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## Facts, Rights, and Remedies: Implementing International Law in Israel/Palestine Conflict: Introduction

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# **Facts, Rights, and Remedies: Implementing International Law in the Israel/Palestine Conflict**

By GEORGE E. BISHARAT\*

Welcome to this symposium. This brief introduction will spell out what has brought us together today, and what the symposium participants hope to accomplish over the next day and a half of discussions.

It is fair to say that what brought our group together initially was a shared sense of deep alarm over the direction that events in the Middle East generally, and Israel/Palestine specifically, have taken in recent years. This sense of alarm had been building among some of us for years, even before the outbreak of the al-Aqsa Intifada in late September 2001, as the deep flaws of the Oslo negotiating process became increasingly evident. Today, of course, our alarm is particularly acute, as our worst fears are being realized before our very eyes. Each day, Israel, with the acquiescence, if not the active support of the United States, goes about consolidating its control over the land and water resources of the remainder of historic Palestine, while penning the stubbornly resistant Palestinian people into what amounts to large, open-air prisons in the Gaza Strip and West Bank.<sup>2</sup>

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\* Professor of Law, Hastings College of the Law, Coordinator, Working Group on Law and Peace Building in the Middle East. The working group is sponsored by the Toda Institute for Global Peace and Policy Research. The Toda Institute, based in Japan, was the principal financial sponsor of this symposium, and I gratefully acknowledge the Institute's generous support. We also greatly appreciate funding received from the Interdisciplinary Humanities Center at the University of California, Santa Barbara.

2. In May, 2004, Israel launched numerous military assaults in the Gaza Strip, ostensibly to stem weapons smuggling across the Egyptian border. In that month alone, over 60 Palestinians were reported killed and over 221 were wounded, including many civilians. About 298 Palestinian residential buildings were demolished, and over 710 families, over 80% of them refugees, were made homeless. Rafah's infrastructure, agricultural resources, and many private and commercial

This process, with all its attendant brutality, is unfolding before a world community that appears either unable or unwilling to productively intervene. Israel's apparent impunity from world judgment, however, will not exempt it ultimately from the consequences of its current actions. No one should mistake what this program of usurpation and incarceration portends for the future: further resistance by the Palestinians and further repression by the Israelis. We will witness a series of explosions—both literal and figurative—leading to more shattered and violated bodies, more funerals, more grieving parents, both Israeli and Palestinian, and the genuine danger of the spread of violence to the broader region of the Middle East and beyond.

Is this bleak future really all that one can expect for the suffering peoples of Israel/Palestine and for the rest of us? Can we be no more than passive, impotent observers to a future of violence, pain, and death? Implicitly, all of the symposium participants have addressed this same question and have similarly answered, "No, there is an alternative." The alternative that we envision is a future of peace based on justice, equality, and respect for both individual human rights and collective national rights, and secured through international law. We are committed to exploring what one might call, for short hand, a "rights-based" approach to peace in the Middle East. For those of us who live and vote in the United States, a country deeply implicated in the negative trajectory of developments in Israel/Palestine and elsewhere in the surrounding region, there is an additional sense of obligation to intervene constructively and positively to avert future Israeli and Palestinian suffering.

As proponents of a "rights-based" approach to Middle East peace, we cannot expect the virtues of our alternative approach to be self-evident. The system of international rights and collective security, painstakingly erected in the post-World War II period, faces

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properties were also destroyed by the Israeli incursions. With an average of ten persons per family unit in the Gaza Strip, the home demolitions have affected thousands of Palestinians. See U.N. Relief and Works Agency for Palestinian Refugees in the Near East, *Supplementary Appeal for Rafah* (May 31, 2004), available at <[http://www.un.org/unrwa/emergency/appeals/rafah\\_appeal.pdf](http://www.un.org/unrwa/emergency/appeals/rafah_appeal.pdf)>. Israel was also continuing the construction of a "separation barrier" in parts of the West Bank, extending an already suffocating system of closures, curfews, and other restrictions on the movement of Palestinians in the West Bank and Gaza Strip. See Human Rights Watch, *Israel's 'Separation Barrier' in the Occupied West Bank: Human Rights and International Humanitarian Law Consequences* (Feb. 2004), at <<http://www.hrw.org/english/docs/2004/02/20/isrlpa7581.htm>>.

