

ANNEX ONE

LEGAL CONSIDERATIONS ON ISRAEL'S REJECTION OF UN SECURITY COUNCIL RESOLUTION 1860

Note III

Crimes against humanity committed by Israel and denounced by Israeli organizations

One year ago, Israeli organizations themselves characterized the attitude of their Government towards the civilian population of Gaza, whose very lives it was endangering, as a "crime against humanity".

These Israeli organizations issued the following statement on 21 January 2008 (almost 1 year ago):

"We, the Israeli organizations signed below, deplore the decision by the Israeli Government to cut off vital supplies of electricity and fuel ..., as well as essential foodstuffs, medicines and other humanitarian supplies, to the civilian population of Gaza. Such an action constitutes a clear and unequivocal crime against humanity."

Signed: The Alternative Information Center; Bat Tsafon; Gush Shalom; The Israeli Committee Against House Demolitions; Physicians for Human Rights; the Coalition of Women for Peace.

Note V

Some of the many United Nations resolutions Israel has refused to implement

Among the innumerable resolutions the United Nations has devoted to the Israeli-Palestinian conflict, several have marked its history and should be noted:

- General Assembly resolution 181 (II) of 29 November 1947, which partitioned* Palestine (*see annex*).
- General Assembly resolution 194 (III) of 11 December 1948, which, during the first Israeli-Arab war,* stated that "the refugees wishing to return to their homes ... should be permitted to do so at the earliest practicable date", or, failing that, "compensation should be paid". Both of those rights would be recalled in 20 General Assembly resolutions between 1949 and 1967.
- General Assembly resolution 273 (III) of 11 May 1949, which admitted Israel* as a Member of the United Nations.

- The famous Security Council resolution 242 (1967) (*see annex*) of 22 November 1967, adopted almost six months after the Six Day War,* which affirmed the right of the State of Israel to exist and to enjoy security, but also the “withdrawal of Israel armed forces from territories occupied”, as conditions of a just and lasting peace. But, with typical United Nations ambiguity, the English text speaks of “territories occupied ...” (rather than “the” territories occupied). The Palestinian question was still only treated as a “refugee problem”. Likewise, Security Council resolution 338 (1973) of 22 October 1973, adopted after the Yom Kippur War,* merely called on the parties to the conflict “to start immediately after the cease-fire the implementation of Security Council resolution 242 (1967) in all its parts”.
- General Assembly resolution 2443 (XXIII) of 19 December 1968, which expressed concern at “the violation of human rights in [Arab] territories occupied by Israel”, denounced again and again in many texts throughout the 1970s and 1980s.
- General Assembly resolution 2535 (XXIV) of 10 December 1969, which affirmed for the first time since 1948 the “inalienable rights of the people of Palestine”, confirmed by resolution 2628 (XXV) of 4 November 1970, which recognized that “respect for the rights of the Palestinians is an indispensable element in the establishment of a just and lasting peace”.
- General Assembly resolution 2649 (XXV) of 30 November 1970, which explicitly mentioned “the right to self-determination” of the Palestinian people.
- General Assembly resolution 2949 (XXVII) of 8 December 1972 declared that “changes carried out by Israel in the occupied Arab territories” were “null and void”, which was then backed up by a condemnation of both population transfers and the implantation of settlements. Resolution 32/5 of 28 October 1977 stipulated that “all the measures and actions taken by the government of Israel” (...) “designed to change the geographical nature and demographic composition” in the Palestinian and other territories occupied since 1967 “have no legal validity and constitute a serious obstruction of efforts aimed at achieving ... peace”.
- General Assembly resolution 3236 (XXIX) of 22 November 1974, adopted in the presence of Yasser Arafat,* who had addressed the Assembly, recognized “the right to national independence and sovereignty” of the Palestinian people, as well as resolution 3237 (XXIX), which “invites the Palestine Liberation Organization to participate in the sessions and the work of (...) the General Assembly in the capacity of observer”.

- General Assembly resolution 3379 (XXX) of 10 November 1975, which determined that Zionism* was a form of racism (the resolution was revoked in December 1991).

