

MERGING THE HUMAN RIGHTS DIMENSION INTO PEACE-MAKING: IS IT “GOOD FOR THE JEWS”?

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I. Introduction

Connecting between the paradigms of human rights and conflict resolution has been a growing global concern among civil society organizations, and academics, but it had no major consequence within the Israeli/Palestinian environment. The search for a better understanding of this issue is timely given the collapse of the Israeli/Palestinian Oslo peace process¹. While the situation since has continued to deteriorate, the fragile hopes evolving from President Obama’s administration can become another passing highlight if not taking into account the importance of ensuring human security on both sides. With the nature of conflict worldwide changing from predominantly international to intra-national, the question of rights for the members of communities involved in various struggles arises at a more significant level. The effects of both globalization and fragmentation in the post-Cold War era have highlighted the emergence of violent confrontations that are identity-and primarily religious driven where the polarized East-West ideological postures once prevailed. The fact that the victims of these “civil wars,” these acts of terrorist movements and state repression, are increasingly civilians themselves, makes it quite clear that a necessary resolution is required in addressing acute forms of suffering that are not covered by the rules governing uniformed combatants. Without codes of conduct, a most negative slippery slope descends from extra-judicial executions to massacres and genocide, and the heavy price in human lives adds fuel to the fire of the original, tangible roots of conflict

In this article, the main purpose is to elicit fresh second thoughts to the subscribers of the realpolitik school among the Israelis and its supporters worldwide. Hence, points of argumentation and counter-points are advanced with the explicit purpose of being plausible and realistic in the perception of the “top-dog” side of the conflict. This time, rather than using heavy, academic jargon and denser theoretical assumptions, our² priority is to speak loud and clear about a dimension that is most likely perceived negatively by the Israeli establishment³. We will give it a try, enlisting first the main arguments in favor- gradually moving from the realist to the liberal outlooks, recognizing that while stressing its analytical aspect, the normative aspects are hard to be totally disaggregated in a context where “ideapolitik” is increasingly showing the sense of progress of the international community ;⁴ then acknowledging the existence of counter-arguments and making fair effort to address them; In our concluding remarks, we express our wish that the antagonistic reader minimally acknowledges the validity of the argumentation for using human rights as an initial yardstick in the search for common ground

II. Argumentation

Argument 1. UNDERSTANDING THE LIMITS OF POWER

In the changing international system, the supremacy of military power does not ensure a peace "diktat", when the issue is not a regime change but a deep-rooted conflict of entire nations versus states. On the one hand, the leadership replacement with Arafat's death did not result in a renunciation of national goals, but to the contrary, the surprising electoral victory of Hamas has only increased the will to resist unilateral moves by Israel. On the other hand, although Israeli military tactics have evolved with the ever-growing challenges of defeating modern terrorism, it has become evident that force alone cannot ultimately guarantee personal security for the Israelis. The most advanced weaponry, ingenious strategy, and superior training will not empower Israel to prevent every terrorist attack. An enemy that wears no uniform, hides among civilian populations, and preys on the fears of the innocent cannot be totally eradicated by conventional means. This adversary can still inflict massive physical, and more importantly, psychological damage on the intended target, thereby achieving the terrorists' goals of disrupting society and sowing fear. A superior military might cannot ensure the absence of violence—Allegorically, Israel is "the lion [of Judea] king of the [Middle East] jungle," cannot crush the stream of bees coming from countless hives, ready to die while inflicting severe pain. Although the bees may not knock out the lion, the persistent attacks may cause him to change directions. This line of thinking helped Hamas, after approximately fifty suicide bombings, to be perceived as victorious in the battle for Gaza's pullout and subsequently win the elections. Even if such acts cannot threaten Israel's national security, the erosion of the stamina to keep the territories at all costs has dramatically diminished among its citizens, specially after the badly run Second Lebanon War. Furthermore, we should take into consideration that the correlation of forces can change over time and the currently fractionalized enemy forces in the Arab world could one day unite. And last but not least, within the internal front, domestic ethnic, social and political strife, including the reluctance of a significant minority to continue to fight in "wars of choice" rather than survival, can reduce the current superiority of the top-dog. Hence, while the military advantage should not be relinquished, a more balanced approach must be undertaken. The short term gains of the restrictions imposed on Palestinian society must be weighed against the long-term effects they will have on future Israeli and Palestinian generations. Seemingly minor when examined individually, restrictions such as the freedom of movement coalesce, creating an unbearable situation for the Palestinian people residing in the West Bank.

Argument 2. DIFFERENCES BETWEEN INTER AND INTRA-STATE CONFLICT

We consider it is best to disaggregate the larger Israeli/Arab conflict and consider its Zionist/Palestinian component within the global context, and as a result, search for remedies based on universal standards. As such, the latter shares many attributes with other ethno-political conflicts, including those in Sri Lanka, Northern Ireland, the former Yugoslavia, Cyprus, and Ngorno/Karabakh. Granted that there is a salient regional dimension, with the Palestinians part of the Arab world that has united in the early stages against Israel's existence as a state and now pressing for withdrawals to the pre-1967 War borders. Nonetheless, the Palestinian accumulation of past and current grievances of non-territorial nature, bring them closer to the other war-torn states. The individual and collective rights of nearly two million Palestinians are central to settling the future of the

West Bank, as it also was in Gaza before the pullout. In the past, the “Israeli/Arab” confrontation was also called the “Middle East” conflict, without regard for the many other violent disputes in the region. Israel now has peace agreements with Egypt and Jordan, the first, the strongest Arab nation and second with the longest borders with Israel. It withdrew from Southern Lebanon and there has not been any important international pressure on Israel for an agreement with Syria. In retrospect, if it was difficult for Israel to negotiate on more than one front, the Assad dynasty should not have been the next in line to be engaged in negotiations. Even if more than one Israeli government opted to engage in this track first, it was for tactical reasons- isolating the Palestinian claims. However, concern for human suffering rather than intervening on disputes over sparsely populated borders has increasingly become a priority for the international community. This is evidenced by its greater concern about the Palestinians’ destiny than with the Syrians. In the Golan Heights, we have a boundary dispute where the territorial dimension prevails over the human element—a few thousand people, only Jewish settlers and Druze, which were given perhaps an unwanted, but nevertheless, equal Israeli citizenship. Kuneitra, the main urban center of the Golan was rendered back to Syria, following the 1975 Kissinger brokered disengagement agreement.⁵

Making peace with the Palestinians is now a precursor to a negotiated lasting peace with the rest of the Arab world. With the balance of power strongly in Israel’s favor, there is a golden opportunity to resolve matters with the Palestinians. There was an expectation that a hawkish and determined government, like that of Prime Minister Sharon, can lead the people to grant human rights concessions and be able to face the settlers’ illegal and extra-parliamentary actions, fueling the political opposition of the annexationists’ forces. But dream has also evaporated with Olmert, his weak successor and now with Likud’s PM Benjamin Netanyahu.