unprecedented challenges today, and many doubt its capacity to deliver on its noble purposes. Painfully, it is the United States that, by its words and deeds, has been one of the leaders in the charge against international law in a variety of spheres, in favor of a unilateralist and militarist approach to international relations. The litany is no doubt familiar and includes the Bush Administration's refusal to sign the Kyoto Agreement against global warming, its withdrawal of our signature from the treaty establishing the International Criminal Court, and, of course, its act of illegal aggression in attacking Iraq.<sup>3</sup> Ongoing war crimes by our troops in that afflicted country simply compound the original violation – one that has already caused the deaths of uncounted thousands of Iraqis, many of them innocent civilians.<sup>4</sup>

But the systematic marginalization of international law in U.S. policy vis-à-vis Israel/Palestine in fact has an older and bipartisan history. While the United States stood with the international community in the aftermath of the 1967 Arab-Israeli war in calling for Israel's withdrawal from occupied Arab territories, since that time the United States under both Republican and Democratic administrations has become Israel's chief abettor in flaunting international law and the will of the international community. It has done so in a variety of ways. The United States has abstained, often alone, on four out of five U.N. Security Council Resolutions regarding Israeli settlements since 1967; and it has abstained, again usually alone, from 24 out of 52 Security Council Resolutions

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3. On the illegality of the Iraq war, See George Bisharat, *Facing Tyranny with Justice*, 7 J. GENDER, RACE & JUST. 1, (2003); Ken Roth, *War in Iraq: Not a Humanitarian Intervention*, in WORLD REPORT 2004 (Human Rights Watch), available at <<http://www.hrw.org/wr2k4/3.htm>>; CENTER FOR ECONOMIC AND SOCIAL RIGHTS, *Tearing up the Rules: The Illegality of Invading Iraq* (Mar. 2003), available at <<http://cesr.org/node/view/523>>.

4. See Center for Economic and Social Rights, *Beyond Torture: U.S. Violations of Occupation Law in Iraq* (June 10, 2004), available at <<http://www.cesr.org/node/view/227>>; Human Rights Watch, *Summary of International and U.S. Law Prohibiting Torture and Other Ill-treatment of Persons in Custody* (May 24, 2004), at <<http://www.hrw.org/english/docs/2004/05/24/usint8614.htm>>; Letter from Kenneth Roth, Executive Director, Human Rights Watch, to George W. Bush, President, United States of America (May 18, 2004), at <<http://www.hrw.org/english/docs/2004/05/17/usint8591.htm>>; Letter from Kenneth Roth, Executive Director, Human Rights Watch, to Donald Rumsfeld, Defense Secretary, United States of America (Jan. 12, 2004), at <<http://www.hrw.org/english/docs/2004/01/12/usint6921.htm>>.

condemning Israeli violations of international law.<sup>5</sup> In the last decade, the United States has exercised nine of its last ten vetoes in the Security Council on Israel's behalf.<sup>6</sup> Since 1948, the United States has maintained, almost without interruption, the flow of arms and economic aid to Israel that has in large part made 37 years of Israeli military occupation possible.<sup>7</sup> More recently, it brought pressure on Belgium to abandon the principle of universal jurisdiction that undergirded the prosecution of Ariel Sharon, together with others accused of responsibility for the Sabra and Shatila massacres of 1982.<sup>8</sup> It also campaigned actively against the U.N. General Assembly's request to the International Court of Justice (ICJ) for an advisory opinion on the legal consequences arising from Israel's separation barrier in the West Bank.<sup>9</sup> Nonetheless, for many years the United States did not openly demur from the international consensus regarding the underlying legal issues and questions of rights at stake in the conflict. It continued to uphold the principle of the inadmissibility of territorial acquisition through war on which U.N. Security Council Resolution 242 and 338 were based. It never officially repudiated the 1978 finding by U.S. State Department Legal Counsel Herbert Hansell that Israeli settlements in the West Bank

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5. See Permanent Observer Mission of Palestine to the United Nations, *Summary of Security Council Resolutions on Palestine since 1948*, available at <[http://www.palestine-un.org/res/res\\_sc.html](http://www.palestine-un.org/res/res_sc.html)> (last visited Dec. 4, 2004); Permanent Observer Mission of Palestine to the United Nations, *Summary of Security Council Resolutions on Settlements since 1967*, available at <[http://www.palestine-un.org/res/res\\_sc.html](http://www.palestine-un.org/res/res_sc.html)> (last visited Dec. 4, 2004).

