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The Application of Education Rights in the Occupied Territories

Jorene Soto

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**THE APPLICATION OF EDUCATION RIGHTS IN
THE OCCUPIED TERRITORIES**

*Jorene Soto**

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* This work received the award for Best Note for Spring 2000. It is dedicated to my mother, Patricia Nicholson, who worked three jobs to fund my education, and who taught me that the tools to life's success are enthusiasm, self-respect, and a strong work ethic which are not always learned in the classroom. I also would like to express my gratitude to Drs. Simona Sharoni and Steve Niva who work tirelessly to teach peace and conflict resolution and take students to Israel to learn more about the world around me. I also would like to thank Professor Berta Hernández-Truyol who introduced me to International Law, always encouraged me to follow my dreams, and for providing me with the legal tools needed to problem solve. Finally, I would like to thank Peggy Douberly for superbly editing the first draft, Christine Thomas for her kind heart and tireless editing, and the entire FJIL staff for their hard work.

I. INTRODUCTION

In 1967, Israel's neighboring Arab countries launched an offensive attack against Israel. His war, known as the Six-Days War, marked Israel's decisive military victory over its neighboring Arab countries. Both Gaza Strip and the West Bank (the Occupied Territories) fell under Israeli control, and higher education in these territories became burdened by Israeli military occupation. Since 1967, the Israeli government's practices have been deliberately aimed at the subversion of educational rights through the regulation of entry and teaching permits in addition to periodic closures of universities in the Occupied Territories. These types of practices have been criticized by Israeli citizens and the international community for violating the Palestinian's educational rights under conventional international law.

Humanitarian law and human rights law are the two bodies of international law applicable to the educational rights of Palestinians during Israel's prolonged military occupation of Gaza Strip and the West Bank. The relationship between these two fields of law has become increasingly interrelated. The Fourth Geneva Convention, which supplemented the Hague Conventions and Regulations of 1907,¹ is an instrument of humanitarian law designed to protect a civilian population under military occupation.² Although the Fourth Geneva Convention is mainly concerned with the humane treatment and juridical rights of the occupied population, it is usefully supplemented by human rights law instruments including the Universal Declaration of Human Rights,³ the International Covenant on

1. See Convention Respecting the Laws and Customs of War on Land, with annexed Regulations, Oct. 18, 1907, 36 U.S.T. 2277; see also ESTHER ROSALIND COHEN, HUMAN RIGHTS IN THE ISRAELI-OCCUPIED TERRITORIES 1967-1982, at 10, 23, 43, 45, 51-52 (Gillian M. White ed., 1985). The Hague Convention is primarily concerned with the rights and duties of belligerents and with the weapons of warfare. See *id.* at 23. The Geneva Convention is primarily concerned with the protection of military personnel placed *hors de combat*, i.e. the wounded, sick, prisoners of war, and persons not taking part in hostilities, such as the non-combatant civilian population. See *id.* at 10. Even though Israel did not accede to the Hague Convention, the official Israeli position is that Israel considers itself bound by its rules because the Convention denotes customary international law. Therefore, the Hague Convention is applicable to the Occupied Territories. See *id.* at 43.

2. See The Fourth Geneva Convention — Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516 [hereinafter Fourth Geneva Convention]. Common Article 3 of the four Geneva Conventions protects, *inter alia*, "Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause." These persons are "in all circumstances [to] be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria." See *id.*

3. See G.A. Res. 217(III), U.N. Doc. A/810, at 71 (1948) [hereinafter UDHR].

Economic, Social, and Cultural Rights,⁴ and the Convention on the Rights of the Child.⁵ However, application of humanitarian law and human rights law is not free from difficulties, especially in times of violent conflict during military occupation.

After providing a brief historical background of the Arab-Israeli conflict, this Note will address the difficulties of the application of international law to the educational rights of Palestinians under military occupation in the West Bank and the Gaza Strip. The first issue that needs to be determined is the protection of educational rights under the Fourth Geneva Convention and its applicability to the present situation. The second issue addressed is the protection of educational rights under various human rights law instruments. The third issue addressed is Israel's position on the applicability of the Fourth Geneva Convention and international human rights law. The fourth issue addressed is suggestions or changes tried by the United Nations and non-governmental organizations to bring educational rights to Palestinians in the Occupied Territories. Finally, this Note will address new suggestions for change to bring educational rights to Palestinians in the Occupied Territories.

