





# Preface

## 8 July to 26 August

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It's a paradoxical, some would say quixotic, venture: a court that appoints itself to investigate the most serious of crimes, a court of individuals that sits in judgement on the actions of states, a court that claims a high moral authority and has no recourse to any material or physical instrument of power.

We met around a simple table in a straightforward, functional room. Twelve people came from all over the world to answer a call that spoke with the voice of our own hearts. A brilliant team of lawyers was there to provide the legal backbone of the proceedings. And a brilliant administrative team kept gentle and tight control on the logistics.

For one day we sat in front of an audience of concerned citizens listening to the papers prepared by our colleagues and the testimony of twelve witnesses. And even though we are all people who are constantly engaged with the detail of what's happening in Palestine, the details that we saw and heard at the Russell Tribunal in Brussels shocked us and shook us.

The Tribunal in Brussels was an extraordinary session called in response to the latest Israeli attack on Gaza: the euphemistically named operation *protective edge*. The session, as juror Richard Falk wrote, "was brought into being because of the enormity of the devastation and the spectacle of horror associated with high technology weaponry attacking the civilian population of Gaza locked into a combat zone that left no place to hide."

The cruelty and injustice of the attack on Gaza brought hundreds of thousands onto the streets. Citizens from Tokyo to LA marched in sorrow and in anger – and the huge majority of their democratically elected governments ignored them. It's a testament to the heart, the will and the efficiency of the Tribunal that within a matter of weeks it had called on its friends and supporters, pieced together the money needed for the session, mobilized volunteers, and summoned its jury and its legal team to Brussels.

And so we sat and listened to Desmond Travers' expert assessment of the munitions dropped on Gaza during the fifty days of the attack, Max Blumenthal's account of the game plan and the practices of the Israeli soldiers on the ground; we watched David Sheen's horrifying images of the racist backing and encouragement offered to their army by the Jewish citizens of Israel and Mads Gilbert's images and statistics of the physical and psychological effects of the attack on the Palestinian citizens of Gaza; and we listened to eight more heart-wrenching witness statements. It all added up: if not to genocide, then to a crime against humanity.

If it did not add up to genocide, then genocide is not far behind. In our findings at the end of the session, the Russell Tribunal explicitly put the world on notice that everything we had heard and seen pointed to one thing: Israel will attack the Palestinians again. Whether or not it will technically commit genocide next time is an open question. But it will certainly destroy more lives, more livelihoods, more hope, more chances of peace. And it will do so in the certain belief that it has impunity – that it is exempt from the application of international law.

Juror Paul Lavery writes: “The simple fact is this. International law exists on paper, but it is only ever implemented when it suits the powerful. Mind the gap: the Grand Canyon of Hypocrisy, obvious to the poor, the angry and marginalised; and it is left to this makeshift civic response, this underfunded *ad hoc* Peoples’ Tribunal, to try and cast a little spider’s web of hope from one side of the canyon to the other, from the rule of law on one side to its far distant implementation for all on the other.”

Today, the gap between the powerful and the powerless grows wider, but today the people of the world – as a collective – are also finding their voice; and that voice demands justice for Palestine. The Russell Tribunal - a tribunal of conscience that confronts violations of international law - concentrates and structures that voice.

At the first Russell Tribunal, the tribunal on Vietnam in 1967, Sartre declared that: “the moral authority of the Russell Tribunal comes from both its absolute powerlessness and its universality.” This has never been more true. □

Ahdaf Soueif,  
Cairo,  
26 October 2014

# Introduction: “Prevent the crime of silence” <sup>(1)</sup>

The Russell Tribunal on Palestine is a citizen’s initiative that was launched to defend the rights of the Palestinian people, to denounce the international community’s dereliction of duty and its complicity in Israel’s failure to respect those rights, and to support activists in Palestine, Israel and throughout the world who call for the exercise by Palestine of the right to self-determination.

Launched in the aftermath of the Israeli *cast lead* operation against Gaza in 2008-2009, the RToP seeks, like its predecessors in 1967 on Vietnam and in 1975 on Latin America, to fuel a popular outcry against the silence and passivity of Western and other countries vis-à-vis the war crimes and the crimes of apartheid and sociocide that are continually being perpetrated against the Palestinians in the occupied territories of the West Bank, Gaza and Jerusalem and against the impunity that Israel enjoys.

The RToP set itself the task in its proceedings of defining and denouncing the crimes that have been perpetrated, and of identifying ways and means whereby members of the general public who support the strict implementation of United Nations resolutions and respect for international humanitarian law and human rights can take action to put an end to settlements, military occupation, the blockade on Gaza and the apartheid wall in the Palestinian territories.

The findings of the four sessions of the RToP and the general conclusions may be accessed on the RToP website. <sup>(2)</sup>

## Exemplary mass action

In summer 2014 people throughout the world took to the streets to express their condemnation, horror and outrage at the Israeli assault known as *protective edge*, the fourth military assault against Gaza since Israel’s official withdrawal from the Strip in 2005. Faced with the passivity of the United Nations, the European Union, the USA and certain Arab countries, numerous observers called for an extraordinary session of the RToP on Gaza. Over a period of seven weeks, the RToP coordinators, lawyers and experts were mobilised and funds were collected from NGO foundations, trade unions, parliaments and individual donors. An impressive session was then organised on 24 and 25 September in Brussels before an attentive and often deeply moved audience of more than 500 people.

Twelve American, British, French, German, Norwegian, Palestinian and Israeli witnesses and experts, more than half of whom had witnessed with their own eyes the massacres and destruction perpetrated by the Israeli army, presented information regarding the military arsenal and

(1) Bertrand Russell, London, 13 november 1966

(2) [www.russelltribunalonpalestine.com](http://www.russelltribunalonpalestine.com)

tactics used by Israel, the destruction of civil, medical and economic infrastructure, the targeting of civilians, and the increasingly widespread and unreprieved use in Israel of hate speech against the Palestinians and calls for their destruction. These presentations are summarised in the present document and can be viewed in their entirety on our website.

On hearing the evidence, the jury, composed of twelve eminent international personalities, issued their findings, which are presented below. They characterise the crimes committed by Israel during summer 2014 as **war crimes** (wilful killing; extensive destruction of property not justified by military necessity; intentionally directing attacks against the civilian population as such or against civilians who are not directly involved in the hostilities; disproportionate use of force; intentionally directing attacks against buildings dedicated to religion or education and against hospitals that are not military targets; use of Palestinians as human shields; use of weapons, projectiles, and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate; use of violence primarily to spread terror among the civilian population) and **Crimes against humanity** (murder, persecution and extermination).

The jury also found evidence of the **crime of incitement to genocide** inasmuch as a parallel can be drawn between the crimes committed in Gaza with full impunity and the increase in

racist rhetoric and incitement to violence during the summer of 2014 at different levels of Israeli society: on the traditional or social media and by, for instance, police officers, religious leaders, public representatives and football fans.

This prompted the RToP to alert decision-makers in the United Nations and the European Union to the real risk of genocide being perpetrated against the people of Gaza and to call for the lifting of the illegal blockade of Gaza and for assistance to be provided to the 600,000 displaced persons and the 11,600 injured victims of the war.

The RToP also condemns the pressure that is being brought to bear by the European Union on Palestinian decision-makers to prevent them from joining the International Criminal Court and calls on the United Nations and the European Union to impose political and economic sanctions and an arms embargo on Israel until such time as it complies with its obligations under international law.

Lastly, the RToP encourages civil society through the world to develop boycott, divestment and sanctions initiatives and to exert pressure on governments to take the requisite measures to prevent Israel from violating Palestinian rights and to recognise the State of Palestine. □

Pierre GALAND  
General Coordinator of the RToP

# Agenda of the Extraordinary Session

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24 SEPTEMBER 2014, ALBERT HALL, BRUSSELS

**Jury members:** John Dugard, Miguel Angel Estrella, Christiane Hessel, Richard Falk, Ronnie Kasrils, Paul Laverty, Ken Loach, Michael Mansfield, Radhia Nasraoui, Vandana Shiva, Ahdaf Soueif and Roger Waters.