Argument 3. THE QUEST FOR EQUAL CITIZENSHIP

From an individual rights perspective, principles would have been respected if Israel’s Knesset could have also annexed "Judea and Samaria" (as she did with the Golan Heights and East Jerusalem), giving the West Bank Palestinians equal rights, and then the Jewish settlers could remain in the Occupied Territories, now becoming part of Israel. What is not admissible, is to maintain a long-lasting, dual legal system for Arabs and Jews in the Occupied Territories. As in Gaza, the moment of truth for the Israeli Jews is to understand that annexing “Judea and Samaria” can be done only at the “cost” of providing them full citizenship, or by a reprehensible “ethnic cleansing.” This last option, although the platform of an extreme party and perhaps quite popular among not a few in Israel, is rejected by most on grounds of morality and expedience. On the other hand, the denial of the right to vote and to be elected to one’s own sovereign government cannot be maintained for over two generations. In this longest contemporary military occupation, a reminder of the principle “no taxation without representation” is needed. While in many protracted communal conflicts, the parties expect to coexist under the same government upon achieving peace (as in South Africa and Northern Ireland), the consensual arrangement anticipated for the Israeli/Palestinian conflict is a two-state solution in which full

citizenship can be secured to all in each separate unit. The ideal of resolving the conflict through establishing a joint and harmonious Jewish/Arab dual-state has been put aside by most as unrealistic and not respecting the strong self-determination preferences of both nations. While the relevance of human rights principles may be greater for integrated solutions than for the cases of separation, in our reality, people's lives remain interwoven. Let alone that more than twenty percent of the Israeli population is made of its original Arab inhabitants and bearing in mind that some religious settlers could opt not to be evacuated from the Jewish Holy places in the Palestinian territory. Hence, even if in the future issues of individual rights are considered the domain of each sovereign state, it will be important to redress the violations of the past, protect rights during the lengthy peace process, and address the likelihood that the population of each state may include a substantial number of the other's nation.. The ideas of "pushing the Jews into the sea" or forced "transfer of Palestinians to Jordan" are simple extremist fantasies; as a Palestinian colleague reminds us, the two peoples are "doomed to coexist."⁶ It would be prudent, from the Israeli perspective, to make the initial steps in this process by placing a greater emphasis now on matters of human rights. It is impossible to predict exactly how long it will take for that vision to be realized. However, the sooner Israel begins the transition from occupier to neighbor, the better.

Argument 4. PRAGMATISM AND THE RESPECT OF HUMANE PRINCIPLES:

Clearly, protection of its citizens is Israel's number one concern, which is why the reduction of Palestinian hatred of Israel, at the grassroots level, must be made a top national security priority. For far too long, the policy of the powerful was aimed at "teaching a lesson" of submission, particularly when the weak side advocated and used extreme violence. As illustrated by a Jewish Jerusalemite taxi driver's: "we will beat them and beat them till they stop hating us." Paradoxically, the mirror image arose within Palestinian organizations at the outbreak of militarized Intifada al-Aqsa.⁷ The tendency in asymmetrical conflicts to show "who is the boss" is very tempting. By now, it is evident that by punishment alone, behavior modification is not going to happen. The main attacks now come from individual volunteers, mobilized by fanatic organizations such as Jihad Al Islam, often brainwashed by irresponsible clerics, but also motivated by overcoming misery and humiliation with the spirit of vengeance and martyrdom. Although a great deal of disdain toward Israel has been spawned by incitement on the Palestinian Authority (PA), controlled media and in Palestinian schools, it is undeniable that many of Israel's security tactics perpetuate and increase the enmity which is already so strong. The respect for the "human dignity" of the individual is of universal relevance, but in our Middle East, humiliation and dishonorable treatment carry an additionally strong, cultural weight that needs to be factored in. The impossibility to reign long-term over millions of Palestinians – with negative repercussions on the Arabs in Israel, has been widely recognized. Still the facts on the terrain, the innumerable road-blocks, the sleepless lines of Palestinians waiting mostly in vain to gain access to the Ministry of Interior's offices in East Jerusalem, all these inhuman treatments have a most negative and perhaps lasting impact on practically every single Palestinian.

By re-evaluating and removing security procedures within the West Bank set to provide protection to Jewish settlements, not only would life be improved for Palestinians, but it would lead to greater security for Israel, as people would become less willing to sacrifice themselves in order to harm Israel. A simple cost-benefit analysis of the procedures carried out by the military now performing policing duties in the territories will help determine what is doing more harm than good to their traditional morality as a defense force.

Granting human rights as entitlements could help humanize Israelis in the eyes of the Palestinians, as for an illustrious moment was the live broadcasting in the Arab satellite TV of the sensitive and patient eviction of Jewish settlers from Gaza. Little human contact between the two peoples has led to a complete de-humanization in the eyes of the other. Younger Israelis see Palestinians as terrorists, while their Palestinian peers view Israelis as aggressive settlers and soldiers.

Argument 5. INTERNATIONAL STANDARDS AS AN IMPERATIVE

Paradoxically, democratic governments often face domestic constituencies that perceive the implementation of specific international resolutions as a source of weakness, concessions granted solely due to pressure from biased global organizations and world powers. Such are the cases on the Supreme Court decision to stop the use of “moderate physical pressure” in interrogations as amounting to torture, or the removal of the security barrier/wall from the West Bank. Such public reluctance can be better diffused instead by a priori framing the task as an implementation of accepted universal principles, rather than facing specific criticism. When a country faces crucial decisions, defining commitments as consummate stresses their acceptance as the “cost of democracy.” What PM Sharon has called "painful concession" is vague and opens up to a Middle East bazaar-type of bargaining without clear standards. The Israeli citizens can perhaps better understand that the cost of being a member of the family of nations requires the acceptance of principles that will translate into required concessions which do not emanate from the weakness or strength of leadership, but rather from contractual obligations.