II. HISTORICAL BACKGROUND

To better understand the Israeli government's aggression towards the Palestinian educational system in the Occupied Territories, one must understand the recent history surrounding the region. At the end of World War I in 1918, Britain conquered Palestine and, in support of a growing Zionist movement,⁶ Britain offered to establish a "National Home for the

4. See International Covenant on Economic, Social, and Cultural Rights, *done* Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

5. See Covenant on the Rights of the Child, *done* Nov. 20, 1989, 28 I.L.M. 1448 [hereinafter CRC].

6. See KIRSTEN E. SCHULZE, *THE ARAB-ISRAELI CONFLICT I* (Clive Emsley & Gordon Martel eds., 1999). Schulze defines classical Zionism as "the traditional ties Jews in the Diaspora (term for 'dispersion' of the Jews) proclaimed to the Land of Israel, and the belief that Jewish independence would be restored with the coming of the Messiah." See *id.* at 1. During the nineteenth century, the ideology of classical Zionism evolved into modern political Zionism which Schulze defines as:

[T]he ideology that "the Jewish people constituted a nation and this nationhood needed to be reaffirmed; assimilation was rejected as it was neither desirable nor was it deemed to be possible; anti-Semitism could only be overcome by physical separation from Europe and by self-determination; and religious and cultural ties to the Land of Israel made Palestine the logical territorial claim."

See *id.* at 1.

Jewish People” in Palestine.⁷ During the next few decades, and especially after the Holocaust of World War II, thousands of Jews migrated to Palestine.

In 1947, guerrilla warfare broke out between the Jews and the Palestinians.⁸ On May 14, 1948, the Jewish leaders declared the formation of the State of Israel.⁹ In response, on May 15, 1948, the neighboring Arab countries of Jordan, Egypt, Syria, Lebanon, and Iraq declared war on Israel.¹⁰ Israel defeated the Arab forces and increased its territory by twenty-one percent.¹¹ The Israelis controlled this region for nearly twenty years at which time its neighboring Arab countries launched a second war against Israel in 1967.

This second war, known as the Six Days War, marked Israel’s decisive military defeat over its neighboring Arab countries.¹² The land Israel conquered during the Six Days War included the Sinai peninsula, the Gaza Strip, the West Bank and the Golan Heights.¹³ Today, Israel remains in control of all of these regions except the Sinai Peninsula which it returned to Egypt as part of the Camp David agreements.¹⁴

Since the Palestinian youth were a leading force behind the confrontations, the Israeli government introduced numerous Military Orders¹⁵ and regulations to prevent students from attending Palestinian universities in the Occupied Territories.¹⁶ Israel, in fact, acted within the Occupied Territories as a fully sovereign government exercising complete legislative, administrative, and judicial authority.¹⁷ Through the means of military orders which brought the universities of the Occupied Territories under the control of Israeli law, textbook censorship, teaching permits, school closures, entry permits and the prohibition of educational activity in general imposed perhaps the harshest restrictions on academic freedom.¹⁸

7. See HOWARD M. SACHAR, A HISTORY OF ISRAEL FROM THE RISE OF ZIONISM TO OUR TIME 109 (Alfred A. Knopf, Inc. 1979).

8. See SCHULZE, *supra* note 6, at 12; see also SACHAR, *supra* note 7, at 304-09.

9. SCHULZE, *supra* note 6, at 12; see also SACHAR, *supra* note 7, at 311.

10. See SCHULZE, *supra* note 6, at 12. See generally SACHAR, *supra* note 7, at 315-53.

11. See SCHULZE, *supra* note 6, at 15.

12. See *id.* at 33-40. See generally SACHAR, *supra* note 7, at 615-66.

13. See SCHULZE, *supra* note 6, at 37-39.

14. See *id.* at 57-58. See generally SACHAR, *supra* note 7, at 399-532.

15. See RAJA SHEHADEH, OCCUPIER’S LAW: ISRAEL AND THE WEST BANK 3-14 (International Commission of Jurists ed. (1985)). Shehadeh provides that military orders are now more readily available than in previous years; however, military regulations made by virtue of these orders are still difficult to obtain. This author was unable to obtain a primary source for Israeli military orders. See *id.* at 3; see also ANDREW RIGBY, LIVING THE INTIFADA 98-110 (1991).

16. See RIGBY, *supra* note 15, at 98-100.

17. See *id.*

18. See SAMIR N. ANABTAWI, PALESTINIAN HIGHER EDUCATION IN THE WEST BANK AND

For example, at the end of the Six Days War, the Israeli administration quickly took steps to replace the Palestinian curricula and textbooks. After Palestinian educators resisted the changes, the Ministry of Education replaced the textbooks in East Jerusalem but only censored the textbooks at schools in the West Bank.¹⁹ The Israeli Military Government through the Ministry of Education reprinted forty-nine out of the seventy-eight textbooks originally considered objectionable.²⁰ The Israeli government argued that it only censored those passages which instilled hatred of Israel, but Palestinian teachers felt the Israelis censored all references to Palestinian nationality and certain passages of the Koran.²¹

