

The Dual Legal System: PIJ Conference on May 17, 2016

On May 17, 2016, the **Palestine-Israel Journal**, in cooperation with the **Friedrich-Ebert-Stiftung (FES) Jerusalem**, held a very successful launching conference at the American Colony Hotel for the new PIJ issue on **The Dual Legal System**, before a joint Israeli-Palestinian-International audience.

The panelists were: **Dr. Saeb Erekat**, PLO Secretary General, MK **Tamar Zandberg**, Member of Knesset, Meretz, **Charles Shamas**, Mattin Group, Ramallah and **Prof. Aeyal Gross**, International & Constitutional Law, Tel Aviv University. Also participating in the second half of the panel was **Ronit Sela**, Head of Public Outreach of the Dept. of Human Rights in the Occupied Territories in the Association for Civil Rights in Israel (ACRI). Opening Remarks were made by **Dr. Beyhan Sentürk**, Director FES Jerusalem and **Ziad AbuZayyad**, PIJ Co-Editor. The event was moderated by PIJ Co-Editor **Hillel Schenker**

What follows is a transcription of the stimulating and informative event.

Dr. Beyhan Sentürk: Good afternoon ladies and gentlemen, dear friends and partners. I would like to welcome you to today's discussion of the latest issue of the *Palestine-Israel Journal: The Dual Legal System*. My name is Dr. Beyhan Sentürk. I am directing the local branch of Friedrich-Ebert-Stiftung here in Sheikh Jarrah, East Jerusalem and I am very happy to welcome all of you on behalf of Friedrich-Ebert-Stiftung; our partner Ziad AbuZayyad will welcome you on behalf of the *Palestine-Israel Journal*. Before I get on to the issue itself, I'd like to say a few words about our long standing and important partnership with the *Palestine-Israel Journal*. Although I'm pretty new here in Jerusalem, I just started my post a couple of months ago, I very quickly understood how important the work of the *Palestine-Israel Journal* is. Here, I'm speaking especially about Hillel Schenker, Ziad AbuZayyad and their team. We are very aware that joint Palestinian-Israeli initiatives are slowly becoming a thing of the past, unfortunately. It seems that large parts of both the Palestinian and the Israeli society see little reason to communicate and work with the so-called "other side." And while we know a huge power imbalance exists, we still believe that a joint commitment to peace and a common resolve to find a solution to the occupation of the Palestinian Land is vitally important. We, at Friedrich-Ebert-Stiftung, will continue to support those who see a reason to unite and stand together in the face of oppression.

I know, Hillel and Ziad, that it is not always easy for you to do your work and acknowledge and appreciate the efforts. Another reason why I cherish our cooperation is the excellent work that we do together, producing very interesting issues, like the latest issue. It contains an outstanding collection of well-researched and insightful essays and articles. The current issue sheds light on the two sets of rules and realities that have slowly been established throughout

the Occupied Territories. A reality now exists in which Jewish Israeli settlers are favored by a legal system that treats Palestinians villages and towns neighboring Israeli settlements as second class citizens. Given the separate settlement roads and exclusive access to resources, a situation is arising which is similar to apartheid South Africa.

From my point of view, it is in everybody's interest to stop this process from continuing by offering a thorough and wide-reaching examination of what is happening on the ground. The latest issue of the *Palestine Israel Journal* is a reminder that now is the time to act. I am very happy that we are having outstanding speakers with us here today, such as Dr. Saeb Erekat; and MK Tamar Zandburg who is joining us soon, Charles Shamas and Professor Aeyal Gross are already with us. So, I am looking forward to hearing your views today on the current developments and what else our speakers have for us. Finally, dear guests, I wish you all an interesting discussion and I'm really looking forward to our debate maybe here or afterwards over a drink after. Thank you very much and I'd like to give the mic to my partner Ziad.

Ziad AbuZayyad: Thank you Beyhan. I am the co-founder and co-editor of *Palestine-Israel Journal*. We started the Journal in 1993, and the first issue came out in 1994 after a long fight between us and the Ministry of Interior Affairs in Israel because they refused to give us a license containing the name "Palestine". They said, "we can give you any name for the journal except 'Palestine.'" After a fight and a compromise in front of the High Court, we came to an agreement that officially we would be known as *Middle East Publications*, but we have the right to publish anything under any name we want. So, we started publishing *Palestine-Israel Journal*, but officially, we are *Middle East Publications*. We were inspired by Oslo Process, we thought that we are making peace, we are entering a new era, and that we should do something to support the peace process.

My colleague at that time, Co-Founding-Editor Victor Cygielman, suggested in every issue we have a special focus on something related to the negotiations, or to both sides, and since then every issue has a focus on a topic related to the bilateral relations between the Israelis and the Palestinians or to any issue of joint concern. So this issue, which we just published by the partnership with Friedrich Ebert Stiftung, it is devoted to The Dual Legal System in the West Bank. We had a very interesting debate and discussion between ourselves, Israelis and Palestinians. Some of the Israelis were worried; they did not want someone to understand that they are talking about Israel as an apartheid state. And some of the Palestinians wanted to jump forward and say that Israel is *already* an apartheid state. And finally, we came to the conclusion that there are things on the ground, there is a process going on, that if it continues, it will take us there, but we should not rush and judge things.

We said in the editorial, which I wrote for this issue, that we want to ring the bell, and now I will dare and tell you that we want to hang the bell. We want to hang the bell on the neck of the fierce violent cat until we tame it, restrain it and stop it, because there is a process going on that is really scary. And I am satisfied to know, that these fears are going up even in the hierarchy of the Israeli army, the IDF, as we heard lately from the Deputy Chief of Staff, and heard from the Chief of Staff a few weeks ago, they're also ringing the bell.

And we heard from American Ambassador Dan Shapiro in Tel Aviv, at the meeting Israeli National Security Institute (INSS), a warning about the dual legal system in the West Bank. It's encouraging for us that it's not only we who think there is a dual legal system, but others are witnessing this, are comparing it with other processes that took place in other places in the world, and they are saying that we should open our eyes and strongly fight against this phenomenon, which is a disturbing phenomenon.

This issue was not possible without the full support of the Friedrich Ebert Foundation. We thank them very much. They are traditional partners of the *Palestine-Israel Journal*. This was not our first project which we did together, and we are going to do further projects in the future. And I want to add more, that this public event, speaking about this issue, is not the only thing. We are willing, as *Palestine-Israel Journal*, to keep ringing the bell, telling everybody, "open your eyes, look and see what's happening. Let's stand together firmly against it, and stop it, and prevent it from taking us to a situation where no one wants to be. Thank you for coming. I will leave the floor for Dr. Saeb Erekat, Saeb who is also an academic, Professor Saeb Erekat before we brought him to politics, and Professor Aeyal Gross and my colleague Hillel Schenker will moderate this meeting. Thank you very much.



PIJ Co-Editor Ziad AbuZayyad speaking at the opening of The Dual Legal System launching conference. (Photo: Josephine Clervaux).

Dr. Saeb Erekat: Thank you Ziad and thank you for the invitation, it's an honor to be speaking with you. You know I like to name things by their name. I think the Israeli government is trying to institutionalize a system that I call "One State, Two Systems." It's not about two states anymore, it's about one state, two systems. Apartheid. It's there. It exists. Ignoring facts don't mean they don't exist. In the West Bank today, there are roads we cannot use as Palestinians, we cannot. And such diseases as bigotry and racism, once they inflict underneath our skin, as humans, we have a tendency to justify them. Whether we are Arabs, Muslims, Christians, Whites, Blacks, Jews, there is this tendency in our mind to justify such diseases. Sometimes we offer a sociological explanation, psychological explanation, economic explanation, sexual, etc.

