



**CONCLUSIONS OF THE FIRST INTERNATIONAL
SESSION OF THE RUSSELL TRIBUNAL ON
PALESTINE**
Barcelona 1-3 March 2010

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List of abbreviations:

UNGA:	United Nations General Assembly
BDS:	Boycott, Divestment and Sanctions
CDI:	International Law Commission
ECHR:	European Court of Human Rights
GC:	Geneva Convention(s)
ICJ:	International Court of Justice
CJEC:	Court of Justice of the European Communities
Res.:	Resolution
RTP:	Russell Tribunal on Palestine
EU:	European Union

1. Meeting in Barcelona from 1 to 3 March 2010 (first session), the Russell Tribunal on Palestine (hereinafter “the RTP”) was composed of the following members:

- Mairead Corrigan Maguire, Nobel Peace Laureate 1976, Northern Ireland
- Gisèle Halimi, lawyer, former Ambassador to UNESCO, France
- Ronald Kasrils, writer and activist, South Africa
- Michael Mansfield, barrister, President of the Haldane Society of Socialist Lawyers, United Kingdom
- José Antonio Martín Pallín, emeritus judge, Chamber II, Supreme Court, Spain
- Cynthia McKinney, former member of the US Congress and 2008 presidential candidate, Green Party, USA
- Alberto San Juan, actor, Spain
- Aminata Traoré, author and former Minister of Culture of Mali

It adopted these conclusions, **covering** the following points:

- Establishment of the Tribunal (**I**)
- Mandate of the Tribunal (**II**)
- Procedure (**III**)
- Admissibility (**IV**)
- Merits (**V**)
- Continuation of the proceedings (**VI**)

I. Establishment of the Tribunal

2. The Russell Tribunal on Palestine is an international citizen-based Tribunal of conscience created in response to the demands of civil society. These past years, **noting** the failure to implement the Advisory Opinion of 9 July 2004 of the International Court of Justice concerning the construction of a wall in the Occupied Palestinian Territory; **noting the failure to implement** resolution ES-10/15 confirming the **International Court’s** Opinion, adopted by the United Nations General Assembly on 20 July 2004; **noting** the Gaza events in December 2008 - January 2009, committees have been created in different countries to promote and sustain a citizen’s initiative in support of the rights of the Palestinian people.

3. The Russell Tribunal on Palestine is imbued with the same spirit, and espouses the same rigorous rules as those inherited from the Tribunal on Vietnam (1966-1967), which was **established** by the eminent scholar and

philosopher Bertrand Russell, and the **second** Russell Tribunal on Latin America (1974-1976), organized by the Lelio Basso International Foundation for the Rights and Liberation of Peoples.

4. Supporters of the Russell Tribunal on Palestine include Nobel Prize laureates, a former United Nations Secretary-General, a former United Nations Under-Secretary-General, two former heads of state, other persons who held high political office and many representatives of civil society, writers, journalists, poets, actors, film directors, scientists, professors, lawyers and judges.

5. Public international law constitutes the legal frame of reference **of the Russell Tribunal on Palestine.**

6. The **Tribunal** proceedings will comprise a number of sessions. The Tribunal held its first session on 1, 2 and 3 March **2010** in Barcelona. It was hosted and supported by the Barcelona National Support Committee and the Office of the Mayor of Barcelona, under the honorary presidency of Stéphane Hessel, Ambassador of France.

II. The mandate of the Russell Tribunal on Palestine.

7. The **Tribunal** takes it as an established fact that some aspects of Israel's behaviour have already been characterized as violations of international law by a number of international bodies, including the Security Council, the General Assembly and the International Court of Justice (*infra* § 17). The question that has been referred to the first session of the **Tribunal** by the Organising Committee is whether the relations with Israel of the European Union and its member states can be characterised as wrongful acts within the meaning of international law and, if so, what the practical implications are, and what means may be used to remedy them.

8. At this session, the **Tribunal** will focus on the following six questions:

- the principle of respect for the right of the Palestinian people to self-determination;
- the settlements and the plundering of natural resources;
- the annexation of East Jerusalem;
- the blockade of Gaza and operation "Cast Lead";
- the construction of the Wall in the Occupied Palestinian Territory;

- the European Union/Israel Association Agreement.

