

# ISRAELI HUMAN RIGHTS VIOLATIONS AND PALESTINIAN VIOLENCE

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## I. INTRODUCTION

This article will attempt to show that scrupulous adherence by both Israel and the United States to principles of international and U.S. law could be a major step in the resolution of the Palestinian-Israeli conflict. It will also attempt to show that the implementation of internationally recognized principles of human rights could reduce terrorism and violence in the region.

Part I of this article discusses certain internationally recognized human rights. Part II summarizes certain U.S. laws which deny U.S. foreign assistance to countries which engage in gross violations of internationally recognized human rights. Part III shows that the State Department, while reporting on gross violations of internationally recognized human rights by Israel, has, nevertheless, consistently refused to officially apprise Congress of these violations, thus allowing it to continue its massive appropriation of foreign assistance to Israel in violation of U.S. laws. Part IV shows that international law sanctions armed struggle for all oppressed peoples, including the Palestinian people, for national liberation, equal rights and self-determination. Part V shows that Palestinian violence is basically a form of armed struggle aimed at restoring to the people of Palestine their civil liberties and human rights as sanctioned by international law.

## II. INTERNATIONALLY RECOGNIZED HUMAN RIGHTS

Basic human rights have long been embodied in the principles and practice of international law.<sup>1</sup> The most important of these

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1. The Charter of the United Nations provides: "We the peoples of the United Nations . . . reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small." U.N. CHARTER, Preamble; see also *United Nations Universal Declaration of Human Rights*, G.A. Res 217A (III), U.N. Doc. A/810 (1948), reprinted in *INTERNATIONAL HANDBOOK ON HUMAN RIGHTS* app. 1, at 459 (J. Donnelly & R. Howard eds. 1987) [hereinafter HUMAN RIGHTS]

rights are those which specifically protect the security of the person.<sup>2</sup> Violations of these specified rights include genocide;<sup>3</sup> slavery;<sup>4</sup> torture;<sup>5</sup> cruel, inhuman and degrading treatment;<sup>6</sup> collective punishment;<sup>7</sup> arrest without due process;<sup>8</sup> imprisonment without fair trial;<sup>9</sup> invasion of the home<sup>10</sup> and the taking of property without due process of law.<sup>11</sup>

There are also human rights which pertain to the meeting of specified vital human needs, such as food, clothing, shelter, health care and education.<sup>12</sup>

Additionally, among the important human rights is the enjoyment of certain recognized civil and political liberties. These in-

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which the United States helped form and which was signed by former President Carter. This document draws heavily on the American Constitution and Bill of Rights. It also draws from the British Magna Carta and the French Declaration of the Rights of Man and of the Citizen. For a discussion of the United Nations as an international lawmaker, see W. MALLISON & S. MALLISON, AN INTERNATIONAL LAW ANALYSIS OF THE MAJOR UNITED NATIONS RESOLUTIONS COVERING THE PALESTINE QUESTION at 145-150, U.N. Sales No. E79.I.19 (1979).

2. Article 3 of the Universal Declaration of Human Rights provides: "Everyone has the right to life, liberty and security of person." HUMAN RIGHTS, *supra* note 1, at 460.

3. *The Convention for the Prevention and Punishment of the Crime of Genocide*, U.N. Doc. A/810 (adopted Dec. 9, 1948), reprinted in 45 A.J.I.L. 6 (Supp. 1951) [hereinafter *Convention*]. The Convention came into force on January 12, 1951, and declared genocide to be an international crime whether committed in peace or in war.

Article II declares genocide to include the following acts intended to destroy, in whole or in part, a national, ethnic, racial, or religious group: (1) killing members of the group; (2) causing serious bodily or mental harm to members; (3) deliberately imposing destruction of the group; (4) imposing measures to prevent births within the group. *Id.*

4. Article 4 of the Universal Declaration of Human Rights provides: "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms." HUMAN RIGHTS, *supra* note 1, at 460.

5. *Id.* art. 5, at 460.

6. *Id.*

7. Article 33 of the Geneva Convention (the Civilians Convention) provides, "collective penalties and likewise all measures of intimidation or of terrorism are prohibited." Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, T.I.A.S. No. 3365, 75 U.N.T.S. 287. See also Article 50 of the Hague Land War Regulations, which provides, "No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible." Hague Land War Regulations, Annex to Hague Convention (IV) Respecting the Laws and Customs of War on Land, Oct. 18, 1907, art. 50, 36 Stat. 2277, T.S. No. 539, reprinted in 1 TREATIES OF THE UNITED STATES AND OTHER INTERNATIONAL AGREEMENTS 1776-1949, at 652 (comp. C. Bevans 1968) [hereinafter TREATIES AND INTERNATIONAL AGREEMENTS].

8. Article 9 of the Universal Declaration of Human Rights provides, "[n]o one shall be subjected to arbitrary arrest, detention or exile." HUMAN RIGHTS, *supra* note 2, at 460.

9. *Id.* arts. 10-11, at 460.

10. *Id.* art. 12, at 460.

11. *Id.* art. 17, at 461.

12. *Id.* arts. 25-26, at 462.

clude freedom of speech,<sup>13</sup> freedom of the press,<sup>14</sup> freedom of religion,<sup>15</sup> freedom to assemble and to petition the government to redress grievances,<sup>16</sup> the right to take part in government,<sup>17</sup> and the right to move freely within and to and from one's own country.<sup>18</sup>

There is also the basic human right to be free from discrimination because of race, religion, color, gender or ethnic origin.<sup>19</sup>

### III. HUMAN RIGHTS AND U.S. LAWS

Since 1970, the Congress of the United States, through new legislation, has made U.S. foreign assistance as well as U.S. investment incentives conditional on the human rights record of the country receiving such assistance. Congress enacted laws making this condition applicable also to U.S. international trade.<sup>20</sup>

13. *Id.* art. 19, at 461.

