

NEW YORK SESSION – 6-8 October 2012

EXECUTIVE SUMMARY OF THE FINDINGS OF THE FOURTH SESSION OF THE RUSSELL TRIBUNAL ON PALESTINE¹

1. The fourth session of the Russell Tribunal continued its historic mission of articulating civic protest and giving voice to insufferable conditions at a moment when world society is facing its most incredible challenges. It should be noted that the UN Charter begins with the words “We the peoples of the United Nations,” and therefore it is not only created to protect state power.

2. This session of the Tribunal focused on the complicity of the United States of America (U.S.) and the failings of the United Nations (UN) regarding the Israeli breaches of international law towards Palestine and Palestinians. There is now a situation in which Israel has achieved a status of immunity and impunity, facilitated by the U.S., despite its complete disregard for the norms and standards of international law.

After hearing various witnesses and experts, the Tribunal has reached the following conclusions (it should be noted that invitations were extended to U.S. and Israeli officials, both of whom failed to respond).

I. Israel’s violations of international law

3. As recalled by the Tribunal during its previous sessions, various well-documented acts committed by Israel constitute violations of several basic rules of international law to be found in international customary law, treaties, resolutions of the political organs of the UN and the Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (ICJ decision on the Wall):

- Violation of the right of the Palestinian people to self-determination as codified in Res. 1514 (XV) and 2625 (XXV), and recognised by the ICJ in its decision on the Wall;
- Violation of customary law, human rights norms (A/RES/194/III, § 11 and customary IHL as codified by the ICRC in 2005, Rule 132, International Covenant on Civil and Political Rights Art. 12(2)) by prohibiting the return of Palestinian refugees to their homes;
- Violation of the UN Security Council (UNSC) resolutions requiring Israel to withdraw from the Occupied Territory (87 resolutions to this day) and the UN Charter which obliges the member states to “carry out the decisions of the Security Council” (Art. 25).
- Violation of “[...] the principle of the inadmissibility of the acquisition of territory by war” (UNSC Res. 242), as well as the Security Council resolutions condemning the annexation of Jerusalem. The Tribunal notes that the Occupied Palestinian Territory refers to the West Bank, including East Jerusalem, as well as the Gaza Strip, since Israel’s 2005 withdrawal did not end the occupation of the 140-square-mile territory. This appears from the fact that Israel still maintains effective control, per Article 42 of the Hague Regulation, of all air and maritime spaces of the Gaza Strip, as well as control along the land border and inside the Gaza Strip, a 300 m wide buffer zone (600 and 1500 m wide in some places) which is a no-go zone depriving Gaza of 35 percent of its cultivable areas;

¹ The full text of the findings can be found on the website of the RTOP: www.russelltribunalonpalestine.com.

- Violation of the Palestinian people's right to their natural resources and wealth through the Israeli use of Palestinian agricultural land, the exploitation of Palestinian water reserves and preventing Palestinian access to more than 10 percent of their safe drinking water reserves (A/RES/64/292);
- Violation of international humanitarian law prohibiting:
 - the establishment of Israeli settlements (4th 1949 Geneva Convention (GC), Art. 49 and 147), the expulsions of Palestinians from their territory (*id.*);
 - the demolitions and expropriations of Arab houses and lands situated in the occupied country (1907 Hague Regulations, Art. 46 and 55);
 - mistreatment, torture and prolonged administrative detention of Palestinians in Israeli prisons (4th GC, Art. 3, 32 and 78);
 - non-compliance with the right of return of Palestinian refugees to their homes (A/RES/194/III, § 11 and customary IHL as codified by the International Committee of the Red Cross (ICRC) in 2005, Rule 132);
 - military attacks against civilians, indiscriminate and disproportionate attacks against Gaza and Palestinian refugee camps (customary international humanitarian law, ICRC Compendium Rules 1 and 14);
 - collective punishment of the Palestinian population of Gaza, where the World Health Organisation reports that life will no longer be sustainable by the year 2020 (Art. 33, GC);
 - the terms articulated by the 2004 ICJ decision on the Wall.
- Violation of fundamental rights and freedoms such as freedom of movement, freedom of religion, right to work, to health and to education because of the Israeli Wall and checkpoints in the Occupied Territory which prevent Palestinians from having free access to their workplaces, schools, health services and religious places (1966 Covenant on Civil and Political Rights, Art. 12 and 18; *id.* on Economic, Social and Cultural Rights, Art. 6, 12, 13);
- Violation of the prohibition of discrimination based on national origin through Israeli policies and practices akin to apartheid (2011 Cape Town findings of this Tribunal), which have denied Palestinians a functioning nationality both within Israel proper as well as in the Occupied Territory and beyond.

