Title: Beyond Occupation: Apartheid, Colonialism and International Law in the Occupied Palestinian Territories.
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Review:

This book prepares the legal groundwork for charges of crimes of colonialism and apartheid to be brought against the state of Israel before the International Court of Justice, following the precedent set by the same court with regard to the Separation Wall. It also follows the 2007 report by John Dugard, Special Rapporteur on the human rights situation in the Occupied Palestinian Territories. Dugard reported that ‘elements of the occupation constitute forms of colonialism and apartheid which are contrary to international law’ (p. 1).

Put succinctly, the legal argument here is that colonialism and apartheid have been identified by the international community as crimes relating to fundamental infringements of human rights law, and that the practices of the Israeli state in the West Bank and Gaza are tantamount to colonialism and apartheid.

The question is not whether Israel violates its obligations as an occupying power; it does, as has been established by the ICJ in its ruling on the Separation Wall. The book calls for a change of focus in the legal framework of the discussion: Israeli policies in the West Bank and Gaza should not be viewed solely within the framework of humanitarian law affecting protected peoples under occupation, but within the broader framework of human rights law.

This is in line with the way Israel’s presence in the West Bank has changed over the past decade. The longevity of an occupation in place for almost half a century, and the unremitting Jewish settlements in the West Bank and the way these have been incorporated into Israel; means that the West Bank (including East Jerusalem) can no longer be seen as temporarily occupied but rather having a permanent regime that uses the façade of military occupation.

The Prohibition of colonialism comes in the form of Article 1 of the UN General Assembly’s Declaration on the Granting of Independence to Colonial Countries and Peoples (1960), which states that ‘The Subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights...’ (p.17.)

The prohibition of apartheid is based on the International Convention on the Suppression and Punishment of the Crime of Apartheid Convention (1973), which declared that apartheid is a crime against humanity and provides a detailed
definition of the crime: “inhuman acts committed for the purpose of the establishing and maintaining domination by one racial group of persons over any other racial group of persons” (p. 108).

As can be seen from the language of the prohibitions, it is the crime of apartheid that is generally seen as more heinous, and the definition of the crime is more detailed. Apartheid is also an emotionally charged accusation, to which the Israelis themselves are very sensitive. Moreover, this book began as a report to the South African Foreign Office, and the South African context of project is clearly discernible.

The chapter that deals with Israeli practices that are tantamount to apartheid takes up half the book, and is accompanied by a detailed comparison of apartheid practices in South Africa and Israeli practices in the Occupied Palestinian territories, arranged by the order of illegal practices set out in the Apartheid Convention.

The practices listed in the Apartheid Convention include, among others, assassinations, restrictions on freedom of movement and of speech, and the denial of the right to a nationality. The book makes it very clear that Israel engages in all these practices in the framework of its control of the Occupied Palestinian Territories, and that there are many similarities with the practices of the apartheid regime in South Africa.

Whether this is sufficiently robust in order to make a legal case in front of the ICJ is hard to tell. There is no doubt that Israel is following repressive and discriminatory policies in the West Bank and Gaza. But, as the authors recognize, in order for these practices to be determined to fall under the category of apartheid, the court would have to establish that Israel is pursing repression and discrimination in order to establish and maintain domination of one racial group over another.

The authors list the likely Israeli objections, and attempt to dismiss them. They correctly point out that in the Israeli-Palestinian context Jewish and Palestinian identities are for all practical purposes immutable from birth, and therefore correspond to racial groups as envisaged in the apartheid convention.

It also seems reasonable to argue, as the authors do, that the racial segregation laws of apartheid South Africa – the ‘petty apartheid’ – were incidental to the overall framework of the racial domination practiced by the South African regime. The fact that Israel does not apply formal segregation of ethnic groups in buses or in other public spaces does not in itself invalidate the charge of apartheid.

Another likely Israeli objection that may carry more weight is the argument of citizenship. Israel argues that the systematic discrimination in the West Bank is between citizens and non-citizens, not between Jews and Palestinians. This is of course disingenuous, but is more difficult to refute. Palestinians who are citizens of Israel move as freely as Jewish citizens; they are not subject to the same travel restrictions as non-citizen resident Palestinians. Israel did make the occasional revealing faux-pas of allowing any Jew, including non-citizens, the same freedoms
of travel as Israeli citizens – the authors correctly highlight this case (p. 152), but it is an exception and not the guiding policy of Israeli authorities.

It is the settlements themselves which provide the clearest evidence for the way discrimination is linked to Jewish/non-Jewish identity, not to citizenship: there is no Israeli Palestinian living in a settlement, nor was one ever invited. The authors cite extensively from a document prepared by Matityahu Drobles in the early years of the occupation, which detailed the plan to install Jewish settlements in the West Bank. This is a shivering document indeed; but it is forty years old, and a court of law would have to be convinced that Israeli authorities have stuck to this plan; it is possible, but requires much more work than presented here.

Another problem with the charge of apartheid is that Israeli practices in the West Bank do not have the intention of ‘domination’, as specified in the apartheid convention, but rather of exclusion. Unlike apartheid South Africa, the Israeli occupation in the West Bank did not have as its primary objective the exploitation Palestinian labour. While such exploitation did and does occur (see pp. 167-172), it was incidental, a side-benefit rather than a goal on its own. Israel had no problem importing foreign labour to replace Palestinian labour during the Second intifada. Unlike apartheid South Africa, a Marxist interpretation of the occupation simply does not hold.

It may seem surprising, but Israel does not want to dominate the Palestinians; Netanyahu is not lying when he says that Israel does not want to rule over another people. Rather, Israel wants the land and its resources for the use of the Jewish people, and therefore wants to exclude the Palestinians from access to the land, and, as a corollary, to prevent them from having a political say in the management of these resources. Such systematic policies of exclusion are a grave infringement of human rights, but it is not clear whether they can be called apartheid: it is possible that they are a different variety of a crime.

The project wisely eschewed the question of whether the regime in Israel in the 1967 borders is itself colonialist or tantamount to apartheid, and focused solely on the regime in the Occupied Territories. There is no stronger argument against the oppression and discrimination of Israeli policies that the argument of human rights: After forty-six years of occupation accompanied by intensive settlement, Israel cannot continue pretending that this is a temporary situation. From a human rights perspective, Israel’s choice is very simple: It must give the Palestinians of the Occupied Territories citizenship, or let them live in a fully sovereign state in all the territories it occupied in 1967.