

International Law and Israel's War on Gaza

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When the Oslo Document was originally presented by the Israeli government to the Palestinian Delegation to the Middle East Peace Negotiations in the Fall of 1992, it was rejected by the Delegation because it obviously constituted a bantustan. This document carried out Menachem Begin's disingenuous misinterpretation of the Camp David Accords—expressly rejected by U.S. President Jimmy Carter—that all they called for was autonomy for the people and not for the land too.

Soon thereafter, unbeknownst to the Delegation and to almost everyone else, the Israeli government opened up a secret channel of negotiations in Norway. There the Israeli government re-presented the document that had already been rejected by the Palestinian Delegation in Washington, D.C. It was this document, with very minor modifications, that was later signed at the White House on 13 September 1993.

Before the signing ceremony, I commented to a high-level official of the Palestine Liberation Organization: "This document is like a straight-jacket. It will be very difficult to negotiate your way out of it." This PLO official agreed with my assessment and responded: "Yes, you are right. It will depend upon our negotiating skill."

Of course I have great respect for Palestinian negotiators. They have done the best they can negotiating in good faith with the Israeli government that has been invariably backed up by the United States. But there has never been any good faith on the part of the Israeli government either before, during or after Oslo. Ditto for the United States.

Even if Oslo had succeeded, it would have resulted in the imposition of a bantustan upon the Palestinian People. But Oslo has run its course! Therefore, it is my purpose here today to chart a NEW DIRECTION for the Palestinian People to consider.

An agenda for an international legal response:

First, we must immediately move for the de facto suspension of Israel throughout the entirety of the United Nations System, including the General Assembly and all U.N. subsidiary organs and bodies. We must do to Israel what the U.N. General Assembly has done to the genocidal rump Yugoslavia and to the criminal apartheid regime in South Africa! Here the legal basis for the de facto suspension of Israel at the U.N. is quite simple:

As a condition for its admission to the United Nations Organization, Israel formally agreed to accept General Assembly Resolution 181 (II) (1947) (partition/Jerusalem trusteeship) and General Assembly Resolution 194 (III) (1948) (Palestinian right of return), inter alia. Nevertheless, the government of Israel has expressly repudiated both Resolution 181 (II)

and Resolution 194 (III). Therefore, Israel has violated its conditions for admission to U.N. membership and thus must be suspended on a de facto basis from any participation throughout the entire United Nations System.

Second, any further negotiations with Israel must be conducted on the basis of Resolution 181 (II) and its borders; Resolution 194 (III); subsequent General Assembly resolutions and Security Council resolutions; the Third and Fourth Geneva Conventions of 1949; the 1907 Hague Regulations; and other relevant principles of public international law.

Third, we must abandon the fiction and the fraud that the United States government is an “honest broker.” The United States government has never been an honest broker from well before the very outset of these negotiations in 1991. Rather, the United States has invariably sided with Israel against the Palestinians. We need to establish some type of international framework to sponsor these negotiations where the Palestinian negotiators will not be subjected to the continual bullying, threats, harassment, intimidation and outright lies perpetrated by the United States government.

Fourth, we must move to have the U.N. General Assembly impose economic, diplomatic, and travel sanctions upon Israel pursuant to the terms of the Uniting for Peace Resolution (1950), whose Emergency Special Session on Palestine is now in recess.

Fifth, the Provisional Government of the State of Palestine must sue Israel before the International Court of Justice in The Hague for inflicting acts of genocide against the Palestinian People in violation of the 1948 Genocide Convention!

Sixth, An International Criminal Tribunal for Israel (ICTI) can be established by the UN General Assembly as a “subsidiary organ” under article 22 of the UN Charter. Article 22 of the UN Charter states the UN General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions. The purpose of the ICTI would be to investigate and Prosecute suspected Israeli war criminals for offences against the Palestinian people.

On January 4, 2009, Nobel Peace Laureate, Mairead Maguire wrote to the UN Secretary General, Ban Ki-Moon and Father Miguel D’Escoto President of United Nations General assembly adding her voice to the many calls from International Jurists, Human rights Organizations, and individuals, for the UN General Assembly to seriously consider establishing an International Criminal Tribunal for Israel in view of the ongoing Israeli atrocities against the people of Gaza and Palestine.

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