III. Procedure

9. The Organising Committee submitted the aforementioned questions to experts who had been selected on the basis of their familiarity with the facts of the situation.

With a view to respecting the adversarial principle, the questions were also submitted to the European Union and its member states so that they could express their opinion.

The experts submitted written reports to the Tribunal.

10. In the case of the European Union, the President of the Commission, Mr. Barroso, wrote a letter to the **Tribunal** which arrived during the first session **in Barcelona**. President Barroso referred to the conclusions adopted by the Council of Ministers of Foreign Affairs on 8 December 2009 (annex A).

11. Only one member state of the European Union responded to the Tribunal's request. In a letter dated 15 February 2010, Germany drew attention, as President Barroso had done (see above), to the Council conclusions of December 2009 (annex B).

12. While the Tribunal takes note of these letters, it regrets that other member states and the European Union itself have proved reticent in presenting their arguments concerning the issues that are addressed at this first session, and that the Tribunal was unable to benefit from the assistance that their arguments and supporting evidence might have provided.

13. The written stage of proceedings was followed by an oral stage during which statements by nine experts introduced by the Organising Committee were heard by members of the Tribunal. The experts were:

Madjid Benchikh (Algeria) - Professor of Public International Law at the University of Cergy Pontoise and former dean at the Law Faculty of Algiers
 Agnes Bertrand (Belgium) - researcher and Middle East specialist with APRODEV

David Bondia (Spain) - Professor of Public International Law and International Relations at the University of Barcelona

Patrice Bouveret (France) - President of the Armaments Observatory, Lyon
 François Dubuisson (Belgium) - Law Professor at the Free University of Brussels

James Phillips (Ireland) - Lawyer

Michael Sfard (Israel) - Lawyer

Phil Shiner (United Kingdom) -lawyer

Derek Summerfield (United Kingdom) - honorary senior lecturer at London's Institute of Psychiatry

- 14.** Having listened to their reports, the Tribunal heard the following witnesses, who were also designated by the Organising Committee:

Veronique DeKeyser (Belgium) - Member of the European Parliament

Ewa Jasiewicz (United Kingdom) - Journalist and eyewitness of Operation “Cast Lead”

Ghada Karmi (Palestine) - Author and physician

Meir Margalit (Israel) - Israeli Committee Against House Demolitions and member of the Jerusalem City Council

Daragh Murray (Ireland) - legal advisor at the Palestinian Committee for Human Rights; in place of Raji Sourani (Palestine), Vice-President of the International Federation for Human Rights. The Tribunal expresses grave concern that its witness, Raji Sourani, Director of the Palestinian Centre for Human Rights, was unable to attend because, as part of the general blockade of Gaza and the closure of the Erez and Rafah border crossings, he has not been allowed to leave Gaza;

Raul Romeva (Spain) -Member of the European Parliament

Charles Shamas (Palestine), MATTIN Group

Clare Short (United Kingdom) - Member of Parliament and former Secretary of State for International Development

Desmond Travers (Ireland) - retired Colonel and member of the UN fact-finding mission that produced the Goldstone report

Francis Wurtz (France) - former Member of the European Parliament

- 15.** The procedure followed by the Tribunal is neither that of the International Court of Justice, nor that of a domestic or international criminal court, but is based on the methodology applicable by any judicial body in terms of the independence and impartiality of its members.

IV. Admissibility

16. When considering the relations of the European Union and its member states with Israel, the Tribunal will rule on a number of alleged violations of international law by Israel. Israel's absence from the present proceedings is not an impediment to the admissibility of the expert reports on the violations. In passing judgment on violations of international law allegedly committed by a state that is not represented before the Tribunal, the Tribunal is not breaching the rule of mutual agreement among the parties that is applicable before international judicial bodies responsible for the settlement of disputes between states (see the *Monetary Gold* and *East Timor* cases, *ICJ Reports*, 1954 and 1995). The work of this body is not comparable to that involved in a dispute referred, for instance, to the International Court of Justice: the facts presented as violations of international law committed by Israel in the Occupied Palestinian Territories have been characterized as such by the United Nations General Assembly and the Security Council, and also by a number of reports such as those of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories. Hence, at this stage, the Tribunal will simply draw attention to circumstances that are already widely recognized by the international community.