Being accepted and fully integrated into the international community has been an important and long-term aim of Zionist and then Israeli foreign policy long before independence. The fact that Israel faces undeserving, negative bias, and sometimes even blatant discrimination at the United Nations⁸ and other international forums, does not make it automatically immune to all international covenants. Whereas the majority of U.N. General Assembly condemnations against Israel take the form of biased resolutions drafted by one authoritarian regime and/or Muslim state, many of the international covenants governing human rights were drafted in order to prevent situations similar to those faced by Jews before the State of Israel existed. The persecution and oppression of Jewish minorities worldwide and the Holocaust, would probably not have taken the same dimensions had these covenants been abided by in those times. International opinion of Israel was actually quite positive for the first two decades following Independence. Since 1967, however, Israel's international standing has been in decline. This decline may be inversely linked to the West's growing dependence on Arab oil, or to the resurgence of global anti-Semitism.

But not less relevant, shift in opinion also undoubtedly reflects the fact that Israel's role as the defenseless underdog has been replaced with that of an aggressive and trigger-happy occupier. Lately, Israel is constantly considered as one of the grossest violators and that may show a double standard attitude in the Arab/Muslim dominated majority in the UN. And yet, there are severe human rights violations that can objectively contribute to such a negative global perception.

Argument 6. ENLIGHTENED SELF-INTEREST AND THE PROPAGANDA OF THE DEEDS

By advocating and trying to adhere to human rights principles, such standards can also be invoked for the sake of the citizens of the stronger party. They often enjoy more daily rights than the oppressed minority, but their right to life is daily challenged by acts of indiscriminate terror throughout the land. Each side should be held accountable to such standards. On collective rights' ground given that Israeli Jews demand from Arabs to be recognized and accepted, why not recognize its right to exist rather than merely accept de facto presence in the region? Nowadays, the Arab world through initiatives such as the Saudi plan and even realists in Hamas, are willing to recognize Israel as a reality that cannot be erased. Pragmatically speaking, it may be good enough. But it also means that the realization of Israel's existence is solely based on its present strength, and it does call for a long-term military superiority. It will be in the Jewish state's best interest to ask for not merely its recognition but to strive to its neighbor's acceptance of Israel's "right to exist". Recognition of the right of the "Other," the Palestinian nation leads to a quest for reciprocity and a more sustained peace.

Furthermore, it may be worth assessing if by showing goodwill now, at the apex of its might, Israel can establish a better starting position for future territorial negotiations. It can be tested that if Palestinians are granted more rights now, it will improve the chances of them becoming more flexible towards territorial requests when the time for final status negotiations finally arrives.

By stressing the respect of the right to life (art. 3 UDHR), which is obviously the most fundamental one, Israel can benefit just as much at its adversary. By refraining from extra-judicial-executions (institutionalized as 'targeted elimination' in Hebrew) of suspected Palestinians, and the major suffering caused to bystanders—the so-called cost of co-lateral damage, we can denounce suicide or homicide bombings as the worst of the human rights violations since they are specifically targeted against innocent civilians. The human rights organizations around the world, the UN, and other international actors should be challenged to take an active stand against such crime, only when our hands are clean from deliberate killings without any legal procedure. As a reminder, when Israeli authorities wanted to make a case in point- rather than targeted assassinations- arrests and subsequent legal action has been undertaken against Palestinians accused of planning suicide bombings, such as the now imprisoned Fateh's younger generation leader Marwan Barghouti.

In addition, the constant state of conflict has had a negative impact on Israeli society. The environment of fear resulting from indiscriminate acts of terror has led to high instances of Post Traumatic Stress Disorder among Israeli youth.⁹ Even more disturbing, however, is that Israeli schoolchildren are among the most violent in the world, a phenomenon believed to be the result of force being an accepted societal means of dispute resolution.¹⁰ An astonishing 43 percent of Israeli children have admitted to bullying others, while one in four Israeli boys admitted to carrying a knife to school for protection.¹¹ It was to be expected that Israel's use of overwhelming force to deal with the Palestinians would have a trickle-down effect on society. A culture of violence developed in Israel, in turn, results in a dramatic outcome on the most impressionable demographics of the community: the children. Israeli children grow up learning that physical force is an acceptable and even successful means of response to a dispute

The legitimate use of force should not be abandoned altogether; however, it must be utilized only as a last resort. As Israel's Supreme Court made it clear in an historic ruling in relation to the security barrier/fence/wall now being built, specific threats to Israeli security must be taken into account, but balance in regards to its impact on Palestinian society as a whole must be minimized whenever possible.¹² The rights of the other party cannot be sacrificed simply to secure our own—a message that must be embedded in the minds of Israeli youth.

Argument 7. GETTING LESS CARROTS AND MORE STICKS

The image of Israel as “David versus Goliath” is fading away. World sympathy with Jewish suffering was an important element for the recognition of the new Israel after the Holocaust, but does not shape the collective memory of the younger generation worldwide. Nowadays, active support emanates predominantly from the dwindling, but well organized, minority Jewish Diaspora and fundamentalist Christian lobbies. Conformism with such narrow-based support can be relevant in US elections but may be opportunistic and shortsighted, particularly at the global level. The risk of becoming a pariah state in the eyes of many, and a liability in the hands of top policy-makers needs to be addressed. On the one hand, systematic patterns of gross human rights violations (as already showing not only in the Annual Report of Amnesty International but also in the sections of the State Department's country-by-country report) could eventually result in growing de-investment, restrictions in preferential trade and scientific agreements, and even in the reduction of the vast amounts of foreign aid, and they are already showing in some countries as selective boycotts. The universal jurisdiction of crimes against humanity is not only accepted by a small number of judges in a few countries, but it is slowly becoming part and parcel of the International Criminal Court. Legal action initiated in a number of European countries, has generated apprehension among leaders and the rank-and-file in military and security services. In the long run, individualized sanctions may act as a deterrent for Israelis to be part of repressive policies and cause them to fragment even further, the already delicate domestic balance and morale.