14. *Id.*

15. *Id.* art. 18, at 461.

16. *Id.* arts. 20-21, at 461.

17. *Id.* art. 21, at 461.

18. *Id.* art. 13, at 460-61.

19. *Id.* art. 2, at 460. Also, in 1965, the United Nations General Assembly defined racial discrimination so as to include discrimination on the basis of *ethnic* as well as biological grounds. The General Assembly resolved that "racial discrimination is any distinction, exclusion, restriction or preference based on race, color, descent or national or ethnic origin." General Assembly Resolution 2106 was adopted by a substantial majority. See W. MALLISON & S. MALLISON, *supra* note 1, at 7; see also Vance, *The Human Rights Imperative*, 63 FOREIGN POL'Y 3-19 (1986).

20. Section 116 of the Foreign Assistance Act prohibits the provision of U.S. bilateral economic assistance to any country the government of which "engages in a consistent pattern of gross violations of internationally recognized human rights . . . unless such assistance will directly benefit the needy people in such country." 22 U.S.C. § 2151n(a) (1982) (emphasis added).

Section 239(1) of the Foreign Assistance Act applies the provisions of § 116 "to any insurance, reinsurance, guaranty, or loan" issued by the Overseas Private Investment Corporation for projects in a country except where the project will directly benefit the needy people in such country or where the national security interest so requires." 22 U.S.C. § 2199(i) (1982).

Section 701 of the International Financial Institutions Act of 1977 instructs the U.S. executive directors of international financial institutions "to oppose any loan, any extension of financial assistance, or any technical assistance to any country" engaged in a consistent pattern of gross violations "unless such assistance is directed specifically to programs which serve the basic human needs of the citizens of such country." 22 U.S.C. § 262d(f) (1982) (emphasis added).

Section 112 of the Agricultural Trade Development and Assistance Act of 1954 states: No agreement may be entered into under this title to finance the sale of agricultural commodities to the government of any country which engages in a consistent pattern of gross violations of internationally recognized human rights . . . unless such agreement will directly benefit the needy people in such country. An agreement will

The purpose of making U.S. foreign assistance conditional on the observance of human rights is specifically stated in Section 502B(a)(1) of the Foreign Assistance Act of 1961.<sup>21</sup> Confirming the commitment of the United States to promote human rights under the United Nations Charter, Section 502B(a)(1) asserts that, "a principal goal of the foreign policy of the United States shall be to promote *the increased observance of internationally recognized human rights by all countries.*"<sup>22</sup>

These laws which link human rights and foreign assistance prohibit the executive branch from providing foreign assistance to any country, "the government of which engages in a consistent pattern of *gross violations of internationally recognized human rights.*"<sup>23</sup>

"Gross" human rights violations are defined to include: "torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges and trial, causing the disappearance of persons by the abduction and clandestine detention of those persons, and other *flagrant denial of the right to life, liberty, or the security of persons.*"<sup>24</sup>

Section 502B(b) and section 116 require the Secretary of State to submit annual reports of the human rights conditions in countries proposed as recipients of foreign assistance.<sup>25</sup> In compliance with this requirement, the State Department publishes a compilation of human rights reports, known as the "Country Reports."<sup>26</sup>

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not directly benefit the needy people in the country for purposes of the preceding sentence unless either the commodities themselves or the proceeds from their sale will be used for specific projects or programs which the President determines would directly benefit the needy people of that country. The agreement shall specify how the projects or programs will be used to benefit the needy people and shall require a report to the President on such use within 6 months after the commodities are delivered to the recipient country.

7 U.S.C. § 1712(a) (1982) (emphasis added).

For a complete compilation of the human rights legislation, see U.S. LEGISLATION RELATING HUMAN RIGHTS TO U.S. FOREIGN POLICY (R. Lillich 2d ed. 1980).

21. Foreign Assistance Act of 1961, Pub. L. No. 87-195, 75 Stat. 424 (1971), as amended by Pub. L. No. 93-559 (1974) (codified as amended at scattered sections of 22 U.S.C.).

22. 22 U.S.C. § 2304(a)(1) (1982) (emphasis added).

23. 22 U.S.C. § 2304(a)(2) (1982 & Supp. 1985) (emphasis added).

24. 22 U.S.C. § 2304(d)(1) (1982) (emphasis added). This section is based on a U.N. resolution which authorized the Economic and Social Council to investigate situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights requiring consideration by the Commission." See Res. 1503, 48 U.N. ESCOR Supp. (No. 1A), para. 5, at 8, U.N. Doc. E/4832 (1970).

25. 22 U.S.C. § 2304(b) (1982); see also U.S.C. § 2151(n)(d) (1982).