V. The merits

17. In these conclusions the Tribunal has used, depending on the context, the terms Palestine, occupied Palestinian territories, Palestinian territory, Occupied Palestinian Territory and Palestinian people without prejudice to the judgment that will be rendered at the final session.

18. The conclusions of the Tribunal will deal, in turn, with:

- violations of international law committed by Israel (A)
- breaches by the European Union and its member states of certain specific rules of international law (B)
- breaches by the European Union and its member states of certain general rules of international law (C)
- failure by the European Union and its member states to take measures against the violations of international law committed by Israel and to identify what remedies may be available (D)

A. Violations of international law committed by Israel

19. Having taken note of the experts' reports, and having heard the witnesses summoned by the latter, the Tribunal finds that Israel has

committed, and continues to commit, grave breaches of international law against the Palestinian people. In the Tribunal's view, Israel violates international law by the conduct described below:

- 19.1 by maintaining a form of domination and subjugation over the Palestinians that prevents them from freely determining their political status, Israel violates the right of the Palestinian people to self-determination inasmuch as it is unable to exercise its sovereignty on the territory which belongs to it; this violates the Declaration on the granting of independence to colonial countries and peoples (A/Res. 1514(XV), 14 Dec. 1960) and all UN General Assembly resolutions that have reaffirmed the right of the Palestinian people to self-determination since 1969 (A/Res. 2535 B (XXIV), 10 Dec. 1969, and, *inter alia*, A/Res. 3236 (XXIX), 22 Nov. 1974, 52/114, 12 Dec. 1997, etc);
- 19.2 by occupying Palestinian territories since June 1967 and refusing to leave them, Israel violates the Security Council resolutions that demand its withdrawal from the territories concerned (SC/Res. 242, 22 Nov. 1967; 338, 22 Oct. 1973);
- 19.3 by pursuing a policy of systematic discrimination against Palestinians present in Israeli territory or in the occupied territories, Israel commits acts that may be characterized as apartheid; these acts include the following:
 - closure of the borders of the Gaza Strip and restrictions on the freedom of movement of its inhabitants;
 - prevention of the return of Palestinian refugees to their home or land of origin;
 - prohibition on the free use by Palestinians of certain natural resources such as the watercourses within their land;
- 19.4 given the discriminatory nature of these measures, since they are based, *inter alia*, on the nationality of the persons to whom they are applied, the Tribunal finds that they present features comparable to apartheid, even though they do not emanate from an identical political regime to that prevailing in South Africa prior to 1994; these measures are characterized as criminal acts by the Convention on

the Suppression and Punishment of the Crime of Apartheid of 18 July 1976 which, though it is not binding on Israel, does not exonerate Israel in that regard;

- 19.5 by annexing Jerusalem in July 1980 and maintaining the annexation, Israel violates the prohibition of the acquisition of territory by force, as stated by the Security Council (SC/Res. 478, 20 August 1980);
- 19.6 by constructing a Wall in the West Bank on Palestinian territory that it occupies, Israel denies the Palestinians access to their own land, violates their property rights and seriously restricts the freedom of movement of the Palestinian population, thereby violating article 12 of the International Covenant on Civil and Political Rights to which Israel has been a party since 3 October 1991; the illegality of the construction of the Wall was confirmed by the International Court of Justice in its Advisory Opinion of 9 July 2004, which was endorsed by the UN General Assembly in its resolution ES-10/15;
- 19.7 by systematically building settlements in Jerusalem and the West Bank, Israel breaches the rules of international humanitarian law governing occupation, in particular article 49 of the Fourth Geneva Convention of 12 August 1949, by which Israel has been bound since 6 July 1951. This point was noted by the International Court of Justice in the above-mentioned Advisory Opinion;
- 19.8 by pursuing a policy of targeted killings against Palestinians whom it describes as “terrorists” without first attempting to arrest them, Israel violates the right to life of the persons concerned, a right enshrined in article 6 of the International Covenant on Civil and Political Rights;
- 19.9 by maintaining a blockade on the Gaza Strip in breach of the provisions of the Fourth Geneva Convention of 12 August 1949 (art. 33), which prohibits collective punishment;
- 19.10 by inflicting extensive and serious damage, especially on persons and civilian property, and by using prohibited methods of combat during operation “Cast Lead” in Gaza (December 2008 - January 2009).

