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LANGUAGE OF WAR, LANGUAGE OF PEACE

Palestine, Israel and the Search for Justice

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1948: INFILTRATING BACK HOME

'I asked myself: "Does a drowning man take up fishing?"'

Emile Habibi, *Saraya bint al-Ghul*

This book is based on the Edward Said memorial lectures I gave at Columbia University, New York, on 17 October 2013 and the British Museum, London, on 28 March 2014 to mark the ten years since Edward's death. His penetrating intelligence, humanism and commitment to the Palestinian cause continue to be sorely missed. As events unfold in our troubled region, I often wonder how he would respond. In this book I have tried to be guided by Edward, reflecting on the issues that were the focus of his interest: culture, language and politics. And as I am a lawyer the legal issues

are also of particular interest to me, so I comment on these as well.

When I gave these two lectures, the US-sponsored peace negotiations were still in progress. Few believed that they would come to anything, but my own persistent optimism led me to hope. I longed to be able to end the book with a description of the terms of the negotiated settlement that had moved this long-standing conflict closer to a just resolution. But it was not to be. My original title, 'Language of Peace', has sadly had to be modified with the addition of 'Language of War'. And yet still I have been guided by Edward's often-repeated aphorism, borrowed from Antonio Gramsci: 'Pessimism of the intellect, optimism of the will.'

Readers will find plenty to induce pessimism in the developments that I describe here. Over the years matters have gone in only one direction, from bad to worse, and anyone with a critical intellect will surely reflect on the present condition of the Palestinians with despair. But we cannot allow intellect to be the only measure. I have always believed, and have not given up hope, that a new generation of Israelis and Palestinians will one day look around and realise that they can no longer accept the way their elders have organised their lives. Indeed, they are not truly living a life, whether they are in the camp of the oppressed or the oppressors. Divine intervention is not going to save either of us; we have to save ourselves. I am convinced that, however long it takes, the optimism of the will is ultimately bound to triumph.

In saying this, I am in no way denying the painful past, and fully recognise the tremendous suffering and injustice

the present order has subjected the Palestinians to, as this book will make clear.

The future of this small area between the Mediterranean Sea and the River Jordan is the concern of not only Israelis and Palestinians. It is a land with particular significance to many people around the world. It has been known for a long time that the key to a safer, more peaceful Middle East lies in resolving the conflict here. While it will ultimately fall upon those of us who live in this tiny contested plot to make peace possible, at the moment we cannot achieve this without the assistance of the rest of the world.

I came to terms long ago with the fact that books have limited power to affect history and politics. Yet my optimism keeps me hopeful that by helping readers to better understand what is taking place here and by proposing things they can do to make change possible, the cause of peace will be furthered. In this way I have tried to remain truthful to Edward Said's unshakeable belief in the ultimate optimism of the will, while doing my best to present an honest and critical assessment of the current situation.

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One evening in the summer of 2013 – just after receiving the invitation to give the first lecture – I was at the grandly named Cultural Palace in Ramallah, watching a play called *Sagh Salim* (Healthy and Whole). This one-man autobiographical piece by Salim Dao, a Palestinian resident of Haifa, started me thinking about the status of Palestinians in historic Palestine and how the language used to describe them has changed over time: from 'citizens' in Mandate

Palestine to 'infiltrators' and 'absentees' under Israeli law and then to 'meddlers' and 'terrorists'.

On the stage, Dao – short, thin, shaven-headed, bespectacled – was sitting on a suitcase, his expression intense and sorrowful. He began the play by begging the audience for their understanding, then announced that, after much thought, he had decided to leave the country. However, before departing he wanted to talk: 'I have so much to say, years of words,' he declared. But he warned us that once he started talking he would be unable to stop shaking: 'This is not a play. You have come to see someone who doesn't know what to do with himself. Let me first begin by telling you where I come from. I was born and grew up in the Galilean village of El Baaneh.'

With satire and self-deprecating humour, he proceeded to tell his life story, from the time he was born – a few years after the Nakba (catastrophe) of 1948 – to the present. He mused on how as a child he could not understand why neighbours from the village who had managed to return home after their expulsion in the months of active war during 1948 were described as *mutasalilun* (infiltrators). As he spoke the word, his face assumed an expression of perplexity, sadness, resilience and weary endurance. He was almost in tears as he asked, 'These were neighbours, their homes in the village, so how did they become outlaws who could only be mentioned in whispers?'

