



Sunday brunch with Michael Lynk

The transcript below is from a live webinar with Michael Lynk, Former UN Rapporteur for human rights in Palestine. The webinar was jointly hosted by Alternative Jewish Voices and Justice for Palestine and held on Sunday 29th of May 2022. Michael was interviewed by Marilyn Garson from Alternative Jewish Voices and Laura Agel from Justice for Palestine.

LA: Kia ora koutou. It's good to have you with us this morning, I'm Laura I'm a member of the coordinating group for Justice for Palestine [Laura opens with a karakia]

MG: Kia ora everyone I'm Marilyn Garson I'm a Co-founder of Alternative Jewish Voices and I welcome everyone from New Zealand and Australia who has come to Sunday brunch with Michael Lynk, the outgoing Special Rapporteur on Palestinian rights at the UN. We're here to say thank you for the work and the dedication.

It's my great pleasure to welcome and introduce Michael Lynk. He and I have become friends over the past five years or so and technically through our siblings we go back another half century to Halifax. Michael Lynk is an associate professor of law and in 2016 he was appointed as Special Rapporteur for a six-year term. He has co-authored a book with Richard Falk about the role and the experience and that will come out later this year.

We see the Special Rapporteur prominently through his formal reports to the United Nations Human Rights Council. Michael Lynk's written voice has greatly influenced me and I'm sure many others here. The method of his reports felt very intentional, culminating in his final high voltage report on Israel as an apartheid regime. Although the formal audience for his reports may have been diplomatic, I thought he also did several things for the rest of us. First, he grounded every issue in law, treaty, resolution, and our inalienable rights as equal human beings. And then he hammered on the exceptionalism of this occupation, and he wrote that with a deeply felt, articulate outrage. In both of those ways his reports gave us resources enabling us, as non-lawyers, to speak about the law and giving authoritative voice to our indignation. And third, he always made clear that the law has not failed Palestine, rather the law has never been tried.

Our governments have not lived up to their legal obligations. That puts the onus on us in our countries to lead our governments to action. So, his reports gave us a real path, a set of steps to end this awful status quo. We're here to say thank you for the quality of those resources, for your tireless work and for the grace that you have shown under such pressure. But mostly we are here to listen, so I will stop! I will though ask you please to begin with a better explanation of the Special Rapporteur's role. I've mentioned the reports, but what else?

ML: Thank you very much all of you for the invitation to participate in this today, it's a great pleasure to be able to do so. I spent two wonderful months, about 15 years ago, as part of my sabbatical in Wellington teaching a course on international labour law at the law school at the university. My kids were very small at that time, and I always remember with great delight their time at the day care and at the school in Te Aro. By the end of the two months they had very distinct New Zealand accents which I'm sad to say they've since lost!

Marilyn is someone I've known for the last five years, but I recall meeting her - as she said, half a century ago - because I knew her older sister going through grade school, we both come from Halifax Nova Scotia on the eastern coast of Canada. In terms of being Special Rapporteur, I'm glad you've asked that because it's something I always want to begin my conversations with people about. The United Nations human rights system about 20 or 25 years ago began to set up Special Rapporteurs on human rights issues, mostly with global mandates and it's now become a part of what is called the United Nations Special Procedures and it's an integral part of the UN human rights system. There are about 55 or so Special Rapporteurs. The bulk of them do have these global mandates: the Special Rapporteur with respect to torture; the Special Rapporteur with respect to food security; the Special Rapporteur on the right to housing; the Special Rapporteur on the right to water, and so on. But they're about a dozen of us who have specific geographic mandates. The Special Rapporteur on human rights in North Korea; in Cambodia; in Myanmar; and myself, the Special Rapporteur with respect to the situation of human rights in the Palestinian territory occupied since 1967.

So, we're appointed for six-year terms, as you mentioned. It's not a paying job, so as a result of that most of us keep our day jobs and the vast bulk of the Special Rapporteurs that I've worked with over the years are university professors like myself. It's because they have already developed an expertise in the particular area for which they are appointed by the UN. But also, it's because teaching jobs at a university are generally flexible enough that allow you to devote the three or four months a year that it takes in order to be able to do your work.

And what is the work then? Marilyn has mentioned that I've delivered reports. I delivered two reports a year over the six years, one in the spring to the Human Rights Council in Geneva, one in the fall of every year to the Third Committee of the General Assembly in New York. And I've always chosen a particular theme for my reports. I've issued reports on the right to development in Palestine; on collective punishment; on the right to natural resources; on international accountability and on illegal occupation. And my most recent and last report, which I issued and delivered in March 2022, was on apartheid and whether it exists in the occupied Palestinian territory. My work also means that I'm constantly dealing with diplomats, with political decision-makers and with civil society. Marilyn, before this began, asked me how many interviews I've done over the six years and it probably is in the range of about 150 to 200 of these kinds of conversations that I've had, as side events in Geneva, New York, or many of them virtually, particularly over the past two years. I hope to be able to use all kinds of methods to be able to communicate the messages that come out of my reports to a global audience, to civil society, to diplomats, the politicians, to the media, and anybody else who cares to listen to the issue. So that in a long way is an explanation of what a Special Rapporteur does and what my work in particular winds up doing.