- 20.** While the European Union and its member states are not the direct perpetrators of these acts, they nevertheless violate international law, either by failing to take the measures that Israel's conduct requires them to take, or by contributing directly or indirectly to such conduct. Moreover, the European Union and its member states do not comply with the relevant provisions of its own constitution, which confirms the attachment of the European Union to fundamental rights and freedoms, states its willingness to uphold and promote the respect of International Law and take appropriate initiatives to that end (European Union Lisbon Treaty, preamble, art. 2, 3, 17 and 21).

B. Breaches by the European Union and its member states of specific rules of international law that require the European Union and its member states to respond to violations of international law committed by Israel

- 21.** Certain rules of international law require the European Union and its member states to take action to prevent Israel from committing specific violations of international law. Thus,

- with regard to the right of peoples to self-determination, the UN General Assembly Declaration on friendly relations (A/Res. 2625 (XXV), 24 Oct. 1970) states, as its fourth principle (2nd para.):

“Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples [...] and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle”

in the *Wall* case, the International Court of Justice also referred to this clause (ICJ, *Reports 2004*, § 156) ; similarly, the 1966 Covenant on Civil and Political rights, that binds Israel since October 1991, stipulates that:

“The States parties [...] shall promote the realization of the right to self-determination:”

- with regard to human rights, the aforementioned Declaration on friendly relations states, in its fourth principle (3rd para.):

“Every State has the duty to promote through joint and separate action universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter” (see also the 5th principle, 2nd para.);

- furthermore, the Euro-Mediterranean Association Agreement of 20 November 1995 (OJEC L 147/1 of 21 June 2000), states that:

“Respect for democratic principles and fundamental human rights [...] shall inspire the domestic and international policies of the Parties and shall constitute an essential element of this Agreement” (art. 2);

this provision requires the European Union and its member states to ensure that Israel respects fundamental rights and freedoms, and it follows that, by refraining to do so, the European Union and its member states are violating the agreement; as shown by the Court of Justice of the European Communities in the *Brita* case (CJEC, 25 February 2010), European Union law is also applicable to the EU’s relations with Israel; while the agreement also stipulates that this does not prevent

“a Party from taking any measures [...] (c) which it considers essential to its own security in the event of serious internal disturbances affecting the maintenance of law and order, in time of war or serious international tension constituting threat of war or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security” (art. 76),

the Tribunal does not consider that this possibility accorded to the contracting parties can be invoked to justify the failure of the European Union and its member states to fulfil their obligation of due diligence to ensure respect for human rights by the other party; on the contrary, fulfillment of the obligation in question may contribute to the maintenance of “peace and international security”;

- with regard to international humanitarian law, common article 1 of the four Geneva Conventions of 1949 stipulates that “The High Contracting Parties undertake to respect and to ensure

respect” for the Conventions, as noted by the International Court of Justice in the *Wall* case:

“It follows from that provision that every State party to that Convention [the fourth Geneva Convention], whether or not it is a party to a specific conflict, is under an obligation to ensure that the requirements of the instruments in question are complied with.” (ICJ, *Reports*, 2004, § 158);

The official International Committee of the Red Cross commentary emphasized the significance of common article 1, stating as follows:

“It is not an engagement concluded on a basis of reciprocity, binding each party to the contract only in so far as the other party observes its obligations. It is rather a series of unilateral engagements solemnly contracted before the world as represented by the other Contracting Parties. Each State contracts obligations ' vis-à-vis ' itself and at the same time ' vis-à-vis ' the others. The motive of the Convention is such a lofty one, so universally recognized as an imperative call of civilization, that the need is felt for its assertion, as much out of respect for it on the part of the signatory State itself as in the expectation of such respect from an opponent, indeed perhaps even more for the former reason than for the latter.

The Contracting Parties do not undertake merely to respect the Convention, but also to *ensure respect* for it. The wording may seem redundant. When a State contracts an engagement, the engagement extends *eo ipso* to all those over whom it has authority, as well as to the representatives of its authority; and it is under an obligation to issue the necessary orders. The use in all four Conventions of the words ‘and to ensure respect for’ was, however, deliberate: they were intended to emphasize the responsibility of the Contracting Parties.

