and displacement across historic Palestine. The apartheid framework allows us to move beyond a sole focus on the 1967 occupied territory towards one that considers the experience of the Palestinian people as a whole and the ongoing Nakba of Palestine.

Professor Lynk has already talked about the definition of the crime of apartheid so I will just say that the crime of apartheid as it is enshrined in the 1973 Apartheid Convention and the 1998 Rome Statute of the International Criminal Court has been applied by Palestinian scholars and practitioners to Israeli laws, policies and practices institutionalised since 1948 and which established a regime of systematic oppression and domination over the Palestinian people.

The latest report to endorse this analysis is that of Amnesty International which found that Israel has established a system of apartheid wherever it has exercised control over Palestinian lives since 1948.

Human Rights Watch adopted a similar analysis and found that Israel dominates all Palestinians, but it concluded that in their view the crime of apartheid only comes together in the Occupied Palestinian Territory since 1967 stating that inhuman acts of apartheid are only committed in that context.

I previously offered a critique of this distinction but essentially Human Rights Watch looks at some of the same Israeli policies carried out on either side of the Green Line and describes them as “inhuman acts” when committed in the Occupied Territories since 1967 whereas they call them “other abuses of fundamental rights” inside the Green Line.

For example, Human Rights Watch talks about the confiscation of hundreds of thousands of dunums of Palestinian land in the West Bank as an inhumane act of apartheid and yet they listed refusing to allow Palestinians access to millions of dunums of land that were confiscated from them inside the Green Line as “other abuses”.

Similarly, Human Rights Watch considered that the effective freeze on family reunification is an inhuman act in the 1967 Occupied Palestinian Territory, but they said that restricting legal residence in ways that block many Palestinian spouses and families from living together inside Israel was listed as “another abuse of fundamental rights”.

These examples show us how the Green Line has come to represent an arbitrary divide that fails to adequately account for the lived experience of the Palestinian people and in particular the continuity of Israeli oppression on either side of this boundary. Critically, virtually all of Israel’s oppressive policies carried out in the Occupied Palestinian Territory since 1967, particularly as it concerns land confiscations and dispossession, were carried out against Palestinian citizens of Israel inside the Green Line during the period of Israeli military rule between 1948 and 1966. The discriminatory Israeli laws put in place in the immediate aftermath of the Nakba in 1948 were extended in 1967 to the Occupied Palestinian Territory and we must therefore understand apartheid inside the Occupied Palestinian Territory as an extension of a regime that was established in 1948.

This regime inevitably extends to Palestinian refugees since it is through Israeli laws, policies and practices that they continue to be denied their right of return. The denial of the right to return to one’s country is listed as an inhuman act of apartheid in the 1973 Apartheid Convention.

Another reason why we should consider the Palestinian people as a whole when we talk about the apartheid framework is because Israel’s apartheid regime operates based on the fragmentation of Palestinians as a main tool of apartheid.

This argument was authoritatively put forward by Professors Richard Falk and Virginia Tilly in their report for the UN Economic and Social Commission for Western Asia (ESCWA). This report showed that by fragmenting them, not only geographically but also legally and politically, Israel maintains an apartheid regime over Palestinians. It obscures the existence of this regime by treating separately Palestinians in each area and it prevents Palestinians from collectively challenging this regime.

Building on this analysis, Palestinian and regional human rights organisations have shown how the fragmentation of Palestinians prevents them from exercising any collective rights particularly the rights to self-determination and return. Therefore, in using the apartheid analysis, it is essential to address the fragmentation of the Palestinian people and to understand the continuity of Israeli policy towards Palestinians since 1948. This policy does not stop at the Green Line, and it also extends to Palestinians in exile.

This brings me to the second point of my presentation which is the fact that this is not only apartheid; this is also settler- colonialism and it is an argument that Palestinian scholars have authoritatively put forward.

