



## EXECUTIVE SUMMARY OF THE FINDINGS OF THE FOURTH SESSION OF THE RUSSELL TRIBUNAL

1. The fourth session of the Russell Tribunal continued its historic function of articulating civic protest and carrying the weight of insufferable conditions at a moment when the world society is facing its most incredible challenges. It should be noted that the UN Charter was created to emphasize the rights of people and not states.

2. The final session of the Tribunal focused on the responsibility of the United States of America (US) and the United Nations (UN) regarding the Israeli breaches of international law towards Palestine. There is now a situation in which Israel has achieved a status of immunity and impunity by their complete disregard for the norms and standards of international law facilitated by the US.

After hearing various witnesses and experts, the Tribunal has reached the following conclusions (it should be noted that invitations were extended to the US and Israel, 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 recognized 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 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), and the Security Council Resolutions condemning the annexation of Jerusalem;<sup>1</sup> the Tribunal notes that this includes the West Bank, including East Jerusalem, as well as the Gaza Strip since Israel’s withdrawal from the Gaza Strip has not ended the occupation of this territory. This appears from the fact that Israel still maintains control 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 % of its cultivable areas;
- Violation of the Palestinian people’s right to their natural resources and wealth through the Israeli use of Palestinian

<sup>1</sup> S/RES/250, 251, 252 (1968), 267 (1969), 298 (1971), 476, 478 (1980).



agricultural land, the exploitation of Palestinian water reserves and preventing Palestinian access to more than 10% of their safe drinking water reserves (A/RES/64/292);

- Violation of international humanitarian law prohibiting:
  - the establishment of Israeli settlements (4<sup>th</sup> 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 (4<sup>th</sup> 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 refugees camps (customary international humanitarian law, ICRC Compendium Rules 1 and 14);
  - 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, to education because of the Israeli Wall and check-points in the Occupied Territory which prevent Palestinian free access to their work place, school, 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 Capetown findings of this Tribunal), which have denied Palestinians of a functioning nationality.

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 transfer, collective punishment, 1996 ILC Draft Code of crimes against the peace and security of mankind, Art. 20; 4<sup>th</sup> GC, Art. 147, Rome Statute Art. 8), crimes against humanity (persecution defined by the International Criminal Court (ICC) Statute cited here as expression of international custom, Art. 7), and the crime of Apartheid (1973 UN Convention, Art. 1 ff.; on Apartheid and persecution, see 2011 Capetown findings of this Tribunal). Because of their systematic, numerous, flagrant and, sometimes, criminal character, these violations are of a particularly high gravity.

## II. US 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 US's economic, military, and diplomatic support. Following World War II, and since then, the US has demonstrated a commitment to Israel's establishment and viability as an exclusionary Jewish state at the expense of Palestinian human rights. While US Administrations initially offered moral support, since the Six Day War in 1967, the US has provided unequivocal economic, military, and



diplomatic support to Israel in order to establish a qualitative military superiority over its Arab neighbors in violation of its own domestic law:

- **Economic Aid.** The US's unconditional support for an internationally recognized occupying power has made Israel the largest recipient of US foreign aid since 1976 and the largest cumulative recipient since World War II in the amount of approximately \$115 billion. Significantly, the US provides its economic aid to Israel as a lump sum and in the form of forgivable loans thereby making it exceptional among all of its foreign beneficiary counterparts.
  - **Diplomatic Aid.** Between 1972 and 2012, the US has been the lone veto of UN resolutions critical of Israel forty-three times. Of those, thirty concerned the Occupied Territory. Israel's consistent violations of the Geneva Conventions is largely attributable to external protection that its special relationship with the US affords.
  - **Military Aid.** Israel receives 60% of the US Foreign Military Financing (FMF) funding making it the largest recipient of US military funding. It now ranks as one of the top ten arms suppliers globally. Israel also receives funds from annual defense appropriation bills for joint US-Israeli missile defense programs that can exceed \$100 million. None of these are subject to rigorous US law including the Arms Export Control Act, the Foreign Assistance Act, and the Mutual Bilateral Agreement between Israel and the US (1952).
6. It is therefore the opinion of this Tribunal that the US has committed the following violations of international and US law:



- By enabling and financing Israel's violations of international humanitarian and human rights norms, the US is guilty of complicity in international wrongful acts per **Article 16 of the International Law Commission's Draft Articles on Responsibility of States.**
- By obstructing accountability for violations of the **Geneva Conventions**, the US has failed to meet its obligations as a High Contracting Party per Common Article 1.
- In continuing to provide economic support for settlement expansion, the US 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, the US is in violation of several provisions of the **UN Charter, in particular Article 24.**
- By failing to condition military aid to Israel based on its compliance with human rights norms and strict adherence to the law of self-defense, the US is in violation of its own domestic law.

### III. THE UN'S RESPONSIBILITY FOR THE FAILURE TO PREVENT ISRAEL'S VIOLATIONS OF INTERNATIONAL LAW

7. The Tribunal faced 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**

8. 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)

## **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**

9. 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 organizations, 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).

10. This means that the UN must do everything reasonably within its power to ensure that the rule of law is properly applied (ICJ, *Gabčíkovo* 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. The UNGA has hardly been better in spite of its right to seize a case on the agenda of the UNSC, under Res. United 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. 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).

11. The Security Council has handed over responsibility for peace making in the Middle East to the Quartet, comprising the UN, the European Union, the US, and the Russian Federation. 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 US determines the response of the Quartet to these matters, and this raises serious questions about the good faith of the Quartet. Consequently, the Quartet has made little attempt to prevent violations of international law. As a member of the Quartet, the UN bears responsibility for its failures.

12. The ICJ decision on the Wall declares the law on a number of violations of international law by Israel. The UN has failed to use its best endeavor to implement this Advisory Opinion.

13. 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, crime of Apartheid, genocide), 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

14. The lack of concrete UN action against Israel constitutes an internationally wrongful act, which prejudices Palestine and implicates the Organization'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 Organization 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 organizations<sup>3</sup>, the UN must stop its wrongful omission and compensate for the damage suffered by Palestine.

### IV. THE QUESTION OF "SOCIOCIDE"

15. Sociocide was first introduced at the 2011 Capetown Session to reflect a sentiment that the Palestinian people are enduring the systematic destruction of their language, culture, and, more generally, their society. It was integrated into this session for further investigation.

16. 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:

- 1) the widespread or systematic destruction of its social and political structures,
- 2) the widespread or systematic destruction of its material and immaterial elements of shared identity.

17. 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 organizing 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

<sup>3</sup> See the last report in *Rapport CDI 2011*, doc. ONU A/66/10, pp. 127-128.



Territory makes it impossible for the Palestinians to properly share elements of cultural and social identity.

The Tribunal considers that Israel is currently committing sociocide in Palestine but strongly emphasizes 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.

### **CONCLUSIONS, WAYS FORWARD AND CONTINUATION OF THE PROCEEDINGS**

**18.** 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 mobilization of international public opinion, especially in the US and Israel, towards a just society based on equality before the law, via the various manifestations of civic society:
  - a. Networks, movements with particular emphasis upon the Boycott, Divestment and Sanctions movement, trade unions, and other campaigns.
  - b. Social media networks;
2. Paying attention to the vital role of criminal and civil litigation against the perpetrators of the various violations before domestic courts.



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 democratization, and a revival of the existing powers of the General Assembly as well as consideration of further powers.

The Russell Tribunal declares its commitment to continue its work on Palestine by monitoring progress and disseminating information.