26. The reports by the Department of State on the human rights practices of individ-

Section 502B(c)<sup>27</sup> provides a procedure which allows Congress to obtain a statement from the State Department regarding the status of human rights in a particular country, the justification for providing assistance to that country and any other information applicable to human rights.<sup>28</sup>

#### IV. THE STATE DEPARTMENT REPORTS ON HUMAN RIGHTS PRACTICES IN ISRAEL AND THE OCCUPIED TERRITORIES

In its reports of February 13, 1986, and February 19, 1987, submitted to the 99th Congress and to the 100th Congress, respectively, in accordance with Section 116(d) and 502B(b) of the Foreign Assistance Act,<sup>29</sup> the Department of State from the outset reports that emergency regulations have been in effect in Israel since 1948.<sup>30</sup>

While averring that political killing, disappearances, torture, and cruel, inhuman, or degrading treatment or punishment are not sanctioned by Israeli authorities,<sup>31</sup> the reports acknowledge that

ual countries are intended to fulfill the requirements of §§ 116(d) and 502B(b) of the Foreign Assistance Act of 1961, as amended, as well as the legislative requirement of § 31 of the Bretton Woods Agreements Act. 22 U.S.C. § 286 *et seq.* (1982 & Supp. 1985).

27. 22 U.S.C. § 2304(c) (1982) (relating to the Foreign Assistance Act of 1961).

28. *Id.*

29. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1985 (Feb. 1986) (submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the U.S. Senate, in accordance with §§ 116(d) and 502B(b) of the Foreign Assistance Act of 1961, as amended) [hereinafter THE 1985 REPORT]; DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1986 (Feb. 1987) (submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the U.S. Senate, in accordance with §§ 116(d) and 502B(b) of the Foreign Assistance Act of 1961, as amended) [hereinafter THE 1986 REPORT].

30. THE 1985 REPORT, *supra* note 29, at 1257; THE 1986 REPORT, *supra* note 29, at 1175. These are the same emergency regulations which existed under the British Mandate for Palestine, and which the Jewish Agency used to condemn. See W. MALLISON & S. MALLISON, *supra* note 1, at 96-100.

31. THE 1985 REPORT, *supra* note 29, at 1258; THE 1986 REPORT, *supra* note 29, at 1176. The 1986 Report, however, adds:

In 1986 three former officials of the General Security Service (GSS, or Shin Bet) revealed that their agency had been responsible for the deaths of two Palestinian prisoners during interrogation after a bus hijacking in 1984. Several GSS officials were also implicated in efforts to cover up the circumstances of these killings in proceedings before two boards of inquiry which investigated the deaths. *President Herzog subsequently pardoned 11 GSS officials who were involved in the deaths and the purported coverup, including the Director of the Service. These pardons precluded further prosecution of these individuals.* After the Government decided against a judicial commission of inquiry, the Attorney General ordered a police investigation. The police investigators reported their findings to the Attorney Gen-

the possession and distribution of literature considered hostile to the state and issued by "illegal Palestinian organizations" are punishable offenses.<sup>32</sup> Flying the Palestinian flag or displaying its colors or displaying Palestinian Nationalist slogans are strictly forbidden.<sup>33</sup> The 1985 Report states that in June 1985, four Israeli Arabs received prison terms of three to six months for displaying Palestinian flags during a peaceful rally in September 1982, which protested the massacre of Palestinians in the Sabra and Shatilla refugee camps in Beirut.<sup>34</sup>

The reports acknowledge that the Law of Return of 1950,<sup>35</sup>

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eral, who issued a report stating that there was no evidence that the Prime Minister at the time of the killings, Yitzhak Shamir, knew of an attempted coverup *nor* that he had issued an order authorizing the killing of terrorists. Foreign Minister Peres and former Defense Minister Moshe Arens were also cleared of criminal wrongdoing.

THE 1986 REPORT, *supra* note 29, at 1176 (emphasis added).

There have been persistent reports of torture by Israeli authorities since 1967. See N. CHOMSKY, *THE FATEFUL TRIANGLE* 123-168 (1983); R. FEUERLICHT, *THE FATE OF THE JEWS* 219-88 (1983); Hodgkin, *Grim Reports of Repression in Israel - Occupied Lands*, MIDDLE EAST NEWSL. (Nos. 7-8, Nov.- Dec. 1969) (this article first appeared in *The London Times*, Oct. 28, 1969).

In September of 1986, Amnesty International called upon Israel to cooperate in a full investigation of reports that it had engaged in torture in the occupied territories. Israel, however, has refused to allow an independent investigation of its conduct in these territories. In a recent article in *Middle East International*, David McDowall wrote:

Amnesty [International] has had a longstanding interest in Israel's treatment of detainees, and this is reported almost annually in the Amnesty International Annual Report . . . . The Israeli authorities told Amnesty then that they 'conduct an ongoing review of the treatment of security detainees, and there is no need for the committee of inquiry you recommend.'

. . . .

We are no doubt supposed to dismiss as wholly without foundation the stream of reports emanating from such internationally respected bodies as Law in the Service of Man, which over the past two years alone has reported on the use of gas and other physical abuse on prisoners. . . . The [U. S. National Lawyers Guild] 'concludes substantial evidence exists that torture has been used in numerous instances against detained Palestinians' . . . . These violations are part and parcel of the wider system of oppression designed to deprive them as a people of what they still have and claim in their homeland.

McDowall, *Israeli Torture*, MIDDLE EAST INT'L 10 (No. 284, Sept. 26, 1986); see also *Amnesty International Reports on Israeli Violations*, 8 Al-Fair: Jerusalem Palestinian Weekly, No. 385, Oct. 4, 1987, at 1, col. 5.