Today under the term security, let's justify that Palestinians can no longer use certain roads in the West Bank, and can no longer build in certain areas and can no longer... it is an apartheid, THE apartheid system. Today, where I live, it is more than the one that exists in South Africa. Israelis still have ignored one simple fact in life, things have natural growth. Occupation corrupts, it's not a new thing in human thinking and human experience, occupation corrupts.

And now the values in Israel, the ethics of Israel, they spend much time trying to justify this ill-diseased natural growth: as how can they as Jews, and the values, and the suffering, and victims, and all these things, live and let live and subject people to a system of pure apartheid? That's your problem, that's not mine. It's not just a dual legal system, it's really ignoring the real facts on the ground. As Palestinians we were told very early on in the 90's, once we recognize Israel, once we accept the Two State Solution, once we later accept swaps, once we agree to be demilitarized, once we accept an agreement for refugees, once and once and once and once. And we did all of this.

And then, look at the situation today. When we began negotiations there were 200,000 settlers in the West Bank and East Jerusalem today, 600,000 and some people say there are 800,000, I'm not sure about the figures. But what I see with my eyes is that there are kids coming from upper middle class families, Jewish families, from the United States and Europe, and they believe once they put their foot in Planet West Bank, and they harm Palestinians and burn their trees and burn their cars and kill their children, they are closer to God. They are closer to which God I don't know, but to God. I don't know if you want them to be your neighbors once they finish their holy mission in harming Palestinians.

It's not about the dual legal system, it's not about, of course, Israelis, and the fact that you're Jewish and you're a settler, of course you can go on any road you want, you can take whatever you want, you can claim whatever you want, you can shoot and say it's self defense, you can kill people and say it's self-defense. That's the daily life that we face, that we know. And, you know, many people in Israel really believe that ignoring facts, it means that they don't exist, and they try to get into an intellectual debate of justifying it, maybe because it is in the DNA of Palestinians that they are this and they deserve to be killed, and this and this and this.

Now, what do we do about this? We've exhausted negotiations. And honestly, in Israel, I was telling Ilan Baruch a minute ago, there is a negotiating behavior, and as a student of

negotiations, unprecedented, they sign agreements with you, and the same people who sign agreements with you, they go out and say, no sacred dates. We're not going to bind ourselves by silly dates we agreed upon, and we're not going to bind ourselves by certain articles we agreed upon. So, what do I do? Write the Americans? Write the Europeans? Because if I violate the agreement as a Palestinian, they close Jericho, they close Gaza, they close the West Bank. But once they've exercised their negotiating behavior as Israelis, and the tactic, no sacred dates and I am sure that all of you have heard about it and heard from your Israeli officials or generals, and we're not going to bind with articles 1, 2, 3, 4, or 5. So what do we do about this?

The whole deal about accepting the two state solution wasn't an easy thing in the Palestinian society, and we did everything humanly possible to make this the reality of Palestinians accepting the two state solution. Now, Palestinians do realize that it's not about recognizing Israel, it's not about renouncing violence, it's not about going to negotiations. And the question, is - what do these people want from us? Their Prime Ministers are telling us, your state is not on my watch, even Herzog said that. And yes you're going to have to live under this subjugation and occupation.

What do you expect, guys, the result will be? When do you think an ISIS flag will be raised in Jericho or Ramallah? And then, you will say, the magnificent Netanyahu will say "Oh, we told you, they're not partners, they're not good, it's in their DNA." It's the most dangerous, vicious situation we are witnessing in this region in the last 1500 years. The one question all of us should ask ourselves every morning is how to defeat ISIS? Such thugs and murderers who are using one of God's great religions like Islam, for their evil ends. This is my advice to all Arabs, all Muslims, to everyone who lives in this region. That is the one question we should ask when we wake up in the morning: how do we defeat such evil phenomenon?



Dr. Saeb Erekat speaking with Ambassador Ilan Baruch, Chair of the Israeli Peace NGO Policy Committee and a PIJ editorial board member at the issue launch. (Photo: Josephine Clervaux)

Some, maybe, in the West, the United States, act as if they developed the technique that ideas can be killed with bullets. I do my research, and the result is I haven't seen any society in the history of man and woman, that have developed the techniques to kill ideas with swords, arrows, or bullets. Some believe that ideas can be prevented from traveling. The only thing that travel without visas, nowadays, are ideas. You don't need to issue visas for ideas. Whether you like it or not, the only free movement in this universe is ideas. So how do you defeat ISIS?

They are always talking about democracy in the Arab World. Anyone who says we are not capable of democracy is a racist. Some people shout and scream, "Oh Ramallah, teachers; 50,000 teachers are on strike." They criticize Abu Mazan (President Mahmoud Abbas). Yes, we have all of this, and we're proud of it, at least I can say that people can express themselves in any peaceful democratic means. They are not going to go to the caves and drop bombs and start shooting.

Arabs deserve good governors, the rule of law, women's rights and human rights. And people in the Middle East are sick and tired of Saddam Hussein being a good dictator when he goes on a crazy war against Iran for 8 years and a bad dictator when he fights, when he invades Iran, or Assad, or Gaddafi.

The second thing that is needed is to dry the swamp of this Israeli occupation. It's a swamp of evil! Because, ladies and gentlemen, what is the difference between a thug, a murderer who puts a Western journalist on his knees in Iraq and Syria and cuts his throat, and between a thug and a murderer who burns Ali Dawabsha the 18-month-old who was burned with his mother and father and brother? Such acts happen because of what? The destruction of the culture of persuasion, negotiations, tolerance and coexistence? Is it all about culture? It's the question I ask that people don't like to answer. People don't like the question, people don't like the insinuation. But as a Palestinian, and I teach my students this, and tell my colleagues this, and I say in my speeches this: Judaism to me is not a threat, was never a threat. Judaism is one of God's great religions exactly like Christianity and Islam, and my fight with Israel is not that I differ with something written in their holy book, or something written in my holy book. It's a political conflict, territorial conflict, national conflict, it's not about religion.

I don't want to wake up one morning for someone to claim to be the head of the Jewish state in Israel and someone claiming to be the head of the Islamic State in the Arab world. This conflict should not be turned into a religious one under any circumstances. When I said occupation corrupts, I really mean it, because it's their children who come and serve, and shoot, and do whatever they please to do and get away with it. And then they go back home, and I'm sure they have memory in their brains. They remember things, and they try to hide it. They develop a system of chaos, justifications within their own minds. And our minds, as humans, it's capable of taking us any place we want it take us. We are, we are the ones who allow our brains to take us in justifying things. And even if you want to build a chaotic situation, chaos has its own order. It develops. That's also depending on our ability to try to justify it.

So what do we do? We leave the situation for another 15 years, where are we? I honestly believe today that the French, who were burned with terrorism in January 2015 and November 2015 got it right. They want to fight and defeat *Daesh* (ISIS) relentlessly, unwaveringly, but at the same time they knew they had to create a balance. This battle cannot be won in the battlefield - defeating *Daesh* with bullets.