## LEGAL BACKGROUND

**John Dugard** on the legal rules governing the conflict

**Paul Behrens** on the requirements for genocide

**Mohammad Abou Arab** on targeting of health workers

**Paul Mason** on targeting of UN schools and experience of reporting in Gaza

**Martin Lejeune** on targeting of industrial zones and factories

**Ivan Karakashian** on use of human shields, focusing on children

**Max Blumenthal** on war crimes

**Agnes Bertrand** on third-party state complicity

**Michael Deas** on ways forward

## TESTIMONIES

**Desmond Travers** on the munitions used during operation *protective edge*

**David Sheen** on incitement to genocide in Israel's public discourse

**Eran Efrati** on the Salem Shamaly case: shooting of a Palestinian by IDF snipers

**Mohammed Omer** on extra-judicial executions (case of Mohammed Tawfiq Qudeh)

**Mads Gilbert** on targeting of health facilities

## CLOSING SPEECHES

## THE JURY RETIRES TO DELIBERATE

25 SEPTEMBER 2014, INTERNATIONAL PRESS CENTRE, BRUSSELS

## INTERNATIONAL PRESS CONFERENCE

for the presentation of the conclusions by the RTOP jury members

25 SEPTEMBER 2014, EUROPEAN PARLIAMENT, BRUSSELS

## HEARING AT THE EUROPEAN PARLIAMENT

Statements by Michael Mansfield, Max Blumenthal, Mohammed Omer, Vandana Shiva, David Sheen and Roger Waters

Russell TRIBUNAL on PALESTINE  
EMERGENCY Session



Testimony of  
ASHRAF  
MASHHARAWI—  
prevented from  
leaving  
GAZA



Martin  
Ronsbo 29.9.14



# A letter from Gaza

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*The following is a letter from Ashraf Mashharawi who, together with Raji Surani and Salem Hamad, was denied permission to leave Gaza to attend the extraordinary session of the RToP in Brussels.*

Dear friends,

We welcome you from Gaza, the place that is awaiting your efforts to bring justice and to halt continuous crimes against unprotected civilians here.

My colleagues and I, who were unable to attend, were full of hope and determination to come and tell you what we experienced and witnessed during the Israeli military attack on Gaza in July-August 2014. The siege that has been in force for 7 years prevented us from joining you.

I think it is very important to share with you the story of being unable to attend so that you can imagine the sort of feelings that are generated by life under siege.

As soon as the RToP called me on 27 August 2014, my colleagues and I started to work on obtaining a visa. We first needed to find somebody to take our passports from Gaza to Jerusalem as it is not easy to send them by post. We managed to do so after about a week. More than 10 days later we discovered that the embassy had not entered our visa applications into the system because we are from Gaza and there were some problems in collecting our fingerprints from there. They solved the issue with the help of the RToP team.

After that we needed to put pressure on them to speed up the process of printing the visa on our passports. We again started to search for somebody with Israeli permission to enter Gaza so that he could bring back our passports. On 21 September the bureaucratic process was

completed and we received our passports with visas.

In parallel, we were working to register our names at the Rafah crossing so that we could leave on Monday, 22 September. Egypt allows about 200 persons to cross each day, although the actual daily need is about 2,000 persons, so that it is not easy to register your name and cross soon afterwards. You need to do so at least one month in advance so that you can leave around the date you want. After a great deal of effort, we managed to register our names for Tuesday and received confirmation. On Monday the Egyptian authorities allowed only a few people to cross so that the people scheduled to travel on Monday were shifted to Tuesday by this delay, which meant that very few people, including us, would have the opportunity to cross.

As every Palestinian needs to use the Rafah crossing, we went there as early as 5 a.m. and waited for our names to be called. We waited until 12 noon and then lost hope, since they stopped taking more passengers.

I met people at the crossing who were there for the fifth time waiting for their names to be called and failing to cross due to the large number of people who urgently needed to leave. The fact is that only a very small number can actually cross at Rafah (10% of the real need).

Actually most of those who are trying to cross have much more important reasons to leave than

we had. Some of them are at risk of losing a job abroad. Others are very ill and urgently need to receive special medical care. There are also students, wives who need to join their husbands, and a lot of other heart-breaking cases of people who urgently need to leave. I think the actual need is more than 2,000 a day if we add people who need to take their families for 5 days' vacation somewhere to relieve all the stress suffered, especially by children, when we were under attack, but that of course is impossible.

I tried to do so many times in the past but failed. My daughter always wanted me to take her to see the airport and to get in a plane and see how things look like from the sky. I wanted to make her simple wish come true, but under siege this is impossible, even for somebody like me who is well able to do so.

It is useful also to describe the scenario if we had succeeded in crossing:

We arrived at 5 a.m., and if everything had been ok, we could have left the Egyptian crossing side at 3 p.m. (we need to wait far too long at the border). People with Palestinian passports are conveyed by security staff to Cairo airport. People with other nationalities are allowed to go out and take a taxi. The expected time of arrival at Cairo airport would have been about 11 p.m. or maybe later.

We would then have had to wait for our flight at 4 a.m., which would have reached Brussels today at 10.30 a.m. We would then have taken a taxi direct to you without sleeping for two days. Even if we had succeeded, it would have been a painful journey.

I think everybody will recognize the importance of having an airport in Gaza and a seaport in order to end this type of suffering. The first step must be to end the siege on Gaza.

So we have been unable to attend, but at least our colleague Mohammed Omar has managed to do so. Please listen carefully to him and try to do your best to stop this man-made suffering for humans in Gaza.

Please recognise your responsibility as human beings to stop violations and crimes against civilians in Gaza. You and the international community have recently failed twice: during the 2008-2009 attack and in 2012. As a result, more crimes were committed in 2014, since the criminals felt that they were free and protected and that nobody would stop them. Remember that every day you fail to hold criminals accountable for their crimes, more children, women and innocents will be killed.

You succeeded in ending injustice in many places such as South Africa and I am sure that you will succeed here. The people in Gaza are human beings and need to be protected.

Dr. Mads Gilbert, who is one of your witnesses, is deeply familiar with many details that can help you to understand what is happening on the ground. He is different from other foreigners who just came for brief visits and to take pictures. He and I experienced conditions on the ground in every area in Gaza. We lived with the people who are suffering and listened carefully to them for a long-time and repeatedly during the past five years. Please listen carefully to him. He knows a great deal and his mind is full of victims' voices that he needs to get out of his mind and heart.

Please accept my sincere greetings from Gaza and, like every victim here, I await the expression of your humanity.

On behalf of my colleagues,  
Ashraf Mashharawi  
Gaza, 24 September 2014

# Legal background

## LEGAL RULES GOVERNING THE CONFLICT

*John Dugard is a South African international law professor and former Special Rapporteur on human rights in the Palestinian territories. He opened the session by giving an overview of the legal rules governing the Israeli-Palestinian conflict. The text below is the full presentation he gave on this occasion.*

This session of the Russell Tribunal will largely be concerned with the facts of operation *protective edge*. We will hear evidence of the killing of over 2, 000 Palestinians, of whom some 70 per cent were civilians, of the wounding of many thousands and of the extensive damage to property. We will also hear evidence of the weapons used, of the suffering of people and of the intentions of the assailant. But this will all be in the context of international law. Fact and law will interact in our proceedings.

The Israel/Palestine conflict has always been characterized by competing legal arguments operation *protective edge* continues in this tradition. So today I will start this session by outlining the law. In doing so I will describe the law as it is generally understood and applied by states, the United Nations and the International Committee of the Red Cross.

I will deal briefly with the following subjects:

- the status of Gaza as an occupied territory;
- the siege or blockade of Gaza as collective punishment;

- the question whether operation *protective edge* was an operation conducted in self-defence;
- the accountability of those responsible for operation *protective edge*;
- the crimes that were possibly committed in operation *protective edge*;
- the courts that may try such crimes;
- the responsibility of states.

### Occupation

At the outset it is essential to understand the legal status of Gaza. It is not an independent state like Lebanon or Jordan. Israel accepts this but argues that Gaza is a “hostile entity”. This is a concept unknown to international law and not supported by any state. Moreover, Israel has never sought to explain precisely what it means.