4. Among these violations of international law, several of them are criminally sanctioned: war crimes (Israeli settlements, inhumane treatment, torture, indiscriminate attacks, home demolitions, forced population transfers, collective punishment, 1996 ILC Draft Code of crimes against the peace and security of mankind, Art. 20; 4th GC, Art. 147, Rome Statute, Art. 8), crimes against humanity (persecution defined by the International Criminal Court (ICC) Statute cited here as an expression of international custom, Art. 7), and the crime of apartheid (1973 UN Convention, Art. 1 ; on apartheid and persecution, see 2011 Cape Town findings of this Tribunal). Because of their systematic, numerous, flagrant and, sometimes, criminal character, these violations are of a particularly high gravity.

II. U.S. complicity in Israel's violations of international law

5. The Tribunal finds that Israel's ongoing colonial settlement expansion, its racial separatist policies, as well as its violent militarism would not be possible without the U.S.'s unequivocal support. Following World War II, especially in the context of the Cold War, and since then, the U.S. has demonstrated a commitment to Israel's establishment and viability as an exclusionary and militarised Jewish state at the expense of Palestinian human rights. While U.S. administrations initially offered moral support, since the Six Day War in 1967, the U.S. has provided unequivocal economic, military and diplomatic support to Israel in order to establish and maintain a qualitative military superiority over its Arab neighbors in violation of its own domestic law:

- Economic Aid. The U.S.'s unconditional support for an internationally recognised occupying power has made Israel the largest recipient of U.S. foreign aid since 1976 and the largest cumulative recipient since World War II in the amount of approximately \$115 billion. Significantly, the U.S. provides its economic aid to Israel as a lump sum early in the fiscal year, and in the form of forgivable loans thereby making it exceptional among all of its foreign beneficiary counterparts. Aid to Israel has averaged about 25 percent of all U.S. foreign aid.
- Diplomatic Support. Between 1972 and 2012, the U.S. has been the lone veto of UN resolutions critical of Israel forty-three times. Of those, thirty concerned the Occupied Territories. In the General Assembly, despite the lack of a veto, U.S. pressure is often brought to bear on member states to prevent efforts to pass or enforce resolutions holding Israel accountable. As a result, the international impunity Israel enjoys for its consistent violations of the Geneva Conventions is largely attributable to external protection that its special relationship with the U.S. affords.
- Military Aid. Israel receives 60 percent of U.S. Foreign Military Financing (FMF) funding making it the largest recipient of U.S. military funding. It now ranks as one of the top ten arms suppliers globally, and is the only recipient of U.S. military aid allowed to invest up to 25 percent of that aid money in its own R&D and military production industry. Israel also receives funds from annual defense appropriation bills for joint U.S.-Israeli missile defense programs that can exceed \$100 million. None of these are subject to rigorous U.S. law including the Arms Export Control Act, the Foreign Assistance Act and the Mutual Bilateral Agreement between Israel and the U.S. (1952). U.S. government policy and specific laws passed by Congress require the U.S. to maintain Israel's qualitative military edge in the region. This collaboration with U.S. military producers has helped fuel a continuing arms race in the region.