They need peace here. They need peace between Palestinians and Israelis. And honest to God, you don't need to reinvent the wheel. It's two states, from 1967, for the state of Palestine to live side by side with the state of Israel, in peace and security and all the caveats we discussed in the negotiations. I don't know what else to offer the Israeli counterpart. I'm not asking Jews to fast on Ramadan, I know they're not going to do it. I'm asking them to respect me when I fast on Ramadan and to accept me. And the same thing, they should not expect me to go and pray with them on Saturdays in their synagogue. I'm not going to do that. Christian and Muslim Palestinians are not going to convert to Judaism and become Israelis one day. And Jews will not convert to Christianity and Islam and become Palestinians. So, what do we do? Benjamin the Magnificent Netanyahu succeeds in destroying the two-state solution, creating one state, two systems. What is he bringing? Maybe his strategy is to see the ISIS flag being raised, so he can tell Israelis, he can continue exporting fear, and the export of fear has its consequences also. Israelis don't lack the intellectual basis to study what happens to people when their leaders export fear and they follow them. As I said, the French is the only game in town. I believe

everyone should support the French initiative. The French are not going to impose solutions on the Palestinians and Israelis. The French are reminding Palestinians and Israelis of the prospects, of the destruction of the two-state solution. The French are telling Palestinians and Israelis to look around at their loved ones, their children, their grandchildren: what do you want them to be in 15 years? Do you want them to live as neighbors, or to be the killers of each other? That's the question. Thank you very much.

Hillel Schenker: Thank you very much Dr. Erekat. We'd like to welcome Member of Knesset Tamar Zandberg to the table, who has been listening to Dr. Erekat. Obviously we didn't invite a member of the Labor Party because they are very busy trying to decide whether they are joining a Unity Government or not. We invited a representative of the coherent and clear-cut opposition. And we also are welcoming Charles Shamas to the table who is an author in the issue and participated in the round table discussion. We have two professional people and two political people, all of whom will be talking about the situation in the West Bank and its implications. Because Professor Gross has to leave early he will make a presentation to be followed by MK Tamar Zandberg and Charles Shamas. Afterwards the audience will have an opportunity to have its say.

Professor Gross is a professor at Tel Aviv University of International and Constitutional Law, a member of the board of ACRI, the Israeli Association for Civil Rights in Israel and is a regular commentator on legal affairs in *Haaretz*.



Panel on The Dual Legal System: (l to r) PIJ Co-Editor Hillel Schenker (moderator), Mr. Charles Shamas, Prof. Aeyal Gross, Dr. Saeb Erekat, MK Tamar Zandberg. On the side is Dr. Beyhan Sentürk, Director of FES Jerusalem (Photo: Ziad AbuZayyad)

Professor Aeyel Gross: Thank you for the invitation. I will start with two brief apologies. First, that I wasn't able to accept the invitation to contribute to this issue because I was so busy trying to finish a book of my own on the same topic generally, and had a deadline with the publisher. So, you will be able to read the book in a few months, a whole book on the legal question of the Occupation. The second apology is that when I was invited, I said that unfortunately I must leave at 6 o'clock for another commitment, so apologies, if you will have questions that I won't be able to answer tonight, you can e-mail me. You can get my e-mail from Hillel or the Tel Aviv University Law School website, and from Ronit Sela from the Association of Civil Rights in Israel who can also answer questions concerning the report that ACRI's association issued on the same topic last year.

A few weeks ago there were big headlines, at least in Israel, because the Minister of Justice, Ayelet Shaked, said she wants to introduce a measure that every Israeli law that will pass in Parliament, will be automatically considered, though not automatically applied, to the West Bank. But to the West Bank actually obviously means to settlements, to Jewish settlements, in the West Bank. And then, people said oh this is horrible and this will prove Israel will be annexing the West Bank, it will be really bad. I read this and was amazed, I mean, Good Morning! Where have you been living the last 20 years, why is everybody in shock?! Because actually, the process of applying Israeli law to settlers has already been happening for many years, and the only novelty of the Minister of Justice's suggestion was that maybe with every law they will automatically consider whether to apply it or not, rather than just to wait until one day they decide they want to do it.

And as the basis of the Dual Legal System, or One State: Two Systems, or as the ACRI report called it, One Rule: Two Legal Systems, the basis is really actually the duality of the duality. Why the duality of the duality? Because there are two major ways under which Israeli law is applied to settlers in the West Bank. The first is personal, actually by legislation of the Israeli Parliament which extended emergency regulation that was done many years ago, and this legislation says that, "for the purpose of certain Israeli statutes, someone who will be considered a resident of Israel, even if they live in the West Bank."

Here's just an example that will make it very easy to understand. National health insurance in Israel is only for residents of Israel. If I'm an Israeli citizen and I move to the U.S., I lose my right to access to the National Health Services. So, there's a problem; we want to give access to the National Israeli Health Services to the settlers so that law says for the purpose of, at least the National Health Insurance Law, if you live in the West Bank and you are Jewish, you are considered an Israeli resident even though you are not an Israeli resident because Israel did not annex formally the West Bank. Another example, at the Bar Association Law, we have a Supreme Court Justice in Israel who is a settler. Actually he could not be a Supreme Court Judge because to be a Supreme Court Judge, you must be qualified to be a member of the Bar and to be a member of the Bar in Israel, you must be a resident of Israel, but the Bar Association Law is one of the special laws that, for the purposes of this law, someone will be considered a resident of Israel if he is Jewish and lives in the West Bank. So this is a personal application, and then there is a territorial application which is by military order, applying some,

Israeli laws to settlements. In reality this becomes personal, too, because only Jews are allowed to live in the settlement. Also laws about education and other specific issues.

There has been the application for many years for some Israeli laws to settlers and the settlements, and this created this dual legal system: One Rule, Two Systems. If you want to understand more deeply what is going on here, it has all to do with the settlements, and with the distortion of the situation of occupation, because as you all probably know under international law, settlements are prohibited, so, but once Israel put settlers and settlements in the West Bank, there was a problem. How are we going to make sure they can still live by Israeli laws? Here we have to understand that people don't love annexation, but maybe in a way annexation is not, well relevant to the current situation, I don't know if it is a bad thing, because if you're going to annex the territory, at least in theory, you have to apply each law there equally, to everyone that lives there.

Israel is in a complicated situation. On the one hand, it did not annex the West Bank. On the other hand through those very complicated routes which I explained, it applied its laws to settlements. In regards to the Geneva Convention, it settled people there. So actually we can say it is de facto annexation, but it is de facto partial annexation. It's de facto because it hasn't been declared as it has been in East Jerusalem and the Golan Heights; and it's partial because with the annexation of the Golan Heights and East Jerusalem, people suffered from inequality, but at least on paper, the same laws applied to everyone living in that territory. In the West Bank, different laws apply and it is partial because the laws only apply personally to settlers and territorially to settlements which end up, again being, actually personal.

So actually we have this weird situation where Israel is the West Bank. On one hand, it's really acting as if it was a sovereign territory of your own which you're not supposed to do in Occupied Territory (OT) because in OT you are not supposed to establish cities and towns and have your own citizens live there and extend your laws to the area. That is annexation. Thus to some extent, it does act as if it is its own sovereign territory. But on the other hand, it also acts to some extent as if it is an occupier in the sense that it doesn't fully apply its laws there and it doesn't give the Palestinian residents Israeli citizenship or anything like that. From the Israeli perspective, it acts both as an occupier and as a sovereign.

But from the Palestinian perspective, it's neither. It's neither a full sovereign state because they don't become citizens, which get the benefit of the Israeli law, and it isn't fully treated as OT because it denies application of Geneva Convention and it violates a lot of its provisions, especially the provisions against settlers and settlements. And that the settlements come to dispossession of Palestine in land, in water, and also the dispossession in rule of law, which is how I refer to what like you described, not just for the legal system but also the fact that if you are an Israeli who did an act of violence against settlers often that would go unpunished. That's dispossession.