The Israeli government also required Palestinian teachers to sign forms which required a declaration of loyalty to the Israeli government.²² At the beginning of the 1967-1968 school year, three quarters of the schools in the West Bank closed for two months because teachers went on strike to protest this measure. The Palestinian education officials and teachers who refused to sign the form were placed in administrative detention or suspended from their jobs. Eventually, an agreement was reached between the Palestinian leadership and the Israeli Ministry of Education which permitted the release of the Palestinian education officials and teachers placed in administrative detention.²³

The Israeli government took similar measures in July 1980 when they enacted Military Order 854. Military Order 854 allowed Israel to censor curricular offerings and textbooks. The order also required non-resident i.e., non-Israeli and foreign university faculty to sign a "loyalty oath" that they would "refrain from any act which is harmful to security and public order . . . and the rendering of any service, or a collaborative or helpful nature, to the PLO [Palestinian Liberation Organization] or any other hostile organisation."²⁴ Military Order 854 eventually lapsed in November 1982, and the Israeli government did not attempt to renew it.²⁵

In addition, school closures prevented many Palestinian students from attending classes. For example, from 1973-1987 Birzeit University was closed 15 separate times for a total of more than 18 months.²⁶ From February 1988 until mid 1989, all Palestinians universities were under

GAZA 22-53 (1986). Restrictions related to education other than those stated include the harassment of students, the arrest of students before their matriculation examinations, ransacking of student dormitory rooms, etc. *See id.* at 25-32.

19. *See* COHEN, *supra* note 1, at 218-19.

20. *See id.*

21. *See id.*

22. *See id.*

23. *See id.*

24. *See* RIGBY, *supra* note 15, at 106.

25. *See id.*

26. *See id.*

almost continuous closure because they had become centers of protest. Israel justified their actions by arguing that the universities needed to control their students better.²⁷

Finally, entry permits have prevented many Palestinian students who live in Gaza from entering universities in the West Bank. At the beginning of the 1994-1995 academic year, 350 Gazan students enrolled at Birzeit University in the West Bank were not given entry permits. On December 7, 1994, 269 of the 350 were provided with entry permits, two months after classes began. After missing two months of classes, most students were unable to complete the semester since course requirements included lecture attendance.²⁸

III. APPLICABLE LAW

A. Humanitarian Law

International humanitarian law is the law governing the interactions between combatant forces and between those forces and noncombatants during a time of military conflict.²⁹ The main instruments of international humanitarian law are the Hague Conventions and the Geneva Conventions. The Fourth Geneva Convention ensures the humane treatment of a civil population involved in military conflict.³⁰ Signed in 1949 and ratified by Israel in 1951, it has been accepted by virtually the entire international community, strengthening the argument that it has become customary international law.

Articles 50 and 94 of the Fourth Geneva Convention deal specifically with the question of educational rights in occupied territories. Article 50(1) provides: “[t]he Occupying Power shall . . . facilitate the proper working of all institutions devoted to the care and education of children.”³¹ In

27. See *id.* at 98-106.

28. See Nigel Parry, *Making Education Illegal* (visited Feb. 1, 2000) <<http://www.birzeit.edu/hrarc/gazarep2.html>>.

29. See Lawrence Weschler, *International Humanitarian Law: An Overview*, in *CRIMES OF WAR: WHAT THE PUBLIC SHOULD KNOW* 18, 20 (Roy Gutman et al. eds., 1999).

30. See Fourth Geneva Convention, *supra* note 2, art. 3.

31. See *id.* art. 50. Art. 50 provides, in part:

The Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children. . . .

....

. . . Should the local institutions be inadequate for the purpose, the Occupying Power shall make arrangements for the maintenance of education, if possible by

addition, Article 94 provides for the assurance of the continuance of studies for children and young people.³²

B. Human Rights Law

International humanitarian law, specifically the Fourth Geneva Convention articles, is usually supplemented by international human rights law. While humanitarian law specifically governs the interactions between combatant forces and noncombatants during a time of military conflict, human rights law governs those fundamental rights which are essential for life as a human being. Human rights law also differs from humanitarian law in that it is understood to apply to all people at all times, not just during times of military conflict. Human rights law instruments applicable to the educational rights of Palestinians in the Occupied Territories include the Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights and the Convention on the Rights of the Child.

A general right to education was directly and specifically articulated for the first time in the Universal Declaration of Human Rights.³³ Article 26(1) states: “[E]veryone should have the right to education . . . [t]echnical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.”³⁴ As a

persons of their own nationality, language and religion

Id. See REBECCA WALLACE, INTERNATIONAL LAW 25-26 (Sweet & Maxwell Ltd. (1997) (1996)).

32. *See id.* art. 94. Article 94 provides, in part:

The Detaining Power shall encourage intellectual, educational and recreational pursuits, sports and games amongst internees. . . .