[....]

In view of the foregoing considerations and the fact that the provisions for the repression of violations have been considerably strengthened, it is clear that Article 1 is no mere empty form of words, but has been deliberately invested with imperative force. It must be taken in its literal meaning.”

the fact that the European Union is not a party to the Geneva Conventions does not preclude the applicability of their rules to the European Union; thus, in the aforementioned *Wall* case, the International Court of Justice held that an international organization such as the United Nations, which was not a party to the

Conventions either, should take action to ensure that they were respected; according to the Court, the UN and

“especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated régime, taking due account of the present Advisory Opinion.” (ICJ, *Reports. 2004*, § 160);

moreover, the International Committee of the Red Cross study on customary international humanitarian law notes that states:

“must exert their influence, to the degree possible, to stop violations of international humanitarian law” (rule 144);

as this is a rule of customary law, it is also applicable to international organizations.

Pursuant to international humanitarian law, beyond common article 1, the member states of the EU are under a specific duty to apply universal jurisdiction to individual criminal suspects, especially in the light of the recommendations of the UN Fact-Finding Mission at paragraphs 1857 and 1975 (a) of its report to the UN Human Rights Council of September 2009. (UN Doc. A/HRC/12/48, 12 September 2009, para. 1857 et 1975)

Further, article 146¹ of the 4th Geneva Convention provides that each state “shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in [Article 147²]”

¹ “Art. 146: The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949.

² Art. 147. Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the

It should be noted that Austria, France, Greece and Italy are four European Union countries that have failed to comply with Article 146 (1) in that their internal legal order does not enable universal jurisdiction to be exercised over those suspected of violations of the crimes listed in article 147.

article 146 (3) not only requires that parties of the 4th Geneva Convention apply universal jurisdiction to those suspected of criminal liability for grave breaches defined in article 147, but that they take effective measures to repress non-grave breaches too, which is explained in the official International Committee of the Red Cross commentary to the Convention as follows:

“under the terms of this paragraph, the Contracting Parties must also suppress all other acts contrary to the provisions of this Convention.”

The wording is not very precise. The expression "faire cesser" used in the French text may be interpreted in different ways. In the opinion of the International Committee, it covers everything which can be done by a State to avoid acts contrary to the Convention being committed or repeated. ...[T]here is no doubt that what is primarily meant is the repression of breaches other than the grave breaches listed and only in the second place administrative measures to ensure respect for the provisions of the Convention.”

C. Breaches by the European Union and its member States of the general rules of international law which require the European Union and its member states to respond to violations of international law committed by Israel

22. Israel’s violations of international law are frequently violations of “peremptory norms” of international law (*jus cogens*): targeted killings that violate the right to life, deprivation of the liberty of Palestinians in conditions that violate the prohibition of torture, violation of the right of peoples to self-determination, living conditions imposed on a people that constitute a type of apartheid.

present Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.”

23. The peremptory character of these norms is attributable to the fact that they cannot be derogated from (see, for the right to life and the prohibition of torture, the International Covenant on Civil and Political Rights, art. 4, § 2, and the Convention of 10 December 1984 against torture, art. 2, §§ 2-3) or that they have been explicitly assimilated to “peremptory norms” by the most authoritative scholarly opinion, namely that of the International Law Commission (ILC) (on the prohibition of apartheid and respect for the right of peoples to self-determination, see the ILC draft articles on state responsibility, commentary on article. 40, *ILC Report*, 2001, pp. 305-307).³

24. When they witness a violation of such norms, even at a considerable distance, states and international organizations cannot remain passive and indifferent. In article 41 of the draft articles on state responsibility, the International Law Commission adopted a provision to the effect that:

“1. States shall co-operate to bring to an end through lawful means any serious breach within the meaning of article 40.” [breach of a peremptory norm of international law].

In its commentary, the International Law Commission makes it clear that:

“the obligation to co-operate applies to States whether or not they are individually affected by the serious breach. What is called for in the face of serious breaches is a joint and co-ordinated effort by all States to counteract the effects of these breaches.” (*ILC Report*, 2001, p. 114).

25. The European Union and its member states are therefore under an obligation to react in application of international law to prevent violations of peremptory norms of international law and to counteract their consequences. By failing to take appropriate action to that end, the European Union and its member states are breaching an elementary obligation of due diligence pertaining to respect for the most fundamental rules of international law.