MG: From the six years that you've had, what can you generalise about in terms of strategy, what you see that works, that doesn't work, that...it feels like such an eventful time, how do you sum it up?

ML: Sure, I'm sometimes asked, "Isn't this a depressing Special Rapporteur mandate to wind up having?" And I can remember a month and a half into my appointment, going to my very first meeting on Special Rapporteurs in June of 2016. And a very prominent Special Rapporteur (in fact he's Australian, a notable expert in international human rights laws) congratulated me on becoming Special Rapporteur in respect to Palestine, and then said, "You know Michael, you've probably got the toughest position of all". And I just felt so deflated after hearing that. But my sense is, and this is certainly true I think of most of the Special Rapporteurs I've worked with... I think every one of us wakes up with a sense of optimism. We know what the law is, we know what human rights requires within each of our particular mandates and for me it meant knowing that the law is on the right side of history with respect to the Israeli occupation of Palestine.

It meant that those very brave, courageous, outspoken advocates – Israelis, Palestinians and internationals who speak through the medium of civil society and human rights organisations – that they are the ones who really feel at the blunt end of the criticism that winds up occurring with respect to this. I should point out that, as Special Rapporteur, the obligation of any member of the United Nations is to allow Special Rapporteurs (or to invite Special Rapporteurs) into the territory to be able to conduct their particular work. I consistently wrote to the government of Israel to allow me into Israel and the occupied Palestinian territory during the six years of my mandate and I heard “crickets” back, they refused me entry into Israel and the occupied Palestinian territory. And that's not simply personal to me. One of my immediate predecessors, Richard Falk, a very prominent American international human rights lawyer, who was Special Rapporteur between 2008 and 2014, was also refused entry and I'm expecting that my successor, Francesca Albanese, will also find difficulty in trying to get into Israel and the occupied territory as well.

So, in terms of answering your question Marilyn, I guess my point would be, this has been an incredibly enriching experience. I was told by Richard Falk when I took it, he said “Look, there are basically two things you have to keep in mind”. And I say this to you because I think this is what is important for civil society organisations who do work on Israel and Palestine to keep in mind – whether you're working in the Jewish community, whether you're working in the Arab, Muslim, or Palestinian communities, or whether you're trying to create a bigger message for the societies that you live in – And that is this, the first issue is to be bold and straight forward. Albert Camus once said that calling things by the wrong names only adds to the affliction of the world. And I think you know it's the duty of all of us to be able to say, “This is what's happening in Israel and Palestine”. But the second thing to keep in mind, in order to be effective as well, is to be responsible. You've got to find the right tone to be able to speak to your own communities and to government decision-makers and the diplomats and to the media as well. And I think if you combine those two thoughts, you know, to be straightforward and call things as they are, to speak truth to power. But also, to be responsible and try to find creative ways of finding that right message to put across to people. Then I think you have the best chance of moving forward, and doing your part, to contribute to finding, ensuring that there is peace and justice between Israelis and Palestinians.

LA: Thank you, Michael. Following on from what you mentioned about international law and what you said about being really clear and responsible about stating the facts about what you see happening. Earlier this year you described Israel's occupation over Palestine as “apartheid”. Do you believe that states generally avoid using that word because of the legal obligations attached to it or for some other reasons?

ML: It's a mixture of things, I think. States sometimes do call Israeli settlements illegal. They voted for those resolutions. And they probably have as part of their own foreign policy - and I'm thinking particularly in Europe – that settlements are illegal. That hasn't stopped them, or it hasn't encouraged them to follow through on that and say, “Ban settlement goods and products from entering into the international market place.” The effect of saying that settlements are illegal unfortunately remains at the rhetorical level only so...let me answer your question this way.

When I became Special Rapporteur, six years ago, I decided I wasn't going to use the term apartheid. It seemed to me to have no useful aim other than to alienate legal and political and diplomatic decision- makers. And, that I could work entirely within the scope of international human rights law and international humanitarian law because there's all kinds of things that states have agreed to, but they haven't followed through on that. And within three or four years of being a Special Rapporteur I came to the conclusion that no matter how well (if I did it well) my arguments were made, or how well-organised my reports were composed in explaining what the law was, and what states

themselves had agreed to - particularly in Europe and North America - they weren't moving on this issue. And at the same time, I was coming to that conclusion that this 50-plus years of occupation was now becoming indistinguishable from annexation. It also was a time when, beginning two years ago, adding to the longstanding voices of Palestinians saying "We live under an apartheid regime", that Israeli and international human rights organisations were now issuing comprehensive well-argued, well-sourced reports saying that this is apartheid. It's either apartheid in the West Bank, its apartheid in the Palestinian territory including East Jerusalem and Gaza, or its apartheid in the entire territory between the river and the sea. And those reports influenced me deeply to come to the conclusion that I have to address the question of apartheid, which is what I did in my 12th and last report in March. And I was lucky to be able to build upon these fulsome reports that had been issued by Palestinians, by Israelis and by the international community. And you know what to me it just comes a lot easier to be able to say these words "apartheid".

