

## A federal Israel-Palestine: Nonviolence and law to end the 100-year civil war

*Non-Jews need to be acknowledged collectively and be freed from subordination*

By Chibli Mallat

Thursday, September 23, 2010



In the first part of this study, the deadlock in Israel-Palestine was presented as a 100-year civil war. New realities on the ground, as well as visionary calls for a united state, instead of partitioning the land at a heavy human cost, have come from leading US thinkers, notably Tony Judt and Seyla ben Habib. If the diagnosis – civil war – and a united federal state is indeed the better way forward, how does one get there?

First, the need to characterize the conflict as one chiefly of a civil war between two so far exclusive constituencies does not mean that we outsiders, in the Middle East, in the US, should keep out of it. All too often we hear a sigh from outsiders, especially in the US: Let them kill each other until they tire; this is not our business. This attitude is wrong because the premise is wrong. The Israel-Palestine problem is also an international problem and has been so since the Basel conference in 1897, in which Theodore Herzl formally mobilized rightly frustrated and pogromized European Jewry to establish a Jewish nation in Palestine, all the way to 9-11, passing through seven or eight wars and counting. Turning our back to “those crazies killing each other out there” is false and immoral. To various extents, communities and states outside Israel-Palestine are inextricably involved in the crisis.

Still, the core conflict is one of civil war, and we have to solve it.

Let me now take a clearer position on the present talks: Unlike Edward Said and a number of colleagues who opposed Madrid and Oslo, I support talks between the two or more parties as a matter of principle. Principle is here dual: In the first place, one never knows how chemistry works between people, and fluidity is the name of the game. Second, and more importantly, the main problem for the one-state solution is the lack of a common, enduring forum. So long as the two parties are on the other side of the wall, nothing gets through but hatred and violence.

There is however a deeper tactical, and, in my view, strategic issue behind supporting talks irrespective of the conditions, results or framework: It is the principle of nonviolence. In the violent mode where the Middle East is ensconced, we need to be extremely clear about this point: We cannot, Palestinians and Israelis, and those of us who support them and bear a share of the pain and of the responsibility, advocate living together as a goal while we kill each other on the way there. It simply does not work.

And let me be clear here on a number of derivative consequences, lest the all-too easy tag of naïveté gets thrown at the nonviolent advocates by the mob, and by the Realpolitik characters who have run our lives for too long. I do not make a moral difference between the killing by Israeli Army and settlers of Palestinian demonstrators, and the killing of settlers, Israeli soldiers and civilians by Palestinians and others. Nor do I minimize the immense violence meted out by Israeli self-righteous leaders, civilian and military, over the past 100-plus years, and the converse violence against Israelis in the longest civil war of modern history. Of course there are nuances, which the law recognizes well enough: A bomb in a café in downtown Tel Aviv is more disturbing than sniping at an Israeli soldier manning a Wall post. Extra-judicial killing with a drone lobbed at house is more reprehensible than shooting dead a suicide bomber driving his truck. But if we really want to get to live together, we must adopt non-violence in the absolute.

Nor do I believe we are completely toothless.

There are other tools: Demonstrations, picketing, humanitarian aid flotillas, and the boycott of Israeli goods, especially those manufactured in the [occupied] West Bank and the Golan. The European Court of Justice has underlined the argument that products manufactured in the West Bank come from an occupied territory, timidly as usual for Europe, but the message should be read clearly (ECJ Decision and comment in *The Daily Star*, March 18, 2010). Law offers, with fits and starts, answers. Israeli leaders are running scared, when travelling abroad, of judicial action against them.

I am proud to be among the first who have shown that there are other, nonviolent ways, to bring bullies to account, when together with families of survivors of the Sabra and Shatila massacres, we lodged a case against Ariel Sharon and others in Brussels in June 2001 (and won it in February 2003, though it was undone by unprecedented retroactive legislation).

While we were ahead of our time, we set the right trend, for Israeli mass murderers and their matches in the Arab world. As reciprocal a policy as possible needs to be devised, and I will continue to work for all Middle Eastern dictators to find their comeuppance, whether the genocidal Iranian leader or the callous gerontocrats who rule Saudi Arabia and Egypt.

