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A Response to Professor Robert A. Friedlander

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In *The PLO and the Rule of Law*,¹ Professor Robert A. Friedlander purports to reply to my study on the PLO's claim to status under international law.² Unfortunately, almost all of the "reply" falls short of being a response and what is left has missed, confused, and demoralized the issue.

I. THE "REPLY"

A. *Missed the Issue*

Professor Friedlander seems preoccupied with the "terrorist" aspects of PLO activities. In my PLO study, however, it was plainly stated that the study did not intend to characterize the coercion exercised by the PLO, as this would be the subject matter of a second study.³ The separation was deliberate. If the premise is granted that the PLO has juridical status under international law, it then necessarily follows that the PLO must accept, with the rights granted or accorded, the obligations imposed by international law. These obligations include the limitations on its rights, if any, to use force. Professor Friedlander, in effect, argues to keep the PLO outside the realm of law but, at the same time, expects the PLO to comply with the rules of law. This is a self-defeating dissertation.

B. *Confused the Issue*

The PLO study attempted to establish with some detail the juridical *differences*, and not the similarities, between territorial public bodies (such as the PLO or the Free French Government) and nonterritorial public bodies (such as the European Coal and Steel Community). The study labored to draw distinctions in their "formation, purposes, admittance under public law, and scope of authority."⁴ The *only* similarity between territorial and nonterritorial public bodies is that both are "public bodies" which, even though they do not have the full attributes of nation-states, have status under international law. It then becomes readily obvious, with all deference due, who is "comparing apples with artichokes."⁵

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1. Friedlander, *The PLO and the Rule of Law: A Reply to Dr. Anis Kassim*, 10 DEN. J. INT'L L. & POL'Y 221 (1981).

2. Kassim, *The Palestine Liberation Organization's Claim to Status: A Juridical Analysis Under International Law*, 9 DEN. J. INT'L L. POL'Y 1 (1980).

3. *Id.* at 6 n.22, and at 22.

4. *Id.* at 6.

5. Friedlander, *supra* note 1, at 232.

C. *Demoralized the Issue*

Professor Friedlander refutes the comparison between the PLO and other territorial public bodies on two grounds. One is that the comparison is "misleading," although Professor Friedlander provides no juridical argument to show how the comparison is misleading.⁶ The second ground is that the comparison is an "insult" to the historic memory of those organizations which "did not violate international law or wage a war against the 'innocent' or 'maintain their claims to public authority by a program of murder . . .'"⁷ The "insult" issue is neither relevant nor accurate. The PLO study did not try to degrade the heroic struggle of the resistance movements in Europe or elsewhere, nor did it venture to legally characterize the use of force by these movements and compare it with the force exercised by the PLO. The use of propogandist terminology like "insult" unequivocally demonstrates a complete failure to advance sound legal argument. If Professor Friedlander's responses are motivated by "moral outrage," this writer would concur with the moral ingredients of law but would not subscribe to Professor Friedlander's moral selectivity. This will be elaborated in the following section.

II. THE NON-REPLY

The major part of the "reply" focused on two main issues: the PLO's stated goal of Israel's destruction and its terrorist activities. In both instances, Professor Friedlander has been selective on both morals and facts.

A. *Claims to the Destruction of Israel*

Professor Friedlander identified the first "quintessential issue" in the following question: "How do you expect Israel to deal with a group that is bent on its destruction?"⁸ He supports this question by citing the Palestine National Charter which, in his words, "is brutally specific about the necessity for the destruction of Israel."⁹

It is unfortunate that some scholars did not discover the Palestinians and their plight until seven decades after the publication of the World Zionist Organization's Charter of 1897. The key provision of that charter states that "[t]he aim of Zionism is to create for the Jewish people a home in Palestine . . ."¹⁰ A year before the publication of the charter, Dr. Theodor Herzl, the founder of political Zionism, published his book *The Jewish State*.¹¹ This book became the Zionist manual for establish-

6. *Id.*

7. *Id.*

8. *Id.* at 223, quoting former Secretary of State Edmund Muskie.

9. *Id.* at 224.

10. 1 N. SOLOLOW, *HISTORY OF ZIONISM* 268 (1919).

11. T. HERZL, *THE JEWISH STATE: AN ATTEMPT AT A MODERN SOLUTION OF THE JEWISH QUESTION* (S. D'Avigdor & I. Cohen trans. 1943). Leon Simon has argued that the term "Jewish State" has no qualitative implications and that it would be more accurately called the "Jew's State" or "State of Jews." Simon, *Introduction*, in *SELECTED ESSAYS OF AHAD HA'AM* 30 (L. Simon trans. 1970).

ing the proposed Jewish state through the conquest of the territory and the people of Palestine. Dr. Chaim Weizmann, later the first President of Israel, communicated to the Paris Peace Conference that the Zionists wanted Palestine to be "as Jewish as England is English."¹² It does not take much imagination for one to ascertain that such official pronouncements call for nothing less than the complete destruction of a "Palestinian" Palestine and the creation of a "Jewish" Palestine.