6. A chart of all exercises of vetoes in the U.N. Security Council is maintained at <<http://www.globalpolicy.org/security/membship/veto/vetosubj.htm>>.

7. Since 1967, the United States has granted Israel \$92 billion in total aid, including \$47 billion in military grants and \$11 billion in military loans. See The Jewish Virtual Library of the American-Israeli Cooperative Enterprise, *U.S. Assistance to Israel* (2004), available at <[http://www.jewishvirtuallibrary.org/jsource/US-Israel/U.S.\\_Assistance\\_to\\_Israel1.html](http://www.jewishvirtuallibrary.org/jsource/US-Israel/U.S._Assistance_to_Israel1.html)>.

8. Ian Black & Ewan MacAskill, *U.S. Threatens NATO Boycott Over Belgian War Crimes Law*, THE GUARDIAN, June 13, 2003, at <<http://www.guardian.co.uk/nato/story/0,12667,976499,00.html>>. Global Policy Forum, *Universal Jurisdiction*, available at <<http://www.globalpolicy.org/intljjustice/universal/univindex.htm>> (last visited Dec. 4, 2004).

9. Rami G. Khouri, *The Rule of Law, or Lawlessness and Terror?*, THE JORDAN TIMES, Feb. 25, 2004, available at <<http://www.aljazeera.com/Opinion%20editorials/2004%20opinions/Feb/25o/The%20rule%20of%20law,%20or%20lawlessness%20and%20terror%20Rami%20G%20Khouri.htm>>.

and Gaza Strip were illegal.<sup>10</sup> And until 1992 the United States voted seven times in support of U.N. Security Council Resolutions to reaffirm the right of Palestinian refugees to return to their homes or receive compensation and support for resettlement.<sup>11</sup> The United States has simply acted in such a way as to communicate to Israel that these legal principles were of no real consequence and hence could be ignored.

A turning point was reached, however, with the signing of the Oslo Accords in 1993, under the aegis of the Clinton Administration. The Oslo Accords, while affirming that implementation of Security Council Resolutions 242 and 338 was integral to the peace process, otherwise neglected the rich body of U.N. resolutions and other sources of international law bearing on settlements, refugees, resources, and many other specific dimensions of the conflict.<sup>12</sup> Instead – and this is a key transformation – the Oslo Accords construed virtually all of the central issues in dispute (settlements, refugees, the status of Jerusalem, borders, security arrangements, and sovereignty) as “permanent status” issues subject to negotiation between the parties.<sup>13</sup> While the Accords did not specifically eschew legal rights as parameters for those negotiations, it has become increasingly clear that the U.S. view, and that of the Israelis, as well, is that negotiations are a substitute for the resolution of these issues according to legal criteria. Indeed, the Israeli government in appealing to the ICJ not to hear the case regarding the separation barrier in February 2004 specifically invoked the Accords as a shield against that litigation, arguing essentially that the Palestinians, in signing the Accords, had agreed to negotiate, not litigate.<sup>14</sup> For their

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10. *The Realization of Economic, Social and Cultural Rights*, U.N. ESCOR Commission on Human Rights, 46th Sess., Agenda Item 8 at 84, U.N. Doc. E/CN.4/Sub.2/1994/18 (1994).

11. See Res. 89, U.N. SCOR, 524th mtg., U.N. Doc. S/1907 (1950); Res. 237, U.N. SCOR, 1361st mtg. (1967); Res. 468, U.N. SCOR, 2221st mtg. (1980); Res. 484, U.N. SCOR, 2260th mtg. (1980); Res. 694, U.N. SCOR, 2989th mtg. (1991); Res. 726, U.N. SCOR, 3026th mtg. (1992); and Res. 799, U.N. SCOR, 3151st mtg., U.N. Doc S/RES/799 (1992).

12. Declaration of Principles on Interim Self-Government Arrangements, Sept. 13, 1993, Isr.-PLO, art. I, 32 I.L.M. 1525.

13. Declaration of Principles on Interim Self-Government Arrangements, Sept. 13, 1993, Isr.-PLO, art. V, 32 I.L.M. 1525.

14. International Court of Justice Advisory Opinion, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *Written Statements of Israel* (Jan. 29, 2004), available at <<http://www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm>>.

part, U.S. officials have, since Oslo, studiously avoided legal language in discussing various dimensions of the conflict. Israeli settlements, for example, are “obstacles to peace,” but not illegal. The attacks on civilians in Rafah and campaign of home demolitions there are “not helpful,” but not war crimes.

