

Diakonia position paper on Israel/Palestine

PAGE 1 of (12)
DATE 04/12/2013
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The Israeli wall is to 85% built illegally inside the occupied Palestinian territory, dividing Palestinians from Palestinians. Photo: Aida-Burnett Cargill

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1. Introduction

This paper is developed to guide communications by Diakonia in relation to the situation in Israel and Palestine. It sets the framework for our positions vis-à-vis decision makers, media, Diakonia's base as well as other stakeholders on Swedish and European level. It will also serve as a base for communications with regional and international actors at the EU institutions and in Israel and Palestine.

The document does not make an analysis of policies inside Israel, or solely Palestinian issues without bearing on the HR situation or conflict. It focuses on international human rights law ("IHL"), international humanitarian law ("IHL"), the occupation and the need for a viable peace.

This position paper follows and replaces "Diakonia's Position Paper on Israel / Palestine" from 17 May 2006. This position paper should be updated at latest 2015, or if changes in the context makes earlier updates necessary.

References:

- *When Diakonia refer to Israel we include the internationally recognized territory of Israel inside the pre-1967 borders.*
- *The Occupied Palestinian Territory ("oPt") is referring to the internationally recognized borders of the West Bank and Gaza along the pre-1967 borders, including occupied East Jerusalem*
- *Although the Wall is sometimes built as a fence combined with various security measures and sometimes as a concrete wall along its route, Diakonia is using the definition "wall" from the advisory opinion of 9 July 2004 of the International Court of Justice ("the ICJ").*

Political Context

In situations of armed conflict, including occupation, it is the civilians on both sides who suffer most. International humanitarian law and non-derogable international human rights law must be respected at all times as these minimum standards take into consideration the most challenging of security circumstances, and look to protect human dignity.

In the Palestinian Israeli context challenges are found in both the Palestinian and the Israeli context.

The Palestinian population¹ has been under constant occupation since 1948. Millions of Palestinians still resides in refugee camps denied both their property, their right to return to their homes, or presented with acceptable alternatives for a future life in dignity. Palestinian civilians living under Israeli occupation suffer from constants and numerous violations of both IHL and HR from Israel's occupational regime. However none of this can justify indiscriminate attacks on Israeli civilians.

¹ The estimated number of Palestinians worldwide hit 11.6 million by the end of 2012; of which a total of 5.8 million Palestinians are living in historic Palestine (between the Jordan River and the Mediterranean – including Israel). As of January 2013, there are more than 5 million registered Palestinian refugees, concentrated primarily in Jordan, Lebanon, Syria, West Bank and the Gaza Strip.

Israeli civilians faces threats and in some cases attacks from militant groups in the oPt or elsewhere violates their basic rights as human beings. However this situation does not justify Israeli IHL violations, the oppression of the Palestinian population in the oPt and the violation of their human rights.

Israel's internal political and judicial processes are steadily deteriorating towards an increasingly hostile position vis-à-vis the realization of human rights of the Palestinian people, respect for international law, including IHL applying to situations of occupation.

The strengthening of the Palestinian authorities is undermined by dependency on, and arbitrary interference by, the Israeli authorities; division between the authorities in the Gaza Strip on the one hand, and on the West Bank on the other hand: and internal challenges of human rights violations, democratic deficits, corruption and rockets against civilians from militant groups within the Gaza Strip.

However, the conflict is not symmetric between two parties in a dispute. The occupation constitutes an inherently asymmetric relationship, in which Israel, through military means, dominates the Palestinian territory and subjugates its people. IHL, including norms that the international community accepts as customary international law and binding on all, sets the overall legal framework for Israel's activities as occupier, and sets out a clear protected person status for Palestinians as a matter of law. Full compliance with IHL and IHRL would protect the population in the occupied territory from practices and policies that currently hinder them from leading a life in dignity, security and justice. Further, it would also prevent Israel from maintaining and extending the permanent structures that lead to unfixable demographic changes and an ever increasing number of uprooted and forcible transferred Palestinians. It should be noted that the transfer of the occupier's population into occupied territory is a grave breach of IHL and listed in the Rome Statute of the International Criminal Court as a war crime.