The status of Gaza is clear. It is occupied territory and has been so since the Six Day War of 1967, when Israel expelled Egypt from the territory. Military or belligerent occupation is a status recognized by international law. According to the Fourth Geneva Convention of 1949, to which Israel is a party and which governs the law of occupation, a state may occupy a territory acquired in armed conflict pending a peace settlement. Occupation is, however, a temporary status which means that parties must negotiate in good faith to reach a settlement. This Israel has failed to do. Consequently Gaza remains occupied territory.

Gaza is part of the Occupied Palestinian Territory. This was emphasized by the Security Council in Resolution 1860 adopted after operation *cast lead* on 8 January 2009.

In 2005 Israel withdrew its armed forces and settlers from Gaza. However, it retains effective control over the territory. This is done by means of control over the land crossings into Gaza, complete control over Gaza's air space and sea space, and regular military incursions into Gaza, sonic booms and rocket attacks. Also it retains control over the Palestinian Population Registry, which determines who may reside in Gaza and who may enter and leave the territory.

Under international law the test for occupation is effective control. Israel has exercised such control over Gaza since 2005 without a permanent physical presence. Modern military technology allows effective control to be exercised from outside an occupied territory.

That Gaza remains occupied territory is accepted by the United Nations and all states, except Israel. However, even Israel's leading humanitarian lawyer, Yoram Dinstein, accepts that Gaza is occupied territory.

### **The Siege of Gaza as Collective Punishment**

In 2006, following Hamas's takeover of Gaza, Israel imposed a blockade or siege of Gaza.

Israel has seriously restricted the supply of fuel into Gaza. This has had a negative impact on industry and agriculture, on the operation of hospitals, on water supply and sewerage. Import restrictions on medical supplies and some of the most basic household and industrial goods and the ban on exports from Gaza have affected all aspects of life in Gaza. This has resulted in unemployment and poverty. Restrictions on the import of cement have prevented Gaza from

rebuilding homes destroyed by Israel in military operations. The restriction of fishing to three miles had drastically affected the fishing industry and supplies of fish to the markets of Gaza.

Israel has imposed the siege in order to compel or persuade the people of Gaza to withdraw support from Hamas.

The siege of Gaza constitutes collective punishment of the people of Gaza. They are punished for not overthrowing Hamas. In other words they are punished for not having done anything wrong. This is collective punishment, which is prohibited by Article 33 of the Fourth Geneva Convention.

Gaza is therefore not only occupied territory. It is also territory that is occupied in violation of international law.

### **Self-Defence**

Israel claims that it has acted in self-defence in operation *protective edge*, thereby portraying itself as the victim. President Obama and both Houses of the US Congress have unanimously endorsed this justification for the use of force. So too have some European leaders.

This assessment is based on two faulty premises.

First, that Hamas started to fire rockets without provocation; that Palestinian militants fired the first shots. This is incorrect. Following the abduction of three Israeli teenagers on the West Bank, Israel initiated an attack on Hamas civil and welfare offices in the West Bank and arrested hundreds of Hamas supporters, including many who had been released in 2012. Israel claimed that this was because Hamas was responsible for the kidnapping but there is still no evidence that the Hamas leadership – as opposed to individual members – were aware of the kidnapping. Clearly Prime Minister Netanyahu wished to destroy the

Palestinian government of national unity by this action. Hamas responded to this action against it in the West Bank with rocket fire from Gaza for the first time since 2012. After which Israel launched operation *protective edge*. Israel therefore bears responsibility for the conflict.

Second, Israel did not respond to rocket fire from an independent state which would have allowed it to use force in self-defence. Instead it acted as an occupying power using force to maintain its occupation. It used force against Palestinian resistance in the same way that Germany used force against the resistance movement in France during World War II.

In other words, rockets fired from Gaza, and tunnelling, were the acts of resistance of an occupied people. And Israel's response was that of an occupying power determined to enforce its occupation and to suppress resistance.

It is helpful to put things in the context of German occupation of Europe during the Second World War. If the French resistance had had the capacity to fire rockets into Germany and it had done so, it would have been applauded for its ingenuity and courage. The actions of the Palestinians must be seen in a similar light.

### Accountability

A state seeking to enforce its occupation may use force to do so. But, like a state that resorts to self-defence, it must comply with the rules of international humanitarian law. So too must the resistance forces of the occupied people. This means that both Israelis and Palestinians are obliged to comply with the rules of international humanitarian law. These rules seek to ensure that military operations distinguish between military targets and civilian targets and that every effort is made to protect civilian life and property.

Failure to comply with these rules may result in prosecution of those individuals who ordered and those who executed international crimes before an international criminal court, such as the International Criminal Court, or national courts exercising universal jurisdiction over such crimes.

It must be stressed that states do not incur international criminal responsibility. Only individuals may be prosecuted.

In this session of the Russell Tribunal we will focus on the crimes of Israel for two reasons. First, because of the disproportionate scale of Israel's assault on the civilian population of Gaza and the loss of life, injury and damage to property it has caused to civilians, compared with the relatively lesser harm caused to Israeli civilians. Over fifteen hundred Palestinians civilians were killed, including 500 children, while seven civilians were killed in Israel. Second, because of the Russell Tribunal's concern for the occupied people of Palestine and the need to bring this occupation to an end.

This focus should not, however, be construed as a denial of the accountability of Palestinian militants for their actions under humanitarian law, for indiscriminate firing on civilian targets in Israel, and human rights law, arising out of the extra-judicial execution of collaborators.

### International Crimes

This session of the Russell Tribunal will focus on the three core crimes of international law: war crimes, crimes against humanity and genocide.

Israel is not a party to the Rome Statute which carefully defines these crimes. Nor is it a party to the First Optional Protocol to the Geneva Conventions of 1977 which provides a definition of war crimes. However, it is a party to

the Geneva Convention of 1949 which defines grave breaches of the Convention; and to the Genocide Convention of 1948. Moreover, it is generally agreed, and this is accepted by Israel itself, that customary international law, which binds all states, prohibits and defines these crimes.

**War crimes:** broadly, war crimes encompass indiscriminate and disproportionate attacks on civilians; the killing, wounding and terrorization of civilians; the wanton destruction of property not justified by military necessity; and attacks on hospitals, ambulances and means of humanitarian assistance.

We will hear evidence of attacks on civilians in places that cannot be conceived of being military targets. Israel's claims that civilians were deliberately put at risk by Hamas, which it claims placed rocket launchers near to civilian areas, cannot explain the number of Palestinian civilians killed and wounded. Nor can they be reconciled with the rule of customary international law which prohibits the launching of attacks which may be expected to cause incidental loss of civilian life, injury to civilians or damage to civilian objects which are excessive in relation to the direct military advantage anticipated. Nor can they be reconciled with the rule that requires parties to a conflict to do everything feasible to assess whether attacks may be expected to cause incidental loss of life or injury to civilians, which are excessive in relation to the direct military advantage anticipated. (See Rules 14 and 18 of the ICRC study on customary international law of 2005).

We will hear evidence of the terrorization of the civilian population by the continuous bombardment of Gaza by war planes, helicopters and unmanned drones; and the persistent shelling from sea and land.

We will hear evidence of the wanton destruction of property that resulted in the total destruction of over 17,000 homes and the partial destruction of over 37,000 homes. And of the destruction and shelling of the Gaza power plant and of mosques, schools, farms and industry.

We will hear evidence of attacks on hospitals and ambulances that can only be described as deliberate.

**Crimes against Humanity:** a crime against humanity is committed when it involves murder, extermination, persecution or any other inhumane act that intentionally causes great suffering when committed as part of a widespread or systematic attack directed against a civilian population with knowledge of the attack.

Murder has its customary meaning of intentional killing. Extermination means killing on a large scale. It also includes the intentional infliction of conditions of life calculated to bring about the destruction of part of a population.

The attack must involve the multiple commission of acts against a civilian population in furtherance of state policy.

The Tribunal will hear evidence of the intentional killing of civilians and the infliction of conditions of life calculated to destroy part of the population of Gaza. It is common cause that operation *protective edge* was in furtherance of Israel's policy.

**Genocide:** genocide is the crime of crimes. Great care should be taken in considering this crime. Nevertheless, operation *protective edge* was of such gravity that the Russell Tribunal believes it is necessary to consider whether this crime has been committed.