6. It is therefore the opinion of this Tribunal that the U.S. has committed the following violations of international and U.S. law:

- By enabling and financing Israel's violations of international humanitarian and human rights norms, the U.S. is guilty of complicity in international wrongful acts per **Article 16 of the International Law Commission's Draft Articles on Responsibility of States and is therefore also responsible for the violations endured by the Palestinian people as well as the affront to the international system.**
- By obstructing accountability for violations of the **Geneva Conventions**, the U.S. has failed to meet its obligations as a High Contracting Party per Common Article 1.

- In continuing to provide economic support for settlement expansion despite occasional expressions of disapproval, the U.S. is also in violation of the **International Court of Justice's jurisprudence**, particularly paragraph 163(D) in its decision on the Wall.
- By stonewalling an international resolution to the conflict by abusing its veto power within the Security Council and its political/economic/diplomatic clout in the General Assembly, the U.S. is in violation of several provisions of the **UN Charter, in particular Article 24**.
- By failing to make military aid to Israel conditional on compliance by Israel with human rights norms and strict adherence to the law of self-defense, the U.S. is in violation of its own domestic law.

7. In 2011, the Palestinian leadership applied for admission of Palestine to the UN. The U.S. made it clear that it would veto this application in the Security Council notwithstanding its long-standing support for a two-state solution. To avoid the embarrassment of contradicting its own policy by using its veto power, the U.S. lobbied other member states of the Security Council to oppose the Palestinian application for admission, explaining that the solution to the Palestinian-Israeli conflict is not a matter of international law or multilateral resolution, but instead a matter of politics. As a result the Palestine application for admission to the UN lapsed.

The statehood bid, as it is more commonly known, raises some controversy amongst Palestinians as well because of its failure to represent the collective will of a national body, two-thirds of whom live beyond the Occupied Palestinian Territory. However, the Russell Tribunal observes that the legal statehood of Palestine is no longer a debatable issue since Palestine has been recognised as a state by more than 130 states and is now a full member of the UNESCO. If Palestine's status is upgraded in the UN from a mere "observer mission" to a "non-member state observer", this would afford Palestine jurisdiction within the International Criminal Court and consequently access to measures for accountability. The U.S. opposes this move principally because it will permit the International Criminal Court to exercise criminal jurisdiction over those Israeli politicians and generals responsible for war crimes and crimes against humanity in the course of Operation Cast Lead and potentially other acts in violation of human rights. It is presently lobbying states to oppose a Palestinian request for recognition as a non-member state because it wishes to secure impunity for Israeli leaders. The Russell Tribunal condemns this cynical conduct on the part of the United States and reiterates the need for criminal accountability for the abuses committed in Gaza, for the ongoing settlement enterprise, and for the forced population transfer of Palestinians.

III. The UN's responsibility for the failure to prevent Israel's violations of international law

8. The Tribunal took up the following questions: **(A)** Do the Israeli violations of international law oblige the UN to act to prevent or stop such violations? **(B)** If so, how should the UN react? **(C)** If the UN did not react properly, what are the consequences of this omission?

A. UN obligations with regard to violations of international law committed by Israel

9. As affirmed by the ICJ (*Agreement WHO-Egypt, ICJ Report 1980*, page 89-90, para. 37), the UN is a subject of international law, which, like states, is bound by international law, and especially, the UN Charter and general international law. The Charter stipulates that the UN's purpose is "To maintain international peace and security", "respect for the principle of equal rights and self-determination of peoples" and "to promote [...] respect for human rights [...] for all" (Art. 1). The Charter provides that the UN must "take effective collective measures" to achieve these goals. Failure to do so amounts to a failure to meet its mandate. (ICJ, *adv. op., Reparations*, 1949). The same idea flows from the rules relating to the right of peoples to self-determination, human rights and the obligation to ensure respect for international humanitarian law. In the decision on the Wall (2004), the ICJ said: "the United Nations, 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 regime [...]" (§ 160). Since neither of the principal organs of the UN has carried out *any* action "to bring to an end the illegal situation," moving towards "further" action becomes even more urgent.

B. How must the UN fulfill its obligation to ensure respect for the law of the Charter and the basic norms of general international law?

