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## Human Rights Council

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Agenda item 7

**Human rights situation in Palestine and other  
occupied Arab territories**

**Joint written statement\* submitted by the Badil Resource  
Center for Palestinian Residency and Refugee Rights, a non-  
governmental organization in special consultative status,  
Mouvement contre le racisme et pour l'amitié entre les  
peuples (MRAP), a non-governmental organization on the  
roster**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[30 January 2013]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

## **The Israeli breaches of international law towards Palestine and Palestinians and the responsibility of its ally**

On 6 and 7 October 2012, took place in New York City (USA) the fourth session of the Russell Tribunal on Palestine<sup>1</sup> which 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 and Palestinians. There is now a situation in which Israel has achieved a status of immunity and impunity, facilitated by the US, despite its complete disregard for the norms and standards of international law.

The Tribunal has reached the following conclusions.<sup>2</sup>

### **Israel's violations of international law**

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 – A/ES-10/273).

- 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), as well as the Security Council Resolutions condemning the annexation of Jerusalem.<sup>3</sup>
- 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% of their safe drinking water reserves (A/RES/64/292).

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<sup>1</sup> www.russelltribunalonpalestine.com - The Russell Tribunal on Palestine (RToP) is a court of the people, a Tribunal of conscience created in reaction to injustices and violations of international law that are not dealt with by existing international jurisdictions, or that are recognized but continue with complete impunity due to the lack of political will of the international community.

<sup>2</sup> Invitations were extended to the US and Israel, both of whom failed to respond.

<sup>3</sup> 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 360 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 % of its cultivable areas.

- 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);
  - collective punishment of the Palestinian population of Gaza, where the World Health Organization reports that life will not 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, 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 Cape Town findings of this Tribunal), which have denied Palestinians a functioning nationality both within Israel proper as well as the Occupied Territory and beyond.

Among these violations of international law, several of them are criminally sanctioned: war crimes,<sup>4</sup> crimes against humanity,<sup>5</sup> and the crime of Apartheid.<sup>6</sup> Because of their systematic, numerous, flagrant and, sometimes, criminal character, these violations are of a particularly high gravity.

### **US complicity in Israel's violations of international law**

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 unequivocal support. Following World War II, especially in the context of the Cold War, and since then, the US has demonstrated a commitment to Israel's establishment and viability as an exclusionary and militarized Jewish state at the expense of Palestinian

<sup>4</sup> 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; 4th GC, Art. 147, Rome Statute, Art. 8.

<sup>5</sup> Persecution defined by the International Criminal Court (ICC) Statute cited here as expression of international custom, Art. 7.

<sup>6</sup> 1973 UN Convention, Art. 1 ; on Apartheid and persecution, see 2011 Cape Town findings of this Tribunal.

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 and maintain 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 provided 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% of all U.S. foreign aid.

### **Diplomatic Support**

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. In the General Assembly, despite the lack of a veto, US 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 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, and is the only recipient of US military aid allowed to invest up to 25% of that aid money in its own R&D and military production industry. 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). US government policy and specific laws passed by Congress require the US to maintain Israel's qualitative military edge in the region. These collaborations with US military producers have helped fuel a continuing arms race in the region.

It is therefore the opinion of the Russell 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 and 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 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 despite occasional expressions of disapproval, 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 and its political/economic/diplomatic clout in the

General Assembly, 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.

In 2011, the Palestinian leadership applied for admission to the UN<sup>7</sup>

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.

The accession of Palestine to a status of “non-member State observer”<sup>8</sup> afford Palestine jurisdiction within the International Criminal Court and consequently access to measures for accountability.<sup>9</sup>

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 in addition to the ongoing settlement enterprise, and the forced population transfer of Palestinians...

Due to the length constraints, we are unable to present the full document.<sup>10</sup>

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<sup>7</sup> The US 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 US lobbied other member states of the Security Council to oppose the Palestinian application for admission, explaining that the solution to the Palestinian-Israel 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.

<sup>8</sup> On 29th November 2012, Palestine acceded to the status of “Observer State – Non member of the UN” following the adoption of a resolution by the UN General Assembly by 138 votes in favour, 41 abstentions and 9 against (Canada, Czech Republic, Israel, Marshall Island, Micronesia, Nauru, Palau, Panama and USA).

<sup>9</sup> The US opposed this move principally because it will permit the ICC 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.

<sup>10</sup> In particular a section dedicated to the UN’s responsibility for the failure to prevent Israel’s violations of international law and the section dedicated to the question of “Sociocide”. The full document can be consulted at <http://www.russelltribunalonpalestine.com/en/sessions/future-sessions/new-york-session-summary-of-findings>.