In addition to dispossession in water and land I think we should also talk of dispossession in the rule of law. We should go even one stage back, to the very complicated Israeli legal position that

I can't analyze in detail now about how the Geneva Convention doesn't really apply because it didn't belong to any other state before, However, notice that Israel doesn't go all the way to say it is not an occupied territory, like China does in Tibet, or like Morocco does in Western Sahara, and says it's part of our territory and we should apply our laws there. So Israel, on one hand, doesn't say it's part of our sovereign territory, we annex it and we should apply our laws there, as Morocco does in Western Sahara and China does in Tibet. But on one hand Israel does recognize it as occupied territory. It's controlled by a military regime which actually relies on the Hague regulations to fulfill the duties of the military regime and the rights of the military regime, for example, the rights to take land for security purposes sometimes. On the other hand, it denies the application of the Geneva Convention so that we have a pick and choose approach to the international law of occupation. Yes to Hague which gives a military regime the power to act, not to Geneva, which protects an occupied population and prohibits settlers and settlements. So the mirror of this recognition and non-recognition of occupation at the same time is acting a little bit like a sovereign because it's not really occupied, so I can settle my residents there and apply my laws to there, but then it is like an occupier in the sense "I do not apply my laws fully and I do not give people equal rights, and I don't treat the Palestinians as my citizens."

Now, of course, we can all say it will be illegal to annex the territories on a unilateral basis and maybe everybody here thinks we should aim and hope for the two-state solution based on the 1967 borders, and I think that probably, I support that too. What I'm saying, is that with total annexation, okay at least if you're not going to go for the two-state solution, at least you should annex it all the way and give all those people equal rights and have the same laws apply to them. Now obviously, the Israeli government doesn't want to do it because it wants the land and not the people, so the result is this really hybrid situation which half recognizes occupation and half doesn't recognize occupation. And half annexed half not annexed. It actually allows Israel when it's convenient to treat it as if it's occupied territory, with military control, but when it's convenient to treat it as if its own territory, with its own civilian laws applicable to settlements, while the Palestinians cannot enjoy neither the full protection of international occupation, nor the protection of being citizens of the country that rules the territory.

To conclude, I would say that, the fact that occupation is considered a temporary situation that happens during war times and exists until we reach an agreement, gives the de facto situation, which in other places we would call apartheid or colonialism, legitimacy that it shouldn't have. Because normally international colonialism today is considered illegal, apartheid is illegal, a conquest is illegal, though occupation, per se, is not considered illegal, because it could be a temporary situation. That's why, I think we have to also say, that sometimes occupation can become illegal when it goes away from what are the basics of norms occupation, which is you don't put settlements, you don't apply your own laws, you don't continue indefinitely, so we should think about this occupation as illegal in order to undermine the legitimacy that the regime that in other places we would identify as illegal. Unfortunately, we are still considered by, at least some in the international community and some of the Israelis, as a legitimate regime. So we should talk about the illegitimacy of the regime, how it looks like apartheid and colonialism under this legitimization of occupation and say it's an illegal regime that has to end. Obviously, the

solution can only be political, so this goes back to the politicians at the table. I cannot offer the solution unfortunately. I know what it should be, but I cannot do much to tell the politicians what to do about it, so thank you very much.



Prof. Aeyal Gross (speaking) and Mr. Charles Shamas: (Photo: Josephine Clervaux)

Hillel Schenker: Thank you very much Professor Gross. Now we will give the floor to Member of Knesset Tamar Zandberg, who was very active in the 2011 Social Protest Movement, became a very central member of the Tel Aviv Municipal Council, and is today one of the articulate, younger members of the Knesset for Meretz.

Tamar Zandberg: Thank you for the introduction and for holding this event. I would like to go back to politics with your permission, my friend, Aeyal Gross, you started with the Law of Norms proposed by Justice Minister Ayelet Shaked, and I think that we can all appreciate your analysis of the current situation. I frequently encounter questions about that, particularly in forums outside of Israel. Is the two-state solution still alive, or what do I think about the one state solution? And, I always say, there is no one state solution - this is the reality, this is what it looks like, this is the status quo. Do we want that? I mean, is that our vision? Or do we have here a situation of occupation that we have to end in order to ensure all rights, human rights, and civil rights, but also political rights, collective rights, for two peoples sharing the same piece of land,

We are doomed to live together as neighbors, and this is the only solution that we can see as a vision, as a long-term reality if we'd like to live here in a sustainable reality.

I think there is a meaning to what we actually do and also to what we declare. I'm a member of the Parliament, and Parliament comes from the French word *parole* to talk, what you say, what you declare, has a meaning. It means something in reality for people, people relate to that, people take their political actions according to their positions. There is some kind of dialogue, discourse that is happening. I think the political situation in Israel right now, where we see the most extreme right wing government in the history of Israel and for sure, the last year, this week, we marked a year to the establishment of this government, and this is the first year since the early 90s where there was no kind of negotiations, talks, dialogues, progress of any kind.

I belong to a left wing party, and I must tell you, I'm sorry Dr. Erez, in the last government, during the Kerry talks when you and former minister Tzipi Livni were starting some kind of another dialogue, we were skeptical, but still we supported the idea of having a dialogue, a political discussion. This is the first year since the beginning of the Oslo Accords that there is a total freeze, total disconnection and we see the results of that. We see the violence, we see the despair, we see the political discourse within Israel, we see racism, we see all of that as a clear reflection of the political total freeze.

Coming from where I stand, being a left-wing person, a left-wing party, we have no expectations from that right wing government. I think Prime Minister Netanyahu has long forgotten the Bar Ilan speech; I think that was the last time he mentioned the words two-state solution. They are talking about a unity government with the Labor Party, but one of the so called terms, in that disaster is having a government decision in support of the two-state solution. And when I hear that I say, can you find one minister in this government who will vote for a declarative future, hypothetical two-state solution? So what are you talking about? But at the same time, I am not desperate at all. I am very hopeful and very optimistic about our capacity to bring about a political change in the Israeli society which will bring, of course, a change in policy. And, maybe you can look at me and say well, we don't know what you are talking about, you come from a very small left-wing party that is being outcast and being marginalized by the mainstream political discourse in Israel, but I would like you to pay close attention to that extreme right-wing government, a narrow majority government, very extreme, very dangerous, very right wing and we can see that in many of their declarations and acts. But, at the same time, I look at my alleged partners to the camp, to the alternative camp, that understand that Israel must go through a political change and I see them, on the one hand trying desperately to enter that extreme right wing government, and on the other hand, promising us that they have the ability to stop some of the right wing initiatives, to balance the political situation.

Maybe, but on the other hand they're desperately trying to bypass Prime Minister Netanyahu from the right. And having a competition who is more right wing, Herzog, one day saying a two-state solution is not feasible at the moment, and a few weeks later saying he recognizes a rare, political opportunity for breakthrough and this is the reason why he and his partners should get 15 jobs in the government and in the Knesset's committees and be a part of the Netanyahu

government. So, I ask myself, I look at the Labor Party, I look at the Yesh Atid party. I look at the party, the constituency, the voters who voted for them; they voted for them knowing that the number one mission is to replace the government, replace the policy, The slogan was "*Rak lo Bibi*", "Anyone but Netanyahu." They knew that the different government would mean fighting the number one challenge for Israeli politics and the Israeli government which is the Israeli occupation, the Israeli-Palestinian conflict, the need for some kind of negotiation, some kind of path to resolve that conflict. And they voted for that, and now we have their leaders, the people who voted for them, convincing them that they are wrong. That actually, the right wing may be more correct, so they are actually convincing their own voters to shift from left to right and then they're saying everybody is right wing so what can we do. I don't think there was ever a more efficient mechanism of shifting the public from left to right than what we see now in unfortunately our counterpart in the opposition. But these are our leaders, the political leaders that were elected.

