**John Torpey** 00:05

Welcome to International Horizons, a podcast of the Ralph Bunche Institute for International Studies that brings scholarly and diplomatic expertise to bear on our understanding of a wide range of international issues. My name is John Torpey, and I'm Director of the Ralph Bunche Institute at the Graduate Center of the City University of New York.

**John Torpey** 00:25

Today we discuss the recent report by the prominent human rights organization, Human Rights Watch, that charges Israel with the crimes against humanity of apartheid and of persecution against their Palestinian population.

**John Torpey** 00:41

We're fortunate to have with us one of the authors of the report, Eric Goldstein, who is acting Executive Director of the Middle East and North Africa Division of Human Rights Watch. He's conducted research missions to these and other regions of the Middle East since the 1980s, writing numerous reports for Human Rights Watch and publishing articles in the news media and academic journals. He has taught courses on human rights at Princeton and Georgetown Universities. Before joining Human Rights Watch, Goldstein worked at the Committee to Protect Journalists. He has a BA from Harvard and a master's degree in international affairs from Columbia University. Thanks so much for taking the time to be with us today, Eric Goldstein.

**Eric Goldstein** 01:29

It's a pleasure to be here.

**John Torpey** 01:30

Thanks so much. So this report was a pretty big deal; it was covered in the New York Times and makes some fairly heavy charges against Israel, not that these charges are unique to HRW or novel, particularly, but you've charged in this report Israel with the crimes of hate crimes against humanity. All this according to international law, of course; crimes against humanity of apartheid and persecution with regard to the Palestinian population. So can you explain on what basis you came to these conclusions?

**Eric Goldstein** 02:12

Thanks for the question. We're a human rights organization, so when we use a term like this, we use it in the legal sense. It's not an insult term, or we're not making cheap analogies. The term apartheid is found in a convention on apartheid from 1973 and it's also in the statutes of the International Criminal Court. It's one of many crimes against humanity that are listed in those statutes. It is one of two that deals with severe and systematic discrimination.

**Eric Goldstein** 02:48

So I take it that most people when they hear crimes against humanity, they think of raping and pillaging and mass murder; and those are crimes against humanity. And we've called those crimes out in many situations, most recently, in Myanmar, where we also found apartheid but other crimes against humanity.

**Eric Goldstein** 03:13

We're also not unaware that when today people hear the term apartheid, they immediately think of South Africa and there are implications of that. And we've had to do a lot of explaining why we are insisting on the legal definition here. And we're not calling Israel an apartheid regime. We're not calling Israel, South Africa. But there are parallels.

**Eric Goldstein** 03:34

I mean, the legal concept did have its origin in South Africa, just as the term genocide had its origins in a particular genocide, the extermination of the Jews in World War Two. And then in 1948, there was a convention reached to prevent genocide. And over the decades since then, people came to accept the concept of genocide, as perhaps having its origins in World War Two but having a meaning beyond that; and became more detached from its original concept. So the same thing, I think apartheid is on the same trajectory, although at an earlier point in that trajectory. So people do think of South Africa.

**John Torpey** 04:21

Yes, of course. I mean, having done some research on the idea of reparations in South Africa, and having spent some time there a couple different times, it's certainly what comes to my mind. And I really had no idea that it had assumed this status in international law, and that you seem to have applied it and maybe others have applied it to Myanmar, which is news to me.

**John Torpey** 04:46

I mean, I don't want to get off on this too much --because we have another more central case that we want to focus on-- but what if somebody said "well, residential segregation in the United States; is now sufficiently severe and it's more severe than it was in the 1960s," which I believe actually to be the case. I don't know that with any great certainty, but if I recall the research on this, I think that is, in fact the case.

**John Torpey** 05:18

Now, how that came to be the case, is it a product of government policy, which I would assume would be some part of a definition in international law of what apartheid is. Would the United States potentially be at risk of being declared an apartheid state? I mean, there is, of course, a famous book on this that is called "American Apartheid" by Doug Massie and Nancy Denton. And I think the story is actually that things have gotten worse since they wrote that book, 30 or 40 years ago now.