The characteristics of this crime will be examined in detail by Paul Behrens. Suffice it to say at this stage that it involves killing, causing serious bodily harm or inflicting conditions of life

calculated to bring about the physical destruction in whole or in part of a national, ethnic, racial or religious group. Unlike the crime against humanity it must be inflicted with the intent to destroy the group in whole or in part.

### Which Court May Try Such Crimes

Ideally the International Criminal Court (ICC) in The Hague should try these crimes. However, neither Israel nor Palestine is a party to the Rome Statute which is the basis for this Court's jurisdiction. There are strong suggestions that Palestine will soon become a party to the Rome Statute, which will allow this court to exercise jurisdiction over the crimes committed in operation *protective edge*. The Security Council could also direct the ICC to investigate and prosecute these crimes, as it has done with Darfur and Libya. But this avenue is closed as the United States would be certain to veto any such referral to the ICC.

In the absence of the ICC national state courts may exercise jurisdiction. This is not, however, an easy process as most states lack the political will to confront Israel. Also, national courts, unlike the ICC, grant immunity to heads of government and senior government officials. This would leave military leaders and individual soldiers alone open to prosecution.

The Geneva Convention of 1949 obliges signatory states to prosecute persons alleged to have committed grave breaches of the Convention. Many of the acts of the IDF in Gaza would constitute grave breaches of the Convention. Sadly states have not in the past been willing to comply with this obligation.

As already said, states may not be prosecuted before international or national courts. This does not mean, however, that states escape responsibility.

## The Responsibility of States

### Israel

There is no international criminal court to try states for committing international crimes. States do not incur criminal responsibility. A state that commits an internationally wrongful act does, however, incur international responsibility which places it under an obligation to make full reparation for the injury caused by the wrongful act. *Prima facie*, Israel has committed internationally wrongful acts in the form of war crimes, crimes against humanity and collective punishment of the people of Gaza. Israel is therefore under an obligation to compensate Palestine for damage caused to its people and their property. Sadly there is no international court competent to enforce this obligation.

### Third States

A state which aids or assists another state in the commission of an internationally wrongful act, including international crimes, incurs international responsibility if it does so with knowledge of the circumstances of the wrongful act (see article 16 of the Draft Articles on State Responsibility). It is not necessary that the assistance should be essential to the performance of an internationally wrongful act. It is sufficient if it contributed significantly to the commission of the wrongful act. The financing of the internationally wrongful act would qualify as assistance (see the ILC Commentary to Article 16).

Assistance in the commission of an internationally wrongful act may result in complicity in the commission of the crime.

Several European states provide military assistance to Israel but none do so on the scale of the United States. Israel is the largest recipient of military assistance from the United States.



The United States is the largest single supplier of military equipment to Israel. It supplies the most up-to-date tanks, fighter jets, helicopters and missile systems in addition to funding Israel's *Iron Dome* defence system. From 2008 to 2018 the United States is set to provide \$30 billion to Israel in military assistance. It is estimated that every day \$8.5 million is spent on military assistance to Israel. This weaponry has featured prominently in operation *protective edge*. Military assistance is accompanied by political support from the President and the Congress. There is at least a prima face case for complicity on the part of the United States.

Assistance resulting in responsibility may take the form of failure to prevent commission of the crime. As Israel's most powerful political ally and supplier of military hardware, the United

States could have taken steps to prevent operation *protective edge* from continuing. It manifestly failed to do so (see Genocide Case, Bosnia v. Serbia, 2007 ICJ Reports, p. 221, para. 430). To aggravate matters the United States persistently prevented the Security Council from taking firm action to halt the attack on Gaza.

Complicity in and failure to prevent an internationally wrongful act present special problems in relation to the crime of genocide, as is clear from the judgment of the International Court in the Genocide Case between Bosnia and Serbia. This is because of the requirement of a specific intent to destroy a group in whole or in part (2007 ICJ Reports, p. 218 (paras. 421-422), p. 223 (paras. 431-432). This consideration does not, however, apply in the case of war crimes, crimes against humanity or collective punishment.

Undoubtedly the United States has a case to meet.



## THE LEGAL REQUIREMENTS FOR GENOCIDE

*Paul Behrens is an expert on genocide and a lecturer in Criminal Law at Edinburgh University. Based on the definition provided by the 1948 Genocide Convention, he began by distinguishing between the concept of genocide as used by lawyers and common perceptions in the media or by historians. He then detailed the legal requirements for employing the concept of genocide.*

The main elements regarding the definition of genocide in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide [Genocide Convention] are:

### [...] Article II

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- killing members of the group;
- causing serious bodily or mental harm to members of the group;
- deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- imposing measures intended to prevent births within the group;
- forcibly transferring children of the group to another group.

### Article III

The following acts shall be punishable:

- genocide;
- conspiracy to commit genocide;
- direct and public incitement to commit genocide;

- attempt to commit genocide;
- complicity in genocide.

### The “social” vs the “legal” concept of genocide

The social concept of genocide (the concept which is commonly employed by historians, journalists, etc.) shows considerable differences to the legal understanding of the crime. The principal difference concerns the establishment of “magnitude”: whereas the social concept focuses in that regard on the objective aspects of genocide (e.g., victim numbers), the legal concept emphasises magnitude on the subjective side (requirement of specific genocidal intent).

### Groups protected under the Genocide Convention

Only four groups are protected under the Genocide Convention: national, ethnic, racial and religious groups. The international criminal tribunals have struggled to find the right approach towards the identification of the groups, but it appears that the entirely objective approach which had originally been proposed has now been abandoned. More recent case law advocates a contextual approach, including both objective and subjective criteria.

### The objective element (*actus reus*) of genocide

This concerns the fulfilment of one of the genocidal acts outlined above (Art II (a) – (e) Genocide Convention). The objective element does not, however, constitute the main characteristic of genocide – in situations of armed conflict, the fulfilment of the *actus reus* tends not to cause great difficulties (especially since the Genocide Convention does not require large victim numbers).

## The subjective element (*mens rea*) of genocide

As far as the “basic” *mens rea* is concerned, the objective part of the crime usually needs to be carried out with intent.

In addition to that, the legal concept of genocide requires yet another subjective element: the intent to destroy one of the protected groups, in whole or in part, as such. It is this element which gives the legal concept of genocide its particular character.

Each of the words in the phrase requires investigation. The group must have been targeted “as such” – it is not sufficient that individual members of the group had been the target of the perpetrator’s actions. The perpetrator must have acted with “intent”: the trial chambers have adopted a high standard for that, clarifying that destruction of the group must have been the “aim” or the “goal” of the perpetrator. Mere knowledge of (potentially) destructive consequences is not enough. The intent must relate to “destruction” of the group, which has been interpreted as “physical” or “biological” destruction. The perpetrator seeks to destroy the group “in whole or in part”; an element which the international criminal tribunals understand as meaning that at least a “substantial part” of the group must have been targeted. Various standards have been advanced to determine what a “substantial part” of the group is, but it appears at any rate necessary to consider the targeting of the “part” of the group in relation to the effect which such an attack would have on the group as a whole.

## Incitement to genocide

Incitement to genocide requires, on the objective side, a form of encouragement or provocation to commit the relevant offence. Incitement must be direct and public. Causation between incitement and the commission of genocide is not required; but it appears that at least the potential for the commission of genocide must have been created.

The *mens rea* of incitement requires intent regarding the act of provoking genocide. In addition to that, it has been established that the perpetrator of incitement, too, must possess specific genocidal intent.

## Evidence for genocide

It has been accepted that certain statements by the perpetrator at the time of commission (in particular, statements calling for the destruction of the group) qualify as incriminating evidence, as do particular acts (e.g., a systematic targeting of the group) and possibly contextual elements (some controversy here). The finding of genocidal intent must be the “only reasonable inference” that can be drawn from the evidence, before a conviction on genocide charges can be entered.

The tribunals have also reflected on certain forms of exculpatory evidence, including the existence of contradictory evidence, the absence of certain actions and the existence of evidence pointing to different motives for the acts of the perpetrator. The evaluation of these strands of evidence, however, has not followed a consistent line in the *ad hoc* tribunals.

# Testimonies

The following are summaries of the testimonies that were presented during the session. The full videotaped version of each presentation can be found on our website.