. . . .

. . . All possible facilities shall be granted to internees to continue their studies or to take up new subjects. The education of children and young people shall be ensured; they shall be allowed to attend schools either within the place of internment or outside

Id.

33. *See* UDHR, *supra* note 3, art. 26.

34. *See id.* The full Article provides that:

(1) Everyone has the right to education. Education shall be free, at least in the elementary and the fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality

resolution, the Universal Declaration of Human Rights is not legally binding. However, the educational provisions of the Universal Declaration of Human Rights have been reaffirmed, amplified, and made more detailed by later international treaties including, the International Covenant on Economic, Social, and Cultural Rights and the Convention on the Rights of the Child.

The International Covenant on Economic, Social, and Cultural Rights, which was adopted by the United Nations General Assembly on December 16, 1966, and entered into force on January 3, 1976, is a treaty which imposes legally binding obligations on those nations which ratify or accede to it.³⁵ The International Covenant on Economic, Social, and Cultural Rights expands upon the content of the right to education as stated in Article 26 of the Universal Declaration of Human Rights.³⁶ Specifically, article 13 requires that “[t]he State Parties to the present covenant recognize the right of everyone to education.”³⁷ In addition,

and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children. Article 26(1) must be read in conjunction with Article 2 of the UDHR which states that “[e]veryone is entitled to all the rights and freedoms set forth in this declaration, without discrimination of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. . . .”

35. Currently, Israel and 137 other countries are parties to the International Covenant on Economic, Social, and Cultural Rights. See ICESCR, *supra* note 4.

36. See ICESCR, *supra* note 4, arts. 6 and 14. A number of provisions of the ICESCR refer to education including Article 6(2) which provides for the implementation of “technical and vocational guidance and training programmes” and Article 14 which obliges states to “work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.” *Id.*

37. See *id.* art. 13. Article 13 provides, in part:

(1) The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

(2) The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right

. . . .

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Article 2(1) requires a progressive implementation of the right to education through positive State action.³⁸

Similar to the International Covenant on Economic, Social, and Cultural Rights, the Convention on the Rights of the Child is an international treaty which imposes legally binding obligations on those nations which ratify or accede to it. Article 28 of the Convention on the Rights of the Child details the educational rights a country must provide. Specifically, it requires parties to make "higher education accessible to all on the basis of capacity by every appropriate means."³⁹

(c) higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education

Id.

38. *See id.* art. 2(1). Article 2(1) provides:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

Id.

39. *See CRC, supra* note 5, art. 28. Article 28 provides:

(1) State Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates

Id. The Convention on the Rights of the Child was adopted by the United Nations General Assembly on November 28, 1989 and entered into force on September 2, 1990. Currently, Israel and 190 other countries are parties to the convention.

C. Customary International Law

Although Israel has signed and ratified the International Covenant on Economic, Social, and Cultural Rights and the Convention on the Rights of the Child which specifically address education rights, widely ratified and adopted human rights conventions and declarations concerning the right to education support the conclusion that certain aspects of the right to education have joined the corpus of customary international law.⁴⁰ These aspects include the right to accessible higher education and the right to equality of educational opportunity. A state is bound to customary international law unless it shows its opposition to that rule from the time of the rule's inception.⁴¹ Israel has never opposed educational rights in the treaties which the United Nations has implemented. Therefore, considering the widespread uniformity of language of international instruments pertaining to educational rights and the fact that Israel has never opposed the recognition of this right, customary international law would appear to require access to higher education for all Palestinian students within the Occupied Territories.⁴²

40. See DOUGLAS HODGSON, *THE HUMAN RIGHT TO EDUCATION* 39-40 (1998). The right to education has been recognized in numerous instruments including: The Charter of the United Nations, art. 55(b), the Convention on the Elimination of All Forms of Discrimination Against Women, art. 10(a), the Declaration on the Elimination of All Forms of Racial Discrimination, art. 3(1), and the Convention against Discrimination in Education, art. 5(1)(a). See *id.*

41. See WALLACE, *supra* note 31, at 25-26; see also BARRY E. CARTER & PHILLIP R. TRIMBLE, *INTERNATIONAL LAW* 134-36 (1990).

42. See C. de la Vega, *The Right to Equal Education: Merely a Guiding Principle or Customary International Legal Right?*, 11 HARV. BLACKLETTER L.J. 37, 38-41 (1994); see also Stephen Knight, *Proposition 187 and International Human Rights Law: Illegal Discrimination in the Right to Education*, 19 HASTINGS INT'L & COMP. L. REV. 183, 188-96 (1995); Customary international law develops from generally accepted practices which nations follow out of a sense of legal obligation. Article 38(1)(b) of the *Statute of the International Court of Justice* instructs the Court to apply "international custom, as evidence of a general practice accepted as law" in the resolution of disputes submitted to it. The two critical elements for the existence of a customary norm of international law are a uniform practice adhered to generally by States and their belief that the practice is required by international law. Unlike treaties and conventions, a rule of customary law binds even those States which have never formally recognized it. National and international courts have relied on international treaties and declarations as well as national constitutions and laws to assist them in determining whether a practice has crystallized into a customary norm. See WALLACE, *supra* note 31, at 9-10.