**John Torpey** 05:52

The core of the legal definition of apartheid is not separateness, even though the term in Afrikaner refers to separateness; the core of the concept in law is domination. So, there are three elements. One is having the intent to maintain a system of domination to the advantage of one group over another group. The second part is having a system of severe of oppression and domination. And the third is certain inhumane acts that are committed as part of that project.

**Eric Goldstein** 06:29

There are people who intend to make that case for the United States --I'm not going to pass judgment on that-- but I can certainly talk about the extent to which it exists in Israel, Palestine, where it exists, and why we were very comfortable making that term.

**John Torpey** 06:47

Well, yes, please. I mean, that's really the subject of our discussion today. But so if you would get into some of the details about what justifies your use of that term or that crime, in the case of Israel Palestine, of course, I'd like to know about that.

**John Torpey** 07:06

As somebody who's worked on Israel Palestine for about three decades, in this report, we took a more aerial view than we usually do, where in the past, we would focus on the occupied territories, or on something that was going on inside Israel proper.

**Eric Goldstein** 07:23

In this case, we looked at the whole territory that is under Israel's control: Israel, plus the occupied West Bank, East Jerusalem and the Gaza Strip. And in that landmass, the population is roughly evenly divided between Jews and Palestinians: Jewish Israelis and Palestinians.

**Eric Goldstein** 07:43

And there are very significant differences in the rights the Palestinians enjoy in the different parts of that land. Clearly, citizens of Israel, just about 20% of the Israeli population, enjoy rights superior to the rights of Palestinians who are within the other areas. But wherever they live, their rights are inferior to the rights of Jews.

**Eric Goldstein** 08:13

So we did take this aerial view, and pointed out that discrimination exists everywhere. But the crime requires a certain level of oppression and it requires inhumane acts. And it is in the occupied territories where we found the presence of those elements of the crime.

**Eric Goldstein** 08:30

So the examples that we gave of practices that meet that threshold are all in the West Bank and Gaza. And I'd like to note that we focused on practices that are not primarily motivated by security, or if they have a security component, which some do, the implementation of those practices make just no reasonable effort to balance security with the rights of the people who are harmed.

**Eric Goldstein** 09:03

So I will list those. For example, about 1/3 of the West Bank has been confiscated. The land is now under Israeli control much of it given over to settlements, much of it off limits, because it's declared a closed military zone.

**Eric Goldstein** 09:22

This land grab maybe has some security element in it, but it's mainly about controlling land. There is the practice of denying building permits to Palestinians in Area C which constitutes two thirds of the land even though it's not where most Palestinians live. They live under Palestine in Area A.

**Eric Goldstein** 09:47

But the denial of building permits in Area C and in East Jerusalem as well creates enormous hardship for Palestinians; the natural growth of their communities is stunted in that build an "illegal" addition to their house or a house for their children and their wives or spouses and then find the Israeli bulldozers pulling up and demolishing them on the grounds that they don't have a permit.

**Eric Goldstein** 10:14

Again, this is not security, this is about preventing Palestinians from enjoying or having access to land that should belong to them. And what happens is that some of these families have to leave; they self-deport to other places.

**Eric Goldstein** 10:30

There's also something like half a million Palestinians who happened to be out of the country in 1967, when Israel captured the West Bank, Gaza, and East Jerusalem and they can't come back. Again, there's maybe a security component, but it's really about demographic domination. Israel wants to be a Jewish majority inside Israel. And they want, obviously a lot of land in the West Bank, with minimum Palestinians.

**Eric Goldstein** 11:03

So these are the kinds of practices that we think are inhumane, and that really can't be defended as motivated primarily by security. And I can give other examples. So one of the criticisms that we've been getting about the report is, "oh, you're not taking into account Israeli security." But the practices that we focused on are really not mostly about security.

**John Torpey** 11:25

So the idea that they're inhumane is simply a function of the fact that they're not oriented towards security (whatever the actions in question are)? Is that the way to understanding inhumane?