Saddam Hussein was tried, Gadhafi is being tried and was indicted in a Lebanese court, and the military and political leadership is worried inside Israel. So worried indeed that they prevent the Goldstone commission from entering the country.

This is the beginning of the nonviolent story, and much more can be done with international law tools: Sooner or later, settlers will confront this reality, and the sooner the better. So long as they are reciprocal, and increasingly universal, these tools are to be honed, defended and expanded. So much for nonviolence being toothless.

Nonviolence is key, both tactically and strategically. There are other keys that justify my preferred choice of a one-state solution as a federal one over partition.

Unlike most of my colleagues in the Middle East, I do not have a problem with the majority of the Israelis, and their political leaders, asking the recognition of Israel as a Jewish state, as long as we consider it as “also a Jewish state.”

With leaders from the Lebanese camps and Gaza, we wrote it clearly (Zaeem, Aburdaini and Mallat, "A human-rights response to Netanyahu," *The Daily Star* and *An-Nahar*, August 20, 2009). I actually do not think Israelis need anyone's recognition of that national character they have chosen for themselves, namely to be Jewish, no less than seeing a problem with Americans asking recognition of being recognized as Americans. The snag, evidently, is the exclusive nature of that citizenship, this is where the comparison with America fails. For it is as simple as this: If some of your citizens are not Jewish, and if the massive majority of people whose lives you control are not Jewish, what do they expect them to do about their exclusion from the world you have defined and continue to define for them?

The dominant Israeli mantra is: Yes we are Jewish, and but we are also democratic. Let us examine this contention more closely.

Contrary to the notion received the world over, Israel cannot be described, in political science or in universally recognized constitutional terms, as a democratic state. This is not only on account of history, where patterns of ethnic cleansing and of legal discrimination are hardly in dispute. The argument of Israel not qualifying as a democracy rests on the persistence of these patterns as structural traits of Israel to date, six decades after its foundation.

No doubt, Israel as a self-described "Jewish and democratic" state is democratic to its Jewish population. The problem is that the Israeli-Jewish leadership considers "Jewishness" as a national identity, as a dominant and generally exclusive constitutional trait. This has corresponded to the negation of the Palestinians as a people since before Israel's inception (the classic Zionist slogan, "A land without people for a people without a land") through the reaction to the diaspora Palestinian community's organization under the Palestinian Liberation Organization in the 1960s (Premier Golda Meir, "Palestinians don't exist," June 1969), and the evacuation from Gaza in 2005 (Premier Ariel Sharon, "We don't have a partner").

Evidence of legal exclusion and discrimination is plain in the treatment of all the people living under Israeli control, by which I mean those whose lives have been and continue to be determined by Israel's legal structure and its government's treatment of their daily existence.

Next to 6 million Jewish Israelis who enjoy, by and large, a Western-style democracy, over 1 million so-called Israeli Arabs have little or no place in effective governmental representation and are subject to a large array of de jure and de facto discrimination; 4 million "occupied Palestinians" in the West Bank, Gaza and Jerusalem suffer from open legal exclusion in a system of Israeli military orders that have governed their lives for over a generation. West Bankers, Gazans and Jerusalemites continue to be respectively the victims of land settlement and expropriation, siege and daily physical harassment of their right to live and move freely; and some 4 million Palestinians are denied their universal right to return to the place from which they fled or were evicted in successive waves in 1948, 1949 and 1967.

So there is a serious discussion to be undertaken on a world level on the type of system that Israel is, as serious indeed as the legal investigation carried out in the mid-1960s on the legal nature of the apartheid regime in South Africa. Edward Said once wrote that the system was actually more benign in South Africa, since white supremacists never denied their existence to the native blacks.

Still, can Israel be Jewish and democratic at the same time?

My answer is yes, so long as the constitutional structure, and the political practice, put a priority on the latter term over the former.