And the arguments I've heard back rejecting these reports, or rejecting my report, generally are very thin. Either, you know, the call has been, "Well, you're an antisemite for saying that", which I think is virtually no argument at all because they never tackle the depth and the analysis of the law that is the pillars of these reports. And this becomes I think probably just a very ugly shorthand, and I must say, a lazy way of being able to answer the very real facts on the ground and the dynamic reality that's going on there. Another argument back is, "Well this, it's not useful, whether or not it really is apartheid in the occupied Palestinian territories, or between the river and the sea, we don't think it's useful, it only drives people apart." But as I said, you know quoting Camus, if the situation is that there are 700,000 Israeli Jews living in Jewish-only communities in occupied territories with full political, citizen legal rights, living in the same geographic and political unit as over three million Palestinians in East Jerusalem and the West Bank. Add to that the other two million Palestinians barricaded in Gaza. If they live with entirely separate rights - political and legal rights - living in the same geographic unit, then find me a better word than apartheid and I will happily use it. If you can prove that it actually conforms with the law. So, I find this second range of arguments - which certainly comes from my government - "That's just not a useful term because it only drives people apart." If that actually is the reality on the ground and that can be stated over and over again through the use of international law, then I think you're right in the question that you pose, it actually would compel governments to do something. That this was apartheid, given what the international community has said over the last 60 some years with respect to the utter illegality of apartheid, culminating in the 1998 Rome Statute on the International Criminal Court which said apartheid is actually a crime against humanity. One of the most serious of crimes that can be committed in international law.

MG: Following that report you did an interview with Mondoweiss, and you said the phrase that I suspect will be attached to your signature for a long time. You referred to the "Fever dream of settler colonialism". And I wonder if that was just a 'blurt' that you'd been waiting a long time to say, or do you really feel that it's moving into a different phase and what is this phase?

A very good question Marilyn. Actually, that was a phrase that I wrote in my report and what I was saying there was that, essentially, what we've learned over the last seven years, and probably one of the two or three most important developments of the 20th century - beginning in the 1950s - was the decolonisation of most of the developing world. Freedom from empire, freedom from imperial rule. And in a number of countries built upon empire was settler colonialism. Certainly, in the country I come from we are now discussing this seriously, as a term and as a method and as an analysis, and I'm sure this is happening in New Zealand and Australia as well. These are classic pieces of settler colonialism, so was South Africa, so was the United States. And then the question arises, is settler colonialism an appropriate term to use with respect to Israel and Palestine. And I haven't done a report

on this issue, but I know that there has risen up an argument in the midst of all of these reports being released on apartheid, that the issue of settler colonialism in the instance of Israel and Palestine has been downplayed. And if you like, that's my very tiny contribution that I think settler colonialism is a useful term, it is something that we should be exploring. I know that it is growing in the academic literature, and I suspect that you'll see settler colonialism being addressed by my successor at some point as well. Why is settler colonialism an appropriate term to at least consider applying with respect to Israel and Palestine? It's that it's like any other settler colonising project. And what it meant was there was an indigenous people - Palestinians - who have lived there for probably, as a people, for 1300 years in terms of being an Arab people. And a movement arose – Zionism - at the end of the 19th century and the beginning of the 20th century, which actually identified in its roots with the colonial movement. Zionism wound up attracting a significant number of European Jews over the next several decades as the answer to the extraordinary predicament that they faced through the rise of fascism, the intensification of antisemitism and ultimately the Holocaust. For many European Jews and for many Jews elsewhere, Zionism seemed to be the answer. We can no longer live in Europe, it's no longer safe for us, we have to find some other homeland. Some would have chosen to emigrate to North America, others in significant numbers chose to go to Palestine either in the 20s and 30s or immediately after the Second World War. And then in turn more numbers came after the establishment of the state of Israel in 1948.

But it's impossible to understand Zionism, I think, without understanding the impact it had upon the indigenous people of Palestine. And Zionism, in its creation and its formative years in the 1920s and 1930s, strongly identified as being a colonial movement, and those terms are actually used by some of the leaders and intellectuals in those decades. So, I think we have to wind up taking that seriously. And in the end what it meant was: salvation for Jews, predominantly European Jews and then for Sephardic Jews coming from Arab lands in the aftermath of the establishment of the State of Israel, but it meant disaster for the Palestinians. And I was just reading today, interestingly enough, an excerpt from the Maisky Diaries. Igor Maisky was the Soviet ambassador to Britain between 1932 and 1943, a hugely influential figure, and his diaries were discovered about a decade ago and published. And as I was reading today, he was friends with a huge number of influential people in Britain in the 1930s and 1940s, including Chaim Weizmann, one of the intellectual founders of Zionism and the first President of Israel. And Weizmann said, as quoted by Maisky in his Diaries, "The solution to the predicament of European Jews, is to move five or six million European Jews to Palestine and to find another home for the million or so Palestinians who wind up living there." So, it meant population replacement. It meant the expulsion and forced transfer of the indigenous people.