**John Torpey** 11:38

There's a list of inhumane acts in the convention on apartheid from 1973. And we based it on that: massive restrictions on the rights of Palestinians to move. For example, 2 million Palestinians live in the Gaza Strip, they're forbidden from exiting the Gaza Strip and entering Israel except if they can get a hard to get/obtain humanitarian exception entry permit.

**Eric Goldstein** 12:08

Now, they don't have a right under international law to enter Israel per se, but they can't get to the West Bank or to East Jerusalem, which is part of the same occupied territory without traversing Israel. And under the Oslo Accords, even, Palestinian territories are one territorial unit. But there's a whole generation of Gazans who've never in their lives, left the Gaza Strip. And Egypt has a role in this as well. Egypt has closed its border most of the time.

**Eric Goldstein** 12:39

But this policy, which does have a security justification in our view, should reflect also an effort to balance the rights of people to freedom of movement against the security means and not be just a blanket ban with occasional exceptions. It's really stunted the cultural growth, the political growth, the flourishing of people who live in this, like 400 square mile; 400 square kilometer strip, and that's 2 million people.

**John Torpey** 13:12

Right, so how do you answer the point or the claim that you haven't paid attention to Israel's security needs, other than to say that we are focused on the inhumane acts?

**Eric Goldstein** 13:24

Well, I think that Israeli security concerns are genuine. And we've reported on in the past on many aspects of Palestinian armed attacks, for example, on Israeli civilians, or rocketing from Gaza into Israel that have upended the lives in people in the nearest Jewish town, Sderot, and condemned these as war crimes, because they're indiscriminate attacks on civilians. So we do constantly report on that.

**Eric Goldstein** 13:56

The fact that Israel has concerns about tunnels being built under the border into Israel is a legitimate security concern. We have no bone with trying to destroy those tunnels. But what does that have to do with strictly regulating the flow of products into Gaza and out of Gaza, produce by Gazan farmers that should be reaching markets like the West Bank? Yes, maybe concrete, there are some items that are dual use items. But the implementation of the closure of Gaza on the movement of people and of goods is clearly an act of collective punishment. And the relationship with Israel's security is attenuated.

**John Torpey** 14:53

Right. So the charges you're making are not, it seems to me, dissimilar to the kinds of charges that have been leveled by, for example, the BDS (the Boycott Divestment and Sanctions Movement) to much controversy in recent years.

**John Torpey** 15:09

And I wonder how you would see the charges you've leveled in this report as compared to those of BDS and others. And insofar as you've perhaps moved towards the BDS position, if that's maybe a way to see this, why now? Is there something about this moment that has changed HRW's view of what is going on in Israel. Because many of the facts that you're talking about are not particularly novel.

**Eric Goldstein** 15:40

HRW is not BDS; we don't support it, we don't oppose it. We defend the rights of people to engage in boycotts, and express themselves about it, but our position is quite different. They urge a boycott of Israel until Israel carries out three basic projects. But that's not the position we take. We do urge Israel to dismantle its system of apartheid. We urge the International Criminal Court to investigate the crime because it is within their statutes. We urge businesses to ensure that their actions are in keeping with their own human rights, responsibilities, and not complicit aiding in apartheid. But that's quite different from calling for a consumer boycott, which we do not do, or calling for the boycott of Israeli academics or cultural stars or sports figures. We don't do that.

**Eric Goldstein** 16:40

The second question you asked was, why now? And that's a fair question. And actually, we've gotten criticism from Palestinians, who've said, "Well, finally, you know, it's not that something has changed here, it's Human Rights Watch that's changed." We've been saying it all along. And it's true that Palestinian organizations have called it apartheid for a long time. And Israeli organizations in the past year have also made that determination. So we're certainly not the first one to do that.