Colonel **Desmond Travers** is a retired Irish soldier and peacekeeper, and one of the authors of the *Goldstone* report following operation *cast lead*. Prior to the RToP extraordinary session he was denied entry to Gaza for investigations after operation *protective edge*. Hence he worked with an extensive dossier from the Palestinian Centre for Human Rights for his statement on the recent munition use in Gaza.

The munitions employed in *cast lead* were estimated to have the energy equivalent of "... a small earthquake."<sup>(3)</sup> If this is the case, then it can be surmised that operation *protective edge* is significantly up the Richter Scale at an estimated seven times that amount of munitions being used. These munitions comprised 43,000 shells, depleted uranium, DIME, white phosphorus (but limited in its use), flechettes, carpet bombs, and other fuel-air and thermobaric munitions.

In order to understand the use and over-use of such munitions, it is necessary to discuss the tactics and the doctrine that give rise to their use. It is also necessary to discuss the consequence of their use. The Dahiya Doctrine, which is the extensive use of munitions in order to punish the population and create a "lasting memory" amongst its people. The over-application of the rules of safety to the detriment of the civilian population, in accordance with the theories of Prof. Asa Kasher, now transfer risk from the

soldier to the civilian; diminishes the element of valorous behaviour and changes the profession of arms to that of mercenaries. Rule of engagement, for example, that makes it an offence for a soldier to allow a Palestinian to advance to within 20 meters of an Israeli post, now give rise in certain brigades to the indiscriminate shooting of civilians, even those fleeing the scene.

Looking back at the last week of *cast lead* in 2008, Travers notes that the IDF put in place elements that would have long-term consequences, in a sub-operation called "for the day after." Notably the buffer zone (no-go areas and high-risk areas) was extended, resulting in the suppression of the productive capacity of 68% of the arable land in Gaza. To this should be added the acceleration of desertification, since the waters that usually migrate from Israel through Gaza have been diverted to a reservoir in the Negev. The closure of the blockade at sea from six to three nautical miles was predicated solely on the extraction of gas from gas-fields along the maritime border between Israel and Gaza and excluded fishermen from 84% of their fishing grounds.

**David Sheen**, an independent journalist and film-maker living in Israel, focused on the racist discourse and public incitement to crime in Israel towards Palestinians, before and during operation *protective edge*. Among the many illustrations he gave was a book published in 2009 by a state-funded rabbi that legitimized killing Palestinian civilians, even Palestinian babies. And in 2010, hundreds of state-funded chief rabbis issued a religious edict forbidding Jews from selling or even renting apartments to

(3) Hamas official in conversation with The UN Fact-Finding Mission (the Golstone report).

Russell Tribunal on Palestine  
EMERGENCY SESSION  
in GAZA



Israeli Journalist  
& Film maker  
DAVID SHEEN  
on Israeli  
Incitement  
to  
GENOCIDE

Martin  
Rowson  
26.9.14

non-Jews. No action was ever taken against any of these rabbis; quite the opposite, their salary budgets were increased.

This violence accelerated before and during Israel's recent assault on Gaza, as frequent calls for vengeance, mass murder, mutilation, ethnic cleansing and genocide emanated from all sectors of Jewish Israeli society, religious and secular, young and old, male and female.

This rhetoric was not contradicted or met with official excuses, trials or refutation. On the contrary, Israeli academics came through with a doctrine explaining how international law allowed sanctions on Gaza such as cutting off water, fuel and electricity supplies, and the very few persons in Israel who showed empathy towards Palestinians were insulted and threatened.

Although Jewish citizens were aware of the consequences of the assault, of the destruction being wrought in Gaza, and of the death toll it was exacting on the Palestinian population, a poll showed at the end of the 50-day assault that the vast majority of Jewish Israelis - a full 97% - rated the army's performance as "very good" or "moderately good."

**Eran Efrati**, former IDF combat soldier and company sergeant and now activist, described the case of 23-year-old Salem Shamaly, who was shot by Israeli snipers while looking for surviving relatives in the rubble of the Shujaiya neighbourhood. This crime illustrates the red line doctrine as "the commanding officer drew an invisible red line on the ground between two houses amidst the rubble, {...} a line that whoever crosses is deemed a danger to the soldiers and is therefore to be killed immediately..." The case of Salem Shamaly is exemplary as "this is not the only deliberate killing of a Palestinian civilian with impunity, but it is the only one that was caught on tape."

In his testimony, Eran Efrati also elaborated on the Dahiya doctrine, which basically says "we will kill as many civilians as we need, as long as you will raise your head and keep breathing." After the loss of 13 soldiers by the IDF on 19 July as they entered the Shujaiya neighbourhood, the reaction of the IDF is to be seen as a "revenge attack", not so much because of the loss of their soldiers, but because it was felt as an insult that "these people are willing to raise their head and resist us." As a result, eleven battalions deployed 258 artillery pieces and fired 7,000 shells into the neighbourhood, 4,800 of which were shot in the course of seven hours. Between 19 and 23 July, it is estimated that between 90 and 120 Palestinians were killed and 400 more were injured in the Shujaiya neighbourhood and that 604 buildings were utterly destroyed.

As a journalist living in Gaza, **Mohammed Omer** entered Khuza'a, one of the most hard-hit areas during operation *protective edge*, where he witnessed massive damage and collected testimonies on cases of execution, humiliation and mistreatment of civilians by the Israeli army.

Sixty-four-year-old Mohammed Tawfiq Qudeh was executed at short range, in front of all his family members, when trying to talk peacefully with the Israeli soldiers, explaining to them that there were only civilians in the house they were about to break into with a bulldozer.

Khalil Al-Najjar, the Imam of the mosque of Khuza'a, was at his brother's home with 15 family members. After being under constant Israeli-artillery fire all night, the Israeli soldiers made them leave the house and Khalil Al-Najjar was forced to undress until naked in front of everyone. The Israeli soldiers then used him, as a well-known and trusted personality, to call on young residents to come outside. All of them had to surrender to the army and were arrested.

Dr. Kamal Qudeh is a doctor serving in Khuza'a. On 21 July, in the afternoon, an Israeli F-16 missile hit the main road connecting Khuza'a with neighbouring villages, leaving Kamal Qudeh as the only person who could offer health care in the area. The villagers, around 2,000 people, asked the Israeli army to be allowed to leave the village to find a safer shelter. They were not allowed to do so.

While Dr Qudeh was treating patients in the clinic, the outside area was hit by two Israeli drone missiles, injuring more people inside the clinic, including Dr Qudeh himself. The troops then fired tear-gas and an hour later an Israeli missile hit the basement, forcing everyone to escape. This time the Israeli tanks allowed them to pass; 130 injured people were carried by people on their shoulders, while others were pulled on donkey carts to reach Nasser Hospital, about two hours' walk to the west. On the way, an elderly man - Ismail Abu Rejela- was killed by random fire.

**Mohammad Abou-Arab**, from Norway, was in Gaza as a voluntary medical doctor during operation *protective edge*. In the course of his work, he was informed that medical teams and aid workers were frequently shot at by soldiers, despite having clearly portrayed that they were health-care workers. In many cases, this was to prevent them from reaching critical areas where there were civilian casualties. This left many without access to life-saving support, and when the teams were eventually able to get access, they found tens of civilians dead, many of whom could have been saved.

The deadliest attack on a health facility was the shelling of Al-Aqsa hospital in Deir al Balah on 21 July. The hospital came under direct tank fire and ten people were killed. Seventy people, including patients, their companions and hospital staff, were wounded. The surgical ward, the intensive care unit, and life-saving equipment

were severely damaged during this attack. According to the World Health Organization, "this incident is yet another illustration of the dangers faced by health-care personnel, patients, ambulances, and hospitals in Gaza."

Mohammad Abou-Arab then enumerated precise cases of the targeting of health workers, including that of the ambulance worker Mohammad Al-Abdallah, who was in Qarara to help an injured person when he was shot in the hip and chest with gunfire and bled to death. Mohammad was travelling in a visibly marked ambulance and was wearing his medical uniform. Colleagues who approached him were shot at to prevent them from helping him.