And when you think of how settler colonialism has impacted upon any range of societies, there's generally three approaches to it. It's either meant domination, or it's meant extermination, or it's meant expulsion. And with any of those cases it has been a disaster for the indigenous population. In North America and South America, in Australia and New Zealand, and in Africa as well. And I think we have to understand, the phenomena that occurred over the last 120 years in Israel and Palestine has been part of the same movement. I want to insist, that doesn't mean that the seven million Israeli Jews who live there today are illegitimate, or don't have the right to continue to live there. There's been in this whole process the creation of a new people, an Israeli Jewish people, who have rights to be able to live there. But what it means is we have to figure out in a creative way how to encourage 14 million Palestinian Arabs and Israeli Jews to live in structures of equality with each other. No other system is going to wind up working, and that means either a genuine two state solution, or it means a one state democratic solution. That's for the parties to wind up deciding in the end, but it has to have as its cornerstone human rights, equality and democracy.

LA: So how might you suggest that activists, or even people who wouldn't necessarily label themselves as activists but read your findings, read the reports with Amnesty and Human Rights Watch and others and really see the situation and want to be part of making that change. How might you suggest that they put pressure on the governments to bring about the equality that you speak of?

ML: I say this as a lawyer, right off the bat: international law in general and human rights law in particular is the one human instrument that we've made together that represent the very best aspirations of these seven and a half billion people that live on this planet. And that's what we should be relying upon. International law has a lot to say with respect to Israel and Palestine. One of the great paradoxes of Israel and Palestine is that the international community has probably passed more resolutions than in any other single conflict than with regards to Israel and Palestine. The framework for how this ought to be settled has been so well laid out through these hundreds of UN resolutions in the Security Council, the General Assembly and the Human Rights Council.

But the great paradox is, for all of the law that's been created, and all those resolutions that have been adopted, they've not moved the needle very much at all in terms of active protection for the Palestinians, let alone giving them a viable path to self-determination which is what the international community keeps on promising to them. So, if I was to give advice as to how people in solidarity organisations or in associations that advocate for Palestinians and Israelis who are generally seeking peace - peace but built on equality - I would say use the law. The slogan that someone said to me last month when I was in Dublin was "Law, not war", and law is not meant only for lawyers. Lawyers may have a hand in creating it, but I think they're only the tools for building these, of trying to articulate what are the aspirations of everybody who wants to be able to live with the right to water, the right to food, the right to housing, the right to self-determination. Which includes, obviously, Palestinians and Israelis.

Why this is an effective tool in any kind of campaign or advocacy is that virtually every government in the world including New Zealand and Australia have signed up to this. They voted for these resolutions, or they're bound by these resolutions from these three decision-making bodies of the United Nations. So you're not asking something new from your governments. You're actually asking them to commit to what they've already agreed to through the framework of international human rights law and international humanitarian law. What is that? The settlements are illegal, and they have to be dismantled. The annexation is illegal, it has been since 1945 including the annexation of East Jerusalem and the de facto annexation that's ongoing with respect to the West Bank. That the blockade of Gaza and it's two million-plus Palestinians who live there is collective punishment which is absolutely forbidden under the 4th Geneva Convention. These are all laid out, not simply in my reports but in a whole host of advocacy which is easy to find on the internet. So, I guess if you speak in the language of equality and democracy and human rights, and are able to base that on international law and what all governments have agreed to, then I think you've got incredibly powerful tools that are going to be unanswerable by the diplomatic and political leaders that you're speaking to.

MG: In this struggle to extend our identification and our caring into this issue, to really make it something intolerable that the mainstream of our political body feels in need to respond to, it seems to me that our environment should be – our working operating environment – should be changed by what's going on in the Ukraine. Sure, we have this global moment of activism, this indignation that is couched in law and human rights. So far, we're not really seeing the needle move here. I wonder what you observe and how we might use this moment not to create a hierarchy of suffering but to extend our concern.

ML: I like the way you've put that question, Marilyn. Because when it occurred at the end of February, three months ago, I, but many others, made the parallel between the invasion of Ukraine and the occupation of Ukrainian territory and the application of international law, and the 55-year-old occupation by Israel of the Palestinian territories and the application of international law there as well. Those who support the occupation, or defend the occupation, don't want to make those comparisons and no one will listen to those who do make those comparisons. But I think they're inevitable with respect to this.