Argument 8. REDUCING THE PARTIES' ASSYMETRY

In the remote past, the victor's imposed solution was hardly under international scrutiny, and impunity allowed the top dog to administer the outcome at its convenience. Later, however, the principles of justice have raised the expectations of the weaker side to attain them, increasing the willingness to fight and sacrifice for them. Illustrating from "macro to micro," similar to our own, also in the family of nations, the stronger party is bestowed with the responsibility of restrain the weaker side, even at the price of concessions. The "big brother" paradox is that he cannot use his extra strength to placate the younger, and he often has to find ways to reduce the asymmetry to induce the other to calm down and relax. By narrowing the gap through confidence building, measures of the dominant actor can engage in a process where the weak feel empowered to negotiate acceptance of other claims.

With overwhelming military and economic superiority over the Palestinians, Israel basically sets the "rules of the game" in any negotiations or dealings with the other side. However, when negotiating with those that have known nothing but powerlessness for nearly forty years, empowerment is the name of the game. The Palestinians have little incentive to abide by agreements that are reached through imposition, and such settlements often perpetuate the desire to fight to attain something more acceptable. By showing more willingness to concede, especially on issues that affect Palestinians on a daily basis, it can be proven to the Palestinians that diplomatic dialogue is indeed far more profitable than violent uprising. In effect, a concerted effort to demonstrate sincerity in negotiations can likely yield a more positive result for Israel than a hard-nosed, stubborn approach. For a durable peace, there is nothing safer than making sure that the agreements meet the minimal needs and expectations of both parties. It has been known that only about half of the peace agreements are fully or partially implemented after five years and therefore need to put ourselves in the shoes of the "Other" as well. We Israelis and Palestinians should know that from our own experience with the Oslo agreements; but we can see with pride how Israel's peace treaties with Egypt and Jordan have lasted without any victims, even through the difficult regional ups and downs.

Argument 9. THE HUMAN RIGHTS LANGUAGE AND ITS IMPACT

Words are not less important than acts in improving relationships. A case can be made through effective communication in the transmission of messages as long as one is paying attention to semantics, and believes in the acceptance of shared universal principles, including the acknowledgment of the rights of the "Other." Even at the levels of protocol and declaratory statement, this message can set up an atmosphere or mutual respect which is more conducive to successful negotiations. Take the first line of the UDHR preamble: The inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. Just repeat it at all times, and the atmosphere may change. Sadly enough, in spite of the lobbying of Human Rights Watch in 1991 in Madrid at the inaugural meeting of the Middle East Regional Peace Conference, we found no "rights basket," or mechanisms or working group in the early stages of designing the bilateral and multilateral tracks that followed it. It seems that the "New World Order" excluded Middle Eastern leadership from compliance with the

yardstick that measures all other regions of the world. The more eclectic Israeli/Palestinian 1993 Oslo Agreement implicitly covers some UDHR principles, such as conducting elections (art. 21) in the Occupied Territories, but the pragmatic outlook of the agreement even kept this clause from being framed within a broader context of human rights. The Oslo II Cairo Agreement of September 1995 has a short reference to human rights, but the Wye Agreement of 1998 has no reference to the human rights obligations of Israel and only a vague mention in relation to the Palestinian Authority. The current Israeli/Palestinian “Roadmap to Peace” suggested by the “quartet” led by the US has no mention of human rights at all. At the leadership level, no such reference to “human rights” or “rights” was found in 45 speeches of PM Ariel Sharon since he took office as late as May 2003—except one speech in Aqaba in 2003 in a joint gathering with the then PM Mahmoud Abbas. On the other side, Chairman Yassir Arafat repeatedly mentioned the term “rights,” but he was exclusively referring to the Palestinian people.¹³

A language of dignity and respect carries a lot of weight for persecuted people, often reluctant to confront the price to pay. For the losing side, rejection, negatives and boycotts—and even suicide bombings—are often perceived as the only remaining source of strength. The usage of a language of “entitlements” by the strong is expedient, since it may elicit a more constructive attitude from the underdog. Rather than conceding to “give up” territories in “Judea and Samaria,” let the Israeli authorities’ stress that Palestinians have an inherent right to a state in part of historic Israel or Palestine. Granted that an inclusion of a human rights provision may not guarantee its execution, but without its explicit reference, there would be little chance for implementation at all.

The Dayton Agreement on Bosnia and the Good Friday Accord on Northern Ireland, in contrast, have human rights clauses interspersed throughout the text, and the European Convention on Human Rights is incorporated into a new agreement to set the standards for domestic law. We strongly feel that a similar commitment would have contributed not only semantically but also psychologically in promoting good will on the part of the Palestinians and awareness about the importance of acting according to set international parameters on the part of the Israelis. Due to the deep-rooted nature of protracted communal conflicts, it is not sufficient to ensure the cooperation of leaders in the peace-making process; peace-building is also required among the sectors of civil society that will eventually be expected to legitimize and support the historic compromise.

Furthermore, it is also expedient to demand for text books, which embrace the basic principles of universality and equality between all people and nations, including Arab and Jews as a normative framework. From an educational point of view, planting the seeds of tolerance towards the “Other” is a long-term investment towards a lasting peace

Argument 10. NEGATIVE DOMESTIC REPERCUSSIONS

The still undefined borders and the presence of an Arab minority in Israel have blurred the distinction between their citizenship rights and their brethren in the Occupied Territories. The lack of respect for human rights in the Occupied Territories has had a negative impact

on democratic values within Israel, and particularly towards its Arab citizens, as shown in the excessive use of violence in the killing of Israelis/Palestinians while curbing the October 2000 riots. Human rights violations against Palestinians, across the Green Line, is a slippery slope back home, firstly by discriminating our “own” Arabs who identify themselves as Palestinians with Israeli citizenship. Not many Jews differentiate between their shared identities across the Green Line divide, as they see Jewish settlers in the Territories not less citizens of Israel. Nonetheless, this slope continues further down, now considering Jews who support equal rights for the Arabs to be even worse than them, traitors to their own ancestry, B’tselem, the Israeli Information Center on Human Rights in the Occupied Territories, are not viewed by hate mail senders as a watchdog but as an “Arab lover.”¹⁴ And why not? The proudly independent Israeli press which reports human rights violations is perceived by most Israelis as publishers of self-hatred left-wing journalism; the slippery slope then continues, and fanatic settlers consider the judges who reject double standards, to be anti-Jewish in their biased; and from there, to the law enforcement agents to be :”Nazi “ agents.