The Israeli army has also repeatedly bombed and targeted other medical aid workers from charities and NGOs and civil defence workers. Such was the case of two firefighters whose fire engine was hit by a shell while they were trying to extinguish fire in a house block which had been bombed.

As a result of these crimes, 23 health and civil care workers lost their lives and 121 were injured, including 41 firefighters, 14 civil workers, 21 paramedics, 34 ambulance workers and 11 other aid workers. Some of them will never be able to carry out their duties of helping people and saving lives ever again.

This behaviour of the Israeli military suggests that the Israel Defense Forces planned a total collapse of the health-care facilities in order to increase the possibility of spreading disease and epidemics.

**Dr Mads Gilbert** is a Norwegian surgeon who has worked extensively in Lebanon and Palestine, most notably in Gaza during the last four Israeli attacks since 2006.

During the fifty days of the assault, 53% of hospitals and 60% of primary health-care clinics



were reported damaged, ranging from broken windows to total destruction, resulting is what is called a “medical disaster” because the capacity to treat is less than the need for treatment. Usually this situation occurs in natural disasters but “everything we see in Gaza is 100% man made, deliberate, executed and controlled by the Israeli government, the Israeli army, with full support from the US.”

This occurred in a context in which public health was already down on its knees because of seven years of siege and the resulting lack of supplies, renewal, upgrading and training. Moreover the medical staff of health facilities had been denied normal payment for one year, due to the fact that Israel allowed a blockade of the payment of public servants in Gaza.

From a medical point of view, the human costs of aggression were much worse than they would have been if hospitals and clinics had been protected as required under international law. Unfortunately, nobody in Israel has been punished for the attacks on health facilities in 2006, 2009 and 2013, and probably no one will be punished for those perpetrated in 2014.

Dr Gilbert concluded his presentation by affirming that he never saw any rockets shot from any hospital he attended, and never saw any soldiers, either of Fatah or Hamas, in the hospitals.

**Paul Mason** was sent by Channel 4 News to report from Gaza between 27 July and 5 August, which happened to be the most intense 9 days of fighting during operation *protective edge*.

In his testimony, he focused on practices he witnessed that were potential war crimes such as the reckless and disproportionate shelling of civilian areas resulting in large-scale loss of life. Through a detailed account of the shelling on 30 July of an UNRWA school in Jabaliya, which was sheltering 3,000 people, he highlighted

that there could be no justification for such an attack that resulted in the death of 21 civilians and the injuring of more than 100, adding that: “the only way to avoid civilian casualties in an area like Jabaliya [...] is to stop shelling.”

Regarding untargeted rocket fire from Hamas, Paul Mason noted that they also constitute an indiscriminate attack on Israeli civilians. However, even though they risk having to endure Israeli strike-backs, a large number of Gaza residents tacitly consent to the firing of mortars and rockets from within civilian areas as “life is so bad here that living is the same as dying.”

Concerning collective punishment, he gave the example of the night-time bombardment of Gaza city on 28 July, which terrified an entire civilian population and destroyed most of the physical and governance infrastructure of the town. Warning leaflets had previously been dropped by air by the IDF, leading to even more fear and confusion for a population that had already fled from other areas in Gaza and that was not allowed to seek refuge outside the territory of the Gaza Strip.

In his account, Mason talked about the use of surveillance and strike drones, usually perceived as being the same as air warfare, which he considers to be an extension of the illegal occupation from the air, putting the civilian population under constant psychological insecurity as they know they come under fire at any time.

Although he did not think that operation *protective edge* could be deemed to constitute genocide as defined in the 1948 Convention, the speaker pointed out that genocidal thoughts were emerging on both sides of the conflict. He also warned that in a modern perspective, “the real problem [...] is the social media and informal networks which allow genocidal thoughts [...] to occur and to guide action”. Moreover,

when Palestinians hear the words “holy war” from an IDF commander; when they see specific sections of their society wiped out; and when they hear the phrase “mowing the lawn” their fears of genocidal intent are rational.

**Martin LeJeune** is a German journalist who spent one month, from 22 July until 22 August, under fire in Gaza in a house with 72 civilians.

Martin LeJeune described an economy that was already agonizing after eight years of blockade and three previous Israeli military incursions, with 40% unemployment, 30% of people living below the poverty line, 57% at risk of malnutrition and 70 % receiving food parcels from relief agencies. Operation *protective edge* resulted in a dramatic worsening of this situation, with the systematic destruction of civilian and economic infrastructure such as hospitals, schools, farms, agricultural land, Gaza’s only power station, its largest mosques and the building of Al-Quds TV. Before the start of the blockade in 2007, 54,000 people worked in industry and 60,000 in agriculture. Prior to the attacks on 6 July the numbers were still around 20,000 in industry and 28,000 in agriculture. After the ceasefires in August, there were only a few thousand employees left in both sectors.

Tens of thousands of private homes were also destroyed or severely damaged, making one third of the Gaza population homeless (600,000 persons). And reconstruction will be very long as the Gaza blockade makes it very difficult to import reconstruction material.

Out of the 220 factories that were completely destroyed by the Israeli army, Lejeune gave the example of the Aby Eida construction company that was totally destroyed, with a loss estimated at about \$7.5 million and the dismissal of 70 permanent workers. The owner explained that “In 2008 and 2012 the factory premises were

already completely destroyed by the Israeli air force [and] this time we have no more money to rebuild our company a third time.” They have no hope of any kind of compensation for the damages through a civil lawsuit, as Israel passed a law in 2007 that defines Gaza as enemy territory and prohibits compensation for losses inflicted upon them by the Israel Defense Forces.

The speaker quotes Abu Ramadan, Director of the Arab Centre for Agricultural Economic Development in Gaza: “Israel is not only attacking civilians and their homes, but also systematically destroyed the economy of the Gaza Strip in order to make people dependent on emergency aid. Now that almost the entire economy is destroyed, people can no longer work, thus cutting their purchasing power dramatically. Now youth want to emigrate at even younger ages than before. Due to the emigration of young skilled workers the economy is becoming even weaker. Israel has achieved the transformation of a functioning economy into a third world country within eight years of embargo and three attacks in five years. Without ending the embargo, it is impossible to break out of this vicious cycle ourselves.”

**Ivan Karakashian**, advocacy officer at Defence for Children International-Palestine, focused on children as a group and their use as human shields by the Israeli army. The use of civilians as human shields is prohibited under international law and under Israeli law on the basis of a 2005 ruling by the Israeli High Court of Justice.

After reminding the public that children under 18 account for half of the Gaza population and that an average of 10 minors died every day during the last Israeli assault, the witness referred extensively to testimonies from Ahmad Abu Raida, 17, who was held hostage, ill-treated and repeatedly used as a human shield by Israeli



soldiers for five days during Israel's ground invasion of the Gaza Strip.

Since April 2004, DCI-Palestine has documented 21 other cases involving Palestinian children being used as human shields by the Israeli army. Twenty of the 21 cases occurred after the Israeli High Court of Justice ruling. Only one of those cases led to the conviction of two soldiers for "inappropriate behaviour" and "overstepping authority." Both were demoted in rank and given three-month suspended sentences.

This does not constitute an exhaustive list, as victims refuse to testify for fear of retaliation or simply because they do not believe the Israeli system is fair or impartial. In the Gaza Strip, verifying the potential use of victims as human shield during operation *protective edge* proved difficult since some did not survive and human rights groups were denied access to investigate.

Ivan Karakashian also insisted on the heavy traumatising effect of the war on children, as it is estimated by the United Nations that 373, 000 would need psychosocial help, of whom 1,500 are orphans and 1,000 have sustained permanent injuries. And this does not include those who are still affected by the previous attacks on Gaza. However, much of the infrastructure needed to help these children has been partially or totally destroyed during the assault.

**Max Blumenthal** provided an overview of the war crimes he documented while reporting from inside Gaza during and after operation *protective edge*.

He detailed cases of using civilians as human shields by Israeli soldiers, abductions of civilians and their torture in Israeli jails during interrogation, and executions of civilians – noting the specific targeting of those who speak Hebrew. He quoted the words of Suleyman Ishrabi, a victim

of continuous, ongoing violence: "every time I have a son, they kill him. Every time I have a business, they bomb it. Every time I plant crops, they burn them."