IV. STATUS QUO

A. Humanitarian Law

Israeli position on the applicability of international legal norms in the Occupied Territories is complex. The publicly stated grounds for Israel's skepticism about the applicability of the Fourth Geneva Convention relate to the pre-1967 status of the West Bank and Gaza. Before 1967, Israel did not accept that these territories were part of Jordan and Egypt, respectively. The territories therefore could not be viewed as "the territory of a High Contracting Party" within the meaning of the second paragraph of common Article 2 of the Fourth Geneva Convention;⁴³ rather, they had been under Jordanian and Egyptian occupation. Israel expressed concern that by accepting the automatic application of the Convention, it might appear to convey to Jordan and Egypt the status of ousted sovereigns with reversionary rights. Therefore, although the Israeli government ratified the Fourth Geneva Convention on July 6, 1951, it chose not to apply it to the Occupied Territories.⁴⁴

43. See Geneva Convention, *supra* note 2, art. 2. According to Article 2,

In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Id.

44. See Nathanel Lorch, *The Applicability of the Fourth Geneva Convention to the Territories Administered by Israel*, 2 ISRAELI YEARBOOK ON H.R. 1971, at 366. The author was a former Israeli representative at the UN who explained the reason for Israel's non-compliance with the Fourth Geneva Convention:

The Fourth Geneva Convention uses a very important term of art, namely, "territory of a High Contracting Party" — in other words, territory which presumably, until the outbreak of conflict, was under the sovereignty of one of the High Contracting Parties. If we were to apply the Convention, we would now be required retroactively to recognize as international boundaries armistice lines which have not been recognized as international boundaries by anybody, least of all by the Arabs themselves. I think this is a valid criticism of the Convention as such: that those who would admit applicability are obliged retroactively to recognize certain frontiers.

See *id.* at 1366.

The Israeli interpretation of the Fourth Geneva Convention is open to the objection that it is based on a subjective technical error.⁴⁵ To refer to the terms of the second paragraph of Article 2 of the Fourth Geneva Convention is of limited relevance because Article 1 states that the High Contracting Parties undertake to respect the Convention in all circumstances.⁴⁶ The phrase "in all circumstances" has been interpreted as including situations of declared or undeclared war, partial or total occupation, or even certain circumstances when the opponent is not a contracting party.⁴⁷ Therefore, Israel's concern that application of the Fourth Geneva Convention to the Occupied Territories would mean recognition of Egyptian and Jordanian sovereignty over the territories has no real justification.

B. Human Rights Law

The Israeli Government has frequently indicated a skeptical attitude towards the applicability of the human rights instruments which it has signed. In 1984, this view was expressed in a memorandum prepared by the Office of the Legal Adviser in the Israeli Foreign Ministry which was written in response to an inquiry about the applicability of human rights accords. The memorandum provides that

the unique political circumstances, as well as the emotional realities present in the areas concerned, which came under Israeli administration during the armed conflict in 1967, render the situation . . . clearly not a classical situation in which the normal component of "human rights law" may be

45. See Adam Roberts, *Prolonged Military Occupation: The Israeli-Occupied Territories Since 1967*, 84 AM. J. INT'L L. 44, 65 (1990).

46. See Fourth Geneva Convention, *supra* note 2, art. 1.

47. See *Report Submitted to the Security Council by the Secretary-General in Accordance with Resolution 605* (1987) U.N. Doc. S/19443 (1988). In section 24, The United Nations Secretary-General addressing the applicability of the Fourth Geneva Convention provided, in part:

[E]ach Contracting State undertakes . . . legal obligations to protect those civilians who are found in occupied territories following the outbreak of hostilities. This is why article 1 states that "The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances." . . . The phrase "in all circumstances" is intended to include declared or undeclared war, recognized or unrecognized state of war, partial or total occupation with or without armed resistance, or even under certain circumstances when the opponent is not a contracting party

Id.