10. As a subject of international law, the UN is, like a state, bound to fulfill its international obligations in good faith. Significantly, in a recent Declaration of the High-level Meeting of the General Assembly (UNGA) on the Rule of Law at the National and International Levels, the UNGA declared that "the rule of law applies to all states equally, and to international organisations, including the United Nations and its principal organs, and that respect for and promotion of the rule of law and justice should guide all of their activities" (UN Doc. A/67/L.1, 19 Sept. 2012, § 2).

11. This means that the UN must do everything reasonably within its power to ensure that the rule of law is properly applied (ICJ, *Gabcikovo* case, 1997). This leads to the conclusion that the UN cannot simply denounce and condemn Israel's violations of international law. Since these oft-repeated condemnations have not resulted in the cessation of Israel's internationally wrongful acts, it follows that the UN must do more. The Security Council is fully aware of this when it repeatedly said that it would resort to other measures if Israel did not comply with its decisions. Yet, it does little more than to continue to deplore and condemn without any action.

The UNGA has hardly been better in spite of its right to seize a case on the agenda of the UNSC, under Res. Uniting for Peace, 377 (V). The UN organs have a duty to ensure respect of international law in terms of the UN Charter, as well as the due diligence rule, the responsibility to protect (2005 Final Document, §§ 138/9), and the obligation to struggle against impunity. The GA has in the past made some efforts towards holding Israel accountable for its violations of international law, but has failed to implement its own resolutions. This is particularly evident in GA Resolutions 37/128 (1982) and 38/180 (1983), which called on Member States to impose stringent military sanctions, including a complete arms embargo until Israel ends its violations of international law and UN resolutions regarding its occupation and attempted annexation of the Golan Heights. The UN's failure to encourage, let alone require, its member states to implement that call is particularly evident

in the emergence of Palestinian and global civil society's efforts to impose just such a campaign of boycotts, divestment and sanctions, including military sanctions. This duty also reflects well-established practice of the UNSC itself in many other cases for over forty years (South Africa, Southern Rhodesia, SFRY, Somalia, Angola, etc.). Ignoring the new framework of R2P (responsibility to protect) as the potential basis for a new plan to protect the Palestinian victims of prolonged occupation represents a new United Nations failure.

12. The Security Council has handed over responsibility for peace making in the Middle East to the Quartet, comprising the UN, the European Union, the U.S. and the Russian Federation. Such out-sourcing of UNSC obligations for insuring peace and security is not authorised in the UN Charter. Further, the Quartet and its envoy have failed to effectively oppose settlement building, the construction of the Wall, and violations of both international humanitarian law and human rights law by Israel. It is clear that the U.S. determines the response of the Quartet to these matters, and this raises serious questions about the good faith of the Quartet, as well as about the legitimacy of UN participation in it. The Quartet has made little attempt to prevent violations of international law. Consequently, as a member of the Quartet, the UN bears responsibility for its failures. That responsibility is particularly important given the degree to which UN participation in the Quartet along with Security Council failure, have jointly served to undermine the legitimacy of key UN agencies operating on the ground. That means that important humanitarian, aid and development agencies, including UNRWA, OCHA, UNICEF and others, which under other circumstances would enjoy significant popular support and legitimacy, are undermined by the UN's broader political failures.

13. In its advisory opinion on the Wall, the ICJ made a number of findings of violations of international law by Israel. The UN has failed to use its best endeavor to implement this Advisory Opinion.

14. In conclusion, the UN's failure to take action proportionate to the duration and severity of Israel's violations of international law (war crimes, crimes against humanity and the crimes of apartheid and persecution), and by not exhausting all peaceful means of pressure available to it, the UN does not comply with the obligations that states have conferred on the UN. The above examples confirm that by its failure to act more strongly than it does the UN violates international law. The effect of these failures is to undermine the rule of law and the integrity and legitimacy of the institutions of international law.