International law is not meant to be an umbrella that folds up at the first sign of rain. It is applicable everywhere. International law is not a menu *a la carte* that you can pick and choose which applies to you. International law, like domestic law, applies to everybody and in a democracy, it applies to everybody equally. So if international law says it's wrong to annex territory, if international law says it's wrong to conquer and go across your borders with the aim of overthrowing other governments, if international law winds up saying, "Human rights are essential to our modern world order, and must be obeyed by all governments" then that applies equally to Israel as it does to Russia in Ukraine, or Morocco in the Western Sahara, or Turkey in northern Cyprus.

These are all occupations that have been longstanding. I want to point out something to your listening audience. One is that occupation is not necessarily illegal. Occupations do occur that are lawful such as the Americans in Japan after the Second World War or the Western powers in Germany after the Second World War. But both of those occupations ended after about 8 to 10 years and that's generally the absolute maximum length that the world today would tolerate as a lawful occupation. Anything longer and the occupying power has to justify why it's continuing and maintaining that occupation. Israel has no justification for a 55-year-old occupation other than to say, "This is not an occupation". Israel has got a lone, solitary voice in denying that international law winds up applying to the occupied Palestinian territories, or that the 4th Geneva Convention applies, or that it has any responsibilities with respect to the to the Palestinian people. The vast bulk of the international community, whether or not they act upon it, at least agrees rhetorically that international law does apply, the 4th Geneva Convention is the applicable document as well as human rights law to that.

This is not the case of Israel having an honest disagreement with the world. This is an acquisitive occupying power that is seeking to take territory illegitimately and illegally and certainly contrary to UN Security Council resolutions which is the highest body that we have in the international system with respect to decision making. There are political reasons as to why you won't find a resolution at the Security Council with respect to Russia. Because it's a permanent member and it has a veto power. But there are more than 30 resolutions passed – critical of the Israeli occupation from the Security Council, beginning in the late 1970s – that the United States either voted for, or allowed to pass by abstaining and not using its veto. So those are the hallmarks on which we begin. So, if international law applies with respect to Russia in Ukraine, it applies just as equally with respect to Israel and Palestine.

LA: *Thank you, Michael. Earlier you mentioned dealing with negative comments, insults and attacks from various people who want to undermine your work and undermine those who stand up for the rights of Palestinians. And we've had a question from the audience, "How best to respond to accusations of antisemitism when advocating for Palestinian human rights?"*

ML: I think there's two parts to an answer to that. And the first is: antisemitism exists. Antisemitism exists in most societies where there are Jews, in fact probably in societies where there aren't many Jews that are left. And it's important, because if we're supporting Palestinians then we're against anti-Palestinian racism but we're also against racism and discrimination of all sorts, including against Jews.

So, I think we have to make that very clear. And we have to know what is an honest applicable definition of antisemitism. Because too often – certainly in the work that I do, but in the work that most human rights organisations do with respect to Israel and Palestine – antisemitism, as I said before, becomes a lazy and abusive attack on those who are trying to do work. Which hurts me in the sense that if you're advocating to end suffering of people and you raise the issue of the suffering of Palestinians and the answer back is “You're an antisemite for raising that”, or “I'm hearing echoes of a form of racism against Jews by you raising that”, then I've got to say that's not an honest argument coming back. There are, I'm sure there are elements, outlier elements with respect to those who profess solidarity with Palestinians, who perhaps harbour antisemitic thoughts or feelings or comments with respect to those, and they should have no part with respect to the struggle for justice. Because the struggle for justice actually means using the same laws to apply to everyone. So, I guess my conclusion with respect to this is: don't let that scare you. Because many good people who hold international human rights at the very heart of the work that they do have been called antisemitic for their comments and for their advocacy with respect to Palestine, who are not antisemitic. If you're called in a lazy way an antisemite for doing this work, you're joining, actually, a pretty big community of people.

But equally, you should be ready to respond if there are actually genuine antisemitic comments being made in any of the advocacy being done on behalf of Palestinians. With Palestinians themselves, many Palestinians themselves who are certainly the ones who are working in human rights organisations say, “That does not do us any good at all, by denying or minimising the Holocaust, by having inflated views with respect to who Jews are or what they may wind up doing.” That doesn't lead to the kind of equality and respect for human rights that many Palestinians – and many Israelis – are advocating. And the last thing I'll say is, there's nothing that I've said, and I'm sure nothing that your organisation has said, with respect to either the facts on the ground in the occupied Palestinian territory, or the applicable law or the applicable UN resolutions to it, that Israeli, Jewish organisations are not saying as well. They're attacked and marginalised in their own society. But the great thing about this human rights work that's going on is that Israeli Jews and Palestinian Arabs are speaking the very same language of human rights and are being motivated by that in order to be able to address all of the abuses of the occupation.

MG: Thank you. And I would add, as part of an international group that includes an Israeli Jewish group, it's quite interesting to look up their website. They're called “Boycott from within: Israeli citizens against the occupation” and they have a really strong statement to make about being allowed to speak this way. Another question from the audience: “We hear a lot of this continuous failure of international structures to uphold the law with regards to Palestine and the Palestinians. So how do you respond to people who have come to believe that violence and power are the only way to change the status quo.” That's a real question.