The apartheid framework reminds us that a fragmented approach to Palestine is detrimental to the Palestinian liberation struggle. We look for example at Amnesty International's latest report which recognises that the international community needs to urgently change its approach to Palestine and acknowledge the full extent of Israel's crimes. Like the previous Israeli and international reports, Amnesty does not go as far as naming settler-colonialism as the context in which Israeli apartheid operates.

Changing the approach to Palestine requires recognition of those root causes, and apartheid allows us to appreciate the continuity of Israeli policy as well as how it targets all Palestinians but, as a number of Palestinian scholars such as Lana Tatour have argued, this is not enough.

To appreciate the root causes in Palestine, we must also recognise that apartheid is committed within the settler- colonialism context. For many decades, Palestinian scholars have theorised about Israeli apartheid. In 1965 for example, Edward Said argued, and I quote, "Racism is not an acquired trait of the Zionist Settler State nor is it an accidental passing feature, it is inherently buried in the ideology of Zionism and in the basic motivations for Zionist colonisation and statehood". And in 1979 Abdullah Habib Karyalay similarly wrote: "From the start, the Zionist colonialists sought to acquire lands in strategic locations and to evict the Arab cousins. All this was closely related with the essence of Zionism, the creation of a Jewish nation on purely Jewish land."

It was therefore clear even before 1967 that racism against Palestinians did not occur in a vacuum; it was part and parcel of the Zionist settler-colonial project and scholars have argued that settler-colonialism is a distinct form of colonialism in that settlers seek to displace and to replace indigenous peoples on the land. Fatur Kholes called this for example "the logic of the elimination of the native". He describes settler-colonialism as a structure not an event and in the case of Palestine, the act of colonisation itself is a means of imposing domination over indigenous Palestinians.

Because of settler -colonialism, which is an ongoing process, the Nakba has also been ongoing for Palestinians. To appreciate the causes of Palestinian oppression, we should understand apartheid as a tool of Zionist settler-colonialism. Both of these frameworks work hand in hand. So we understand this in the following terms; first of all settler-colonialism clarifies the underlying logic and structure of the Israeli state as premised on the displacement, replacement and domination of the indigenous Palestinian people. This is in order to establish an exclusively Jewish state. Second, apartheid shows how this goal is operationalised through the systematic oppression of Palestinians. It shows both how Palestinians are racialised in order to dominate them as well as why Zionist ideology is institutionalised in Israeli laws, policies and practices.

To look at this in more detail, we see how Israeli laws and policy establishes a system of preferential treatment for Jewish persons anywhere in the world. Jewish persons under Israeli law are entitled by birth to settle in historic Palestine and to receive Israeli citizenship under the 1950 Law of Return and the 1952 Citizenship Law. In turn, indigenous Palestinian refugees were de-nationalised, and they have been precluded since from exercising their right of return through the operation of the same Israeli laws.

Additionally, properties belonging to Palestinian refugees and displaced persons have been confiscated by the state through the 1950 Absentee Law. This piece of legislation remains in force today and continues to be used to dispossess Palestinians.

Overall, this has been the reality for Palestinians since 1948. To give another example, inside the Green Line about 93% of the land is controlled by the Israeli state or the Jewish National Fund and it is said to be held in perpetuity for the Jewish people. Palestinians with Israeli citizenship, which is a status distinct from nationality which only applies to Jewish persons under Israeli law, own only 3% of the land inside the Green Line. Many Palestinian villages remain unrecognised by the state of Israel and no new Palestinian town has been built since the state's establishment.

Israeli authorities confiscated millions of dunums of Palestinian land between 1948 and 1966 and this reality persists so long as Palestinians are denied return to these lands and denied their collective right to self-determination. At the same time we see that Israeli law, through for example the 1952 Jewish Agency Status Law grants quasi-governmental status to Zionist institutions of colonisation. This includes the Jewish National Fund, the World Zionist Organisation and the Jewish Agency. These institutions, which have operated in Palestine since the late 19th and early 20th century, are charged with discriminating against all non-Jewish persons particularly the indigenous Palestinian people and they have historically prevented Palestinian control, and even access to, their natural wealth and resources by diverting and exploiting these for the benefit of exclusive Zionist colonisation. This is something the Palestinian and regional human rights organisations have shown repeatedly over the years. So therefore, when we think about, for example, the 2018 Jewish Nation State basic law enacted by the Israeli parliament, we need to understand this as an entrenchment of the reality that Palestinians endure for over 70 years.