³ As a reminder, the International Law Commission is a subsidiary organ of the UN General Assembly, created in 1947 to codify international law. It comprises 34 members “of recognized competence in international law” A/Res-174(II) on 21 November 1947, 2nd para.

26. The Russell Tribunal on Palestine considers that this obligation to react implies, in accordance with the rules of good faith and due diligence, the obligation to ensure that the reaction against violations of peremptory norms of international law complies with the principle of reasonable effectiveness. To that end, the European Union and its member states must use all available legal channels to ensure that Israel respects international law. It therefore calls for a response that goes beyond mere declarations condemning the breaches of international law committed by Israel. Of course, the Tribunal takes note of these declarations, but they are no more than a first step when it comes to meeting the international obligations of the European Union and its member states; they are not fully performing the duty of reaction imposed by the rules of international law.

27. Lastly, the Russell Tribunal on Palestine wishes to emphasize that the obligation to react against violations of peremptory norms of international law must be subject to rules of non-discrimination and of the unacceptability of double standards: the Tribunal is perfectly well aware that states have not codified a rule of equidistance in respect of the obligation to react, but it holds that such a rule is inferable as a matter of course from the principles of good faith and reasonable interpretation of international law. Refusing to accept it will inevitably lead to “a result which is manifestly absurd or unreasonable” and which is ruled out by treaty law (1969 Convention on the Law of Treaties, art. 32 b). In these circumstances, the Tribunal considers that it is unacceptable and contrary to the aforementioned juridical logic for the European Union to suspend its relations, *de facto*, with Palestine when Hamas was elected in Gaza and to maintain them with a state that violates international law on a far greater scale than Hamas.

D. Failure of the European Union and its member states to refrain from contributing to the violations of international law committed by Israel

28. The Tribunal notes that reports by experts have brought to light passive and active forms of assistance by the European Union and its member states for violations of international law by Israel. Attention has been drawn, for instance, to the following:

- exports of weapons and components of weapons by European Union states to Israel, some of which were used during the conflict in Gaza in December 2008 and January 2009;
- exports of produce from settlements in occupied territories to the European Union;
- participation by the settlements in European research programmes;
- failure of the European Union to complain about the destruction by Israel of infrastructure in Gaza during the Cast Lead operation;
- failure of the European Union to demand Israeli compliance with clauses concerning respect for human rights contained in the various association agreements concluded by the European Union with Israel;
- the decision by the European Union to upgrade its relations with Israel under the Euro-Mediterranean Partnership Agreement;
- tolerance by the European Union and its member states of certain economic relations between European companies and Israel involving commercial projects in the occupied territories, such as the management of the Tovlan landfill site in the Jordan valley and the construction of a tramline in East Jerusalem.

29. For these acts to qualify as unlawful assistance or aid to Israel, two conditions must be met: the state providing assistance must do so with the intention of facilitating the wrongful act attributable to Israel and it must do so knowingly; article 16 of the International Law Commission draft articles on state responsibility reads:

“A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

- a) That State does so with knowledge of the circumstances of the internationally wrongful act; and
- b) The act would be internationally wrongful if committed by that State.”

In its commentary the International Law Commission makes it clear that the state which assists the perpetrator of the wrongful act must intend to facilitate the wrongful conduct and the assisted state must effectively engage in such conduct; the assisting state incurs responsibility even if such assistance is not essential to the performance of the wrongful act; it is sufficient if it “contributed significantly to that act” (*ILC Report*,

2001, p. 66). The assisting state must therefore be aware of the fact that Israel is violating international law and that the assistance given to Israel was intended to facilitate such violations.

30. *In casu*, the European Union and its members states could not have been unaware that some forms of assistance to Israel contributed or would perform have contributed to certain wrongful acts committed by Israel. This is applicable to:

- exports of military equipment to a state that has maintained an illegal occupation for more than forty years;
- imports of produce from settlements located in occupied territories and no real control by the customs authorities of European Union member states of the origin of such produce save in exceptional circumstances (Court of Justice of the European Communities, 25 February 2010, *Brita*), whereas the exception should become the rule;
- evidence of a report repressed in 2005 and repeated internal reports by European Union officials to EU bodies listing violations accurately, only to be ignored by those bodies.