Max Blumenthal also evoked the Hannibal Directive, a secret field procedure established in 1986 to prevent kidnappings of Israeli soldiers through the elimination of the soldiers' captors, and possibly the soldier himself. It is also a mechanism for revenge on the entire civilian population present in the area where the capture took place. In an interview with the Israeli newspaper *Yediot Ahronot* on 15 August, the IDF Colonel Ofer Winter openly referred to the implementation of this directive under his command. In what is known as "black Friday", he ordered a carpet bombing of Rafah, where it was suspected that an Israeli soldier had been captured. By 2 August, the Israeli army, which had dropped 500 artillery shells in 8 hours and launched an estimated 100 airstrikes in two days, had killed 190 Palestinians in Rafah, including 55 children. With the morgues full to capacity, medical workers were forced to store corpses in ice-cream refrigerators.

Elaborating further on the case of Colonel Winter, the speaker noted that he is one of the religious Zionists who now make up 40% of army officers, and that he publicly invoked religious justifications for the war, calling it "a just war against a cruel enemy. We, who sanctify life, fought against an enemy who sanctifies death. The forces of light against the forces of darkness." On the eve of Israel's ground invasion, Winter declared in a letter to his troops that they were to punish the blasphemous Palestinians of Gaza: "in many cases the terrorists are the children or relatives of the people who live there. In almost every home there is a son or other relative that is a partner in terror. How do you raise children in a home with explosives? In the end, everyone gets what they choose." In spite of - or

thanks to - these declarations, Colonel Winter is currently a very popular figure in Israel.

While reminding the public that operation *protective edge* has to be seen in the broader context of the Zionist project, Max Blumenthal concluded that, "given the conduct of Colonel Ofer Winter and his stated opinions, given the incitement to genocide that David Sheen [a previous speaker] so clearly documented, given the demonstration of dehumanisation - in which Palestinians are viewed as un-people - which was played out in this operation, we have to at least conclude that there were genocidal aspects to it."

**Agnès Bertrand**, the Middle East policy officer for APRODEV, an association of European development organizations, looked at the way in which the European Union deals with accountability processes for crimes committed during Israeli offensives in Gaza.

She pointed out how the Israeli domestic judicial system has proved to be deficient in dealing with crimes related to the occupation. Out of 400 incidents reported by the Israel army after operation *cast lead*, only 3 had led to indictments and the harshest sentence was for a soldier who stole a credit card.

Palestinians therefore have an urgent need to access international justice, an option that the EU rejects, arguing that any attempt to use international mechanisms of accountability would be detrimental to the conduct of the peace process as it would undermine the trust between the parties.

A demonstration of this EU position, appearing clearly through documents released in WikiLeaks, is the fact that the European Union, together with the US, has actively participated in burying the *Goldstone* report – a commission of inquiry appointed by the Human Rights

Council after the *cast lead* operation - by containing the handling of the report to Geneva as long as possible, hence blocking processes of accountability. This example is crucial, as the dynamics around the *Goldstone* precedent provide indications of the lack of support that could be expected from the US and the EU for the work of the newly-appointed commission of inquiry led by Professor Shabas.

The EU also exercises pressure on the Palestinian Authority not to go to the International Criminal Court (ICC), which seems to be the only judicial mechanism available to Palestinians right now. In the EU Council conclusions on the Middle East Peace Process that was released on 27 July, while the war was raging in Gaza, the European Union "reiterates its call upon the Palestinian leadership to use constructively its UN status and not to undertake steps which would lead further away from a negotiated solution." The speaker called this "a demonstration of one of the most visible cases of hypocrisy of European diplomacy."

Agnès Bertrand concluded that it is important for civil society to campaign for the access of Palestine to the ICC, as Israeli impunity for the crimes committed during the latest offensive against Gaza will lead to the commission of other war crimes and another offensive in Gaza sometime soon. Going to the ICC would be an incentive for Israel to get serious about ending the occupation. It could create an electroshock in Israeli public opinion and would act as a deterrent of further violations of international law.

**Michael Deas** spoke as European coordinator of the Boycott National Committee in Europe (BNC), a movement that aims to initiate grassroots boycott, divestment and sanctions campaigns all over the world.

Michael Deas reminded the audience that: "When those in power stay silent in the face

of crimes against humanity, and indeed facilitate and support them, the role of civil society is to take action to end international complicity and to develop effective forms of accountability.” This is why the BDS calls for various forms of boycott action until Israel complies with international law. The speaker then presented some of the key aspects of the BDS campaigns.

Given the importance of international military aid, trade and cooperation with Israel (\$30bn of US military aid in the period 2009-18; granting of arms exports licences by EU countries to Israel worth £47 million in 2005-09; exports of €13 million worth of weapons from EU to Israel in 2012), the imposition of a military embargo is a key demand of Palestinian civil society. As a result of public pressure, the Spanish Government recently announced a temporary ban on arms exports to Israel, and Norway and several countries in Latin America have also implemented various types of military embargos on Israel in recent years. At least 8 banks and pension funds have been successfully pressurised to divest from Elbit Systems, Israel’s largest military company.

Signed in 2000 and upgraded in 2012, the EU – Israel Association Agreement facilitates largely unrestricted trade between the EU and Israel and allows Israel to participate in more EU programmes and projects than almost all other non-European countries. Thanks to such agreements, Israeli weapons companies Elbit Systems and Israeli Aerospace Industries (IAI) have, for example, been allowed to participate in EU-funded research projects worth €44 million since 2007, including the development of drones that have been used in this summer’s massacre in Gaza.

In June 2013, the EU responded to public campaigning by introducing new rules preventing public funding from benefiting illegal Israeli

settlements. And if the EU does not consider suspending the Association Agreement at this stage, it should at least ban trade and economic links with illegal Israeli settlements. The EU recently banned all products from Crimea unless they are accompanied by a certificate of origin from the Ukrainian authorities.

The failure of governments to prevent corporate complicity in Israeli violations of international law has led to a huge growth in popular grassroots BDS activism that has proven successful. For example, French multinational Veolia withdrew from several infrastructure projects serving illegal Israeli settlements after well-organised local campaigning persuaded dozens of local municipalities across the world not to award public contracts to the company, costing Veolia more than €5 billion.

As BDS enters the mainstream, Israeli leaders have begun to openly express their fears about what they see as a strategic threat to Israel’s regime of oppression. Israeli finance minister Yair Lapid has predicted that an escalation of European boycotts could cost Israel billions of euros. However, this summer’s massacre in Gaza shows that Israel still feels able to act with impunity and there remains much more to do to raise the price of Israeli impunity further. Trade unions and grassroots groups in Gaza therefore published a statement calling for an intensification of boycott action to hold Israel to account: “Our battle to hold Israel accountable for its fresh war crimes and crimes against humanity has begun. The outcome of this battle to end Israeli impunity will determine whether Israel’s latest assault will be yet another stage in Israel’s ‘incremental genocide’ of Palestinians or the turning-point that will bring an end to Israel’s status as an entity above the law. The outcome of this battle depends on you.”

Russell TRIBUNAL on Palestine  
EMERGENCY SESSION  
on

GZA



Roger  
Waters

For the  
Ransom  
24.9.14

# Findings of the RToP Jury

*After hearing experts and witnesses for the whole day, the Jury retired to draw its conclusions with the help of a team of international lawyers.*

Jury members are: John Dugard, Miguel Angel Estrella, Christiane Hessel, Richard Falk, Ronnie Kasrils, Paul Laverty, Ken Loach, Michael Mansfield, Radhia Nasraoui, Vandana Shiva, Ahdaf Soueif and Roger Waters.

## **The findings are as follows:**

1. When images of the death, destruction and desperation inflicted on Palestinian citizens of Gaza were broadcast in July and August of 2014, people all over the world were struck with a visceral sense of indignation, anger and disgust. For too long, crimes and serious human rights violations have been committed against the Palestinian people by the occupying Israeli authorities with complete impunity. The occupation, blockade and siege imposed on the territory of Gaza amount to a regime of collective punishment, but the most recent conflict represents a clear intensification of the campaign to collectively punish and terrorise the civilian population. Not only was operation *protective edge* the third major military assault on Gaza in six years, but it was marked by a significant escalation in the scale, severity and duration of the attack. It was Israel's heaviest assault on the Gaza Strip since the beginning of its occupation of the Palestinian territories in 1967. Given this cyclical and devastating pattern of

violence and the likelihood of its continuation, the members of the Tribunal were conscious of the need to give a voice to the people of Gaza and to express the overwhelming need for urgent action. The Russell Tribunal on Palestine hopes to act as a voice of conscience and to contribute some measure of accountability for these appalling and inhumane acts.