I look at the public, and I recognize a huge hope for change. Disbelief? Yes. Desperation? Of course. But at the same time, a deep understanding that in order to have a change we must have a political change. People are not sure what is the best way that can be achieved, it's very complicated, as both of you described, very bluntly. A lot of this has been going on for too long. But at the same time, I have no doubt that change is not only necessary but also achievable, and at the same time, it must come from the Left side, it must come from a very clear, loud, and sharp political alternative that will put the current situation on the table and will propose the political leadership to change that. And then, we can take these very interesting, knowledgeable, and important descriptions of reality and make them part of history and not part of the future and the present. Thank you.



MK Tamar Zandberg together with Dr. Saeb Erekat. (Photo: Josephine Clervaux)

Hillel Schenker: Thank you very much MK Tamar Zandberg. We will now welcome Charles Shamas who is a senior director at the MATAN group in Ramallah, and I also ask Ronit Sela, please come up, also for the sake of gender balance. Ronit Sela is one of the authors in the PIJ issue and is the Head of Public Outreach Department of Human Rights in the Occupied Territories in the Association of Civil Rights in Israel, and she will replace Professor Gross in the discussion. So, Charles, please.

Charles Shamas: Thank you. First of all, I want to congratulate the entire editorial team for producing this edition of the Palestine-Israel Journal. I think it is remarkably informative, insightful, and very welcome because we all sit around listening to speakers, reflecting on this problem that we are endlessly in. We describe it a lot and I think that the difference between productive descriptions and unproductive descriptions is something we need to give attention to. A good description points a way to an opportunity change what is. I don't think that there is anybody in this room that doesn't agree about the basic parameters what we want, and the basic unacceptability of the results of Israel's application of the legislation and military acts described in this issue in the Occupied Territories. Even what it does to the critical culture and self-definition of the Israeli party politics. So I think we're pretty agreed as to what we want.

We have a tendency to want to talk about law, because law seems to offer an opportunity, or a way to change what we're stuck with in some way because we have been unable to change it politically. Well law is made, basically, to get certain things to happen, or to align certain critical

combinations of forces and interests to get something to happen that won't happen by itself because of political discretion, and political equilibrium, and existing political will. So let's agree that we're really looking a process where law can become a driver for changing political will, that law can recondition political life. We're not talking about law or politics, were talking about law *in* politics and this is really important because if we think about it that way, law becomes pretty important. Of course it's very technical, but those technicalities and it's the whole discussion that takes place when people agree that they have to analyze facts by law is a discussion that can be politically momentous.

Law is not a source of hope because it tells us what is good and bad. Yes, legislation was made, enacted, because we considered that we had a public interest in getting the law implemented and the situations resolved because the situation that we are resolving would be satisfying, politically - so that's why we make law. But then we have the problem of exceptions; the law that we're talking about, when we're talking about international law and analyzing the system of governance that has been constructed or operated in the Occupied Territories. The law that we're evaluating in terms of is basic conflict prevention law; it's law that was made on the understanding that power, when it has the opportunity to indulge itself and exercise itself as it wants, if it indulges itself in certain ways, it will produce conflict. WHY? Because all governing authorities need the government to some degree for the acceptance of or cooperation of or acquiescence of the population under their protective control. And the less they have, the more oppressive they are, the more coercive they are, the more they will generate desperate acts of coercion and attempts at self preservation by their victims.

The world has been preoccupied at least since WW1 with the idea that we want a stable state-based order. We want human rights, and the whole purpose of human rights law was basically invented as a reflection on how important human dignity was. It's how important stability and security is to us. The Universal Declaration of Human Rights in its preamble connects the fundamental abuse of human rights with uprising and instability. The reason I'm going in this direction is to come back to the contents of the PIJ issue. Long work by the interests that a particular set of rules serve, such as permanent prevention, may not be important enough to the collection of powerful actors that are needed to implement and ensure others' conformity to the law. So, maybe we're in an unfortunate situation where the things we believe in, and the legal principles we consider to be good and satisfying legal principles are simply not. Their purpose is simply not important enough in the real political world. The people and the actors who are decisive, command-full power to implement the rules or not. So,

How does the law deal with this? Well, what it does is it says, "I'm going to construct a situation in where my interests, or the interests in conflict prevention and human rights or the object and purposes of the law of occupation are connected to another set of interests that is very fundamental to actors that have nothing to do with this problem of occupation. The problem of human rights: who can stand and watch all of these things and say "what a shame this is happening, but it doesn't involve me and I don't have anything to do about it." In which case the law never gets enforced. So what the law does is it puts obligations of enforcement on this other

class of actors and it creates consequences to their imperative interests for not performing their important functions.

A judge or a policeman who is opposing an armed robbery isn't doing it just because he believes the armed robbery is bad. He does it because if he doesn't, his own particular imperative interests, his job, his standing in society, maybe his remaining out of jail hangs in the balance. The system of practice, the legislative and administrative acts that are designed here, are not only affecting Palestinians and Israeli Jews in the Occupied Territories. Anybody who deals, any third country, any company that deals with this situation and this system of practice, in some way is being affected or having to decide if it can permit itself to give effect to these rules that aren't being followed. Maybe, before we start thinking about the decisive issues, our political visions, our sympathy with the left, our sympathy with human rights, maybe those aren't the key determinative interests that ring around enforcement.

I had long discussions with legal services in different members of the European Union, and the only thing that their governments could agree to was an absolute provision against international aggression. Now, the various rules and their impact on Palestinian human rights and dignity, the various ways in which they violate basic rules of the laws of occupation, this is all very important. But the fact of the matter is, that all of this practice described involves Israel's exercise of the powers reserved for legitimate sovereigns in territory over a population that is not its own. In other words, violations of the law of occupation violate the limits under which the occupying powers exercise its effective control and authority can be tolerated internationally. And, the appropriation by an occupying power of powers reserved for the legitimate sovereigns after he scares others, it really disturbs a very fundamental interest, an existential interest that dwarfs their interest in protecting the human rights of some group of people in some situation of oppression, of which there are many in this world. It's interesting that the European Union would have had to think, "How can it permit itself to deal, or interact, or have anything to do with the legislation and administrative acts for many who are under occupation? It concluded, finally, after years of occupation, that it could not respect its position and commitments on the issue of Israel's sovereignty over the Occupied Territories. This is a very basic idea that blows away the discussion, because there is nothing to discuss.

There aren't many political actors in this world that are comfortable with the idea that a non-sovereign, by military force, can impose its will and appropriate the rights of the sovereign in this kind of situation. It would be as silly as if I issued an edict, in this room, I said, "I'm going to be the authority and you're all listening to me very courteously. I'm going to say, anybody who blinks their eye is offending against the rule I am imposing here. Well first of all, you would laugh, you'd be like, "You're not the sovereign, you're not the authority, you're not even chosen or elected to make rules for us that we have to abide by. But then, if I start enforcing it, by coercing, by punishing, by using force on you, I wouldn't last behind this table for five seconds, for five minutes, you cannot accept that. The fact of the matter is that it's a problem not just of the legislation, but it's the practice, the reality that comes from coercive implementation and enforcement of this dual legal system.... And it's the fact that others are happy not to pay attention to the fact that they have to deal with it in many ways.

Today people are looking at corporate activities in the Occupied Territories; Does the corporation and the government recognize the validity of property rights created by the occupying power? No. Even the U.S. military manual specifically says that property rights cannot be created by an occupying power, only by a sovereign. So, how does the U.S. tax code apply to these situations? How can the U.S. simply say “no, in the case of this special situation we believe that there is a violation of my law but do nothing about it?”

Whatever Israelis think and whatever Palestinians may think, the rest of the world is stuck with the fact that it created an order and set of rules and it wants to hold onto it because throwing it away, disregarding it, it creates such a high level of uncertainty, and such a high level of “everything is up for grabs,” that is unacceptable.