The Bush Administration’s “Roadmap to Peace” continues the earlier established pattern of reference only to Security Council Resolutions 242 and 338 and neglect of the body of more specific resolutions dealing with various dimensions of the conflict.<sup>15</sup> Yet another qualitative step away from a law-informed approach to peace was taken in April 2004 when President Bush repudiated the Palestinian right of return and opined that Palestinians would have to defer to demographic realities and accept the permanent annexation of some West Bank Israeli settlements to Israel.<sup>16</sup>

What accounts for this apparent indifference, if not hostility, to a law-based approach to conflict resolution on the part of the two dominant players in this conflict, the United States and Israel? Frankly, I suspect the answer to this is complex, but one obvious possibility presents itself: law, at least when it is respected, constrains power. Israel, as a powerful player, simply doesn’t want to accept the constraints that international law would impose on it, and foresees a more favorable substantive outcome through negotiations without legal limitations. The United States, meanwhile, may either endorse Israel’s vision for the future of the region or be indifferent and sees no need to upset a valuable ally.

Whatever the cause of this anti-legal inclination after more than a decade of the Oslo “peace process,” the reality should be obvious to all: the region is more inflamed, more fearful and more angry than at almost any point since 1967, if not before. Something clearly has gone seriously wrong.

Probably many things have gone wrong, but at least one hypothesis we have to consider is that this de-legalized approach to the resolution of the conflict has seriously undermined the possibilities for a durable agreement between Israel and the Palestinians. It has done so primarily because it has left the

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<sup>14</sup> Press Statement, U.S. Dep’t of State, A Performance-Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict (Apr. 30, 2003), available at <<http://www.state.gov/r/pa/prs/ps/2003/20062.htm>>.

<sup>16</sup> *Leaving Gaza, Settling in the West Bank?*, ECONOMIST, Apr. 16, 2004, available at <[http://www.economist.com/agenda/displayStory.cfm?story\\_id=2592636](http://www.economist.com/agenda/displayStory.cfm?story_id=2592636)>.

Palestinians, the weaker party to the negotiations in virtually every sense, militarily, politically, and economically, at the mercy of a much more powerful adversary. Israel, moreover, has been backed by the most powerful country in the world, the United States. The terms of the agreement that Israel very nearly was able to force upon the Palestinian leadership three to four years ago had all the hallmarks of a humiliating surrender, rather than the starting point for relations of mutual respect between two equal peoples.

It is past time to try a different approach, one that re-centers international law in both public policy making and public discussion of the Israel/Palestine conflict. What does a rights-based approach to peace in Israel/Palestine offer that prior approaches have not? Let me suggest just three advantages; there may well be others.

First, and most important, international law provides a baseline of protection for both Israeli and Palestinian peoples, guaranteeing that fundamental rights will not be compromised in a peace agreement. Of course, as the weaker parties to the negotiations, Palestinians currently need these protections more than do Israelis. International law will at least partially offset the tremendous imbalance of power that otherwise would permit Israel to dictate terms to Palestinians that they might accept through compulsion, but not embrace as just. However, it should not be lost that international law protects the rights of both peoples, Palestinian and Israeli.

Second, a resolution based on broadly accepted principles of international law and justice will have the greatest legitimacy between the parties to the agreement and within the world community. International covenants, U.N. Resolutions, and the practices of nations enshrine the world community's most considered and universal fundamentals of morality and justice. A resolution that credibly conforms to them will be durable, unlike any that would merely reflect the current imbalance of power between the parties. An agreement based only on power differentials and that leaves one side with a lingering sense of injustice will be inherently unstable, while one that honestly and fairly addresses longstanding grievances will be lasting.

Third, a rights-based resolution of the Israel/Palestine conflict would be exemplary of an approach that might profitably spread to other conflicts in the region, both international and sub-national. It would be, moreover, consistent with the stated objective of U.S.

policy to promote democracy and the rule of law in the Middle East.<sup>17</sup> There may be much to criticize in both the substantive vision of “democratization” held by current American policy makers for the Middle East, and even more so in their willingness to resort to military means to bring it about, but the “freedom deficit” they identify is an undeniable fact. Just as lawless behavior in Iraq by the United States deeply undermines efforts toward “democratization,” indelibly associating it with foreign occupation, and all the death, destruction, and humiliation it entails,<sup>18</sup> lawful behavior has the capacity to legitimate and serve as a positive example that might spur the growth of genuinely democratic elements in the region. A law-based resolution will say to the people that respect for international law and for U.N. resolutions is demanded of all nations and peoples of the region, not just some.