32. THE 1985 REPORT, *supra* note 29, at 1260; THE 1986 REPORT, *supra* note 29, at 1178.

33. *Id.*

34. THE 1985 REPORT, *supra* note 29, at 1260-61.

35. Law of Return provides:

Every Jew has the right to immigrate to this country . . . . Every Jew who immigrated to this country before the commencement of this Law and every Jew born in the country, whether before or after the commencement of this Law, is in the same

which abolished all restrictions on Jewish immigration, and the Citizenship Law of 1952,<sup>36</sup> which granted every Jew the right to citizenship upon arrival in Israel, confer an advantage on Israeli Jews denied to the Israeli Arabs.<sup>37</sup> The reports state that while Is-

position as one who immigrated under this law . . . . The rights of a Jew under this Law, the rights of an immigrant under the (Citizenship) Law, 1952 and the rights of an immigrant under any other legislation are also granted to the child and grandchild of a Jew, to the spouse of a Jew and to the spouse of the child and grandchild of a Jew . . . . For the purpose of this Law, 'a Jew' means a person born to a Jewish mother or converts to Judaism and who is not a member of another religion.

4 Laws of the State of Israel 114 (1950) (as amended), *reprinted in* W. MALLISON & S. MALLISON, *supra* note 1, app. 4 at 430-31.

The right to return to one's country is a right preserved only for the citizens of that country. *See supra* note 18. Others may, from time to time, be granted, by statutory legislation, the "privilege" of immigration. The Israeli Law of Return, therefore, is a tacit bestowal of Israeli citizenship upon every Jew, no matter what may be his or her conventionally regarded citizenship.

Since the criteria for determining a Jew under Israeli Law are that one be born of a Jewish mother, or become Jewish by conversion, religion or ethnic origin, are likewise the basis for Israeli citizenship by return. The Palestinians, on the other hand, because they are not born of Jewish mothers or because they are not converted to Judaism, are denied the right of return to their native land, and thus denied the right to Israeli citizenship. This is a violation of the United Nations Charter, the Partition Plan and General Assembly Resolution 217A (III), pertaining to discrimination on the basis of religion or ethnic origin. *See supra* note 19.

36. The Law of Citizenship stipulates procedures for Jews and non-Jews to acquire Israeli citizenship. There is no Israeli nationality in Israel. In 1970, the Israeli Supreme Court affirmed the absence of an Israeli nationality in *Tamarin v. State of Israel*, C.A. 630/70 (1972). Tamarin, a human rights advocate, requested that his nationality be changed from "Jewish" to "Israeli." The Ministry of Interior refused his request. The Israeli Supreme Court supported the decision of the Ministry of Interior. *Id.* Under the Population Registry Law, identity cards are issued to all Israeli citizens. Israeli Jews are identified as having "Jewish nationality," while Israeli Arabs are identified as having "Arab nationality."

Under the Status Law, a covenant was entered into between the Government of Israel and the Zionist Executive, representing both the world Zionist Organization and the Jewish Agency. *See* 7 Laws of the State of Israel 3 (1952), *reprinted in* W. MALLISON & S. MALLISON, *supra* note 1, app 6, at 433-40. By virtue of this covenant, certain rights and privileges are made available to Israelis with "Jewish nationality," but denied to Israelis with "Arab nationality," such as the ownership or use of the land, which is held "in trust for the Jewish people." This is the very land which was expropriated from the Palestinians. *See* I. LUSTICK, *ARABS IN THE JEWISH STATE* 170-82 (1980); *see also* Tekiner, *Jewish Nationality Status as the Basis for Institutionalized Racial Discrimination in Israel*, *AM. ARAB AFF.* 79-98 (Summ. 1986).

37. THE 1985 REPORT, *supra* note 29, at 1261; THE 1986 REPORT, *supra* note 29, at 1179-80. The Palestinians' right to return to their homes and property in Israel is a fundamental right under international law. *See supra* note 18. Also, under the four Geneva Conventions of 1949, which have been ratified by the United States and Israel, this right is emphasized repeatedly. It applied to all civilian persons, prisoners of war and disabled military personnel. The Geneva Convention of 1949 on the Protection of War Victims, Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, arts. 5, 13, 63, 6 U.S.T. 3114, T.I.A.S. No. 3362, 75

raeli Jews enjoy freedom of movement, the movements of Israeli Arabs are strictly limited.<sup>38</sup> The reports discuss Israel's refusal to permit Palestinian refugees who left their homes in the 1947-48 fighting to return or to be compensated for their losses in accordance with the U.N. General Assembly Resolution 194 of December 11, 1948.<sup>39</sup> The reports state that the Israeli Arabs are proportionally underrepresented in the Knesset.<sup>40</sup> Lack of budget parity between Israeli Arab local councils and Israeli Jewish municipalities has been documented according to the reports.<sup>41</sup> The parallel education systems in Israel for Jews and Arabs, conducted in Hebrew and Arabic respectively, show disparity in quality with greater resources per student going into the Jewish system.<sup>42</sup>

The most flagrant violation of human rights is related to the use of the land, where title to 93 percent of the land is claimed by the state or by quasi public organizations "in trust" only "for the Jewish people."<sup>43</sup>

Israeli Arabs have asserted various other violations, such as the denial of equal access to housing and other services.<sup>44</sup>

According to the reports, the Palestinians in the territories which Israel has been occupying since 1967 suffer from even more

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U.N.T.S. 31, Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, Aug. 12, 1949, arts. 6, 13, 62, 6 U.S.T. 3217, T.I.A.S. No. 3363, 75 U.N.T.S. 85, Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, arts. 4, 5, 46-48, 142, 6 U.S.T. 3316, T.I.A.S. No. 3364, 75 U.N.T.S. 135, Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, arts. 4, 6, 36, 45(2), 134, 158, 6 U.S.T. 3516, T.I.A.S. No. 3365, 75 U.N.T.S. 287.