I would like to close with a simple proposition. Rather than describing what’s wrong, and talking about how to resolve the changes, politically, we need to think about what we have to demand of others, how others that command a lot more power than we do, how others that command a lot more power than Meretz might assemble - what we have to present them with that actually attaches or seizes critical interest, imperative interest of their own, that the law defends and that they cannot afford to disregard and allow it to be harmed. We have to start understanding how international law, as it applies to the situation and legal framework here, how that law gets enforced; not as a matter of legal discussion because people share our convictions, but because they have other vital interests that will get harmed and the law was made to function as law by implicating those other vital interests. We have to figure out how to make the connections for these other actors. So I think we have a lot to act on, but this provides us with a great point of departure because we often act from our hearts and we have to be clear, we have to understand and be able to explain to others in a very technical and precise way, what *is* going on here. And what stake do they have in allowing themselves to participate in it, cooperate with it, give it legal effect within their own legal orders. That’s the sort of thing that will lead us forward.

Hillel Schenker: Thank you very much Mr. Shamas and we will now open it to the audience to ask questions of the entire panel or directly to a particular individual. Introduce yourself before you make your comments. Ladies First.

Professor Khuloud Khayyat Dajani, Al Quds University. I wanted to start by putting on the table the fact that a human being, a citizen in Israel lives 10 years more than any citizen in Palestine, the life expectancy. And even though the UN system, the legal system, we thought it would solve certain issues, based on the international constitution, the Declaration of Human Rights. But we see that everything in our life must abide by the occupation’s laws and regulations. From using the water to the social welfare to the rights of children to play and so on. I very much appreciate that I am part of the **Palestine-Israel Journal** editorial board. I feel like this should be a model for what we are, for the new era, because now regardless of what we are talking about negotiations and politics and so on, now is the stage or the era of transitional justice, where the only way to bring a difference to this part of the world is to make transitional justice and to make the most for Palestinian people, to help them live and prosper. We have

democracy in Israel, apartheid in West Bank, we have social welfare and health care in Israel and we have all kinds of violations of human rights in the West Bank and so on. And if we are going to be living here and hope for a better future, we have to take this issue seriously and work on this together.



Audience at The Dual Legal System launching conference. (Photo: Ziad AbuZayyad)

Hillel Schenker: I suggest we take two or three questions from the audience and then have the panel respond.

Jonah Bob from the *Jerusalem Post* and I want to ask a very specific question, I would be happy for it to go to everyone but first go to Professor Erekat. (Comment - "Call me Saeb"). One thing that hasn't been discussed is the Israeli military in the West Bank courts, which I've written about quite a bit. And aside from the actual disappearing of the courts, disappearing would solve most of the dilemmas people have with the courts, I've spoken to some defense lawyers of Palestinians and said "what could be done in between, creative ideas that could be done in between, to at least make it a little more fair?" One idea that came up, that I had never heard before, was what if the courts still existed but there were Palestinian judges and observers on the panels and not only Israeli judges, it would help. I posed this to some top Israeli officials and they were in shock. There were three reactions; first they said wow, that's so interesting, I've never heard of that; then they said that's completely impractical and I think they were sort of wrestling with it because they are used to being asked "well the courts should disappear" and that was not what was being said, it was something different. Then they said, "well Palestinians will never agree to it so it's not even worth getting into it because Palestinians would never agree to it." Obviously it is not an ideal solution, but is that something, if only to put

it back to the Israeli officials, to make them wrestle with it, for the Palestinian side would say maybe that is something to be considered to improve in the current situation, when the current government doesn't appear to be ready for a significant change in the situation anytime soon?



Question from Jonah Bob of The Jerusalem Post: (Photo: Josephine Clervaux)

My name is **Ismael Mubarak**. I'd like to say that a two-state solution will never happen if we want to leave it to Israel. It would have to be forced by some international project on Israel. If we want to leave it to Israeli government, we will never have a two-state solution because the Jewish lobby really controls the government over there and the United States cannot put pressure on Israel because the Jewish lobby really is a super power in the United States. I lived there for about four years and I know the Jewish Lobby. Like Pat Buchanan said once when Ronald Reagan was president, "the U.S. Congress is an Israeli occupied territory". Some U.S. politicians wrote a book called "They Dare to Speak Out", and they described how the Jewish lobby approaches every U.S. politician who wants to run for office, whether it is the Congress or the White House, and they strike a deal with him to support Israel in order to support him to get into office. And you can tell, anybody who wants to run for office, he has to come to Israel, and go to the Wailing Wall, and grieve there and declare the obedience for Israel. So it has to be international, like when Iraq occupied Kuwait, within a few months, there was the United Nations, one resolution against Iraq and they defeated Iraq and got them out of Kuwait. But Israel has been occupying the West Bank and the Golan Heights for almost half a century and they can't do anything. The United States and the European Union are flirting with Israel, they

are not serious with Israel. Unless the United States liberates itself from the Jewish Lobby, there will never be two-state solution.



Question from Ismael Mubarak. (Photo: Josephine Clervaux)

Hillel Schenker: Thank you. The panel is now invited to respond to the questions and also to each other.

Tamar Zandberg: Thank you all again for very interesting presentations and questions. Prof. Dajani, I would like to specifically thank you for your comments, because you reminded us what we are here for. Is politics all bad? It is not about the rules and the ties and the cocktails and the talks. It is about the lives of people. It's about rights, It's about justice, it's about shelter, it's about dignity. This is what we are dealing with. This is why this is so important. And I thank each and everyone one of us that came here tonight and bothered to write these articles and I read just the names and the abstracts. All of these people are professional lawyers, professors, et cetera but they are also activists, for that exact reason. And of course, coming from a left wing party, it's not just about peace. It's about an agenda. I always say the wide umbrella is "justice, equality and democracy" because these three pillars define everything else. They define that people can actually live with their human rights, collective rights, health rights, housing, education et cetera. And politics, and specifically law, following up your important presentation, is about that. How do we ensure that people get the rights they are entitled to? So of course, you are right, it wasn't a wide enough part of this discussion, but this is a reminder to the very basic soul of what we are doing here.

I will leave the military court question to Dr. Erekat, and would like to address your comment, that we hear that a lot. When I visit the U.S., it used to, maybe up until a few years ago, be a question. What is the position of government vis a vis the Israeli government and the Israeli government being a right wing government, so supporting Israel, what does that mean? I would like to tell you that in the last years, this is changing, in the world, and specifically in the U.S. I can tell you as an Israeli, and I think this is not about a relationship between countries. It's about relationships between political camps that support shared values. You know the late Prime Minister Rabin used to say that his partners are the peace seekers and the moderate peace supporters from both sides and you do not divide the political partnerships by nationality or religion, you divide them by the values and the ideology. So you can look at institutions like J Street for example, that lobby U.S. Congress and Senate and American public opinion to support peace, out of support to Israel. And you can find people like me and others, my colleagues, who say everywhere, in Israel and outside of Israel, that supporting Israel does not necessarily mean supporting every policy of the Israeli government. And my presentation before was how harmful the policy of the Israeli government is on that issue. But supporting the best interest of the State of Israel, of Israelis, is pursuing peace, and ending the occupation, and I think we have to be very clear about that distinction. I know we are clear about that distinction and we represent a political camp in Israel that, as I said before, is not as small as it sometimes may seem. And I think that we should seek our partners in the Palestinian society, in the international community, in the Jewish communities in the world and everywhere we can find them, and I think it's not only possible, but it's already happening.