Overall, the apartheid legislation is embedded in the state settler-colonialist structure and logic of elimination.

Both apartheid and settler-colonialism must be understood as in relation to one another and, importantly, a recognition of apartheid that disregards settler-colonialism advances what scholars like Tatour have called a liberal conception of equality that does not include the colonisation.

I'll conclude on this point before talking about ways to mobilise against these root causes. As confirmed by Professor Lynk's latest report, the recognition of the apartheid framework does not displace the reality of occupation, nor does it preclude the simultaneous recognition of colonialism in this context. This framework was put forward in 2009 in a detailed study published by the South African Human Sciences Research Council.

I will conclude on a point which concerns mobilising against the root causes of Palestinian oppression.

Last May, Palestinians across historic Palestine and in exile rose as part of the unity intifada. The intifada called for reuniting Palestinian society and Palestinian public will, as well as our means of struggle, to confront Zionism's racist colonialism in all of Palestine. Nearly a year on, the triggers for the intifada have not abated. Palestinians continue to endure Israeli apartheid and settler-colonialism, ongoing threats and displacement, house demolitions, forced expulsions and settler violence across historic Palestine.

An effective anti-apartheid movement in Palestine and by Palestinians and allies must be premised on the long-standing Palestinian rejection of Zionism as a racist and settler-colonial project. For decades, Palestinians have been centering colonisation in their struggle for liberation. Without such a vision scholars have warned that an anti-apartheid struggle can at best only achieve a restructuring of the regime rather than its dismantlement.

International law prohibits apartheid as racial discrimination, a crime against humanity as we saw earlier and a serious breach of international law giving rise to third state responsibility. It also prohibits key elements of the Zionist settler-colonialist project including population transfer, annexation, and the acquisition of territory by force. It also enshrines the right of Palestinians to self-determination. We must strategically deploy and use these legal norms to confront Israel's state criminality.

Therefore, accountability and effective measures against Israeli apartheid are essential and, briefly, there are several avenues through which these can be pursued within the UN human rights system. I will focus primarily on the latest UN Commission of Inquiry which was established on the 27th May last year. This Commission of Inquiry is unprecedented in its mandate and scope. It was created by the Human Rights Council and is mandated to investigate all underlying root causes of Palestinian oppression including "systematic discrimination and oppression based on national, ethnic, racial or religious identity". This investigatory body is the first to cover all historic Palestine and it is ongoing in nature. Its first report is expected in June 2022.

In terms of individual criminal responsibility, the International Criminal Court has jurisdiction over the crime of apartheid in Palestine as part of its ongoing investigation. The crime of apartheid has never been prosecuted and, although the ICC's jurisdiction is limited geographically and temporally, there is strategic value in pursuing accountability for the crime of apartheid at the ICC level.

Finally, in terms of State responsibility, the 2001 International Law Commission articles on state responsibility require that no state shall recognise as lawful a situation created by a serious breach of international law (which includes apartheid) nor shall states render aid or assistance in maintaining that situation. Third states must also cooperate to bring to an end the illegal situation. Overall, and I'll conclude here, recognition of Israeli apartheid must lead to measures of international justice and accountability. Apartheid triggers state responsibility as well as individual criminal responsibility and this analysis enables Palestinians to challenge Israel's decade-long fragmentation and the ongoing Nakba.

Finally, effective, coercive measures by third states which includes sanctions can build external pressure and generate tangible consequences for Israel's ongoing crimes.

Thank you very much.