Article 49(1) of the Fourth Geneva Convention concerning the protection of civilians provides: "Individual or mass forcible transfers as well as deportations of protected persons from occupied territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive." (emphasis added).

38. THE 1985 REPORT, *supra* note 29, at 1261; THE 1986 REPORT, *supra* note 29, at 1179-80.

39. THE 1985 REPORT, *supra* note 29, at 1262; THE 1986 REPORT, *supra* note 29, at 1180. On December 11, 1948, the United Nations General Assembly adopted Resolution 194. See G.A. Res. 194(III), 3 U.N. GAOR at 21-25, U.N. Doc. A/810 (1948). Paragraph 11 of the resolution provides, "The [Palestinian] refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return." *Id.* at 24.

40. THE 1985 REPORT, *supra* note 29, at 1262; THE 1986 REPORT, *supra* note 29, at 1180.

41. THE 1985 REPORT, *supra* note 29, at 1263; THE 1986 REPORT, *supra* note 29, at 1181-82.

42. THE 1985 REPORT, *supra* note 29, at 1264.

43. *Id.*

44. *Id.* at 1265-66.



severe violations of human rights.<sup>45</sup> The U.S. view is that Israel's presence in the occupied territories is governed by the Hague Regulations of 1907, and the 1949 Fourth Geneva Convention Concerning The Protection of Civilian Populations Under Military Occupation.<sup>46</sup> The reports state that the friction between Israeli authorities and the Palestinian population has been partially caused by Israel's unilateral annexation of East Jerusalem and the Golan Heights,<sup>47</sup> and its introduction of Jewish civilian settlers into the occupied territories,<sup>48</sup> as well as its use of collective pun-

45. THE 1985 REPORT, *supra* note 29, at 1267-77; THE 1986 REPORT, *supra* note 29, at 1184-95. The 1986 Report states:

At least 7 unarmed Arabs were killed in 1986 and more than 29 were wounded in incidents involving IDF soldiers . . . Two of the seven killed were students at Bir Zeit University where IDF soldiers opened fire on demonstrators. During the same week two Palestinian boys, 14 and 12 years old, were shot and killed and . . . others were wounded by gunfire . . . . In October, a Palestinian student was shot and wounded by security forces at Bethlehem University . . . . It appears that the deaths could have been avoided by use of nonlethal crowd control measures . . . .

Individuals may be held in administrative detention without formal charges for up to 18 days . . . . This can be extended indefinitely . . . for three month periods . . . . Persons held for security reasons are not allowed bail and initially are denied access to counsel or other outside contact . . . . The use of six month administrative detention and deportation continued in 1986. The United States has indicated that these measures are inconsistent with the Fourth Geneva Convention . . . . In November, the Palestinian editor of the Jerusalem newspaper, *Asha'ab*, was ordered deported because of his alleged association with Fatah, the PLO's largest faction. Israel did not claim that he was personally involved in terrorism.

*Id.* at 1186-87.

46. THE 1985 REPORT, *supra* note 29, at 1267; THE 1986 REPORT, *supra* note 29, at 1184.

47. THE 1985 REPORT, *supra* note 29, at 1267; THE 1986 REPORT, *supra* note 29, at 1184. The 1986 Report states:

The United States holds the view that Israel is an occupying power in these territories and, therefore, that its administration is subject to the Hague Regulations of 1907 and the 1949 Fourth Geneva Convention concerning the protection of civilian populations under military occupation . . . Major differences have arisen in regard to the applicability of these provisions in East Jerusalem and the Golan Heights, to the introduction of civilian settlers, and to collective punishment.

*Id.* at 1184; Article 55 of the Hague Land War Regulations provides:

The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forest, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.

*See* Hague Land War Regulations, art. 55, *reprinted in* TREATIES AND INTERNATIONAL AGREEMENTS, *supra* note 7, at 653.

48. THE 1985 REPORT, *supra* note 29, at 1267; THE 1986 REPORT, *supra* note 29, at 1184. The 1986 Report states: "Arab complaints of settler violence continued throughout the year, including unauthorized armed patrols, physical harassment and disruption of legally authorized political meetings." *Id.* at 1185.

ishment.<sup>49</sup> It stresses that the introduction of Jewish civilian settlers into the occupied territories is one of the main causes of friction.<sup>50</sup>

Under occupation rules, military authorities can and do enter into private homes, places of worship, schools and other institutions without warrant or prior judicial approval.<sup>51</sup> The 1986 Report states that in 1985, at least 17 houses of West Bank and Gaza residents suspected of involvement in security incidents were demolished and 20 were sealed even before the suspects had been put on trial.<sup>52</sup> It is widely believed that mail and telephone services are monitored in the occupied territories.<sup>53</sup> Individuals can be and are officially questioned on their political views.<sup>54</sup> All residents over 16 must carry identity documents with them at all times and must show them to military officials whenever requested.<sup>55</sup> Vehicles owned by Arab residents of the occupied territories are frequently stopped and searched by military officials and by armed Jewish civilian settlers.<sup>56</sup>

The most offensive of Israel's violations of human rights in the

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49. THE 1985 REPORT, *supra* note 29, at 1267; THE 1986 REPORT, *supra* note 29, at 1184.

50. THE 1985 REPORT, *supra* note 29, at 1267-68; THE 1986 REPORT, *supra* note 29, at 1184. The 1986 Report states:

The complex human rights situation in the occupied territories reflects the fact that, in the absence of a peace settlement, the territories remain under military administration and there is friction between occupation authorities and the Palestinian population. Among the signs of friction are active resistance to the occupation . . . . Friction also arises from security measures taken by Israel . . . . Other causes of friction are the introduction of civilian Israeli settlers.