The forlorn yet obdurate expression on Salim's face as he hesitantly, almost guiltily, uttered the word 'infiltrators' was one that I immediately recognised as quintessentially Palestinian. It continued to haunt me after the performance and I was still thinking of it a few days later as I

drove down to the Jordan Valley through the lunar hills between Jerusalem and Jericho. I passed many signposts for recently built Jewish settlements served by roads that we Palestinians cannot use. How odd, having separate roads for different ethnic groups, as well as different categories of land where different rules apply, and yet as I drove along I was fully aware of where I could and could not go, automatically taking the circuitous routes that confound the geography of the region.

It was Salim Dao's play that alerted me to what I was doing. As I drove, I wondered how many more terms and behaviours I have unwittingly adopted, and to what extent I have made the language of occupation and defeat my own.

I've become accustomed to so much. I have almost forgotten that I used to take the pleasant narrow road that runs through the soft hills leading to the attractive village of Beitin, north of Ramallah. I have not visited Beitin for over fifteen years, but I remember that landmark house near the pine tree that one saw on first entering the village. This road is now reserved solely for privileged VIPs with cards issued by Israel, as well as foreign dignitaries visiting Palestinian officials in Ramallah. We have stopped calling it the Beitin road and now refer to it as the DCO (District Coordination Office) road. Just as I've become used to the new network of roads, so I've become used to the language of occupation and oppression that determines our small world ... to the extent that I have stopped thinking about it.

This led me to reflect further on the linguistic oddities we have had to train ourselves to accept in order to get on with our daily lives in the Israeli-occupied territories, sometimes called the State of Palestine. In what follows I

will explore how these terms have entered our consciousness and become so much a part of our lives that we no longer notice them. I will then go on to discuss what I call the legal narratives of the two protagonists, Israel and Palestine, and consider how and why the Israeli narrative has prevailed. I will briefly review the troubled nine-month course of the latest US-sponsored peace talks, which have come to nothing, and see what lessons we can draw from this failure. Finally, I will show how the language of peace turned into the language of war, and consider what it will now take to arrive at peace in our troubled region.

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Only a few of the Palestinians forced out of their homes by Israel in 1947–8 were bold enough to try to return immediately. Some were shot at and died, but others survived and tried again. Some of them made it and managed to get the much-coveted identity card that the new government issued after the establishment of the State of Israel, but they then lived the rest of their lives in fear that the Israeli authorities would find out that they were so-called 'infiltrators' and deport them.

However, most displaced Palestinians decided to wait until the hostilities ended before trying to return to their homes. They were given tents and provisions to help them survive by the Red Cross. That winter of 1948–9 was one of the coldest the region had ever known. How odd it is that every time people here are forced out, nature conspires to produce a harsh winter: this was again the case in 2013, when Syrian refugees in Jordan endured one of the worst winters on record.

Anyway, here is our first twist in terminology. The Palestinians who were forced out of their homes in 1948 were not regarded by Israel as refugees. That would have implied that Palestine was their country, to which they should be allowed to return. This was not how the Israeli authorities saw it, on either count, and they did their best to make sure that the return would never happen. The Palestinians who were forced out of their homes and country, whom Israel called 'infiltrators' when they tried to return, were not defined by the UN as refugees, with the full rights accorded to this category of people the world over. Not only did Israel ban Palestinian refugees from returning home, as it continues to do to this day, but in denying them refugee status it also denied their existence as a national group. Rather than being placed under the auspices of the United Nations High Commissioner for Refugees (UNHCR) and being subject to the legal regime of international refugees (as established in 1951), they were accorded 'special status' and a specific unit was created by the UN to take care of them. This was the United Nations Relief and Works Agency for Palestinian Refugees in the Near East, from whose usual acronym, UNRWA, the mention of 'refugees' is remarkably absent.[1]