**Eric Goldstein** 17:16

I think that, first of all, we're a very conservative organization. We're very cautious in our analysis. And because we chose to go the legal route, we had perhaps a harder, higher hill to climb than if we just said, "Oh, this is like South Africa." So in legal proof, I think the most challenging part is intent; showing that Israel has the intent to maintain the system permanently. And I think that perhaps we, and others, thought that the intent was not quite there. As long as there seemed to be a peace process, as long as Oslo had some life in it, as long as there was really leaders who are prominently saying, "we still support a two state solution and we want to see a Palestinian state thriving in the West Bank and the Gaza Strip." Yeah, many people gave up on that a long time ago. And I think perhaps the determination could have been made earlier.

**Eric Goldstein** 18:28

But after more than a decade of a Netanyahu government, where Netanyahu and other Israeli leaders repeatedly say they have zero intention of withdrawing from most of the West Bank, talking about a Palestinian state minus --meaning no real Palestinian state-- and taking concrete measures to not only increase the population of settlements, but close off areas, continue confiscation of land and the building out of the infrastructure for those settlements so that they become seamlessly connected to Israel are pieces of evidence I think that speak to that intent, and push it over the line.

**Eric Goldstein** 19:18

You know, there are Israelis who grew up in settlements who do not say "I grew up in the West Bank." They honestly think that they grew up in Israel. And that's how they speak of where they're from. So I think that this is an element that shows just the extent to which Israeli --and there are many, many laws that also extend the application of Israeli law extraterritorially into the West Bank.

**John Torpey** 19:49

So you've raised now a couple things that I want to ask about. One is a kind of counter argument that whatever its failings, Israel is the only real democracy in the region. And, I guess the question in a way is, how can it be both a democracy and an apartheid state? Is that possible? I mean, South Africa claimed that, of course, as well. But it was, a "herrenvolk democracy" or something like that.

**Eric Goldstein** 20:20

I think that within its green line borders, there's a good case that Israel is a democracy. In some ways, it's a vibrant democracy. 20% of the population belongs to the Arab minority, and they have full citizenship rights, they vote. They have other forms of discrimination, but they are part of the electorate, and we see that playing out in the current stalemate. But I think that it's debatable whether you can call a democracy a country that continues to rule over roughly 5 million people for half a century in the West Bank. Because those people don't have those rights. They have no rights to elect the government that makes the most important decisions of their lives. Yes, there is a Palestinian Authority, but the Palestinian Authority has very limited powers. It's more akin to say, a state government or municipal government providing services. Maybe they didn't intend for that to be what it would be after a quarter century. But that's where we are. And so I understand that Israel is a democracy in one sense, but I'm not somebody who just will say it's the only democracy in the Middle East, or that it is a democracy without a huge asterisk next to that label.

**John Torpey** 21:41

Now, this in turn leads to the other question that some of your comments raised, and that is what's the solution to this unacceptable arrangement? How do you get past set of arrangements that make possible the kinds of crimes against humanity that you've just charged Israel with committing?

**John Torpey** 22:00

And that debate, as you've kind of suggested, has revolved around the question of one state or two states? And it seems to me that the momentum lately has been away from the two state solution and towards a one state solution that somehow makes for equal rights of the entire population and gets away with the kind of oppression that you've just talked about and described.

**John Torpey** 22:28

So I'm guessing that HRW doesn't have a position on the one state or the two state solution. But do you have a sense of where the momentum of events is taking things? Do you want to comment on that? Or is that maybe outside the realm of what you'd want to talk about?

**Eric Goldstein** 22:51

No, I'd be happy to talk about that. Yes, Human Rights Watch takes no position about one state, two state, confederation. We think that dismantling apartheid is compatible with any political solution. Obviously, a two state [solution] is on life support at this point; there's no momentum for it at this point. But it's not in theory, in any way, incompatible.

**Eric Goldstein** 23:20

And I think here is where the distinction between the legal definition and the South Africa analogy is important. Because many people in Israel have said, "you're comparing us to South Africa. South African apartheid was an illegitimate regime, and the only solution was to blow it up. And your logical conclusion of what your report finds is to blow up Israel and start over."