*Id.* at 1184.

51. THE 1985 REPORT, *supra* note 29, at 1271-72; THE 1986 REPORT, *supra* note 29, at 1188.

52. THE 1985 REPORT, *supra* note 29, at 1271; THE 1986 REPORT, *supra* note 29, at 1188. The 1986 Report states:

In 1986 at least 15 houses of West Bank and Gaza residents accused of involvement in security incidents were demolished and 21 were sealed. . . . Such action is usually taken before a suspect is tried . . . . Nine shops in and adjacent to a building housing Jewish settlers in Hebron were cordoned off by IDF after the owners refused to sell their shops.

*Id.* at 1188.

53. THE 1985 REPORT, *supra* note 29, at 1271; THE 1986 REPORT, *supra* note 29, at 1188.

54. THE 1985 REPORT, *supra* note 29, at 1271; THE 1986 REPORT, *supra* note 29, at 1188.

55. THE 1985 REPORT, *supra* note 29, at 1274; THE 1986 REPORT, *supra* note 29, at 1191.

56. THE 1985 REPORT, *supra* note 29, at 1274; THE 1986 REPORT, *supra* note 29, at 1191.

occupied territories, according to the reports, are the taking of land by Israeli authorities for settlements, military use, and in connection with major road plans, and the reclassification of communal areas as state land.<sup>57</sup> The 1985 Report states that the Palestinians have been precluded from use of an area approaching 50 percent of the West Bank land and 15 percent of the Gaza strip.<sup>58</sup> The scarcity of water in most parts of the West Bank constrains agricultural and urban development and thus adds to the hardship of the Palestinians because of the disproportionate amount of water allocated for the Jewish settlers' use.<sup>59</sup>

Other violations include the closing of newspapers for publishing or printing "politically significant material;" and the closing of universities on "security grounds." Neither "politically significant" nor "security grounds" are defined.<sup>60</sup>

In summary, the reports of the Department of State reveal the following violations of "internationally recognized" human rights by the State of Israel against its *Israeli Arab citizens*:

57. THE 1985 REPORT, *supra* note 29, at 1276; *see supra* note 47.

58. THE 1985 REPORT, *supra* note 29, at 1276.

59. *Id.* at 1277.

60. THE 1985 REPORT, *supra* note 29, at 1272; THE 1986 REPORT, *supra* note 29, at 1185, 1189-90. The 1986 Report states:

Israel has allowed the establishment of four universities in the West Bank and one in Gaza . . . but has restricted student and faculty activities which it sees as threatening security.

*Id.* at 1185.

Israeli authorities have closed universities and colleges . . . on security grounds. The Hebron Polytechnic was closed for one month in April following a demonstration protesting the Tehiya Party Convention being held in Hebron. An-Najah University was closed temporarily . . . in January because the authorities said that they were concerned that recently held student elections would lead to disturbances. The authorities also closed . . . Bethlehem University for three weeks in November on the same basis . . . These measures at times . . . went beyond what might be reasonably justified on security grounds.

*Id.* at 1190-91. The 1986 Report also states:

Israel . . . often censors articles and editorials and restricts circulation . . . One Arabic newspaper and one magazine were closed in 1986. Broad restrictions on speech and assembly apply in the occupied territories.

*Id.* at 1185.

In August, the authorities closed the weekly newspaper *Al-Mawoif* for three months after its presses were used to print pamphlets deemed threatening to security . . . In August, the High Court of Justice upheld permanent closure of two Arab Jerusalem newspapers . . . The court rejected arguments by the newspapers' attorney that freedom of expression should protect the newspapers. The U.S.- based Committee to Protect Journalists criticized the decision, as well as travel restrictions placed on several Jerusalem Arab journalists, one of whom was prevented from traveling to the U.S. to address an Amnesty International conference.

*Id.* at 1189.

(1) Israeli Jews enjoy freedom of movement. The movement of Israeli Arabs is strictly limited.

(2) The Law of Return of 1950 abolished all restrictions on Jewish immigration, and the Citizenship Law of 1952 granted every Jew the right to citizenship upon arrival in Israel. The State of Israel refuses to permit the Palestinian refugees to return to their homes and farms or to compensate them in accordance with the U.N. General Assembly Resolution 194 of December 11, 1948.

(3) Israeli Arabs are proportionally underrepresented in the Knesset.

(4) There is no budget parity between Israeli Arab and Israeli Jewish municipalities. Favor is shown to the Jewish ones.

(5) There is disparity in quality between the Israeli Jewish and the Israeli Arab educational systems. Greater resources per student go into the Jewish system.

(6) Title to 93 percent of the lands of Israel is claimed by the state or by quasi public organizations "in trust" only "for the Jewish people,"<sup>61</sup> thus denying the Israeli Arabs use of it.

(7) Equal access to education, housing and other social services is denied to the Israeli Arabs.