C. Legal consequences of UN omissions

15. The lack of concrete UN action to hold Israel accountable for its violations constitutes an internationally wrongful act, which prejudices Palestine and implicates the organisation's responsibility. The unlawful nature of the UN omissions is acute due to their exceptional gravity under international law. These necessitate appropriate responses from the organisation which has particular responsibilities for maintaining international peace and security. As stated classically in the International Law Commission's Draft Articles on Responsibility of international organisations, the UN must stop its wrongful omission and compensate for the damage suffered by Palestine. Until the United Nations and its member states move seriously to implement their obligations, it will be left to the human rights and other organisations of global civil society to hold Israel accountable.

IV. The question of “sociocide”

16. Sociocide was first introduced at the 2011 Cape Town session to reflect a sentiment that the Palestinian people are enduring the systematic destruction of their territory, institutions, economic and social infrastructure as well as their culture and, more generally, their society. It was integrated into this session for further investigation.

17. As to the sociocide, the Tribunal notes that it is currently not a crime under international law even though the concept is used by academics in order to describe the process of destroying a society’s ability to endure over time through:

- the widespread or systematic destruction of its social and political structures;
- the widespread or systematic destruction of its material and immaterial elements of shared identity.

18. The Tribunal considers that those widespread and systematic destructive processes are currently ongoing in Palestine as:

- the continuing military occupation of the Territory, the continuing building of settlements, the construction of the Wall that places parts of the Palestinian Territory out of reach of Palestinians and the blockade of the Gaza Strip, materially impede Palestinians from organising a political structure that would fully be able to administer the Palestinian Territory or people over time;
- the widespread destruction of education facilities and places of worship as well as the general situation in the Occupied Territory makes it impossible for the Palestinians to properly share elements of cultural and social identity;
- the systematic denial of the right of return, restitution and rehabilitation for the Palestinian people to their original homes and properties enforces their forcible exile, their institutionalised separation from one another and contributes to the destruction of their social structures and shared identities;
- the institutionalised discrimination against Palestinian citizens of Israel (which constitutes an indigenous population) based upon their non-Jewish identity, is a danger for the survival of the Palestinians as a social group. The Tribunal emphasised that the indigenous population is denied nationality within Israel, which is only available to Jewish persons, and is unable to marry other Palestinians from the OPT or from surrounding refugee host states;
- those policies target all Palestinians irrespective of their residence i.e., within Israel proper, the OPT, or in forced exile based upon the findings of the 2011 Cape Town session on apartheid.

The Tribunal considers that Israel is currently committing sociocide in Palestine but strongly emphasises that all those acts are already condemned by current positive international law as being either crimes against humanity (which includes the Convention on the Suppression of Apartheid) or war crimes susceptible of being prosecuted by the ICC in terms of the Rome Statute of 1998.

V. Ways forward and continuation of the proceedings

19. At this time of international, political and economic turbulence, it is particularly important for there to be a credible and effective system of international justice. The system presently has shown itself quite unable to bring about change.

This can, however, be achieved by:

1. The mobilisation of international public opinion, especially in the U.S. and Israel, towards a just society based on equality before the law, via the various manifestations of civil society:
 - (i) networks, including social ones, movements with particular emphasis upon the Boycott, Divestment and Sanctions movement, trade unions and other campaigns including those in the United States specifically targeting military aid to Israel;
 - (ii) a heightened focus on U.S. complicity in, and facilitation of, Israel's violations of international law in international advocacy;
2. Supporting and encouraging the vital role of criminal and civil litigation against the perpetrators of the various violations before domestic courts, including making sure that countries fulfill their duties under Universal Jurisdiction.
3. The referral of crimes committed in Palestine to the ICC by the Security Council or by the acceptance of the declaration made by the Palestinian government in January 2009, accepting the competence of the ICC.
4. Reforming the UN itself, for example by the abolition of the veto by the five permanent members of the Security Council, the expansion of the membership of the Security Council in the hope of democratisation and the strengthening of political will within as well as a revival of the existing powers of the General Assembly and consideration of further powers.