**Eric Goldstein** 23:44

No. Legally, apartheid is a system of severe discrimination. We found all the elements of the crime in the West Bank, Gaza Strip and East Jerusalem. Imagine --this is just a thought exercise because it's not about to happen-- Israel unilaterally withdrew from the occupied territories. You'd be left with a situation inside Israel of discrimination; systemic discrimination. You'd still have a refugee problem.

**Eric Goldstein** 24:14

Would that meet the definition of apartheid, which requires a certain level of oppression and inhumane acts? It's debatable. Well, I'm not going to answer that because it's a hypothetical. And there are probably groups who will say, "Oh, it's still apartheid." But I think this is what many "two state" advocates say is: "we withdraw, we can cut ourselves off from the cancer that's growing in the West Bank; keep it from metastasizing. And then we can focus on the very real problems that we have inside Israel."

**Eric Goldstein** 24:53

There are problems of the Bedouins in the Negev who live in unrecognized villages and discrimination in the rights of people to marry and family reunification with bringing in members of family from outside, discrimination in delivery of school, sort of education services and others.

**Eric Goldstein** 25:16

But what my point is that when you're not making South Africa analogy, there are eventual ways to just dismantle the system that are feasible. Now there's some people who prefer the one state, a one state solution, which also, in theory, could give people rights. But I think that with the kind of the decline of in hope for a two state solution, there has to be a renewed focus on the rights of people now. Because they were always put off into the future.

**Eric Goldstein** 25:55

The attitude was, "yes, it's terrible. Things that happen in the West Bank are terrible. But if we press all that much harder to resolve the conflict, then the human rights abuses, which are symptoms of that conflict, will be resolved." And it's gone on too long. And we have to focus on the people who are living this today. And if peace is elusive, there are more reasons to create the conditions now for people of whatever the group they belong to have the conditions where they can thrive and where their rights are respected.

**Eric Goldstein** 26:35

You know, one of the many kind of illusions is the law of occupation, and so, of course, the occupier has certain prerogatives, and people aren't going to get their full rights. Technically, that's true. But you know, the law of occupation was designed for the morning after; it's supposed to be a short term, legal regime to deal with unstable, perhaps a violent situation, when an army captures territory.

**Eric Goldstein** 27:07

This is now 54 years later, two generations later, and there has to be some evolution in the rights that people can expect living in this situation. Sure, they're still security problems, but they're not existential problems. And some of those security problems have been exacerbated by the illegal settling of 600-plus thousand of Jews in this land. And the arrangements that have been set up to protect their lives, their safety, to the detriment of the 3 million Palestinians who live in the West Bank.

**John Torpey** 27:47

So the issue of security leads me to my next question, which really has to do with the American reaction to the report, insofar as there has been one, and more generally the American posture towards this part of the world, which has always been in the post-World War Two era what the United States wanted, in many ways, was what tended to happen insofar as it was in control of events.

**John Torpey** 28:16

And I would say that there's been this general kind of departure or decline of interest in the region having to do with the declining significance of oil in our economies and things like that. But the Trump Administration was actually quite hands on in certain ways and had some modest successes, I think one would have to say, with regard to Israel's relationships with some of its Arab neighbors. But I wonder how is the United States reacting to the report? And how do you see the new Administration's posture towards the region and towards Israel's place in it?

**Eric Goldstein** 28:59

On paper, the Biden Administration has stuck to its talking points, which is "we support a two state solution. We talk to Israel about human rights." But it's telling that they have downgraded it in its among its Middle East priorities. Its priority is Iran right now. And that I think, reflects that they know that this, the two state solution, is not one summit away, it's a long way off. And in the meantime, they're restoring US assistance to UNWRA, the UN agency for Palestinian refugees. There might be an upgrading of relations with the PLO after Trump basically ordered their shutdown, the shutdown of their Embassy in Washington.

**Eric Goldstein** 29:51

And so those are small steps, but I think the Biden Administration does not want to expend political capital right now doing a sprint in the hope of a summit and some breakthrough because they realistically have assessed it's not going to happen.