By any objective standard, the above violations of the Israeli Arabs' human rights are a "flagrant denial of the right to life, liberty, or the security of the person" as defined in the Foreign Assistance Act. Yet the Department of State in these very reports certifies to Congress that "Israel is a parliamentary democracy which guarantees by law and reflects in practice the civil, political, and

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61. Jews who do not live in Israel, and who may have no intention of ever living there, possess, through this "trust," potential liens on the land which was expropriated from Palestinians, or which came to the State of Israel as "public lands" at the time of partition for the benefit of Jews and Palestinians. But the land now is to benefit only Israel's Jewish citizens. Non-Jews, the Palestinians, are prohibited from owning such land, or benefitting from the state trust. In fact, they are prohibited from ever working on the land by the Charter of the Jewish National Fund. This prohibition was initiated by the General Federation of Jewish Labor in Palestine during the British Mandate. Almost all Jewish public and private institutions followed "the principle of persistent and deliberate boycott of Arab labor." A. LILIENTHAL, *THE ZIONIST CONNECTION II: WHAT PRICE PEACE?* 116-17 (1982) (quoting J. SIMPSON, *PALESTINE REPORT ON IMMIGRATION, LAND SETTLEMENT AND DEVELOPMENT*, CMND. 3686 (Oct. 1930)).

Also, Article 3 of the Constitution of the Jewish National Fund, a quasi-governmental body holding most of the agricultural land in Israel, states that the land "is to be held as the inalienable property of the Jewish people." This article also states that "it shall be deemed to be a matter of principle that Jewish labor shall be employed" and that the "employment of non-Jewish labor shall constitute adequate proof as to damages." See A. LILIENTHAL, *supra*, at 117.

religious rights of its citizens.”<sup>62</sup> This certification is unfortunate. It amounts to a further “denial” of the Israeli Arabs’ right to life, liberty and security. It is a misrepresentation to Congress, which appropriated financial assistance to the State of Israel totaling \$3.350 billion in 1985<sup>63</sup> and \$3.621 billion in 1986.<sup>64</sup>

The reports of the Department of State also enumerate the following violations of “internationally recognized human rights” by the State of Israel against the *Palestinians in the occupied territories*:

(1) The unilateral annexation of East Jerusalem in violation of the Hague Land Regulations of 1907.

(2) The introduction of Jewish civilian settlers into the occupied territories in violation of the Geneva Conventions.

(3) Cruel and inhuman treatment of the Palestinian inhabitants.

(4) Collective punishment.

(5) Killings of unarmed civilians, mostly children and students.

(6) Entering private homes, places of worship, schools and other institutions without warrant or prior judicial approval.

(7) Deportations.

(8) Demolishing homes of accused or sealing such homes before putting the accused on trial.

(9) Monitoring mail and telephone services.

(10) Closing universities and newspapers.

(11) Official questioning of individuals on their political views.

(12) Subjecting individuals to illegal searches and seizures and detaining individuals for prolonged periods without charges.

(13) The taking of land by Israeli authorities from the Palestinians.

(14) The reclassification of Palestinian communal areas as state land.

(15) The diversion of Palestinian water to Israeli Jewish settlers’ use.

It is difficult to find a plausible explanation for the State Department’s contradictory positions which are neither legally nor politically justifiable. Israel’s human rights violations, as cited in these reports, are at the root of the conflict and the violence plagu-

62. THE 1985 REPORT, *supra* note 29, at 1257; THE 1986 REPORT, *supra* note 29, at 1175.

63. THE 1985 REPORT, *supra* note 29, at 1266.

64. THE 1986 REPORT, *supra* note 29, at 1183.

ing the region. Furthermore, these violations are so flagrant that the Government of the United States should deny Israel further aid until they are remedied. U. S. aid to Israel, by law, should be predicated on Israel's observance of human rights.<sup>65</sup>

## V. NATIONAL LIBERATION AND ARMED STRUGGLE VS. TERRORISM

The legitimacy of national liberation movements has been recognized in international law. On the basis of "the principle of equal rights and self-determination of peoples,"<sup>66</sup> set forth in the United Nations Charter, national liberation has been considered a basic right of all oppressed peoples. In fact, this basic principle of international law has been specifically applied to the Palestinian people.<sup>67</sup> The General Assembly on November 22, 1974, recognized

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65. The State Department's apparent disregard of the rule of law in its certification to Congress about Israel's human rights practices, coupled with the high emotions inherent in the Palestinian-Israeli conflict, should make the issue of U.S. financial assistance to Israel ripe for judicial review. The history of litigation in U.S. courts in matters pertaining to the Palestinian-Israeli conflict is short, however. The courts would be breaking new judicial ground. By doing so, the judiciary would render a service which could extend well beyond the Palestinian-Israeli dispute. For a review of six cases involving the Palestinian-Israeli conflict, see Wingenter, *The Palestine-Israel Conflict in the U. S. Courtroom*, 18 THE LINK 1-12 (No. 3, Sept. 1985).

66. U.N. CHARTER art. 1(2). For a discussion of the right of national liberation movements to self-determination under international law, See W. MALLISON & S. MALLISON, *THE PALESTINE PROBLEM IN INTERNATIONAL LAW* 192-206 (1986).

67. G.A. Res. 2649, 25 U.N. GAOR Supp (No. 28) at 73-74; G.A. Res. 2672C, 25 U.N. GAOR Supp. (No. 28) at 36; G.A. Res. 3089D, 28 U.N. GAOR Supp. (No. 30) at 78; G.A. Res. 3236, 29 U.N. GAOR Supp. (No. 31) at 4.