ML: It's an important question. Of course, I – coming at it as a lawyer, as a law professor, as someone who works within the realm of international human rights and humanitarian law – I often will make the argument to diplomatic and political decision makers, “If you don't want to say the only avenue left to those that are oppressed, to those that are suffering under a regime of systematic discrimination is violence, then you have to take the laws that you've created and the international rules-based order that you support, and the resolutions that you've adopted at the United Nations seriously, and actually raise the issues of accountability”.

This occupation is not going to die of old age. This occupation will not end until there is a concerted effort by the international community to raise - probably substantially raise - the cost to Israel for continuing to maintain and deepen the occupation. And that means using these tools of international

law. You know, I think the dichotomy is quite clear: either we're going to resolve this as peacefully as we can through the tools of diplomacy and through the guidance and the North Star of human rights and humanitarian law. Or you're going to continue to let it degenerate into violence where you find these attacks on Palestinians by Israeli military and sometimes a response by Palestinians of attacking individual Israeli civilians. None of that is helpful, none of that builds the kind of trust that you want to be able to see that's going to guide these two peoples towards a more prosperous and egalitarian future. But unless and until you actually use these plentiful tools of international law, to use issues like accountability on Israel, then you shouldn't be surprised when this unwarranted violence keeps on breaking out.

I want to point out that in terms of issues of terror, because I'm often asked this question. Terrorism is a fallacious tool to be able to use, and I've said that to Palestinians. And most certainly the Palestinians working in civil society agree with me. They have put their trust and they put their efforts with respect to the framework of international law. Palestinians, organisations, there are Palestinian political organisations that do advocate terror or violence. And I think, you know, that's wrong tactically, it's wrong morally and it's wrong legally. It's wrong tactically because Israel is so much more powerful militarily, and it inflicts so much more damage in return to the Palestinians. The UN has issued figures that, since 2008, over six thousand Palestinians have died as a result of Israeli violence and around 270 Israelis and foreigners have died as a result of Palestinian violence, which is a ratio of around 22 to one. So the application of violence is asymmetrical in this case. But if we are to make our best efforts to ensure that violence has no role then we have to push these decision-makers into saying, "Accountability has to be the key issue here". And I sometimes puzzle audiences when I say, "I want to talk to you about the A word now", and they're expecting me to speak about apartheid, as I will have asked. But I say the real A word is accountability.

The reason why I've come to the conclusion that this is apartheid, the reason why I've issued a previous report saying that the occupation has become illegal under international law, is to force the international community, particularly Europe and North America and Oceania, to take the terms about accountability seriously. If you think that simply repeating the mantra of a two-state solution, while doing nothing to be able to preserve it or to make it happen, is going to lead to the kind of future we all want to see, then you're sadly mistaken. And to be able to keep on saying two states as a substitute for any kind of action, you know, criticism without accountability, it becomes unbelievable after a while. It becomes...not a tool to be able to advance us.

Basically, we have two tools in front of us. The international community relies upon realpolitik, and it basically relies upon the fact that Israel militarily, and diplomatically, economically, and politically has far more tools and far more power than the Palestinians with respect to this. And that's the continued failed framework we have from the Madrid-Oslo process from 30 years ago. It keeps on repeating this realpolitik of actually acknowledging and replicating the asymmetrical power on the ground. Your other alternative is international law and a rights-based approach. And that's what I advocate and that's what most human rights organisations – Israeli, Palestinian, and international – wind up advocating. We have to put our anchor into human rights law, into international law and humanitarian law, international criminal law. And use those principles because those, I think reach the best of us and those have the best hope of minimising this terrible asymmetry of power between Israelis and Palestinians.

LA: Another question from the audience about neighbouring nations. They've asked, "What is the dynamic at play that sees immediate neighbouring nations of Israel signing peace and trade agreements without consideration or conditions on Israel to withdraw from Palestinian occupied territory", and it mentioned for example the role that Jordan could play.

ML: Sure. Egypt signed a peace agreement in 1979, Jordan signed a peace agreement in 1994 and more recently there's been the so-called Abraham Accords that were created during the last years of the Trump administration that has seen Bahrain, United Arab Emirates, Morocco and I believe Sudan sign these agreements to recognise Israel and to create trade and economic relations with them. The Biden administration will say this is helpful, this is good, it's not a substitute for a final peace agreement between Israel and the Palestinians. I agree with that, other than I think that these Arab countries themselves, I think are deceiving or self-deceiving themselves if they think that by creating these diplomatic trade and military relations with Israel that it's going to hasten peace in the Middle East. They have to show the evidence that's happening. And over the last two years, since the Abraham accords were launched – I believe in August 2020 – in 2021 we've seen the highest number of Palestinian deaths by Israel since 2014. We've seen the highest number of settler attacks on Palestinians and their property in 2021 than we've seen since the statistics first began to be kept in 2012. We've seen a rise in Palestinian home demolitions by Israel. We've seen 20-25,000 more settlers per year going into the occupied territories. All of the evidence, all of the signs are that this occupation continues to thicken, to deepen, and I think those who advocate for a two-state solution have the onus on them to show how that is possible with the continued growth of these settlements. We now have over 300 settlements in occupied East Jerusalem and the West Bank with settler population growing by 100,000 every four years. Who can't do their maths and come to the conclusion that that means an end to a two-state solution?