Argument 11. THE JEWISH AUTOCTONOUS ROOTS

Human rights are not only an inherent tenet of the Declaration of Independence in because of its democratic nature, but also because of its adherence to the vision of a “Jewish state”, inspired by the justice of its prophets. The notion of human rights takes root in the Talmud, and it even goes as far back as the Ten Commandments.¹⁵ The Jewish covenant with God dictates that the people of Israel are to be a light to all nations, an example to the rest of the world of living the correct way of life. Human rights are not a foreign imposition, nor a punishment by the international community. The values are rooted from the Jewish religion and books, which reveal the message of the prophets during early experience with statehood more than two thousand years ago, and surely as a persecuted minority in exile. The struggle against discrimination in the Dreyfus case in France not only led Theodore Herzl to the establishment of the World Zionist Organization, but also Emile Zola’s appeal of “J’accuse” and the formation of the first International League for the Rights of Men in the nineteenth-century. The late Rene Cassin—a Nobel Peace Laureate, a proud Jew and president of the Alliance Israelite Universelle, when preparing the draft text of the UDHR, recognized the background to reflect the Ten Commandments.¹⁶ The State of Israel was formed so that the Jews would have a refuge where they could escape from constant discrimination and the denial of rights and dignity. Jews cannot claim this moral right while simultaneously denying it to others. The Old Testament states: “Justice, justice you shall pursue.”¹⁷ Scholarly consensus argues that the word justice appears twice in order to signify that a just cause must only be pursued by just means. The security of the Jewish state and the safety of its people are undoubtedly just causes. However, as Jewish people defending a Jewish state, the tactics Israel uses in pursuit of these causes must also be dictated and kept in accordance with the principle of justice which is so embedded in the Jewish faith.

Whereas establishments often see human rights as the adversary’s weapon, it is not less important to understand that by endorsing them and claiming some contribution to its

shaping, we are also recognized as contributors to the better standards of human behavior. Although we cannot have it both ways, if Jews claim some copyright, they have also to accept that the widespread acceptance of such honorable principles also results in justified demands on Israel.

Rather than overstating our adherence to human rights standards in conflict, it may be best to stop here and debate the arguments that are often brought to dismiss such principles. Let us only mention other positive points that may require further coverage: issues such as the relevance of the respect of human rights for the prevalence of democracy, and if pursued on both sides, the democratic peace concept anticipates that Palestinians and Israelis will not fight each other; the corrosive effect of not respecting the rights of the Palestinians within Israel proper, not only on its Arab population but ignoring the entitlements of the weaker sectors of the Israeli society; the corruptive practices of occupation tending to arbitrary rule and its effect on the transparency of Israeli elites,; and more.

III. Counter-Arguments

Counter-argument 1. AN INSURMOUNTABLE CONFLICT OF RIGHTS

We need to acknowledge that a situation of contending rights of the parties in conflict makes it very difficult to make wise judgments about the prevalence of one claim or the other's, especially when related to two nations that have been subjugated throughout most of their history. Clearly, absolutist unilateral claims to territory for one nation deny the full rights of the other group and if both have similar but contending rights, compromises must be reached. Let us take the Law or the Right of Return to the land of their ancestors respectively for Israelis and Palestinians as a matter of principle. One can argue for ever about who has more rights to be in Israel/Palestine—Jews who were expelled from the Holy Land twenty centuries ago or Arabs who were expelled from Palestine more than five decades ago— but since human rights codes do not specify a time limit for such right, we concur that both nations have a legitimate presence here. The issue at stake is determining how to satisfy the greatest number of core needs for the individuals of both communities and at with the least negative results for the majority. In our cases, both nations aspire for a separate self-determination in two states, and this collective right should prevail. But let's remind ourselves that not all claims are necessarily a zero-sum game, that if good for me it must be bad for the 'Other'. Sometimes immediate gratification may not be in the long term more useful than granting rights to the present opponent; and at a later peaceful stage both sides enjoying the expanded pie, notably the international community providing with generous funds that can attend much of the needs. Furthermore, not all needs are material and tangible, and sometimes we can generate more resources by cooperating with rather than confronting one another.

Counter-argument 2. HUMAN RIGHTS AS MAXIMALIST PROPOSITIONS

“Realpolitik” advocates have argued that demanding human rights clauses may delay the formulation of an accord when the window of opportunity to conclude it is relatively short. Furthermore, a point could be made that there have been not few instances in which clauses of agreements in asymmetrical situations seem to violate universal standards explicitly or implicitly. At times of emergency the survival of the peace process dictates harsh policies toward its opponents, and may include deportation or imprisonment without due process. The danger, however, is that long-term institutionalization of such human rights violations will weaken “law and order” within and across the contending nations, making reconciliation much more difficult at a later stage. If it is considered worthwhile to stick to the “cost of democracy,” deviations have failed to conclude a deal and may in fact hinder arriving at a long-term stable solution. Relating to human rights as a paradigm does not necessarily mean that all measures must be congruent with such principles. It is mostly a reminder of an expectation that higher standards should be achieved insofar as this is feasible. In many countries in the West, it became clear after September 11, 2001, that security considerations may clash with individual freedoms. And yet, the prevalence of the universal laws is respected as the overall binding principles, departures from which are heatedly debated. Furthermore, as a democratic nation that remembers its own peoples’ victimhood, Israel is expected to cling closely to human rights values, and it is expedient to prevent the deterioration of such image. Without minimizing the impact of violent acts, as time goes on, not only will Israel’s counter-terror strategy become more perfected, but its strong democratic process should eventually bring an end to those practices that curtail the boundaries of human rights. One recent Supreme Court ruling brought the end of the demolition of the houses of suicide bombers, because it served as collective punishment¹⁸, a measure that the security services temporarily seconded given that it did not fulfill its deterring purpose. It was not only the evolution of Israeli military tactics, but the action by its democratic institutions that often brought to some mitigation in the difficult human rights conditions for the Palestinians.