Full compliance with international law and obligations would also enable Palestinians the basic realization of their civil and political rights allowing for a progressive exercise of the right to self-determination.

Since 1948, the issue of Palestinians that were made refugees as a result of the conflict, remains to have significant humanitarian dimensions, and must be resolved in accordance with the principles of international law.



Hamas and other militant Palestinian groups have fired more than 10,000 rockets from Gaza into Israeli territory. Firing rockets aimed at a protected civilian population is illegal according to international law. Photo: Diakonia

Diakonia's approach

Diakonia has a vision of a life of dignity for all individuals. The main target group for Diakonia's work is the poor and oppressed and those vulnerable to violence and other injustices. The main objective is to change the political, economic and social structures that hinder a fair and sustainable development.

Diakonia does not accept outdated views that you either support Israelis or support Palestinians. Thus, Diakonia does not side with any of the active parties of the conflict, but sides with the civilian population protected by IHL to uphold the rights of the individual regardless of background. Diakonia's objective is the promotion of peace, international law, human rights and democracy, gender equality and poverty eradication

Non-violence is a basic parameter in all of Diakonia's work. The Palestinian-Israeli situation shows the futility of violence, where endless repression and retaliation feed off each other. Action is urgently needed to break this cycle of diminishing hope.

Diakonia focus on the need to change the structural problems and driving forces behind the conflict and work to eradicate those.

The occupation, violation of human rights and international humanitarian law, including but not limited to the building of the Wall and attacks on civilians, must end.

Full compliance with IHL does not, however, do away with the occupation and does not solve the conflict. Thus, as a parallel track to promoting IHL and IHRL during occupation, Diakonia will call upon the international community to ensure Israel's compliance with its IHL obligations, and IHRL obligations in general, hold accountable those who have violated IHL, work towards ending the occupation, and work for a just viable peace.

The struggle for a just and viable peace as well as respect for IHRL and IHL cannot be left to the parties alone. All states as well as international institutions have the duty to secure the respect for international law. Thus, Diakonia advocates for an active involvement from the international community, UN, EU and Sweden.

The conflict and racism

Diakonia is deeply concerned about the hardening attitudes and success for racist argumentation in both the Israeli and Palestinian society and addresses problems like incitements and hate speech in its work.

Diakonia does not accept the discriminatory practices applied by Israel against the Palestinians population in the occupied Palestinian territory. The practice of differing legal rights and protection, differing access to public infrastructure depending on ethnicity is unacceptable and includes practices included in the structures of apartheid.

Diakonia recalls that in 2012, the UN Committee on the Elimination of Racial Discrimination, considering the consequences of Israeli policies and practices which amount to racial segregation and apartheid, and endorses the assertion that Israel should "take immediate measures to prohibit and eradicate any such policies or practices which severely and disproportionately affect the Palestinian population in the

Occupied Palestinian Territory and which violate the provisions of article 3 of the Convention.”²

Diakonia does not accept that groups, political parties or individuals use the conflict to promote Islamophobic and anti-Semitic ideas and/or argumentation.

The role of religion

The influence from the three major religions in the existing conflict cannot be overlooked. However, it is important to recognize that this conflict is not one of religion, but rather is premised on the struggle for natural resources, namely land and water. . In this regard, the Israeli occupation does not distinguish between Palestinian Muslims and Palestinian Christians, with both groups subjected to the same violations of international humanitarian and human rights law.

Many religious peace builders are striving for a just and durable solution to the conflict based on international law, much of which finds its origins in the world’s religions. However, religion can also be used to facilitate hate, to dehumanise and disrespect others. Numerous acts of terror and crimes have been justified by a perverted religious argumentation and interpretation. We are deeply worried by the growing influence of extremism that makes use of religious references.