MG: *And another question about realpolitik. How significant do you think American use of Israel is as a point player to protect their big business and security interests? America seems unmoveable on this matter. Why?*

In his 2011 memoirs called *Interventions*, Kofi Annan, the former Secretary General of the United Nations, remarked upon the passivity, the remarkable passivity in his words, of the Security Council towards Israel in contrast to other conflicts that were going on at the time, including and particularly he compared it to the Security Council's actions with respect to Syria. But he went on to say a leading contributing reason as to why the Security Council is so passive when it comes to Israel and Palestine is the role of the United States. And I think it's fairly easy to lay out there's been so much written about the relationship between the United States and Israel. It gives a country which has a European standard of living and I think the GDP per capita of Israel in 2020 was \$44,000 per capita (American) but it gives it \$3.8 billion in aid – mostly military aid – annually, of which Israel is required to spend some of that aiding American military industry.

This is an entirely unique relationship diplomatically, militarily, and politically, and Israel has become obviously an important issue domestically. In his memoirs in 2020, Barack Obama said, "There is no other country in the world where I, as a president, in trying to make a rational or sound foreign policy decision, would face a domestic blowback as it is with Israel. I would never face that", he says of that, "with any foreign policy issue that I had to make with respect to Canada, Russia, China, Britain, France, Europe." So, there is a unique relationship that is symbiotic, and it has to do, in part, with very strong organisations in the United States that defend the occupation. Some of them Jewish organisations, some of them Christian Zionist organisations. And yet when you look at polling done in Canada and the United States and in Europe, you'll find that despite any sustained critical review –in say the mainstream American press, or Canadian Press, or European press – that in most of these countries there is at least either an equal division or there was a stronger polling among recipients saying they support Palestinian rights than those who would wind up defending Israel. So, it's a matter of tapping into what most people are actually seeing, and can't un-see, when they read stories with respect to the assassination of the Al Jazeera journalist, or the attack on her funeral several days later. It's hard

to un-see that, once you've actually begun to see it. So, there is, to my view, there is a considerable daylight between where popular opinion is, and where elite political diplomatic opinion is, in most of the Western European and North American and perhaps Oceanic countries are.

LA: *So a question might be: is this an issue specific to the US, and it links with a question from the audience that asks "What do you think drives the inaction by political leaders the world over." Is it the same thing?*

ML: That's a huge question. Obviously, the relationship that Israel has with the United States is by far the single most important relationship that it has in order to be able to protect it diplomatically, militarily and economically. European countries would probably be willing to take a stronger stance against Israel if it were not for wanting to protect their relationship with the United States. Certainly, we see, within the European Union, a division among countries there. On the one hand you have some Eastern European countries – and particularly Hungary but also at times the Czech Republic or Slovenia or Poland – who take positions within the European Union very much supportive of Israel. On the other end of the spectrum, there are countries like Ireland or Luxembourg or Belgium, or Norway that take positions that we would probably say are quite supportive of Palestinian rights, and meaningfully so. I was in Ireland for a week at the beginning of April, at the end of my role as Special Rapporteur. I was astonished to see, there are seven parties in the Irish parliament (the Irish Dáil) and six of them have extremely strong platforms with respect to Palestinian rights. For them Palestine is actually a vote-getter among the Irish population, but Ireland is one small country within Europe and while it has some influence, being on its borders, and has done some progressive things in terms of resolutions coming from the Irish Parliament – and it sits now on the Security Council – its role is minimal. In terms of my own country, again I think as I said with respect to the United States, polling here would show probably a sympathy towards the Palestinians among the general population. But it's not deep and it means that for political decision-makers, there's not a huge amount of pressure on them to take stances that are in favour of action against Israel for continuing to deepen the occupation.

MG: *We are seeing here a real generational change. We're enjoying here a real generational change and our partner group Justice for Palestine is a big part of that. That is, a next generation cohort of Palestinians speaking about their own lives. I wonder, from within the United Nations, with respect to your position, or your former position or others, when do you think Palestinians will be able to speak as of right in positions like yours.*

ML: Well, you know, if I can alter the question slightly because I think this is what it's driving at. "How useful or how important is the United Nations with respect to the articulation of Palestinian rights?". And I would have, I guess, two answers to that. At its very best, the United Nations is the forum and provides the agencies which help to articulate and try to protect, to its best efforts possible, Palestinian rights. I think of UNRWA, the UN agency for Palestinian refugees. I think of the resolutions that are adopted, particularly in the UN Human Rights Council, and the creation of this Permanent Commission of Inquiry last summer by the Human Rights Council to be able to look at the root causes with respect to the Israeli-Palestinian conflict. At times when the General Assembly passes its basket of resolutions, every December, in terms of the role that I played as Special Rapporteur.