The significance of this distinction remains of great importance to this day. In reporting on a survey published on 19 June 2013 by UNHCR, the *Guardian* noted that by the end of 2012 the number of forcibly displaced people worldwide had reached 45.2 million, including 15.4 million refugees. This prompted a reader to write to the editor:

> you completely failed to quote the number of Palestinian refugees, citing instead that the largest number

> of refugees, by country of origin, is from Afghanistan, at 2,585,600. What you omitted, presumably by choice, is the information from the same UN report that the article is based on, as follows: 'of 10.5 million refugees under UNHCR's mandate … a further 4.9 million Palestinian refugees fall under the mandate of its sister agency, the UN Relief and Works Agency' … I am curious as to why your article completely omits to mention the Palestinian refugees. Surely, as the largest group of refugees in the world, they should merit some mention?

Chris Elliott, the readers' editor, responded in the Open Door section of the paper on 28 July 2013:

> The heart of the problem – which we should have realised sooner – lies in the fact that the Palestinian refugees do indeed fall under the mandate of the United Nations Relief and Works Agency (UNRWA) not UNHCR. According to the UNRWA website this is because: 'As UNRWA was set up in 1949, Palestine refugees were specifically and intentionally excluded from the international refugee law regime established in 1951. The 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto exclude Palestine refugees as long as they receive assistance from UNRWA. The UN office of the High Commissioner for Refugees (UNHCR) provides assistance and protection to Palestine refugees outside UNRWA's areas of operations.' … that's why Afghanistan tops the chart [of UNHCR statistics] … The only Palestinian refugees who

do appear in the UNHCR statistics are 94,804 who are in countries where UNRWA doesn't operate, and thus fall under the protection of the refugee agency.

So began our long ordeal of confinement by exclusivist categorisation. Palestinian refugees became a special category, different from refugees the world over, and, as we shall see, they were considered 'absentees', a category without context which meant they were denied compensation and the right of return. But who were these absentee owners? Had they somehow just absented themselves from homes and property that belonged to them?

An Israeli law of 1950 defined an 'absentee' as someone who, between 29 November 1947 and the date when the state of emergency ceased to exist, happened to be outside Palestine, regardless of the reason – they could have been abroad for business, study or their health. As such, they lost their right to return home and were denied access to their property.[2] It should be noted that the law considers the start date as 29 November 1947, the date of United Nations Resolution 181 on the partition of Palestine, which recommended the creation of an Arab and Jewish state in Palestine, and not when the much larger State of Israel was declared.

The line these refugees were hoping to cross in their attempt to return home following Israel's creation came to be called the Green Line – purely because of the colour of the ink used on the map demarcating the 1949 Armistice Agreements between Israel and Jordan. Desperate to deter more Israeli settlers from crossing the line that had served as the border for nineteen years, between 1948 to 1967, the

Palestinian Authority (PA)[3] tried in March 2014 to have the UN change the colour of this demarcation line from green to red, arguing that the arbitrary line representing Israel's pre-1967 borders was sending out the wrong message. In explaining why they were calling for this change, one Palestinian official explained, 'What does green say to you? Green means go, right? But what about the colour red? Red says stop. For all these years those settlers have been pouring over the Green Line. Now we want the UN to deliver a clear message to Israelis: stop when you see red.'[4]

Meanwhile, the Arab Jews who were being absorbed into Israel after 1948 were not called refugees either. They arrived through *ma'abarot* (transit), as though by coming to Israel they were en route to heaven. In Hebrew they were said to have made *aliya* (ascent). They were not mere immigrants to the new country. Instead, according to the Zionist ethos, they were returnees who had come home after 2,000 years of exile. On 25 September 2013 the Israeli High Court rejected the appeal of twenty-one appellants who wanted their nationality to be listed as 'Israeli' rather than 'Jewish' in the Population Registry. Palestinians, who are often accused of denying the existence of Israel, on occasion find a strange ally in the High Court.

Advocating a binational solution, Edward Said wrote in 1999: 'The beginning is to develop something entirely missing from both Israeli and Palestinian realities today: the idea and practice of citizenship, not of ethnic or racial community, as the main vehicle of coexistence.'[5] How far we are from reaching this ideal.

From its earliest days the Zionist movement was focused not only on winning the military struggle but also on