Many who work in the field argue that respect for human dignity is a universal concept, as well as a plausible confidence-building measure. The Israeli/Palestinian example would seem to be a case in point. In the Oslo agreements, it was considered that the nature of reaching agreements in protracted communal conflicts and the need for gradualism has often resulted in partial agreements prior to the final treaty, but the target was not reached. In such cases, human rights serve as confidence-building measures until the process is completed. Such improvements are often presented as offering “peace dividends”, but their allocation as entitlements provides the element of justice needed to redress the sense of asymmetry of the oppressed. In other words, one of the main reasons of the failure of the Oslo process was the sense of “relative deprivation,”¹⁹ the deterioration of human rights standards at times of growing expectations- including the right to life of both Arabs and Jews- that eventually derailed it. Then, too late for the Camp David summit, shared solutions to the permanent status seem to have been formulated in what has been called the “Clinton parameters.”²⁰ But what the challenge is now relates to how to move from “here to there,” namely from the polarized views about the legitimacy of violent means of action rather than the common ground about the ends, the goals and objectives. This transition could be facilitated by increased respect of human rights.

Counter-argument 3. CULTURAL RELATIVISM VERSUS UNIVERSAL STANDARDS

Much has been said about the Middle East to be an exceptional region and that Arab Islam has many contradictions with human rights standards, although increasingly voices have been rather emphasizing points of convergence²¹. This complex issue has several aspects. First of all, in some Western cultures (Israel included), there is a fear that commitments of principle will bring about demands for exhaustive implementation. However, it is often argued that in high context cultures, in which behavior is often determined by ceremonial and ritual declarations, the minority or weaker side expects some symbolic recognition of rights, even if this falls short of full implementation. The extraordinary value of acknowledging injustices has gained increasing recognition as distinguished political leaders around the world have apologized in recent years for historical wrongdoing perpetrated by their rulers, peoples or nations. Nations that have been oppressed over the course of decades or centuries may find a healing effect in such statements and in what is often a symbolic and very partial redress of past violations. Many of the issues that pile up relate to dignity and not necessarily to the land and homes that may have been lost forever.

Secondly, in the context of a protracted highly violent conflict, support for gross human rights violations against the “Other” is popular, and our case is no exception. As mentioned, the conventional answer has been that “the only language they understand is force.” Hence, skeptics have predicted that human rights norms are far from the attitudinal prism of the Arab masses—not having been socialized into such practices. The Palestinians may argue that there is a mirror image, but in this case, the victims of past persecutions now have the chance to be in the vindictive position of the victimizer. However, it is our conviction that such core values can be found both in Islam and Judaism and should be explicitly mentioned in the peace process as part of a common heritage. Tolerance towards the “Other,” and nonviolence can be found in the sources, and further stressed if we try to bring out “the best of each culture²². At least, at present, their rhetoric if not their actual adherence to international human rights standards makes the Arab states and the Palestinians as well not less accountable than Israel. Arguments have been advanced as to the lack of universal validity of some basic human rights, but the debate has somehow been subdued since globalization makes it necessary to disaggregate the once considered monolithic communities. All countries now include a civil society that professes shared values across the divide and we know if from our own experience of working across the national divide with our peers.

The best way to fight against double standards is not by a defensive explanation of our excesses, but to demand that the UN mechanisms and the European community forces our neighbors to be judged by the same yardstick. In the pursuit of such policy Israeli Jews will find many allies in the Arab world, and they will empower them in their criticism of their own regimes. Even if world’s expectations on Israel are high given the Jewish contribution to the concepts of human rights and its people being the victim of horrendous violations, the international organizations should not give discounts on the Arab regimes and be as firm as demanded from all members of the community of nations.

Counter-argument 4 THE PALESTINIAN STRUGGLE AS PART OF AN UNSOLVABLE, EXISTENTIAL CONFLICT

For many in Israel, the Palestinian struggle is still a part of an existential conflict. It is well-documented that Palestinian terrorist groups are not alone in their fight for Israel's destruction. Syria is still technically at war with Israel, and has played a major role in providing funding, training, and arms for terrorist cells of the Hezbollah and Hamas. Together with contributors from other Gulf States, members of the royal family in Riyadh have been funneling millions of dollars to Hamas, while simultaneously standing up as a peace broker with its "Saudi Peace Initiative."²³ In effect, the conflict has not contracted in scope to only involve the Palestinians, but has rather expanded to now include other Muslim state actors. The non-Arab Islamic Republic of Iran, the world's biggest state sponsor of terror, not only supports Hezbollah and other terrorist organizations operating in the territories, but has reaffirmed time and again its own commitment to the complete destruction of the State of Israel. So, this argument calls that all efforts must be made to stop terror against Israel, and conceding in the human rights front should not occur before. In the incipient Intifada Al Aqsa, the crackdown should have started within Fateh's movement violent Tanzim arm, and after the Hamas electoral victory, it is incumbent upon the Palestinian Authority to restrain its aggressiveness originating from the Gaza Strip.

While fighting extremism, one should not cease to isolate such forces through the use of positive incentives, including recognizing the Palestinian right of self-determination and opting out of being their oppressors. Pushing altogether for the isolation of political Islamist terrorism places Israel not only together with other Western democracies but also with the Arab regimes that fear domestically Iranian inspired Shiite terror and Al Qaida Sunni terror. And together with them, to agonize before maintaining and undertaking actions that restrict freedom and particularly the right to life. Fundamentalist terror as other aberrations in history attempting against the "rules of the game" such as piracy in the open seas till a few centuries ago, will eventually be defeated by the nearly unanimous self-defense of the enlightened world; Israel can and should be a part of it and refrain from actions that amount to state-terror.

Counter-argument 5. ISRAEL MUST LEARN FROM PAST MISTAKES

It has been argued that although making kind gestures toward the Palestinians is a noble idea, but when tried time and time again, it yields only disastrous results for Israel. Many of the arguments in this paper been presented before by 'peacenicks', they are almost identical to those which justified the concessions made following the 1993 Oslo Accords, and those offered at the 2000 Camp David Peace Summit. It was hoped that by making life easier for the Palestinians, and giving them some limited autonomy, a negotiated peace settlement would be more appealing to a large segment of the Palestinian population. As history shows, rather than peace, these two episodes of Israeli generosity and optimism led to the murder of thousands of innocent Israelis at the hands of Palestinian terrorists. The lesson to be learned is that Israeli concessions, on any level, cannot precede a complete halt of Arab aggression. Only after the Palestinians demonstrate that they are willing and able to crack

down on terrorist organizations can Israel let its guard down and worry about anything other than its own security. Israel has moved forward considerably since the outbreak of the Intifada in September 2000; jumping the gun now and making foolish concessions before a Palestinian leader takes significant action against terror will entangle Israel in a process that has repeatedly failed miserably in the past.