The United Nations is where Palestinian rights are able to be articulated according to human rights and according to international law. Unfortunately, the United Nations isn't always acting at its very best. The problems with, what I've mentioned before, with respect to the Security Council and the permanent veto that the United States has and its willingness to use that. It's vetoed over 40 resolutions since the early 1970s with respect to stances critical of Israel. It's the only permanent Security Council member that's ever used its veto with respect to a resolution critical of Israel. So,

Israel knows that it can endure, and it can absorb, if you like, the toothache of having to go to the dentist every once in a while because of the criticism in the international community. But it knows it is not going to pay a price because the United States will wind up backing it.

So, the UN is often, unfortunately, not at its very best; and the issue of accountability, the issue of calling Israel to account for its violations of the 4th Geneva Convention. Or the issue of article 25, I'll raise it with you, of the charter of the United Nations adopted in 1945 which states "Every member state of the United Nations agrees to apply decisions made by the Security Council". And yet Israel is in violation of more than 30 resolutions passed with respect to its occupation and faces no consequences with regard to this. So, this is the dilemma of working within the UN system. You do have a platform to be able to articulate new and better frameworks with respect to Israel and Palestine. But on the other hand, you have to accept – no you don't have to accept, but you have to regret and push against – the fact that very little accountability will wind up flowing from that, unless you make it.

If I can just say one last thing. I am, by profession, a labour lawyer. That's what I went to law school for, and I worked as a labour lawyer for about a dozen years before I became a law professor. And there is a very famous piece of labour legislation that was passed in the 1930s through the US Congress, and trade unions had fought long and hard for that. And they went to Franklin Delano Roosevelt who was the President. He said "I support you. I support you in this, like, I know what you're saying. But you have to make me do it." And that's what I think we have to keep in mind with respect to all political and diplomatic leaders. And there's another very famous saying that we all probably know. Martin Luther King said, the arc of history tends towards justice, or bends towards justice. But we all know that, but then the Reverend Jesse Jackson said, and I think this is the most important thing: but we've got to make it bend, it won't bend by itself. So that's what I think we have to keep in mind with any kind of struggle is that we have to play the long game. You have to have and create strategic patience in order to be able to win justice step by step.

LA: We have another question from the audience: "The international boycott of South Africa was effective in dismantling apartheid. Do you support the BDS movement to pressure and highlight Israel's determination to ignore accountability to Palestinian human rights?"

ML: Nothing else is going to work but accountability. I call them accountability measures, others call them BDS. I, as a Special Rapporteur, said I took no position in favour or against BDS other than to say it's nonviolent and it's a form of expression therefore it should be defended in those cases. I don't see any other way of accomplishing justice for Israelis and Palestinians, except through accountability measures like boycotts or sanctions. There has to be accountability and it's going to have to come from civil society. Civil society is going to have to be, if you like, the new international superpower with respect to this and other social justice issues. You know, why are we now working so hard to achieve goals with respect to climate change and try to slow down climate change except for the fact that we have a better and more informed civil population that agrees with us. They've become the changemakers with respect to climate change and the environment. Same thing is true with respect to Israel and Palestine.

MG: Thank you. I'm sorry we have unanswered questions that we don't have time to get to and I'm just going to ask one last question and then Laura will wind up. I feel like your last comments have been leading in this direction, but I want to draw it out. Your mission was to work through the UN and yet you were constantly in the position of saying that the UN was declining to respect its own resolutions and international law. I'm guessing that this is also a part of your upcoming book with Richard Falk. I wonder if you could give us some hints about that book.

ML: It's actually with Richard Falk and John Dugard who was Richard Falk's predecessor. The three of us, through Richard's leadership, are putting together a book which includes excerpts from our various reports that we submitted over the last 20 years to the Human Rights Council in the General Assembly. Along with our own observations, individual observations, as Special Rapporteurs. How effective was the United Nations, how effective was civil society? What were the high points of what we did as Special Rapporteurs? What were our great disappointments by the time we had finished our six year mandates? So those are, I think, the pieces that you'll find in this particular book. I'm hoping that when it gets published that everybody who winds up laying their hands on it is going to find it to be that kind of useful source. All three of us are lawyers. But all three of us, I think, have tried – both in our reports and what we wrote – to find a way of making sure that the justice that is embedded in human rights law winds up being made accessible to all. And if that book winds up achieving its goal of accessibility, then we're all going to be very happy people.

MG: Thank you, Michael. So, as we draw this conversation to a close, I would really like to start by saying a big thank you for your time, Michael, for joining us, it's really been a pleasure talking to you today and I know that it's really been useful hearing your words. Thank you to everyone for joining us and for your questions we really hope to see you in the future for similar webinars. [closing karakia]