What would a rights-based resolution to the Israel/Palestine conflict look like? Our first task over the next day and a half will be to flesh out some answers to this question. So we will take each of the major dimensions of the conflict – settlements, refugees, water, the status of Jerusalem – and try to give some specificity to the character of a rights-based resolution with respect to each of them. Most of these will be familiar to you as the “permanent status” issues of the Oslo Accords. There are, however, some omissions from that list and some other additions to it that I need to highlight.

The omissions, I should point out, are more by accident than by design. We suffered some attrition from our original list of contributors, so these gaps do not necessarily reflect our judgment that the omitted topics are less worthy than the ones we do address. Perhaps most notably, we do not directly examine questions of borders and sovereignty as between Israel and a Palestinian state or non-sovereign entity. This is certainly not because the topic is straightforward. Clearly, there are a host of issues to be considered and discussed here, given strong indications that any Palestinian entity likely to emerge in the near future will exercise highly

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17. See Wayne Washington, *Bush Urges Mideast to Accept Democracy*, BOSTON GLOBE (Nov. 7, 2003), available at <[http://www.boston.com/news/nation/articles/2003/11/07/bush\\_urges\\_mideast\\_to\\_accept\\_democracy](http://www.boston.com/news/nation/articles/2003/11/07/bush_urges_mideast_to_accept_democracy)>.

18. See *Humanitarian Assistance Following Military Operations: Overcoming Barriers*, 108th Cong. (2003) (opening statement of Rep. Christopher Shays, Chairman, Subcomm. on Nat'l Sec., Emerging Threats, and Int'l Relations), available at <<http://www.house.gov/shays/reconstruction/const.htm>>.

compromised sovereignty, or none at all. Another topic we do not directly take up is the basic legality or illegality, as the case may be, of Israeli occupation of the Golan Heights, West Bank, and Gaza Strip, nor of armed opposition to it. Again, these are important areas to discuss.

The good news is that all of these topics, both the ones we have on our agenda to discuss directly and those we do not, are only partially severable. There is really a great deal of interconnection between the various dimensions of the conflict. Discussions of settlements, or Jerusalem, for example, implicate questions of borders, sovereignty, water, and others. As we conduct our discussions, therefore, we must take cognizance of some of the gaps in our coverage and insure that some of the missing pieces of the puzzle are filled in as we discuss the pieces with which they connect.

As to the additions, let me comment for now on just one, the inclusion of a discussion of the status of Palestinian citizens of Israel. This group has long been excluded from discussions about conflict resolution between Israelis and Palestinians, notwithstanding the fact that they are substantial in number (roughly 1.2 million people, about 20% of the population of Israel), the fact that they were historically part of the Palestinian people and show increasing signs of re-asserting that aspect of their identities in the present, and the fact that they, like other Palestinians, have substantial grievances against the Israeli state.<sup>19</sup> They have been treated, rather, as a domestic minority whose concerns should be addressed within the context of the Israeli sovereign state and as if they had no connection to Palestinians living either under occupation or in exile. This occlusion of the Palestinian citizens of Israel from discussions of peace between Israelis and Palestinians seems artificial and wrong, and jeopardizes the chances of a comprehensive settlement between the two peoples. We need to ask whether the concerns of Palestinian citizens of Israel can and should be integrated into the broader push for peace between Israelis and Palestinians. Who should speak for them? What demands should be made on their behalf? What would be the legal underpinnings of the rights they might assert? If we make headway on some of these questions, I think we will be adding something novel

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19. The best source of information on the status of Palestinian citizens of Israel is Adalah: The Legal Center for Arab Minority Rights in Israel. Reports and other publications may be gained through their website at <<http://www.adalah.org/eng/index.php>>.

and extremely important to the public debate over peace in the Middle East.

As to some of the issues that we address, there has long been a fairly strong international consensus on their proper legal standing and on where the rights lie. There is virtual unanimity (outside of Israel) on the illegality of Jewish settlements. International law is not immutable of course, and it is conceivable that some revisiting and updating is necessary in respect to some issues. There has been some discussion among commentators, for example, as to whether the U.N. Secretary General's proposed resolution for Cyprus embodies a new and different approach to the rights of refugees and whether it is one that bears implications for the rights of Palestinian refugees.<sup>20</sup> That is all well and good, but we have to be a little more ambitious than to simply restate or revise at the margins and instead push beyond abstract definitions of rights in the direction of remedies. This is where we may be able to make our most important and original contributions, and break new ground.