Being aware of this populist form of criticism, our reservation of the Oslo Process and its aftermath is that if concessions were offered they fell short of the declaratory policy and run late in implementation and not framed within the wider context of the human rights paradigm. Our argument of “too little” is not only in the lack in quantity of human rights clauses in the agreements, but also qualitative in terms of a different discourse from the prevailing arrogance of power. No one argues that, to ensure that the implementation of the Disengagement Plan also in the West Bank is not viewed as withdrawal under fire, Israel must retain a strong security presence on its side of the fence. At the same time, it is imperative to announce an Israeli policy that does not infringe on full Palestinian control of their destiny in Gaza, including the freedom to communicate to the Arab world through use of the Egyptian border and the rest of the world by air and sea links. Yet such respect of their sovereign rights also implies that there is no obligation to allow free passage neither to Israel, nor through Israel to the West Bank. Such special dispensations can be negotiated for concessions on the Palestinian side.

The withdrawal from Lebanon following mounting Israeli casualties, sent a strong signal to terrorist organizations that Israel was sensitive to heavy losses of Jewish lives. This perceived weakness motivated Palestinian terrorists to increase attacks on Israeli civilian targets, evident in the outbreak of the Intifada al-Aqsa shortly after and in the Second Lebanon War. To avoid appearing weak and thereby encouraging future terrorism, Israel should not opt for the easy way out of collective punishment. The answer is not extra hardships must be created for the Palestinians to simply show Israeli strength. Or thinking that by generating more oppressive conditions, the Arab masses will seek to disassociate from the organizations responsible for anti-Jewish violent acts. From the days of the bombing of the Baghdad nuclear reactor, the rescue of innocent passengers at Entebbe airport, to the capture and bringing to trial one of the killers of two Israeli reservists in Ramallah, who was shown in a photo exposing his bloody hands, the bombing of Jihad-al Islam training camps in Syria and so many other examples have shown the heroic and legendary capacity of the Israeli Defense Forces and Israel’s intelligence. Such acts could continue to show its superiority on the terrain and across borders, but targeting innocent Palestinians has been only generating a depreciation of such professionalism. Even if the Hamas movement can claim some impact in the decision to pullout from Gaza, in the long-term, the respect for Israel’s democratic decisions and the effective and sensitive evacuation of the settlers can show the true capacity of the Israeli Defense Forces.

IV. Conclusion

Peace is sustainable when security and justice go hand-in-hand. Sacrificing one at the expense of the other has proven in the long run to be self-defeating, and a consensual

negotiated agreement is the healthiest approach to use. We highlighted the relevance of human rights as the operational expression of “justice,” a concept that UN Security Council Resolution 242 coined together with “lasting” to qualify the meaning of “peace” (“a just and lasting peace”). We can look upon the UN resolution as a diplomatic compromise between contending positions behind the two terms. But we can as well see, even post-facto, the wisdom of a combination which is not a zero-sum outcome but rather win-win proposition in which both sides have more to gain. The territorial element which Palestinian and Israeli leaders may be calling an “historical compromise” for the under-dog and “painful concessions” for the top-dog, also brings many other tangible and intangible elements, whose resolution can immensely improve the quality of life for both sides. If we could look upon individual aspirations not only in terms of our own “people,” but our “peoples,” we could move a long way towards a stable peace and reconciliation, which can add to the precarious diplomatic agreement the longer-term peacebuilding dimension. At this time, a wide sector of Israeli political parties and the majority of its citizenry have recognized the collective right of the Arab Palestinians for statehood, while the newly elected Hamas has difficulties in adjusting its “all or nothing” Charter to accept the Israeli Jewish right of self-determination

Many of us are tired of a match for scoring points on who has more rights, Jews or Arabs? For quite some time, Palestinian and Israeli civil society organizations, academics, writers and people of goodwill have come to agree that both nations have enough rights, already proven by the persistence and stubbornness in clinging to the Holy Land and that it is short-sighted for the stronger side dispossessing the Other. The solutions should care in providing satisfaction to the minimal core needs that without it no nation will stop fighting.

Realist and liberal Zionist converge in stressing that after centuries of suffering, Jews are now collectively committed no longer to be the object but rather the subject of history. This protagonism can be best fulfilled not only by the sword but by the book as well. The texts of Judaism are part and parcel of the contemporary human rights book, by which we are now being judged as our prophets did throughout history. As members of a democratic nation that remembers its own peoples’ traumatic past and still has part of its people scattered in the Diaspora, Israeli Jews should take ownership and internalize the relevance of the human rights values for their existence and co-existence around the world.

Besides the sense of inner self image for the Israelis to feel good about their humane approach, we all know that in the twenty-first century, the principle of legal equality is catching up globally. Even if the United Nations still maintains double standards and bloc politics often determine the wording of its General Assembly resolutions, the text of human rights covenants and treaties is becoming the international rule of law, and its implementation now carries enforcement mechanisms.²⁴ This is not only because they are endorsed and ratified by an overwhelming majority, but it also has to do with the fact that Israel wants to be seen as a member of the “family of nations.” With an arguable orientation towards Europe—rather than the Middle East—Turkey is a case in point in which the adherence to human rights standards is a precondition to be a member of such a prestigious “club.” Since Israel looks West rather than East, this observation should not

past unnotice. Yet if in particular we want to belong to both—as in the case of Egypt belonging to the Arab League and the Organization of African unity—Israel’s acceptance in the region should not be to the detriment of its Western profile. And becoming part and parcel of the predominantly Arab region requires the good will of the Palestinians opening doors or at least not obstaculizing the Jewish strong urge for recognition and acceptance, as suggested by the Saudi and now Arab League peace initiative. Introducing human rights as a relevant dimension, may result in a paradigm shift and open up new avenues for imaginative and creative solutions. Stressing the uniqueness of the conflict makes people feel that there is no solution to their conflict. Rather than confining ourselves to continuously boiling in our own pot, it is better to look at the world marketplace for prices paid today for conflict termination.

We are not so naive as to expect that showing governments the right texts will be enough to get them to comply. However, human rights clauses emanating from declarations and covenants are drafted in broad terms and subject to different interpretations, which can allow room for some “constructive ambiguity.” Overall, the learning experience from “best practices” elsewhere is that by including the rights issues in the peace-making process ensures a more durable outcome and satisfaction with a new status-quo. Rather than continue to be stuck within the same “tunnel vision” why not fully explore the advantages of lateral thinking. We are running out of space but not away from the burden of evidence. And suggested earlier, together with Palestinian colleagues I have modestly contributed to the search for common ground on intricate issues such as water, settlements, refugees and Jerusalem, and further reference is made in endnotes 1 and 13..