Fatigue, poor education and a lack of trust in legal rights and civil society are easily exploited by extremists, using religious terminology. These are problems Diakonia addresses in our local work.

As an organization with roots in Christianity, Diakonia has a special responsibility to counter and prevent the misuse of the Christian faith to justify acts of violence, discrimination or nationalism. Diakonia does not accept the use of religion as a basis for hate speech, discriminatory practices, marginalization, incitement, or the denial of basic rights.

Absolute religious freedom, which is an individual right, and the unrestricted access to holy places for all groups must be protected during occupation and within any future peace agreement.

Diakonia consider religion as an individual right, and individual choice, but not as a suitable base for state building and law.

Diakonia does not accept religion or history being used as a base for hate speech, discriminatory practices, incitement, or denial of the rights for rights-holders.

Gender aspects of Diakonia’s positions

The positions below should be read considering that the impact of the occupation on women and children are often underestimated or underreported and must there be given

² Diakonia recalls that in 2012 The UN Committee on the Elimination of Racial Discrimination, considering the consequences of Israeli policies and practices which amount to racial segregation and apartheid, endorsed the assertion that Israel should “take immediate measures to prohibit and eradicate any such policies or practices which severely and disproportionately affect the Palestinian population in the Occupied Palestinian Territory and which violate the provisions of article 3 of the Convention.”

particular attention. Violations of women and girls tend to fall in the shadow of the visible and often publically documented violations against men. For example, while most workers hindered by check-points are men, movement restrictions impact women more indirectly, by adding to their domestic burden, increasing their financial and administrative dependence on male relatives and affecting their access to education and vocation. Widespread detention of men and children, constant military presence and lack of public services in the occupied territories contribute to limiting women's chances of empowerment.

Further, the occupation hampering the financial and social development and the stress added to families from violence and oppression has proven to have a very negative impact for the women. Not only hampering the development in the area of gender, but also distracting resources that could otherwise strengthen the legal, financial, economic and political position of Palestinian women.³

³ Palestinian women participation in the labor force has been declining due to restrictions on agrarian land in the West Bank, the decreasing role of the agriculture amongst other variables pushed female participation rate in the oPt down to 15%, which is the second lowest rate in the world, second only to Syria (13%).

2. Diakonia's positions

Overview

The humanitarian crisis in the oPt is a fully man-made situation and should be solved through non-violent methods and by political decisions recreating peace, security and prosperity rather than a long term aid-dependency,

Political decisions or lack of decisions keep people in poverty and insecurity. By raising awareness, encouraging mobilisation and action among our constituency towards politicians and other duty bearers in Sweden and the EU, we complement the work of the rights holders and our partner organisations in the region. Diakonia's positions are also based on the responsibility of the international community to protect the right of civilians, to not support violations of international law from any parties, and to achieve a viable peace.

Although a just and viable peace agreement is the ultimate goal the present situation of the civilians under occupation must be addressed immediately. The regime in the West Bank and the occupied East Jerusalem with unequal rights and duties depending on ethnicity, the ID-system for Palestinians, constant restrictions of movement for the Palestinian population, discriminatory services and separate roads and transport systems, bears resemblance of structures similar to those of the old apartheid South Africa. These structures are illegal and must be changed.

The liability for the consequences of occupation should be considered in all relations with Israel and accountability should be sought at the highest political level. At the same time, it is essential to continue the partnership with Israeli civil society representatives who strive for human rights of the Palestinians in the oPt.

The liability for IHRL and IHL violations against the civil population in both the oPt and Israel should be considered in all international relations with Israel, the Palestinian Authorities (PA) and Hamas as well as other actors with the aim of preventing further crimes, and seek responsibility for illegal actions from all sides.



The American International School in Gaza was destroyed during an attack by Israel in 2009. The school was not a military target and the destruction did not prevent any militant group to use the compound as base for military activities. Photo: Aida Burnett-Cargill

Peace process

Diakonia support a viable, just and negotiated peace. Negotiated in accordance with the principles of international law, securing the rights of both people to live in peace and security.

