

## Israel Accused of War Crimes

Gaza offensive 'a crime against humanity': UN Special Rapporteur

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### *Outrage and Impotence as Gaza Burned*

United Nations chief Ban Ki-moon expressed his “outrage” and the President of the General Assembly, Miguel d’Escoto Brockmann, accused Israel of violating international law.

“Gaza is ablaze,” he told the UN General Assembly, “it has been turned into a burning hell.”

The UN’s Special Rapporteur for Human Rights in the Occupied Territories, Professor Richard Falk, characterized the Israel offensive as containing “severe and massive violations of international humanitarian law.”

But an outspoken US lawyer isn’t overly impressed with the indignant words of Ban, Brockmann, or Falk.

“Saying is one thing,” according to international attorney Francis A. Boyle, “doing is another.”

He accused the UN creating the problem in the first place by what he described as the “illegal” partitioning of the Palestine Mandate that led to a massive displacement of the indigenous Arab population.

“You can never trust the United Nations to do the right thing for the Palestinians. The Palestinians have always been on their own, and they know it,” he said, “Abandoned and betrayed by the entire world now for 60 years.”

Professor George Bisharat from the Hastings College of the Law at the University of California says the United Nations owes the people of Palestine a moral debt.

“The UN is deeply implicated in the injustices and violations of rights of the Palestinians over the last six decades,” he said. “It is not at all clear that the General Assembly had the legal authority to partition Palestine, and the plan it passed in 1947 violated the rights of the indigenous people of Palestine to self-determination.

“The United Nations has owed the Palestinian people a moral debt since that time ? and one that it has never effectively paid.”

Author and political scientist, Norman G. Finkelstein, expressed his frustration at the inaction of global leaders, and the inability of the United Nations to even enforce its own resolutions.

“The world does nothing,” he said. “Most states are led by cowards and slaves of the United States. The only ones showing any courage right now are the UN agencies in Gaza. Their representatives are telling the truth.”

Dr. Mohammad Marandi, head of the Department of North American Studies at Tehran University shares Finkelstein’s low opinion of UN leadership.

“While the UN staff in Gaza are doing heroic work,” he said, “their statements are not reflected by the higher authorities of the UN or the countries that are represented there.”

Boyle, meanwhile, says the legal tools are available to enforce resolutions and international law, but Finkelstein believes it is not simply a question of law, but rather a lack of political will.

“The UN is not impotent,” he said. “It chooses to be silent because it is composed of craven slaves of the United States.”

Under the current circumstances, says Finkelstein, Israel believes it can act with impunity.

“Why should Israel care? The world is doing nothing. The only hope is public opinion, which is light years ahead of the elected representatives.”

The Israeli offensive against Gaza triggered massive anti-Israel protests around the world, and according to Kole Kilibarda, an organizer with the Toronto-based Coalition Against Israeli Apartheid (CAIA), they have an important role to play.

“It is a mistake to view the UN in monolithic terms, and in no way should its actions or inaction serve as a substitute for individuals to organize themselves in their communities to fight and struggle for what they see as just,” he said.

“Social change has never come from the UN,” Kilibarda said. “At its best, the UN has only managed to legitimize what social movements had fought for over decades and sometimes centuries.”

But Kilibarda says it is clear the Israeli leadership is indifferent to the overwhelming majority of world opinion that has condemned their attack.

“Israel was ready for this reaction and it is obvious that the ‘media war’ was prepared months in advance in an attempt to prevent a repeat of Israel’s PR fiasco during its 2006 attack on Lebanon.

“The fact is,” Kilibarda said, “Israeli leaders only care about the opinion of politicians in Washington and other world capitals. So long as these governments see a strategic interest in supporting Israeli apartheid as a means of repressing the self-determination of the people living in the Middle East, Israel will continue on its course.”

Prof. Bisharat says the real responsibility lies not with the UN itself, but with the handful of powerful nations that run it according to their own interests and moral outlook.

“The UN will likely never become a venue sympathetic to Palestinian rights until it undergoes substantial reform and democratization,” he said.