So far, preliminary considerations have been advanced with a tenuous hope that they can make sense to the passing Israeli governments and public. To what extent do the different points of argumentation are making sense to those within the “establishment”?. After so much error and little trial, is it not worth including this ingredient in the recipe for peace? We invite the readers to reflect and enrich the list, making it even more accessible to the top-dogs’ minds. But even if we fail to connect, perhaps the policy makers of the world and the United States in particular, will find it advisable to try to advocate for the resolution of the Israeli/Palestinian conflict the very same principles that have been acceptable for the resolution of other contemporary disputes.

¹ The subject has been treated together with Palestinian colleagues in several publications: Edy Kaufman and Ibrahim Bisharat, "Human Rights and Conflict Resolution: Searching for Common Ground between Justice and Peace in the Israeli/Palestinian Conflict", NIDR Forum, (December 1998), pp. 16-22; E. Kaufman and I. Bisharat) “Humanizing the Israeli/Palestinian Peace Process, Israel-Palestine Journal, (Vol. VI, No.1, 1999), pp. 8-13; E. Kaufman and I. Bisharat), "Introducing human rights into conflict resolution: the relevance for the Israeli-Palestinian peace process", Journal of Human Rights, (Vol. 1, No 1, March 2002), pp 71- 92.

² I rather use the plural (we, us) when presenting this article, since its main assumptions are the shared product of a team of Palestinians working with me, a consensus built with colleagues that include, among them, the above mentioned Ibrahim Bisharat. Mohammed Abu Nimer and Walid Salem.

³ I would like to express my gratitude to Simon Dinirs and Sahar Sattarzadeh at the University of Msryland, College Park and Sonia Martinez at the Hebrew University for their assistance in research and editing this article.

⁴ In this article I have paraphrased, changed and expanded some of our joint findings in a language, hopefully, better understood to the Israeli public at large and the political leadership in particular. See E. Kaufman and Ibrahim Bisharat, Are Human Rights Good for the Top Dog as Well? , Palestine-Israel Journal, (Vol. 10, No 3, 2003), pp 89- 95.

⁵ Quandt, William Q., Peace Process: American Diplomacy and the Arab-Israeli Conflict Since 1967, (Berkeley, University of California Press, 2001)

⁶ Prof. Manuel Hassassian , team-teaching with E. Kaufman the course “Conflict Resolution- the Israeli/Palestinian Experiment” (at CIDCM website, College Park, Md. 2005).

⁷ The militarized second Intifada was called by Sari Nusseibeh as “unmitigated catastrophe”, and “self-defeating”, as quoted from his new book “Once Upon a Country” by Amos Elon, Hard Truth about Palestine, New York Review of Books, Vol. LIV, No 7, April 26, 2007, pg. 28

⁸ In 1975, the U.N. General Assembly adopted resolution 3379, condemning Zionism, the ideology that the State of Israel was founded upon, as racist. The resolution stood valid for 16 years before it was finally repealed. Though Secretary General Kofi Annan has characterized the resolution as the United Nations’ darkest hour, it today serves as one of a multitude of examples of the anti-Israel and anti-Semitic attitudes which plague the United Nations to this day.

⁹ “Trauma Center Survey Reveals 70% of Israeli Children Impacted by Intifada.” Herzog Hospital. 2001. <<http://www.herzoghospital.org/index.asp?id=134&newsid=73>>

¹⁰ In 1999, over a year before the eruption of the second Intifada, a World Health Organization survey found that Israel ranks as the 8th worst out of 28 countries surveyed on school violence Maxwell, B. “Israel’s schools mirror a culture of violence.” St. Petersburg Times.6 Jun 1999. <http://www.sptimes.com/News/60699/Perspective/Israel_s_schools_mirr.shtml>

¹¹ Ibid.

¹² For coverage of the Supreme Court ruling see Ha’aretz (Hebrew Daily), September 17, 2005.

¹³ The analysis of both the Palestinian and Israeli data has been incorporated in E.Kaufman and Mohammed Abu-Nimer) Bridging Conflict Resolution and Human Rights: Lessons from the Israeli/Palestinian Peace Process (prepared for a USIP, Jeff. Helsing et al (eds.), Human Rights and Conflict , forthcoming).

¹⁴ Podeh ,Elie. From Fahd to ‘Abdallah : the origins of the Saudi Peace Initiative “ ,Gitelson Peace Papers, The Harry S. Truman Research Institute Advancement of Peace, Hebrew University Jerusalem 2001.

¹⁵ Two excellent books were written by former Supreme Court judge Haim Cohen, Human Rights in the Talmud and the Mikrah, (Tel Aviv, Ministry of Defense Publishing House, 1992, in Hebrew), and Haim Cohen, Human Rights in Jewish Law, (New York, Ktav Publishing House, 1984)

¹⁶ Marc Agi, Rene Cassin, Pere de la Déclaration universelle des droits de l’homme (Paris, Perrin, 1998)

¹⁷ Deuteronomy, 16:20.

¹⁸ “Israel Ends Demolition of Palestinian Homes.” Associated Press.17 Feb 2005.

¹⁹ Ted Robert Gurr, Why Man Rebel? (Princeton, Princeton University Press, 1967)

²⁰ The CLINTON PARAMETERS are appended to the report of International Crisis Group, Middle East Endgame II: How A Comprehensive Israeli-Palestinian Peace Settlement Would Look, Middle East Report

²¹ Kevin Dwyer, Arab Voices: The Human Rights Debate in the Middle East, (Berkeley, University of California Press, 1991)

²² Bushru’i ,Suheil, The Wisdom of the Arabs.....????????????

²³ Podeh ,Elie. From Fahd to ‘Abdallah : the origins of the Saudi Peace Initiative “ ,Gitelson Peace Papers, The Harry S. Truman Research Institute Advancement of Peace, Hebrew University Jerusalem 2001.

²⁴ This topic is developed in Edy Kaufman “Human Rights in World Politics” (Tel Aviv, Ministry of Defense Publishing House, 1999), (in Hebrew)