After all, cynicism about international law – at least for many members of the public – has never been about the substantive rights it enshrines. Instead the cynicism turns on the perception of the incapacity of the international system to vindicate and protect those rights in reality. If our alternative rights-based approach is to win adherents, we have to be able to offer concrete and pragmatic proposals, not simply a shimmering mirage that retreats with every step one takes in its direction. Our proposals need to be clear-eyed and realistic in two senses. First, they need to take account of current “facts,” changed realities that demand flexibility in the kinds of remedies we devise. Second, we have to begin to envision how to get from here to there, that is, how to begin to actually enforce or implement our proposals. Let me back up now and say just a few things about these two needs.

First, as to the “facts” we must consider in imagining remedies. We all know that the reference to “facts,” or more fully, “facts on the ground,” is typically a euphemism for the surrender of Palestinian rights. The common formulation is that some “fact” established by Israel, such as the “realities on the ground and in the region” referred to recently by President Bush in his statement regarding West Bank

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20. See Eyal Benvenisti, *The Right of Return in International Law: An Israeli Perspective* (2003) (unpublished draft), available at <<http://www.tau.ac.il/law/members/benvenisti/work.html>>.

settlements,<sup>21</sup> must cause some Palestinian right (in this case, to be free of illegal colonization of land slated for Palestinian self-determination) to yield. Such a use of “facts” is clearly antithetical to the rights-based approach we urge. At the same time, our suggestions would be entirely unrealistic if they do not contemplate and accommodate changed demographic, political, economic, social, and other circumstances. So we have to seek a principled ground between the use of “facts” to defeat rights and a purely abstract conception of rights that has no possibility of implementation in the world as we know it. What “facts” matter? Here is another “demographic reality” that might be considered: by the year 2010, if current birth rates continue, the number of Palestinians living within the borders of former Palestine will equal, then exceed the numbers of Jews.<sup>22</sup> Is this a kind of “fact” that we should be considering? How should these “facts” be accommodated in the fashioning of remedies, if at all? When should “right” yield to “fact,” or vice versa? These questions are not at all easy, and there may not be one answer or one principle that is applicable to all the issues we discuss. But they are important, and we must address them as coherently as we can.

As to getting from here to there or crafting strategies for actual enforcement or implementation, this is a key step. If we do not begin to offer a vision of how to translate some of these ideas into reality, eventually we will be dismissed properly as adding nothing truly helpful to public discussion. If we implicitly assume that our suggested remedies will be implemented via negotiations between the parties, there is no guarantee that negotiations will even resume in the foreseeable future, let alone on such a footing as to make proper legal remedies even feasible. Therefore, we have to be as creative and broad-minded as possible and consider the full range of possibilities, from litigation in the courts of individual nations, to actions within international organizations and tribunals, to public campaigns and other kinds of actions launched within civil society. The unfortunate probability is that we may only be able to rely in limited ways on governments, and some of the heavy lifting may have

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<sup>20</sup> *Leaving Gaza, Settling in the West Bank?*, *supra* note 15.

<sup>21</sup> See ARNON SOFER, *ISRAEL DEMOGRAPHY 2000-2020: DANGERS AND OPPORTUNITIES* 18 (National Security Studies Center, University of Haifa) (2001). See also *Profile: Recent Israeli Actions Have Encouraged the Discussion of an Israeli-Palestinian Binational State* (All Things Considered on National Public Radio, Oct. 20, 2003), available at <http://www.npr.org/programs/atc/transcripts/2003/oct/031020.kenyon.html>.

to be done by forces in civil society, one reason why we have carved out some time tomorrow morning to consider these possibilities.

We do have to be candid about the limitations of international law. It will never provide all the answers. In respect to some issues, water, the status of Jerusalem, and perhaps others, international law may provide only the broadest parameters for equitable resolutions. Negotiations are thus crucial, and inevitable.

I have said enough in the way of preliminaries. I am delighted to be here and more particularly delighted to be here with you, and I look forward with hope to our discussions. I am caught between the tension of knowing our limitations and the enormity of our challenge on the one hand, and the importance, even necessity, of what we are attempting on the other. I couldn't imagine a more inspiring cohort on which to embark on this great challenge.