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applied, as are applied in any standard, democratic system in the relationship between the 'citizen' and his government.⁴⁸

The defect with this assertion is that human rights do not apply solely in "classical situations" and should not be viewed in this rather limited way. The human right to education, as well as all human rights, is applicable to all persons in all places, both among international States and among the peoples of territories under their jurisdiction.⁴⁹ Human rights provisions are most applicable during times of military occupation because that is when their very existence is threatened the most. Therefore, during times of military occupation, it is unacceptable for a party to circumvent international human rights agreements which it has signed and ratified.⁵⁰

V. SUGGESTIONS OR CHANGES TRIED BY THE UNITED NATIONS AND NON-GOVERNMENTAL ORGANIZATIONS

A. Humanitarian Law

An overwhelming majority of intergovernmental⁵¹ and non-governmental organizations consistently agree that the Fourth Geneva Convention is applicable and should be applied to all territories occupied by Israel since the Six Days War. Most recently, the United Nations Security Council Resolution 607 of January 5, 1988, made specific comments about the Occupied Territories and asked Israel to comply with the Fourth Geneva Convention.⁵² General Assembly Resolutions, including

48. See ADAM ROBERTS ET AL., *ACADEMIC FREEDOM UNDER ISRAELI MILITARY OCCUPATION* 80-81 (1984).

49. See *Respect for Human Rights in Armed Conflict: Report of the Secretary-General*, G.A. Res. 2676(xv), U.N. GAOR, 25th Sess., Agenda Item 47, at 16, U.N. Doc. A/8052 (1970). The approach asserted in the General Assembly resolution was that "fundamental human rights, as accepted in international law and laid down in international instruments, continue to apply fully in situations of armed conflict."

50. See Roberts, *supra* note 45, at 72.

51. See S.C. Res. 446, U.N. SCOR, 34th Sess., 2134th mtg. at 4, U.N. Doc. S/INF/35 (1979); S.C. Res. 252, U.N. SCOR, 23rd Sess., 1426th mtg. at 19, U.N. Doc. S/INF/35/Rev.1 (1968); S.C. Res. 465, U.N. SCOR, 35th Sess., 2203rd mtg. at 5, U.N. Doc. S/INF/36 (1980) (The United Nations Security Council has 15 members: five permanent members — China, France, the Russian Federation, the United Kingdom and the United States — and 10 elected by the General Assembly for two-year terms. Each Security Council member has one vote. The passage of a resolution requires nine votes, including the confirming votes of all permanent members. The United Nations Charter does not give the Security Council explicit authority to interpret international agreements. However, this authority is implicitly derived through articles 24 and 94(2) of the United Nations Charter which give the Security Council the primary responsibility of peacekeeping and international security.).

52. See S.C. Res. 607, U.N. Doc. S/RES/607 (1988).

Resolution 51/132, were phrased even more stringently, demanding that Israel “accept the de jure applicability of the Convention in the occupied Palestinian territory . . . and that it comply scrupulously with the provisions of the Convention.”⁵³ The Resolution also calls for all States parties to the Convention to “exert all efforts in order to ensure respect for its provisions by Israel, the occupying Power, in the occupied Palestinian territory.” On June 15, 1999, the United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People met in Geneva to discuss the applicability of the Fourth Geneva Convention in the “Occupied Palestinian Territory.” The Committee again reasserted the idea that the Fourth Geneva Convention is applicable to Israel, condemned those countries which commit actions that contribute to violations of the Fourth Geneva Convention, and discussed enforcement measures the international community could take to end Israel’s violations of the Fourth Geneva Convention.⁵⁴

The world’s leading non-governmental organizations have also supported the assertion that the Fourth Geneva Convention is applicable to Israel’s occupation of Gaza Strip and the West Bank. The International Committee of the Red Cross has consistently maintained that the Fourth Convention fully applies to the Occupied Territories and that the Palestinians are a protected population under the terms of the Fourth Geneva Convention.⁵⁵ On May 11, 1999, Amnesty International released a letter to governments which ratified the Fourth Geneva Convention.⁵⁶ The letter detailed Israel’s grave breaches of the Fourth Geneva Convention and called for other State parties to consider enforcement measures to ensure that Israel respects its obligations under the Fourth Geneva Convention.⁵⁷

B. *Human Rights Law*

The United Nations General Assembly has consistently passed resolutions asserting that international agreements relating to educational rights of Palestinians should be respected by Israel. Since the United Nations Charter gives the General Assembly explicit authority to initiate

53. See G.A. Res. 51/132, U.N. GAOR, 51th Sess., U.N. Doc. A/AC.183 (1996); see also G.A. Res. 32/5, U.N. GAOR, 32nd Sess., at 485, U.N. Doc. A/32/L.3/Rev. 1 and Rev. 1/Add. 1 and 2 (1977).

54. See Khader Shkirat, *Plenary II: Enforcement of the Fourth Geneva Convention* (visited Oct. 2, 2000) <www.lawsociety.org/reports/1999/geneva4.html>.

55. See ICRC Statement on the 20th Anniversary of the Occupation, ICRC BULL., No. 137, June 1987, at 1; see also ICRC, Annual Reports for 1968 and subsequent years.