But even then, the legal recognition of a collective identity is needed, while respecting what Owen Fiss emphasized in a seminal article what became known as the anti-subordination principle. In a democracy, a group cannot subordinate another group – period. Jews are one group in Israel, not the only one. Indeed, if my description of the conflict as a long civil war is correct, the other group needs to be acknowledged as a collectivity and be freed from subordination. Only then can Israel be Jewish and democratic at the same time

I do not believe this dual character is possible outside a constitutional structure that is federal. But we need to examine further both central constituencies for the solution we are seeking. In simplified terms, a unified democratic state requires its constituencies to be democratic. This is not the case in Israel today. Nor is it in “Palestine.”

I do not see the Palestinians developing, within the limits of occupation, discrimination, ethnic cleansing, siege, enough of a democratic constituency. This is why, contrary to colleagues in the Arab world, I am not too keen on Hamas. The rule of fear imposed by Hamas in Gaza is not a point that needs to be driven in the US, but this talk is not simply to convince American friends in Utah. It is also directed to the Gazans, and I have said and repeated: Forget getting Hamas into the equation so long as the daily life of Gazans, from the perspective of their government in Gaza, de facto or de jure, is not operating democratically. Gazans are not ruled democratically: Throwing PLO sympathizers from rooftops to assert Hamas rule is simply beyond the pale. Killing “extremist” Islamists as in Rafah in August 2009 without any form of trial is unacceptable.

Also unacceptable, as a sure sign of intolerance, is the imposition of headscarves on half the population. Mutatis mutandis, similar questions need to be asked on the West Bank, and in Palestinian camps abroad. Without democracy, that is forms of conviviality under rule of law to the extent the difficult conditions faced by Palestinians allow, nonviolence against Israelis is hardly conceivable, for violence will remain the rule in the very way Palestinians treat each other.

Palestinian colleagues will argue that the standards I am suggesting are too high, that national liberation movements were never required to rise in their difficult fight to the democratic level; that indeed, with so many of its leaders in Israeli jails or the daily target of death from the skies, how could Palestinians be asked to develop a democratic polity?

I accept the difficulty, but would still contend that the premise is wrong: The fight for Palestine is not a colonial fight. It is a civil war. Even as a colonial fight, it is worth thinking the telling difference between the fight in India and that carried out in Algeria and elsewhere: Non-violence in India has allowed for a far more democratic independence than that in countries where liberation was achieved through the gun. But even this comparison is incorrect, and underlies the uniqueness of the Palestinian-Israeli situation. Jewish Israelis are not simple French expats in Algeria, or British officers of the Raj. They have nowhere to go. This is also why nonviolence is so central to the solution of the conflict, for violence is premised for both sides on ethnic cleansing.

To conclude on the reality and rationality claimed at the outset of this lecture under the famous Hegelian aphorism: All that is real is rational, and all that is rational is real. Real is

the fact that the conflict has endured a hundred years, the longest running civil war in modern history. Real is the impracticability of the two-state solution, and the ethnic cleansing it consecrates and commands. Real, the aspiration of Jewish Israelis to a Jewish state. Real, their exclusive, oblivious consideration for the similar aspiration by non-Jews, namely the Palestinians. Real also is the difficulty to make communities act democratically within.

Rational is the alternative, one state constructed as federal entity, where both aspirations are met without ethnic cleansing ensuing, where democracy and basic human rights trump Palestinian and Jewish nationalism. Rational is the need for nonviolence, absolute nonviolence that is also proactive and finds in legal and other means ways to make it effective. Rational is the expression of the two groups in two states linked constitutionally in a federation that protects the individual citizen's basic human rights.

Now we're in for a long debate which requires that we suspend our disbelief and argue more closely about the constitutional structure of that unified, federal state. The debate will take at least a generation to bear fruit. Against another 100 assured years of civil war, it is not necessarily a waste of our time.

*Chibli Mallat* is the joint founder of Right to Nonviolence, an international NGO first established in Lebanon. This is the second part of a lecture presented at the Forum for Questioning Minds in Salt Lake City on September 12, 2010. The first part was published in The Daily Star law page on September 17.