In both cases, this conduct contributed “significantly” to the wrongful acts committed by Israel even if they did not directly cause such acts, and it is reasonable to assume that the European Union could not possibly have been unaware of this. In these cases, the European Union may be held to have been complicit in the wrongful act committed by Israel and hence to incur responsibility.

31. The participation of the settlements in European research programmes, the failure of the European Union to complain during the “Cast Lead” operation about the destruction by Israel of infrastructure that the EU had funded in Gaza, and the (proposed) upgrading of bilateral relations between the European Union and Israel are characterized by a number of experts as assistance to Israel in its alleged violations of international law. The International Law Commission considers that one must, in cases of this kind, “carefully” examine whether the state accused of wrongful assistance was aware that it was facilitating the commission of the wrongful act. According to the International Law Commission:

“Where the allegation is that the assistance of a State has facilitated human rights abuses by another State, the particular circumstances of each case must be carefully examined to determine whether the aiding

State by its aid was aware of and intended to facilitate the commission of the internationally wrongful conduct." (*ILC Report 2001*, p. 68)

Even if the acts of the European Union and its member states do not contribute directly to the violations of international law committed by Israel, they provide a form of security for Israel's policy and encourage it to violate international law because they cast the European Union and its member states in the role of approving spectators. As the International Criminal Tribunal for the Former Yugoslavia put it:

"While any spectator can be said to be encouraging a spectacle - an audience being a necessary element of a spectacle - the spectator in these cases [German cases cited by the Chamber] was only found to be complicit if his status was such that his presence had a significant legitimising or encouraging effect on the principals." (ICTY, *Furundzija* case IT-95-17/1-T, 10 Dec. 1998, § 232).

32. The European Court of Human Rights (ECHR) has held that lack of effort by a State party to the European Convention on Human Rights to ensure respect for the Convention in a territory under its jurisdiction may engage its responsibility for violations of the Convention committed in the territory concerned, even if the state does not exercise de facto authority there. *In casu*, the Court found that Moldova had failed to exercise due diligence *vis-à-vis* the secessionist government of Transdniestria and *vis-à-vis* Russia, which supported it, in order to halt the violations of the Convention that were being committed by the Transdniestrian authorities. Thus, the Court noted that:

"In their negotiations with the separatists, the Moldovan authorities have restricted themselves to raising the question of the applicants' situation orally, without trying to reach an agreement guaranteeing respect for their Convention rights" (European Court of Human Rights, *Ilaşcu and others v. Moldova and Russia*, 8 July 2004, § 348).

It added:

"the Court notes that the negotiations for a settlement of the situation in Transdniestria, in which the Russian Federation is acting as a guarantor State, have been ongoing since 2001 without any mention of the applicants and without any measure being taken or considered by the Moldovan authorities to secure to the applicants their Convention rights" (*ibid*, § 350).

The Court also noted that the Russian Federation has signed military and economic agreements with Transdniestria, which show that “it survives by virtue of the military, economic, financial and political support given to it by the Russian Federation”, that the latter has “made no attempt to put an end” to violations of the Convention and that even if its agents have not participated directly in them, “its responsibility is engaged with regard to the acts complained of” (*ibid.*, §§ 392-394). Although the Russian Federation is clearly much more involved in the events in Transdniestria than the European Union in those occurring in Palestine, it is significant that the European Court of Human Rights bases the responsibility of the Russian Federation and Moldova for violations of the European Convention on Human Rights committed by a third-party authority – Transdniestria – on their inaction or passivity with respect to the violations concerned. This inaction is broadly similar to that of the European Union and its member states with respect to the violations of international law committed by Israel in Palestine.

In a partly dissenting opinion in which he was joined by four other judges, Judge Casadevall adopts a similar approach:

“I consider that the efforts made by the Moldovan authorities with a view to securing the rights set forth in the Convention after its ratification in 1997 were not pursued with the firmness, determination and conviction required by the serious situation in which the applicants found themselves. [...] It should be noted that, while taking steps to promote co-operation with the secessionist regime with the avowed aim of making life easier for the population of Transdniestria, the Moldovan authorities have not displayed the same diligence with regard to the fate of the applicants. In their negotiations with the separatists, whether before or after May 2001, the Moldovan authorities have restricted themselves to raising the question orally, without trying to reach a written agreement providing for the applicants' release” (*ibid.*, Partly dissenting opinion, Casadevall, Ress, Tulkens, Birsan and Fura-Sandström, §§ 9-10).