56. See Amnesty International, *Amnesty International Public Statement on the Fourth Geneva Conventions* (visited Mar. 20, 2000) <<http://www.aqr.com/amnesty1.htm>>.

57. See *id.*

studies and make recommendations to promote the realization of human rights and fundamental freedoms for all, the General Assembly organized the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population in the Occupied Territories in 1968.⁵⁸ The recommendations of this committee have appeared in numerous General Assembly resolutions.⁵⁹ Specifically related to education rights, GA Res. 41/63 included a provision which condemned Israel's "[i]nterference with the system of education . . . of the population in the Palestinian and other occupied Arab territories."⁶⁰

The attention of the United Nations and other non-governmental organizations with the Occupied Territories has had limited effect on Israeli practices which deny educational rights to Palestinian students.⁶¹ The United Nations resolutions were condemned by Israel which views the United Nations as controlled by hostile countries. A former Israeli Supreme Court Justice claimed United Nations members were biased and incapable of objectively investigating the truth.⁶² Because the numerous intergovernmental and non-governmental organizations have been unable to serve a useful role in mediation or negotiation, it is important to look at other alternatives in order to bring educational rights to Palestinian students.

58. See U.N. Charter, arts. 9-17.

59. See G.A. Res. 51/134, U.N. GAOR, 51st Sess., at 58, U.N. Doc. A/51/49 (1996); G.A. Res. 2799(XXVI), U.N. GAOR, 26th Sess., at 359, U.N. Doc. A/L.650/Rev.1 (1971); G.A. Res. 2535(XXIV)B, U.N. GAOR, 24th Sess., at 234, U.N. Doc. A/7839 (1969). The General Assembly is composed of representatives of all Member States, each of which has one vote. Decisions on most questions are reached by a simple majority. However, decisions on complex questions, including those involving international security, require a two-thirds majority. The General Assembly derives its power to make resolutions promoting human rights in the Occupied Territories from the United Nations Charter.

60. G.A. Res. 41/63, U.N. GAOR 41st Sess., U.N. Doc. A/41/63 (1986).

61. See *Birzeit Human Rights Record* (visited Oct. 2, 2000) <<http://www.birzeit.edu/press>>.

62. MEIR SHAMGAR, *MILITARY GOVERNMENT IN THE TERRITORIES ADMINISTERED BY ISRAEL 1967-1980: THE LEGAL ASPECTS* 330 (Meir Shamgar ed., 1982). This was asserted by Israeli Supreme Court Justice Haim Cohn:

The flagrant selectivity, whether it be accusations of violations of human rights to which the U.N. Human Rights Commission resorts in order to appoint a committee of inquiry, or whether it be accusations of violations of human rights to which the Commission does not resort in order to appoint a committee of inquiry (or anything else) — it, too, is nothing but a direct consequence of the politicization of human rights . . . Israel finds itself in permanent and total (perhaps even splendid) isolation, and in all the U.N. agencies, is exposed to resolutions which are passed by a majority, without any possibility of raising a defense.

Id. at 330.

VI. SUGGESTIONS FOR CHANGE

A. *The International Court of Justice*

If the United Nations is to play an effective role in bringing educational rights to Palestinian students, its resolutions must have a binding legal effect on the behavior of Israel, particularly in respect to the applicability of the Fourth Geneva Convention and human rights law. A legally binding effect could be achieved if the United Nations Security Council exercised its right to request an advisory opinion from the International Court of Justice on the issues.⁶³ The International Court of Justice, created under the United Nations Charter's Statute of the International Court of Justice, is the principal judicial body of the United Nations. It consists of fifteen judges, of whom no two may be a national of the same state.⁶⁴ The International Court of Justice's compulsory jurisdiction includes the interpretation of treaties, any question of international law, and the determination of the existence of any fact that, if established, would constitute a breach of an international obligation.⁶⁵

Although the International Court of Justice has never been asked to consider issues arising from the Occupied Territories, article 96 of the United Nations Charter allows the United Nations Security Council to request the International Court of Justice to give an advisory opinion on any legal question. In addition, article 94 of the United Nations Charter would allow the United Nations Security Council to compel Israeli acquiescence by first requesting an advisory opinion from the International Court of Justice and then appealing to itself if Israel did not comply with the court's ruling.⁶⁶ The principal ground for considering the proposal is that there is still basic disagreement about what parts of international law are formally applicable to the situation in the Occupied Territories. Theoretically, the court could provide the answers to the aforementioned issues including whether the educational provisions of the Fourth Geneva Convention are applicable to the Occupied Territories and whether educational provisions in international human rights instruments are applicable to the Occupied Territories.