Dr. Saeb Erekat: I began reading the articles, the very interesting articles in the issue before I came here, and it is not about the Hague conventions, the Geneva Conventions, it's not about international law. There is a law that was inherent in this research by scholars; **the law of getting away with it**. With all due respect, people are not ignorant, people don't have an IQ of 20.

Israel is not a perfect society. Israel is like Palestine, like Nigeria, like America, like Nicaragua. You know they have decent people, indecent, honest, dishonest, they're normal. So, everyone knows, everyone hears, everyone sees, what Israel has been doing to Palestinians for the last 50 years under the occupation, and the practice, the real law that Israel creates is how to get away with it. And that is where we need to work, to put our efforts, in order to stop what is going on. I am talking about realpolitik.

I disagree with you totally about the power of the "Jewish lobby". I will give you five examples of U.S.- Israeli relations. 1956. Eisenhower was the President of the United States. Ben-Gurion was the Prime Minister of Israel. Israel went on a picnic to Sinai with Britain and France. Right? A phone call from Eisenhower to Ben-Gurion. Out, out. 1975, the 2nd disengagement from Sinai. Rabin was the prime minister. Kissinger is Secretary of State. Rabin didn't want to do the second disengagement. A phone call from Kissinger to him, this may jeopardize agreement number 1, and agreement number 2. In less than 24 hours, Rabin was signing it. 1990, the loan guarantees, Shamir and Bush the father, when Shamir managed to get 75% signatures from the

Congress and the Senate, that could override any decisions of the executive of the U.S. And then you remember President Bush saying "I'm a lonely man facing an army of lobbyists who act against the U.S. interests." Shamir shifted. 1991, Israel was hit with missiles from Iraq. Arens was the Defense Minister in Israel, and Shamir was the Prime Minister. They were not allowed to defend themselves, the Israelis. You know the ones who fired back, the Patriot missiles from Israel were German fingers and Dutch fingers and American fingers. Israel was not allowed to defend itself. 2015, the Iran Deal. Netanyahu did everything in the book to sabotage the deal, but then it was signed. So the question is, it's not about, to be honest with you, nations are like me and you, they are about their interests. And the question President Bush, the son, did not wake up one morning find his conscience aching saying that "there should be a Palestinian state" because he was the first American president to specify the term "State of Palestine." It is his national interests.

Yesterday marked the 100th anniversary of Sykes-Picot. And now, when you have Moscow in Damascus, Washington in Damascus, terrorists in Damascus, Berlin in Damascus, and London in Damascus, they are not going for a picnic to Damascus. These people are there to see what can be done to organize the Middle East map today. And what we are simply saying to the world, without Palestine being back on the map, forget it! You are going to have another century of chaos, lawlessness, extremism and bloodshed. What is the reason for the United States interest in the two-state solution? Is it Syria? Is it their understanding of what is going on in the Arab world? Did they define what is going on in the Arab world? Because what is going on in the Arab world today, whether we like it or not, is exactly what happened in Europe on March 15th, 1848. A gentleman by the name of Chancellor Metternich had to flee his palace after three weeks of peaceful demonstrations in his capital. And it took Europe 140 years for the dust to settle down. It took a Bismark, the nephew of Napoleon to run for elections, a Berlin conference, a War I, a War II. And yet next month we will see whether Britain will be part of the EU or not yet.

What is going on in the Arab world is really similar to what went on in Europe in that year and in my prediction, unfortunately, it will be 40 to 50 more years. Arab are democratizing. And where do we fit in this? What do we do to make the right people win? Can, you mean the Israeli government doesn't understand that having a Palestinian state will be an element in defeating extremism, and producing the right people in the region? Producing human rights, women's rights, the rule of law. At the end of the day, Israel is a country with 5,000 tanks, 3,000 fighting planes, nuclear weapon, congress, senate, as you said, it's all about politics.

I am the most disadvantaged negotiator of all time. I have no army, no navy, no air force, no economy, my people are fragmented. But having said all of this, what options does Israel have? Three options, not a fourth one. Number one is my option, live and let live. Two states and I did not wake up one morning and fill my conscience aching for the suffering of Jews and Israelis that I recognize them. No. I believe in a two-state solution because I believe no one benefits from achieving peace more than Palestinians, and no one stands to lose more in the absence of peace more than Palestinians. That's the truth. It's about my interests. I am not doing a favor when I negotiate with them. I'm not doing them a favor when I work in my society to maintain

the culture of peace, the culture of persuasion, the culture of dialogue, the culture of negotiations. And unfortunately, what you see today is you have people in Israel who are creating the methods, techniques, theories of the law of getting away with it. And sometimes it works, but it's going to be short-lived. The crime-sequences of such policies, of ignoring facts that they don't exist, is a disaster in the social fabric of that given society, on Israel.

What is happening to Israeli's? I'm scared. I am living one km away from them. What I hear, what I see, is scaring me. It's very serious. And as far as the situation is concerned, when we speak about two states, it's the only option. Because there is no such thing as a one state solution. A solution, by definition, needs two parties. Israel and Israelis will never be party to a one state solution. Today, May 17th, 2016, from my hometown Jericho to Tel Aviv, 50.9% of population are non-Jews. Today, May 17th, 2016, 48.1% are Jews. You know, once I was discussing things with Mr. Sharon, the Prime Minister. And he's wasn't shy, and I'm not shy either. So he said something I didn't like. I told him "close your eyes for twenty seconds and walk me through what you see in my hometown of Jericho in dreamland, 2020." And he said "Saeb this question doesn't allow me to sleep!."

What are you going to do with me? Geniuses, 149 IQ, getting away with it, Congress, Senate; what are you going to do with me? It's your job to think. I'm here. I'm here to stay. And the question is not about the legal system, or how they can play around with it. Israel has violated every single law and demand, international law throughout history of mankind. It's lawlessness out there. It's the law of every hour on the hour. Any given jeep with soldiers have the rules of engagement to decide on what to do. Roadblocks, search, kill, demolish homes, injure people, curfews; without going back to their superiors.

Jonah, I was in the military court in 1987. I was arrested from my house and then taken to court. I was a sociology professor at Najah University that year. And in the military court in Nablus, there was a judge there and I had with me two Israeli lawyers. And one of my lawyers raised his hand and asked a question so the judge asked him to shut-up, honestly. So he said "no, I have a client." He said "shut up, *Tishtok*" And my lawyer said "am I in a court or not?" The judge sentenced him \$1,500 in contempt of court. So I told him, Jawad, they give you \$1,500, what will the sentence you?" What kind of military court do you want Palestinians to be a part of? These are the tools of apartheid, of oppression.

I'm not really worried in the long run. In the long run, Palestinians and Israelis are destined to live together. But the best model to live together, to exist, is that they live within a two-state solution, a State of Palestine to live side by side the State of Israel, in peace and security on the 1967 lines. And today this government in Israel is saying "no, we don't want the two-state solution." The name of the game to Mr. Netanyahu is one state, two systems. Apartheid, that's the real name. Like it, don't like it, these are the values that are diminishing Israel's democracy. With this, Israel is no longer a democracy. Whether you like it, whether you don't like, facts speak for themselves. And if you want to accommodate yourself to the new system of thinking and values and ethics, well, it's really up to you.

Second option, it's the one state reality, not solution. There is a one state reality being created, by settlements, dictation, and these things that we will be seeing. What this leads to is what is out there today; in planet Jericho, Nablus, Hebron, even East Jerusalem. It's a system of apartheid. Because that's the occupation, the natural growth of the corruption of the occupation. I believe we have a good opportunity now, with the situation of the international community. When Moscow is in Damascus, Washington is in Damascus, Berlin is in Damascus, London, everyone is there, everyone is here, they are not picnicking. We have a good chance to ask one question; what do we do to make the right people win in this region? The right people meaning human rights, women's rights, freedom, stability. And I am telling you, on the one hand, Arab are democratizing. It will take a painful 40 to 50 years, bloodshed. But mark my words, Arabs are democratizing; and Palestinians here have decided to defend themselves and their way of life and stay.