The international community should act with the conviction that only a solution based on international law, negotiated by both parties while each maintains respect for international law, can create justice and lasting peace.

Israel's occupation of the Palestinian territory must end. Palestinian right to self-determination must be respected, as well as their right to decide on their representation and participation in international bodies.

The conflict is highly asymmetric with Israel as a recognized state with an enormous military capacity and ability to create facts on the ground. By moving the conflict from the military to the legal and diplomatic arena, negotiations can be more equal and meaningful, but also making it necessary for the international community to respect and support the Palestinians decisions, and also support non-violent diplomatic and legal initiatives for recognition from the Palestinians.

The annexation of East Jerusalem constitutes a violation of international law and is not recognized by the international community.

The status of Jerusalem as a place open for three religions must be preserved and protected against unilateral actions, ensuring free access to the holy places for all. And its final status decided in negotiations respecting the equal rights of all current and previous inhabitants.

Israel has declared Jerusalem as the eternal and undividable capital of Israel, and has stated a policy to cap the percentage of Palestinian residents in Jerusalem.

Israel is rapidly moving towards cementing the annexation through a system of legal measures, in particular discriminatory planning and residency laws, it has become impossible or very hard for the Palestinian population to live and own property in Jerusalem.

The continuing annexation of substantial parts of the West Bank is evident and presents a serious obstacle to peace. The Israeli High Court of Justice, when condoning the illegal planning regime imposed by Israel in the OPT, and upholding the petitions put forward by settler organisation, inherently fails to respect and promote the rule of law.

The illegal Israeli sea, air and land blockade against Gaza must end.

The Israeli blockade against the Gaza Strip makes the territory and its inhabitants almost completely dependent on aid. It contributes to economic injustice, frustrations and disables a constructive process towards a life in security, equality and dignity. It amounts to collective punishment in violation of international humanitarian law. The blockade also makes the inhabitants of the Gaza Strip vulnerable to illegal practices and undue

pressure from militant forces. The blockade must end and the population on the Gaza Strip must be given possibilities to work and support themselves. The Gaza Strip holds a Palestinian sea- and airport that should be repaired and opened to enable export, import and free trade.

All parties must refrain from violence and respect human rights and international humanitarian law.

The parties to the conflict must respect international law, including human rights law and international humanitarian law. While international humanitarian law provides special treatment of the protected Palestinian population, Israel must also respect its obligations of non-discrimination in accordance with international human rights law.

The Israeli wall on the occupied Palestinian territory is illegal and must be removed where not built on the internationally recognized border.

In its Advisory Opinion of 9 July 2004, the International Court of Justice held that the wall currently being built by Israel in the Occupied Palestinian Territory is illegal under international law as it violates both human rights law and international humanitarian law. The wall severely weakens the Palestinian economy and undermines their right to self-determination. According to United Nations' OCHA, 80% of the wall is built on occupied Palestinian territory and only 20% on the international recognized border.

Access for humanitarian aid and access to people in need must be guaranteed by all parties.

Under no circumstances can it be accepted that Israel or Palestinian actors prevent or interfere with humanitarian or development work, or deliberately destroy aid or development projects. To stop humanitarian assistance meeting the basic needs of the occupied population is a violation of international humanitarian law.

The Israeli settlements and supporting structures as well as Israel's intentional changes of the demographic situation are illegal and present a major obstacle to peace and development.

There are some 150 settlements in the West Bank and Occupied East Jerusalem inhabited by more than 500,000 settlers, in violations of Article 49 of the Fourth Geneva Convention. The confiscation of private land, demolition of private property, building of settlements, and the whole network of settlement roads violate international law deepens the conflict. This practice moves the parties further away from reach a viable peace. Furthermore such practises also violate the Rome Statute of the International Criminal Court.

The Palestinian Authority as well as the Hamas “de facto” government in the Gaza Strip must guarantee the human rights, including women’s rights, of the Palestinian population under their control.