63. See U.N. Charter, *supra* note 58, art. 96 paras. 1 and 2.

64. See Statute of the International Court of Justice, June 26, 1945, art. 3, 59 Stat. 1055, T.S. No. 993.

65. See *id.* art. 36.

66. U.N. Charter, *supra* note 58, art. 94(2). Art. 94(2) states: "If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may . . . make recommendations or decide upon measures to be taken to give effect to the judgment." *Id.*

The drawback of this method is that it is unlikely to change the political and military realities for Palestinian students because Israel would reject any decision not in its favor. Israel would most likely deem any International Court of Justice decision to be biased and subjective which is the same reason Israel has condemned the United Nations General Assembly and the United Nations Security Council resolutions. The International Court of Justice is the principal judicial organ of the United Nations and, as such, is an integral part of the organization with its Statute annexed to the United Nations Charter. The General Assembly and the Security Council theoretically control the International Court of Justice because judges are elected by an absolute majority at separately and simultaneously held meetings of the General Assembly and the Security Council.⁶⁷ Therefore, because the International Court of Justice is closely linked to and controlled by the United Nations, General Assembly and the United Nations Security Council any judgment by the International Court of Justice would most likely be ignored by Israel which would view the Court as controlled by hostile countries which were biased and incapable of objectively investigating the truth.

B. *Grassroots Approach*

Since it is doubtful that the International Court of Justice could play an effective role because Israel would view the Court as controlled by hostile countries, it is necessary to look at other methods of conflict resolution to bring educational rights to Palestinians in the Occupied Territories. A more effective approach would be one in which the international community plays a very small or insignificant role and the private citizens of Israel take responsibility for changing their own government's military orders. This type of grassroots approach would seek to establish personal relationships between the Palestinians and the Israelis and, through those relationships, to address issues of mutual concern, break down stereotypes, promote friendships, and eventually bring educational rights to the Palestinians. If Israeli and Palestinian private citizens took the steps to develop personal relationships with each other, the individual transformations that would occur would lead the two groups to discover their common humanity and to view each other as friends instead of enemies.⁶⁸

The advocacy work of private citizens in Israel and the Occupied Territories already proved to be an effective means of bringing educational rights to Palestinians. Against their government's wishes, many Israeli

67. *See id.*, arts. 1-33.

68. *See* DR. LOUISE DIAMOND ET AL., *MULTI-TRACK DIPLOMACY: A SYSTEMS APPROACH TO PEACE* 60 (1996).

students and academics protested the punitive measures taken by the Israeli military against Palestinians students and professors. For example, in October 1981, five professors from the Israeli Hebrew University in Jerusalem published a report calling for their government to "refrain from closing universities as a means of punishment or to prevent disturbances."⁶⁹ In addition, in November 1981, 100 students and professors from Israeli universities joined Palestinians at Birzeit University in the West Bank to protest a two month closure that was imposed. Finally, the ability of Israeli and Palestinian private citizens to organize themselves and gain the support of the international academic community was the key reason Military Order 854 (an order which sought to exercise broad control over Palestinian universities) lapsed in November 1982.

Although the activities of private citizens are often transformational, there are certain defects in this approach that should be recognized. The goal of improving personal relations at the grassroots level is to allow the citizen empowerment it engenders to lead the way for the government to bring about change.⁷⁰ However, private citizens sometimes find themselves working parallel to or in opposition to their governments because their opinions seem too radical. To bring educational rights to Palestinian students, Israeli and Palestinian private citizens will need to organize large numbers of citizens so that they can "build bridges" with the Israeli government. Once the private citizens and the Israeli government are working towards the same goal, their ideas can eventually be incorporated into law.

VII. CONCLUSION

Israel has given express commitments over the years to implement the terms of a number of treaties, including the Fourth Geneva Conventions, the Universal Declaration of Human Rights, the International Covenant on Social, Economic and Political Rights, and the Covenant on the Rights of the Child, which refers to the right of education. The aforementioned treaties are solemn obligations with which Israel must conform. In the past, the United Nations General Assembly resolutions, the United Nations Security Council resolutions, and the suggestions from the world's leading non-governmental organizations have been ignored by Israel which views these intergovernmental and non-governmental organizations as controlled by hostile, biased countries. It is possible for the international community to take direct action and pressure Israel by bringing a claim against Israel with the International Court of Justice because the treaties to which Israel

69. See RIGBY, *supra* note 15, at 106-07.

70. See DIAMOND, *supra* note 68, at 64.

is a signatory have stressed the importance of education as a legal right. In addition, Israelis and Palestinians could begin grassroots movements to effectuate change in their own country. Without pressure from the international community and Israeli citizens, it is highly unlikely that Israel will adjust its cruel tactics that violate the education rights of students within its borders. It is time that the international community and Israeli citizens represented those students who are unable to speak for themselves because, although idealistic, humanitarian laws and human rights laws are worthless if they are not enforced.