Historically, the Government of the United States has always supported the principle of self-determination for the people of Palestine. It supported the principle of self-determination for Syria, which included the Palestinian people, through its support of Article 22 of the Covenant of the League of Nations. The Covenant of the League of Nations was incorporated into the Treaty of Versailles on April 28, 1919. See the Covenant of the League of Nations, reprinted in 1 CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, *THE TREATIES OF PEACE 1919-1923*, at 10-23 (1924). Article 22 of the Covenant provided:

To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the states which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there shall be applied the principle that the well-being and development of such peoples form a *sacred trust of civilization* and that securities for the performance of this trust should be embodied in this covenant.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be *entrusted* to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that *this tutelage* should be exercised by them as mandatory on behalf of the League . . . *The wishes of these*

that the Palestinian people are "entitled to self-determination in accordance with the Charter of the United Nations."<sup>68</sup> In another resolution, the General Assembly stated that it "reaffirms the inalienable rights of the Palestinian people in Palestine, including: (a) The right to *self-determination* without external interference; (b) The right to *national independence* and sovereignty. [It] also reaffirm's the legitimacy of the people's struggle for liberation from . . . alien subjugation by all means *including armed struggle*."<sup>69</sup>

The concept of individual or group terrorism, however, does not seem to be specifically defined under these principles, although reference is made to it.<sup>70</sup>

## VI. PALESTINIAN VIOLENCE

In 1965, a small group of Palestinian commandos crossed the cease-fire line separating Lebanon from Israel for the first time and conducted their first military operation inside Israel.<sup>71</sup> Their leader was a Palestinian civil engineer named Yasser Arafat.<sup>72</sup>

Nine years later, in addressing a plenary meeting of the United Nations General Assembly on November 13, 1974, Arafat stated:

[S]o let us work together that my dream may be fulfilled, that I may return with my people out of exile, there in Palestine to live . . . in one democratic State where Christian, Jew and Moslem live in justice, equality, fraternity and progress. . . . I announce here that we do not wish one drop of either Arab or Jewish blood to be shed;

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*communities must be a principal consideration in the selection of the mandatory.*  
*Id.* (emphasis added).

Also, by supporting the Palestine Partition Resolution, concerning the future government of the Palestinian Arab State, the Government of the United States recognized the right of the people of Palestine for self-determination. G.A. Res. 181, 2 U.N. GAOR at 131-32, U.N. Doc. A/310 (1947). For a thorough analysis of the fundamental rights of the Palestinian people under international law, see W. MALLISON & S. MALLISON, *supra* note 66, at 174-206.

68. See also G.A. Res. 2672C, *supra* note 67. This provides that "the people of Palestine are entitled to equal rights and self-determination, in accordance with the Charter of the United Nations."

69. G.A. Res. 3070, 28 U.N. GAOR Supp. (No. 30) Operative para. 2 (emphasis added).

70. Terrorism has been defined as the commission of illegal acts of violence against individuals or groups not parties to a national struggle. Terrorist acts include assassination, torture, blackmail, the taking of hostages and the destruction of property. See U.N. SECRETARIAT, *ORIGINS AND FUNDAMENTAL CAUSES OF INTERNATIONAL TERRORISM*, reprinted in *INTERNATIONAL TERRORISM AND POLITICAL CRIMES* 5-10, (M. Bassiouni ed. 1975). For a reference to state terrorism, see *supra* note 7.

71. See A. LILIENTHAL, *supra* note 61, at 198-99.

72. See A. HART, *ARAFAT: TERRORIST OR PEACEMAKER?* (1984).

neither do we delight in the continuation of killing, which would end once a just peace, based on our people's rights, hopes and aspirations had been finally established."<sup>73</sup>

Neither Israel nor the United States heeded Arafat's appeal. The violence continued, escalating at times into acts of international terror.<sup>74</sup>

## VII. CONCLUSION

There are national and international laws pertaining to human rights which have existed for decades. The Government of Israel has violated these laws in the treatment of its own Israeli Arab citizens, and in the treatment of the Palestinians in the occupied territories. The United States Department of State has repeatedly acknowledged these violations in its annual reports to Congress, but has continued to certify to Congress that Israel guarantees by law and reflects in practice the civil, political, and religious rights of its citizens. This certification is at the core of the conflict. Disregarding its own national laws, as well as its commitments under international law, the Government of the United States has continued to ignore Israel's human rights violations and has in fact aided and abetted Israel by giving it substantial annual military and economic grants, thus rendering itself an accomplice to these acts.

The Palestinians have been frustrated and disillusioned by these flagrant violations of their human rights. They have resorted to armed struggle as sanctioned by international law. The passion of this struggle has, further, produced acts of international terrorism which can in no way be sanctioned.

International law will be supreme when governments allow it to be. When the Government of Israel, pressed by the Government of the United States, in compliance with U.S. and international law, ceases to violate the human rights of the Palestinians, violence and counter violence may abate.

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73. THE ARAB READER: A DOCUMENTARY HISTORY OF THE MIDDLE EAST CONFLICT 516-17 (W. Lacey & B. Rubin eds. 1984).

74. See Christison, *Myths About Palestinians*, 66 FOREIGN POL'Y 118 (Spr. 1987); see also E. HERMAN, *THE REAL TERROR NETWORK* (1982); N. CHOMSKY, *TOWARDS A NEW COLD WAR* chs. 1-2 (1982); Simon, *Misunderstanding Terrorism*, 67 FOREIGN POL'Y 120 (Summ. 1987); A. LILIENTHAL, *supra* note 61, at 357-99. For a discussion of the application of a double standard on terrorism, see N. CHOMSKY & E. HERMAN, *1 POLITICAL ECONOMY OF HUMAN RIGHTS* (1979); N. CHOMSKY, *PIRATES AND EMPERORS: INTERNATIONAL TERRORISM IN THE REAL WORLD* 37-38, 106 n.25 (1986).