**Eric Goldstein** 30:11

In response to the report, they said they do not share the assessment of Human Rights Watch that this amounts to apartheid. But they did not condemn the report. I think if Pompeo had been Secretary of State, we would hear a vigorous denunciation and perhaps accusations that it's an anti-Semitic report. We didn't hear that from the Biden Administration. And the other government that is close, very close with Israel that we are concerned about is the German government. And it was similar. We don't share that assessment, but it has not began vigorous denunciation.

**Eric Goldstein** 30:50

And I think, if I were a Israeli government official sort of writing up the responses that this report received in Western capitals, I would be disappointed. It wasn't a situation where they all circle the wagons to protect Israel. And I think, first of all, they all know that it's an accurate description of a system of rampant discrimination and control. Even if they choose not to use the word domination, they might say, "it's not helpful to our goal of achieving a solution of the ongoing conflict." But I don't think that the facts of the report are so much in dispute.

**John Torpey** 31:40

So, since you've mentioned Iran, which might be seen as kind of the elephant in the room here, I wonder, just as a kind of final question, where do you see that relationship going? It seems to me that Israel is indeed most worried about Iran these days. And, with the collapse of the JCPOA, it may have good reasons to be worried about Iran and its nuclear and other military capabilities.

**John Torpey** 32:14

So I wonder, as I was saying in my previous question, there has been under the Trump Administration some improvement with some of the Arab neighbors. But with Iran, it doesn't look quite so cozy. So I wonder how you think that broader regional security situation is going to develop with regards to Israel?

**Eric Goldstein** 32:40

One thing that's happened is that the Iran issue and the Palestinian issue have become detached. You don't hear policymakers saying, "oh, if we can't solve the Palestinian-Israeli issue, it will make things worse with Iran." Iran now has a life of its own. And this is reflective of the kind of peripheralization of the Palestinian issue in Middle East Policy. There are different stages of that.

**Eric Goldstein** 33:09

A quarter century ago or longer there was a concern that what happened in Palestine could ignite the "Arab street". The Arab Spring of 2011 also further pushed Palestine to the margins; there's these very nationally focused revolts against autocrats and then civil wars and ongoing conflict in a number of countries in the region.

**Eric Goldstein** 33:36

So I think that the Iran issue is largely decoupled from the Palestinian issue. And that there's no sense in Israel of urgency to deal with the Palestinian issue in order to somehow reach a different outcome with Iran. Nor do I think that American policymakers see those two issues as somehow intrinsically joint, which may be to the disadvantage of Palestinians, their issue is just not very high on the international agenda right now.

**Eric Goldstein** 34:09

And there have been a couple of really excellent papers published in the last couple of weeks: one by a working group at Carnegie Endowment, and one by Professor Nathan Brown at GWU, who basically take stock of the kind of the stalled state of the peace process and what should be done. And while neither of them embraces the term apartheid, they do embrace a recentering of rights. You have people who should be enjoying their rights, regardless of the political outcome here and that Israel needs to take steps to improve the rights and dismantle the system that systematically it exists for the flourishing of Jewish people. That's pretty much the stated goal if you look at the nation state law that the Knesset adopted to the detriment of the other people that inhabits the same piece of land.

**Eric Goldstein** 35:16

And that kind of approach can, in the long term, make the situation more propitious for peace. But it is not an agenda that is driven by the need to reach a breakthrough in the peace process, which has always been more of a reason to downplay human rights than to address them head on.

**John Torpey** 35:44

Right. Well, let's hope the HRW report moves things somewhat in this direction. I want to thank Eric Goldstein for sharing his insights about Human Rights Watch's recent report on Israeli mistreatment of its Palestinian population.

**John Torpey** 36:04

Remember to subscribe and rate International Horizons on SoundCloud, Spotify and Apple podcasts. I want to thank Hristo Voynov for his technical assistance and to acknowledge Duncan Mackay for sharing his song International Horizons as the theme music for this show. This is John Torpey, saying thanks very much for joining us and we look forward to having you with us for the next episode of International Horizons.