The population in both the West Bank and the Gaza Strip are subject to violations of human rights from both the PA and the Hamas de facto government. This includes, but is not limited to violations of the right to liberty, security and fair trial, the rights of women, rights of handicapped and of religious minorities, as well as freedom of press.

Conduct of hostilities

When responding to threats, including attacks on its civilians, Israel has a right to protect its population in accordance with international law. There is no hierarchy between the rights of Israelis and Palestinians to live in security and dignity. Parties to the conflict the conflict must not directly target the civilians and civilian objects, undertake indiscriminate and/or disproportionate attacks and must take extensive precautions to protect civilians.

Corporate Responsibility

Corporations operating in Israel/Palestine must ensure they do not profit from the Israeli occupation and settlements, and ensure they are not implicit in Israeli violations of International Law.⁴

All settlement related activities should also be scrutinized, and corporations facilitating or supporting such activities held accountable⁵. Also, all financial activities in the occupied territories regardless enterprise, NGO or governmental must actively ensure they do not contribute or encourage conflict dependency worsening or prolonging the conflict.⁶

Third states’ responsibility

According to the Geneva Conventions under international law, all states have an obligation to ensure other states’ compliance with international humanitarian law, including the law of occupation. Therefore, Sweden and EU must:

- Actively and effectively encourage the respect for IHL from all parties and discourage violations of the same.

⁴Several UN and international reports touched upon this issue including the report of the Special Rapporteur on the situation of human rights which identified 13 corporations accused of “serious human rights and international humanitarian law abuses and violations” and the 2012 report “Trading Away Peace: How Europe helps sustain illegal Israeli settlements” which was signed off by 22 major international human rights and humanitarian organizations including Diakonia.

⁵ According to the 2013 report of the independent international fact-finding mission to investigate the implications of the Israeli settlements, these activities are not only limited to the supply of equipment and materials for the construction of the settlements, but also security services (for businesses inside the settlements, and for surveillance of the settlement periphery), and banking and financial operations helping to develop the settlements, including loans for housing and development of businesses.

⁶ See: www.cdda.se

- Adhere to the obligation to search for, investigate and prosecute serious violations of IHL that amount to war crimes.
- Ensure that their involvement in relations with Israel is not characterized as undue recognition of, aid or assistance to, Israel's settlement activity.
- Establish that no bilateral agreements with Israel or the Palestinian Authority allow for or support trade with illegal settlements, or benefit structures supporting settlements or other illegal practices resulting in violations of IHL.

Financial and political support to the occupation deepens the conflict and risks violating international law. Therefore, Sweden and the EU should:

- Ensure full compliance with international law and obligations to enable all Palestinians the basic realization of their civil and political rights allowing for a progressive exercise of the right to self-determination.
- Actively encourage a negotiated, viable peace agreement in line with international law. And actively discourage unilateral actions from the parties undermining a viable peace agreement.
- Work to end the illegal blockade of the Gaza Strip.
- Ensure free access for humanitarian aid, developments aid and securing the free space for civil society to work within the occupied Palestinian territory.
- Support the establishment of independent Palestinian infrastructure for communication, agriculture, industry, import and export.
- Secure a correct and effective labeling of all products originating from illegal settlements in oPt. Ban trade, financial cooperation and other cooperation with the illegal settlements and financial actors or structures supporting them.
- Support the Palestinians right to self-determination and their participation in international bodies, and support non-violent initiatives to achieve international recognition.
- Support a just and viable solution for all refugees from the conflict, based on international law and resolutions, including the Palestinian right of return.
- Actively encourage a peaceful reconciliation between PA and Hamas, and support a democratic society for the Palestinian population.
- Work to secure the rights of all religious groups, and religious freedom in both Israel and the oPt, as well as free access to holy places for all religions.
- Work to support organizations and groups striving for gender equality and gender justice in the oPt.
- Secure that no bilateral or multilateral agreements are signed, implemented or upgraded with Israel or the PA without preconditions of respect for human rights and international humanitarian law.