Dr. Marandi says the problem with the UN is that it is undemocratic, and it is unlikely that Israel will face serious condemnation.

“The only thing that will impact events on the ground is a change of attitude by the United States or an increase in resistance [to US influence] by countries such as Egypt, Jordan and Saudi Arabia.

“It is ironic,” Dr. Marandi said, “that the United States considers the UN and the UN Security Council to be legitimate bodies, but their key ally ? Israel ? never accepts their resolutions.”

#### Holding Israel Accountable for War Crimes

Israel’s reaction to the passage of Resolution 1860 calling for an immediate ceasefire was to dismiss it as an unworkable piece of paper.

Prime Minister Ehud Olmert said since the “terrorist organizations” would not honor it, then why should Israel. Consequently, he and other senior cabinet ministers said they would simply ignore it.

The position taken by Israel was a clear violation of their responsibilities as a member of the world body.

“All members pledge to uphold the charter of the UN and to abide by Security Council resolutions,” said Prof. Bisharat.

“However, this resolution was not taken under Chapter Seven of the charter which is the chapter under which enforcement actions — including the use of force — are authorized. So Israel can ignore the resolution with impunity.”

In fairness, the professor added, Hamas too scorned the resolution, maintaining that its perspective was never heard.

Given the ferocity of the Israeli campaign in Gaza and the extraordinarily high proportion of civilians killed and injured, some governments have begun to call for legal action against Israel for war crimes and crimes against humanity.

Prof. Bisharat outlined two possible courses of action to hold Israel legally accountable for its violations of international law in Gaza.

“One is to form a special international criminal tribunal under the authority of the UN General Assembly to create subsidiary organs under Article 22.

“This would be unprecedented. All special tribunals in the past — for Rwanda and the former Yugoslavia for example — have been established by the Security Council.”

Prof. Bisharat said the unusual move of seeking a tribunal without UNSC approval is being taken because of the omnipresent threat of a US veto.

“The other course is to refer the matter to the International Court of Justice for an advisory opinion, similar to what was done in respect of Israel’s ‘separation wall’ built by Israel in the occupied territories.

“My sense is that many people internationally, and to an extent in the US, are finally

shocked enough at Israel's behavior that real action will be taken," he said.

But, the professor added, it will be a political battle within the General Assembly and no one can precisely predict its outcome.

A good start, according to Boyle, would be to have Israel suspended from the United Nations.

"The UN General Assembly can vote to suspend Israel from all participation in the activities of the UNGA, as well as affiliated agencies, organizations, institutions and other activities," he said, "And this would not be subject to a US veto."

He pointed out that similar measures were taken against the apartheid regime in South Africa and the rump Yugoslavia — which at the time was being accused of genocide.

"Both of these cases, apartheid and genocide apply to Israel," Boyle said, "and you can quote me on that."

As a condition for its admission into the United Nations, Boyle explained in a recent legal article, Israel formally agreed to accept General Assembly Resolution 181 (II) (1947) (partition/Jerusalem trusteeship) and General Assembly Resolution 194 (III) (Palestinian right of return).

"Israel has repudiated both these resolutions (among other things) and consequently has violated its conditions for admission to UN membership," Boyle wrote.

Prof. Bisharat agrees that, in theory at least, it would be possible to have Israel suspended from the United Nations.

"It is theoretically possible, but highly unlikely," he said, "There are few nations that would brook the wrath of the US that would surely follow any such action."

Boyle has previously offered his services to the government in Iran if they wished to pursue legal action against Israel, and said he is pleased that Tehran — along with Malaysia and other countries — appear to be taking his suggestions seriously.

Sometimes described as being a little on the "fringe" or eccentric, Boyle had a sharp response to critics.

"I am the same eccentric person who single-handed won two World Court orders for Bosnia and Herzegovina against the genocidal rump Yugoslavia to cease and desist from committing all acts of genocide against the Bosnians. The first and only time a feat like that has been accomplished in the history of the court," he said.

"And I can do the same for Iran, or anyone else, on behalf of the Palestinians against Israel."

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