The resolutions adopted since then have faithfully reflected the same ideas, and there is still a fundamental contradiction between Security Council resolutions 242 (1967) and 338 (1973) and the other texts adopted by the General Assembly. This contradiction has long been the basis for, on the one hand, the insistence of Israel and the United States* on the first two texts and, on the other hand, the insistence of the Palestine Liberation Organization on only accepting “all” United Nations resolutions. The Palestinian National Council of Algiers overcame that last obstacle by recognizing General Assembly resolution 181 (II) and Security Council resolutions 242 (1967) and 338 (1973) on 15 November 1988 — a step that it completed almost eight years later, by modifying the Palestinian National Charter to eliminate all the articles that denied Israel’s right to exist.

Since the outbreak of the second intifada,* the Security Council has adopted numerous resolutions, including the following three:

- Security Council resolution 1322 (2000) of 7 October 2000, adopted by 14 votes in favour and 1 abstention (the United States), “deplores the provocation carried out at al-Haram al-Sharif in Jerusalem on 28 September 2000, and the subsequent violence there and at other Holy Places, as well as in other areas throughout the territories occupied by Israel since 1967, resulting in over 80 Palestinian deaths”, “calls upon Israel ... to abide scrupulously by its legal obligations and its responsibilities under the Fourth Geneva Convention” and “calls for the immediate resumption of negotiations within the Middle East peace process”.
- Security Council resolution 1397 (2002) of 12 March 2002, adopted by 14 votes in favour and 1 abstention (Syrian Arab Republic), explicitly states, for the first time since the partition plan of 29 November 1947, “a vision of a region where two States, Israel and Palestine, live side by side within secure and recognized borders” (see annex).
- Security Council resolution 1435 (2002) of 24 September 2002 reiterates the demand “for the complete cessation of all acts of violence, including all acts of terror, provocation, incitement and destruction”, “the expeditious withdrawal of the Israeli occupying forces from Palestinian cities towards the return to the positions held prior to September 2000”, “calls on the Palestinian Authority to meet its expressed commitment to ensure that those responsible for terrorist acts are brought to justice by it”, and finally “expresses its full support for the efforts of the Quartet [the United Nations, the United States, the European Union and the Russian Federation] and calls upon the Government of Israel, the

Palestinian Authority and all States in the region to cooperate with these efforts and recognizes in this context the continuing importance of the initiative endorsed at the Arab League Beirut Summit”.

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Note VI

Press release by John Dugard, United Nations Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

The killing of some 40 Palestinians in Gaza in the past week, the targeting of a government office near a wedding party venue with what must have been foreseen loss of life and injury to many civilians, and the closure of all crossings into Gaza raise very serious questions about Israel’s respect for international law and its commitment to the peace process. Recent action violates the strict prohibition on collective punishment contained in the Fourth Geneva Convention. It also violates one of the basic principles of international humanitarian law that military action must distinguish between military targets and civilian targets. Israel must have known about the wedding party in Gaza near to the interior ministry when it launched missiles at the ministry building. Those responsible for such cowardly action are guilty of serious war crimes and should be prosecuted and punished for their crimes. The United States and other States which attended the Annapolis conference are under both a legal and a moral obligation to compel Israel to cease its actions against Gaza and to restore confidence in the peace process, ensure respect for international law and protect civilian life.

War against the children of Gaza

It is a violation of international law to collectively punish more than a million people for something they did not do. According to the Geneva Convention, to which it is a signatory, Israel actually has the obligation to ensure the well-being of the people on whom it has chosen to impose a military occupation for more than four decades. Instead, it has shrugged off the law. It has ignored the repeated demands of the United Nations Security Council. It has dismissed the International Court of Justice in The Hague. What John Dugard, the United Nations special rapporteur on human rights in the occupied territories, refers to as the “carefully managed” strangulation of Gaza — in full view of an uncaring world — is explicitly part of its strategy.

An unequivocal crime against humanity

We, the Israeli organizations signed below, deplore the decision by the Israeli government to cut off vital supplies of electricity and fuel (and therefore water, since the pumps cannot work), as well as

essential foodstuffs, medicines and other humanitarian supplies to the civilian population of Gaza. Such an action constitutes a clear and unequivocal crime against humanity.

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