So, how, what will be the techniques of the Bennetts and the Netanyahu and the Liebermans and so on? Now, because if you take the trends from 1967 to now, what are the military orders? Let's just define; home demolitions, deportations, removing people, forcing, all the cohesion, all the system of trying to subjugate people by means of force. And if Netanyahu thinks that he can boil water and put coffee and get orange juice as a result, he can do it once, a million times, he is going to get coffee. And a military solution, military solutions, security solutions, will lead to extremism and desperation and desperate acts. I'm not creating this. Einstein once was asked, "what's madness?" And he responded by saying "it's to repeat the same things using the same ingredients and expect different results." And that is the Israeli government. They are just repeating the same things, the same ingredients, same tools; expecting they can silence the Palestinians and have the Palestinians accept this way of life. You know the fact that the French are moving. France is not trying to replace the United States. There are 79 Air France landings everyday in American airports. That is the truth. They are allies. French are telling the Americans "Look, look, in Europe we are almost 20% Muslims by 2030, and we need to get our act together; and we cannot let this conflict turn into a religious one; a Jewish state versus an Islamic state. We will burn! Because if an ISIS flag is raised here, it means Berlin, Brussels, Paris, London will be under attack very soon!"

It's been my honor to be here with you today. It's May 17th, my twin daughters' 34th birthday. I'm having a dinner for them, at 7, so allow me to excuse myself and leave, I'm really sorry, I have to leave. It's a very special occasion for me.

(From the audience) Happy Birthday to them Saeb!

Ronit Sela: Thank you for having me here and dedicating an entire issue to this important topic. I'll say a sentence or two about where I think we are and then I'll try to say something wise about where we might be heading. When ACRI published the report about the dual legal system in the West Bank, we published it for some clarity about where we are now because people often say the Israeli Occupation. Okay, but what is under that title of the Israeli Occupation or the Military Occupation? And the truth is that if we look at the past nearly 49 years, there has been a great fragmentation of the area. So even though we do see a dual legal

system, the fragmentation is much bigger than a dual, than two. And where we are now is a legal paradigm that is very confusing and very frustrating for a human rights organization or for legal experts who are dealing with this. If you take Israel's control and put it on a line, or on a spectrum, starting from the kind of control it has over the Gaza Strip, the kind of control it has over areas A and B, the kind of control it has in area C, the control it has in Jerusalem beyond the barrier, and then the control it has in Jerusalem inside the barrier. And the various legal systems that work, the Israeli law that works there, the international law, it's a very new paradigm, it doesn't exist anywhere. And we are trying to promote human rights, which is more important than the legal conversation. We just want to have human rights for people; to try to do that in Jerusalem with Israeli law, through the courts; in the West Bank, through also the courts, but with international law, and it doesn't work well. And it's very confusing and it's where we are now. We've really managed to mess it all up, everything here is messy; the legal system and the fragmentation. The result is a huge suffering of human rights, which you are sadly aware of.

I'll say one thing about where we are going. I'll say this about Israeli society; I think there is a greater acknowledgement that something doesn't fit for Israelis. Like it doesn't make sense that there is a military occupation in areas that, intuitively for Israelis, feel like they're Israeli. For Israelis, the settlements, and the process of making them such a part of mainstream Israel, it just doesn't make sense that there is a military occupation.

My sense is that there will be more and more attempts to say "why is there at all even just a facade of the military occupation or the outdoor framing of a military occupation in places where they should be a part of Israel, such as the settlement blocs?" And then in Jerusalem, I think we are seeing the other side of that. It doesn't make intuitive sense to Israelis that neighborhoods beyond the barrier are still part of Jerusalem. I don't know if you've seen but this week there are now new signs saying "Issawiyya is not my Jerusalem", "Shu'afat is not my Jerusalem." It's a new initiative to say that Israel should actually give away parts of East Jerusalem to the Palestinian Authority because it doesn't make sense to Israelis that this is actually part of the annexed Israel part. So I don't know what we will be publishing in ten years but I think that it is just important to notice how much our situation and how much the occupation is changing. And it just feels like it's all just one big horrible suffering and human rights violations but I believe it is important to notice these changes. Thank you.

Charles Shamas: I have a tendency to get despondent because I think back 30 years and I could be in very similar discussion as the one we've been having today. I wanted to use that the question of The Jerusalem Post reporter and perhaps and what you just said in terms of perceptions of reality and what's normal, and what's abnormal. The biggest responsibilities that I think all of us have and that various third parties that you (pointing to the many diplomatic representatives present), us, internationally have, is how they communicate what is reasonable to us. And they do that by either dealing with us on the basis of the assumptions we have in our heads, and the rules we apply; or explaining why they can't deal with us on the basis of those assumptions and rules because they would be breaking important rules themselves. It's an issue of their own integrity, the imperative self-interests I was talking about are not ideal interests, not idealism. For lots of people it is morality. We could talk about our common

political dedications. But I don't think that's the sort of thing that is going to decisively shape how Israelis and Palestinians form their own expectations and how they're taught by others what is reasonable.

In my view, the question about the military court is a nice example of this problem. A military court does not operate in a vacuum, it implements legislation, it applies legislation. And the question is, is the legislation applied by the military courts, legislation that others consider must abide by international law or have certain commitments, can they permit themselves to have that role? Can you talk about just shuffling the deck in the terms of the nationalities of the people in the court and who is doing what and who is watching whom, and make a difference? There is a substantive issue here, and it has to do with system of rules that is being applied, which is what this issue tries to point us to. It is not an issue of personalities and nationalities.

You can talk about if you want to be a massage therapist, you can talk about who is giving you the massage and the color of their skin and the perfume they wear and this sort of thing. And yes, maybe part of the whole idea of Palestinian self-administration was to put a congenial, comfortable face on something that was substantively not acceptable, not regular, not consistent with very basic rules. And these are rules that were not made for our situation; these are rules that evolved over a long period, a long process of consultation, negotiation, discussion about how various other situations, like this, should be regulated. So, this kind of suggestion is the sort of thing I remember, again, from 30 years ago. People with bright ideas, "Why don't we send in some Belgians here?" and "Why don't we get this?" and "Why don't we do people to people?" You know, okay? Really nice ideas, but they ignore the substance of the problem.

The substance of the problem is the rules that are being applied by power, and whether or not others with some share of power, whether they're foreign, whether they're other Israelis, whether they're other Palestinians, can permit their own power to be exercised in the manner that complies with the violations of these rules that they must have an interest in defending. It's a kind of democracy, not a popular democracy, no, it's a "all people are not equal." I'm a weak political actor, you may be a strong political actor. You may have more power than I do, you may have less, who knows? The fact is, that various decisions tell each actor themselves about what they can permit themselves to do. Can I permit myself, as a Belgian or a French, to apply the legislation, or participate in the application of the legislation in that military court? That's the question. And when they take a decision, responsibly, that decision communicates something to Israelis, and it should help Israelis adjust their own perception of reality, their own understanding and assessment of what is normal and reasonable.

Hillel Schenker: Thank you very much. I would like to thank all of the panelists who are here and also the panelists who had to leave early and thank all of you in the audience for being here. We look forward to seeing you again at our next activities. Hopefully we will be making progress towards ending the occupation, but meanwhile we will be continuing to do our work and together, each one of us has a role to play.



Overview of the audience in the Pascha Room at the American Colony Hotel (Photo: Ziad AbuZayyad)