The following excerpt appears in the official Israeli *Government Yearbook* of 1955:

The state of Israel is the fulfillment of Herzl's vision in his book, "The Jewish State." It is called the "State of Israel" because it is part of the Land of Israel and not merely a Jewish State. The creation of the new State by no means derogates from the scope of historical Eretz Israel.¹³

This official policy is neither history nor rhetoric. It is a deliberate, systematic, and on-going policy of the State of Israel to conquer all of Palestine and other areas constituting Eretz Israel, however defined. Since the June war of 1967, Israel has colonized more than one third of the land surface of the West Bank, in addition to the Gaza Strip.¹⁴ Prime Minister Menachem Begin has declared several times that this colonization policy is based on "right" and "security" considerations.¹⁵ In July 1980, the Knesset passed a law which "legally" annexed East Jerusalem.¹⁶ In light of these events, the relevant question would ask which group is bent on the brutal destruction of the other.

Professor Friedlander raises a very important question when asking what territories should be liberated to create a Palestinian state.¹⁷ Every nation, including the United States, has declared that the territories occupied by Israel in the 1967 war are "occupied territories" in both a factual and legal sense. Furthermore, these nation-states have emphasized that the occupied territories are subject to the humanitarian laws of war as codified in the Geneva Conventions of 1949. Against this universal attitude of sovereign states, Israel stands alone in declaring that these territories are "liberated,"¹⁸ and thus not subject to the Geneva Conventions.¹⁹

Without subtracting from the substance of the above, Professor Friedlander appears to reach the conclusion that the solution advanced

12. C. WEIZMANN, TRIAL AND ERROR 244 (1966).

13. [1955] ISRAEL Y.B. 320.

14. A. ROKACH, ISRAEL'S SACRED TERRORISM (1980).

15. See, e.g., Int'l Herald Trib., Mar. 22, 1980, at 2, col. 5; N.Y. Times, July 28, 1977, at 3, col. 3.

16. Int'l Herald Trib., July 31, 1980, at 1, col. 7.

17. Friedlander, *supra* note 1, at 225.

18. Blum, *The Missing Reversioner: Reflections on the Status of Judea and Samaria*, 3 ISRAEL L. REV. 279 (1968).

19. See The Beit El case, as reported in the Jerusalem Post, Mar. 19, 1979, at 1, col. 1.

by the PLO, which calls for a secular democratic state, is equivalent to the destruction of the State of Israel. It seems embarrassing for a scholar to preach moralism on the one hand, and ridicule democratic values on the other. A secular democratic state may be an idealist dream, but it is certainly more consistent with humanitarian law than a racist state. The Law of Return of 1950²⁰ gives every Jew the right to immigrate to Israel. Upon arrival, the immigrant is immediately bestowed with Israeli nationality.²¹ However, non-Jewish Palestinians who remained in Israel after the establishment of the state were considered by the Israeli courts as "stateless."²² When the Nationality Law was enacted, it "legally" denationalized these Palestinians.²³ The children of these stateless Palestinians would also be stateless.²⁴ The juridical reason for this discriminatory attitude is that these Palestinians are not "Jewish."

It seems highly reasonable and legally justifiable to call for an inclusive democratic secular state rather than an exclusive ghetto state.²⁵ It is not the destruction of a state, but merely the de-zionization of a state. As if to be more royalist than the king, a Jewish-Zionist member of the Knesset finally called for "Israel without Zionists"²⁶ as the solution to the Palestine-Israeli conflict.

B. *Terrorism versus Terrorism*

The second major issue that preoccupies the "reply" is the terrorist aspect of PLO activities. Once again, Professor Friedlander was selective on facts and morals. Zionist historians and authoritative writers have recorded at length and in depth pre-state and post-state Zionist terrorism. The present Prime Minister of Israel has written of the organized massacres, including that of Dair Yassin, that were inflicted upon Palestinian

20. 4 L.S.I. 114 (1950) (amended 1954 and 1970).

21. 6 L.S.I. 50 (1952) (amended 1958, 1968, and 1971). The discriminatory character of the Nationality Law is explained by Professor Rubinstein in *Israel Nationality*, 2 TEL AVIV UNIV. STUD. IN LAW 159 (1976). See also I. GOULDMAN, *ISRAEL NATIONALITY LAW* (1970). Gouldman conceded the point when asked if the law could be considered discriminatory. See *MIDDLE EAST REV.*, Apr. 23, 1971, at 18.