Similarly, according to Judge Ress,

“if one recognises that the Russian Federation had jurisdiction over Transdniestria at the material time, and continues to exercise control, then one realises that there was an obvious lack of formal protests, declarations or other measures towards the Russian Federation, third countries, the United Nations and other international organisations, in an attempt to influence them to bring the illegal situation in Transdniestria and the applicants' unacceptable situation to an end” (*ibid.*, Partly dissenting opinion. Ress, § 6).

The situation of the European Union and its member states with respect to Israel is, of course, entirely different from that of Russia and Moldova with respect to Transdniestria; nevertheless, the reasoning of the European Court of Human Rights in this case is perfectly applicable, *mutatis mutandis*, to the responsibilities of the European Union and its member states *vis-à-vis* Israel.

33. In the light of the foregoing, and as noted by an expert, it is logical to interpret the silence of the European Union and its member states as tacit approval or a sign of acceptance of violations of international law by Israel. As it is inconceivable that the European Union and its member states are unaware of the violations of international law being committed by Israel, the Tribunal concludes that the acts in question constitute wrongful assistance to Israel within the meaning of aforementioned article 16 of the International Law Commission draft articles on state responsibility.

34. At this stage of the proceedings, the Russell Tribunal on Palestine calls on:

- (i) the European Union and its member states to fulfil their obligations forthwith by putting an end to the wrongful acts specified in section C and D of this document ;
- (ii) the European Union, in particular, to implement the European Parliament's resolution calling for the suspension of the EU-Israel Association Agreement, thereby putting an end to the context of irresponsibility that Israel continues to enjoy;
- (iii) European Union member states to implement the recommendations set out in para 1975 (a) of the UN Fact-Finding Mission Report on the Gaza Conflict (Goldstone Report) regarding the collection of evidence and the exercise of universal jurisdiction in respect of the crimes attributed to Israeli and Palestinian suspects;
- (iv) European Union member states to repeal any restriction under domestic law that would impede compliance with the duty to prosecute or extradite (*judicare vel dedere*) any alleged perpetrator of a war crime or a crime against humanity;
- (v) European Union member states to strengthen mutual legal assistance and cooperation in criminal matters through the EU contact points, EUROPOL, INTERPOL, etc.;
- (vi) European Union member states to refrain from limiting the scope of universal jurisdiction so as to ensure that no EU member state becomes a safe haven for suspected perpetrators of war crimes or crimes against humanity;
- (vii) the Parliaments of Austria, France, Greece and Italy to enact laws which, in conformity with Article 146 of the Fourth Geneva Convention, would facilitate the exercise of universal jurisdiction in those states;

- (viii) individuals, groups and organizations to take all necessary measures to secure compliance by the European Union and its member states with their aforementioned obligations including, in particular, the exercise of universal jurisdiction in civil and criminal matters against any alleged perpetrator – an individual or a state agent -- of a war crime or a crime against humanity;
- (ix) the existing legal actions in the context of the Boycott, Divestment and Sanctions campaign (BDS) to be stepped up and expanded within the European Union.

The Russell Tribunal on Palestine calls on the European Union and on each of its member states to impose the necessary sanctions on its partner - Israel - through diplomatic, trade and cultural measures in order to end the impunity that it has enjoyed for decades. Should the European Union and its member states lack the necessary courage to do so, the Tribunal counts on the citizens of Europe to bring the necessary pressure to bear on the EU by all appropriate means.

VI. Continuation of the proceedings

35. These conclusions close the first session of the Russell Tribunal on Palestine in Barcelona. As announced by the Tribunal, these are provisional conclusions: they are the result of a *prima facie* assessment of the facts brought to its knowledge and are without prejudice to the final verdict that the Tribunal will deliver at its closing session. The Tribunal hopes that the European Union and its member states will participate more actively in future sessions of the proceedings by making known their views, thereby preventing the Tribunal from drawing erroneous conclusions due to their silence and their absence.