

'Israel Violates International Law With EU Complicity'

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BARCELONA – Things are worsening for Israel from moral and legal perspectives. In fact, one year after the Goldstone Report on its 'war crimes' during its war on Gaza and amidst growing suspicions of its direct responsibility in the assassination of a Palestinian leader in Dubai, an international court has now concluded that Israel is violating international law with Europe's complicity.

The European Union (EU) is an accomplice of Israel in its proven violations of international law, as it legitimised Israeli actions in the Palestinian occupied territories and provided support to it, according to the findings of the Russel Tribunal on Palestine (RTP), which met in Barcelona March 1-3.

The Tribunal concluded that Israel has committed and continues to commit violations of international law, while the EU and its member states have breached this law and failed to take measures against Israeli violations and identify remedies.

The RTP, which was set up by late British philosopher, mathematician, historian, pacifist and social critic Bertrand Russell to judge the Vietnam War from the perspective of international law, has also stated that

"Israel practices a systematic policy of discrimination with the Palestinian population by closing Gaza's borders and limiting the movement of people across the territory."

The RTP is an international citizen-based "Tribunal of conscience" created in response to the demands of civil society. It is imbued with the same spirit and espouses the same rigorous rules as those inherited from the Tribunal by Bertrand Russell on Vietnam (1966-1967) and the Russell Tribunal II on Latin America (1974-1976).

Its members include Nobel laureates, a former UN Secretary-General, a former UN 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.

International public law constitutes the legal frame of reference for the RTP.

In its conclusions, the Russel Tribunal takes it as an established fact that some aspects of Israel's behavior have already been characterized as violations of international law by a number of international bodies, including the UN Security Council, the General Assembly and the International Court of Justice (ICJ).

Grave Breaches, Apartheid

Having taken note of reports and heard witnesses, the RTP finds that

“Israel has committed and continues to commit grave breaches of international law against the Palestinian people.”

According to the RTP, Israel violates international law:

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 and all UN General Assembly resolutions that have reaffirmed the right of the Palestinian people to self-determination since 1969.

By occupying Palestinian territories since June 1967 and refusing to leave them, Israel violates the Security Council resolutions that demand its withdrawal from those territories.

By pursuing a policy of systematic discrimination against Palestinians in Israeli territory or in the occupied territories, Israel commits acts that may be characterised as apartheid; these acts include:

- the closure of the borders of the Gaza Strip and restrictions on the freedom of movement of its inhabitants;
- the prevention of the return of Palestinian refugees to their home or land of origin;
- the prohibition on the free use by Palestinians of certain natural resources such as the watercourses within their land.

“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 RTP 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”.

Criminal Acts

The Tribunal concludes that these measures are characterised as “criminal acts” by the Convention on the Suppression and Punishment of the Crime of Apartheid of July 18, 1976, “which is not in fact binding on Israel, though this does not exonerate Israel in that regard”. In particular:

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.

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 ICJ in its Advisory Opinion of July 9, 2004, which was endorsed by the UNGA in its resolution ES-10/15.

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 ICJ.

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 Covenant on Civil and Political Rights.

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.

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).

EU Violations

While the EU and its member states are not the direct perpetrators of these acts,

“they nevertheless violate international law and the internal legal order of the EU as set down in the EU Treaty either by failing to take the measures that Israel’s conduct requires them to take or by contributing directly or indirectly to such conduct,” underlines the RTP.

It adds that Israel’s violations of international law are frequently violations of “peremptory norms” of international law:

“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.”

“The EU 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,” concludes the Tribunal.

“By failing to take appropriate action to that end, the EU and its member states

are breaching an elementary obligation of due diligence pertaining to respect for the most fundamental rules of international law.”

The RTP considered 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 EU 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 RTP takes note of these declarations,

“but they are no more than a first step when it comes to meeting the international obligations of the EU and its member states; they are not fully performing the duty of reaction imposed by the rules of international law.”

Lastly, the RTP emphasised that the obligation to react against violations of peremptory norms of international law must be subject to a rule of non-discrimination and of unacceptability of double standards.

“The RTP 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”.

EU Discrimination

In these circumstances,

“the RTP considered that it is unacceptable and contrary to the aforementioned juridical logic for the EU to suspend its relations, de facto, with Palestine when Hamas was elected in the Occupied Palestinian Territories and to maintain them with a state that violates international law on a far greater scale than Hamas.”

Regarding the failure by the EU and its member states “to refrain from contributing to the violations of international law committed by Israel”, the RTP noted that

“reports by experts have brought to light passive and active forms of assistance by the EU and its member states for violations of international law by Israel.”

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, according to the RTP.

EU Complicity

The RTP explains that the EU and its member states could not have been unaware that some forms of assistance to Israel contributed or would perforce contribute 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 EU member states of the origin of such produce;
- evidence of a report repressed in 2005 and repeated internal reports by EU 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 EU could not possibly have been unaware of this.

“In these cases, the EU may be held to have been complicit in the wrongful act committed by Israel and hence to incur responsibility,” the Tribunal emphasised.

Moreover, the participation of Israeli settlements in European research programmes, the failure of the EU 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 EU and Israel, it stressed, are characterised by a number of experts as assistance to Israel in its alleged violations of international law.

Even if the acts of the EU and its member states do not contribute directly to Israeli violations of international law,

“they provide a form of security for Israel’s policy and encourage it to violate international law because they cast the EU and its member states in the role of approving spectators.”

“The silence of the EU and its member states seems like tacit approval or a sign of acceptance of violations of international law by Israel,” the Russell Tribunal judged.

“As it is inconceivable that the EU and its member states are unaware of the violations of international law being committed by Israel,” the RTP concludes that the acts in question constitute wrongful assistance to Israel within the meaning of aforementioned article 16 of the UN-International Law Commission draft articles on state responsibility. (IDN-InDepthNews/05.03.2010).

Badriya Khan is a veteran political analyst.

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