22. See *Re Goods of Shiphris*, 3 Pesakim Mehoziim 222 (Aug. 13, 1950), where a Tel Aviv District Court held that Palestinians, after the establishment of the State of Israel and prior to the enactment of Israel's Nationality Law, were "stateless." This was upheld by the same court in *Oseri v. Oseri*, 8 Pesakim Mehoziim 76 (Dist. Ct. Tel Aviv, Aug. 7, 1952), and by the Supreme Court in *Hussein v. Governor of Acre Prison*, 6 Piskei-Din 897 (Nov. 6, 1952). See generally [1950] INT'L L. REP. 110-12.

23. Art. 18(a), 6 L.S.I. 50 (1952) (as amended).

24. *Id.* Compare art. 3(a) with art. 3(b). It is obvious that children born to parents who could not meet the requirements of article 3(a) will inevitably be stateless as well. In an attempt to remedy this awkward position, a new article 4(a) was introduced by the Amendments of 1968. 22 L.S.I. 241 (1968).

25. Professor Morris R. Cohen contemplated in 1946 that: "The supposition that the Jews of Palestine will necessarily be on a higher spiritual plane and serve as an inspiration to Jews throughout the Diaspora is like the argument that an independent Liberia will elevate the position of Negroes elsewhere." M. COHEN, *THE FAITH OF A LIBERAL* 330-31 (1946).

26. U. AVNERI, *ISRAEL WITHOUT ZIONISTS* (1968).

villages.²⁷ The deliberate and well-planned massacre of Kufr Wasim in 1956²⁸ was not the last incident nor the last mockery of justice in the annals of the State of Israel's history of terrorism. Moshe Sharett's *Papers* are the very latest available sources which document official Israeli terrorism.²⁹ The Report of the American National Lawyers Guild³⁰ has thoroughly substantiated and carefully documented the terrorism employed by Israel against the civilian population of the occupied territories. These authoritative reports were undoubtedly prepared and recorded without oil or petrodollar pressure, the short-cut excuse Professor Friedlander seems to give for anti-Israeli United Nations resolutions and other official pronouncements.³¹

Another important facet of the violence that engulfs the area has been ignored by Professor Friedlander. It is imperative for a balanced juridical analysis to define who has "initiated" the terrorism. Was it a "necessary" use of force? And once exercised, was it used "proportionately"? These are the legal ingredients needed to differentiate aggressive from defensive coercion.³²

III. CONCLUSION

It is not my intention to become involved in an orgy of incrimination. The major thrust must be consistency and comprehensiveness when handling a highly complex issue like the Palestinian question. Power politics and cold war strategies have proven to be a complete failure in promoting peace and security to the entire arena of the Palestinian-Israeli conflict. Let us try law as a problem-solving tool.

27. M. BEGIN, *THE REVOLT—STORY OF THE IRGUN* (1951). See generally Y. BAUER, *FROM DIPLOMACY TO RESISTANCE* (1970); L. COLLINS & D. LAPIERRE, *O JERUSALEM* 272-81 (1972); P. GABBAY, *A POLITICAL STUDY OF THE ARAB-JEWISH CONFLICT* (1959); A. PERLMUTTER, *MILITARY AND POLITICS IN ISRAEL* (1969); Khalidi, *Plan Dalet: The Zionist Master Plan for the Conquest of Palestine*, 37 *MIDDLE EAST FORUM* 22 (1961). The references cited above document the pre-state terror.

28. S. JIRYIS, *THE ARABS IN ISRAEL* 240-61 (1973). This massacre took place on October 29, 1956, when 49 Palestinians were killed in cold blood. The Israeli army officer in charge, identified as Chedmi, was fined one piaster; this is today known in Israel as the "Chedmi Piaster." Jiryis' account of the massacre was drawn from file no. 3/57 of the Central Court of Israel's Defense Army.

29. See A. ROKACH, note 14 *supra*.

30. NATIONAL LAWYERS GUILD, *TREATMENT OF PALESTINIANS IN ISRAEL—OCCUPIED WEST BANK AND GAZA: REPORT OF THE NATIONAL LAWYERS GUILD 1977 MIDDLE EAST DELEGATION* (1978). The Guild has taken a very supportive position toward Israel ever since its creation.

31. Friedlander, *supra* note 1, at 234.

32. See M. McDUGAL & F. FELICIANO, *LAW AND MINIMUM WORLD PUBLIC ORDER* 217-44 (1961).