2. Over the course of the 50-day conflict, some 700 tons of ordinance were deployed by the Israeli military forces in the context of a sustained aerial bombardment and ground offensive. This approximate figure equates to the dropping of two tons of ordinance per square kilometre of the Gaza Strip. These actions resulted in: the deaths of 2,188 Palestinians, at least 1,658 of whom were civilians; 11,231 civilians injured; damage to 18,000 housing units (13% of all available housing stock in Gaza was completely or partially destroyed); the internal displacement of some 110,000 civilians; the complete destruction of eight medical facilities and damage to many others, such that 17 out of 32 hospitals were damaged and six closed down as a result; massive destruction of water facilities leaving some 450,000 civilians unable to access municipal water supplies; the destruction of Gaza's only power plant facility, rendering the entire Gaza Strip without electricity for approximately 20 hours per day, thereby having a profound impact on water treatment, food supply and the capacity of medical

facilities to treat the wounded and displaced; numerous attacks on and destruction of UN sponsored and controlled infrastructure, including three UNRWA schools which were being used as temporary centres of refuge; the total destruction of some 128 businesses and approximately US\$550 million worth of damage caused to agricultural land and livestock; attacks on cultural and religious property; and finally, the conflict has left some 373,000 children in need of direct and specialised psychosocial support. The attack was widespread and systematic to the extent that the Palestinian Authority estimates that it will require US\$7.8 billion to repair the damage caused to civilian and state infrastructure.

3. The Russell Tribunal on Palestine is an international citizen-based Tribunal of conscience, created in response to the demands of civil society (non-governmental organisations, unions, charities, faith-based organisations) to educate public opinion and exert pressure on decision-makers. The RToP is imbued with the same spirit and espouses the same rigorous rules as those inherited from the Tribunal on Vietnam (1966-1967), established by the eminent scholar and philosopher Bertrand Russell. The Tribunal operates as a court of the people, with public international law (including international human rights law, international humanitarian law, and international criminal law) constituting the frame of reference of the Russell Tribunal on Palestine.
4. Following Israel's military operations in the Gaza Strip in July-August 2014, a decision was taken to urgently reconvene the RToP for an extraordinary session to examine the nature of potential international crimes committed in Gaza. During the course of this extraordinary session the RToP has received testimony

from some sixteen individual witnesses, providing eyewitness and expert opinions on a range of issues of direct relevance to the events in Gaza in the summer of 2014. The members of the Tribunal jury were moved and deeply disturbed by the harrowing evidence provided by the witnesses. Following the hearings and the deliberations of the jury on 24 September 2014, the findings of the extraordinary session of the Russell Tribunal on Palestine are summarised as follows.

## I. THE USE OF FORCE

5. Israel is the occupying power in the Gaza Strip. As the occupier, Israel cannot be considered to be acting in self-defence under the rules of public international law in its resort to the use of force in Gaza. Israel did not respond to an armed attack by the military forces of another state; rather it acted as an occupying power using force to effect its control of the occupied territory and its domination over the occupied population. Under international law, people living under colonial rule or foreign occupation are entitled to resist occupation. Israel's actions are those of an occupying power using force to maintain its occupation and to suppress resistance, rather than a state resorting to force in lawful self-defence. The ongoing occupation of Palestinian territories is itself an act of aggression as defined by the UN General Assembly in Resolution 3314 (1974); the Tribunal notes that an aggressor cannot claim self-defence against the resistance to its aggression. Operation *protective edge* was part of the enforcement of the occupation and ongoing siege of the Gaza Strip. This siege amounts to collective punishment in violation of Article 33 of the Fourth Geneva Convention.



## II. WAR CRIMES

6. The evidence provided by the witnesses who appeared before the RToP covers only a tiny fraction of the incidents that occurred during operation *protective edge*. Their testimony, however, coupled with the extensive documentation of Israel's attacks in the public realm, leads inescapably to the conclusion that the Israeli military has committed war crimes in the process. Israel forces have violated the two cardinal principles of international humanitarian law: the need to distinguish clearly between civilian targets and military targets; and the need for the use of military violence to be proportionate to the aims of the operation. It has done so through the scale of its bombardment of Gaza and its shelling of civilian areas, including hospitals, schools and mosques. An estimated 700 tons of munitions were employed by the Israeli military during the operation, in contrast to 50 tons during operation *cast lead* in 2008-09. Civilians in Gaza have been terrorised by this bombardment, as well as denied the right to flee the territory to seek protection and assistance as refugees from war in breach of the right to leave one's country pursuant to article 13 (2) of the UN Declaration on Human Rights.

7. Evidence heard by the Tribunal suggests that war crimes committed by Israeli forces include (but are not limited to) the crimes of:

- **wilful killing** (including summary executions by ground troops and killings of civilians by snipers around houses occupied by Israeli forces inside Gaza);
- **extensive destruction of property, not justified by military necessity** (including the destruction of essential services, in particular

Gaza's only functioning power plant and the apparently systematic targeting of the water and sewage infrastructure);

- **intentionally directing attacks against the civilian population and civilians objects** (including extensive and wanton artillery shelling and aerial bombardment of densely populated civilian areas);
- intentionally launching attacks in the knowledge that such attacks would cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated (i.e. the **use of disproportionate force**, explicitly stated and implemented by the Israeli military in the form of its "Dahiya doctrine", which involves a policy of deliberately using disproportionate force to punish the civilian population collectively for the acts of resistance groups or political leaders);
- intentionally directing **attacks against buildings dedicated to religion or education** (including repeatedly and knowingly targeting UN schools operating as places of refuge for civilians);
- intentionally directing **attacks against hospitals, medical units and personnel** (including the direct shelling of hospitals resulting in the killing and forced evacuation of wounded civilians, as well as apparent patterns of the targeting of visibly marked medical units and ambulance workers performing their duties);
- utilising the presence of a civilian or other protected person to render certain points, areas or military forces immune from military

operations (i.e. the use of Palestinian civilians as **human shields**);

- employing **weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate** (including flechette shells, DIME weapons, thermobaric munitions (“carpet” bombs), and munitions containing depleted uranium);

- the use of violence to **spread terror among the civilian population** in violation of the laws and customs of war (including the employment of a “knock on the roof” policy whereby small bombs are dropped on Palestinian homes as a warning signal in advance of larger bombardments to follow).

8. Allegations of the targeting of civilians and the use of indiscriminate weapons by the Palestinian resistance during operation *protective edge* have been clearly stated in the public realm by the Israeli authorities. The information available to the Tribunal is that 66 Israeli soldiers and 7 civilians in Israel were killed by Palestinian armed groups during operation *protective edge*, with 469 soldiers and 837 civilians wounded. There is also, however, contradictory information and unclear statistics from official Israeli sources regarding Palestinian rockets, and Israel’s military censor has a gag order in effect, making it extremely difficult to identify where the rockets fell without cooperation from the authorities. The Israeli authorities did not accept the invitation to appear before the Tribunal to state their case. This notwithstanding, the RToP emphasises as a matter of principle that any armed group that directs its firepower at a civilian population thereby violates the laws of war. Where such firing results in the deaths

of civilians, war crimes will have potentially been committed by those responsible. Firing weapons that are incapable of making the distinction between military and civilian targets is itself criminal.

### III. CRIMES AGAINST HUMANITY

#### *The Contextual Elements of Crimes Against Humanity*

9. For an apparently “ordinary” domestic criminal act to reach the threshold of a crime against humanity, there are certain contextual legal elements that must be satisfied. There must be a widespread or systematic attack against a civilian population, and the acts of the perpetrator must form part of that attack and be committed with knowledge of the wider context of the attack. Under the Rome Statute of the International Criminal Court, there is an additional legal element to be proven, which is the existence of a State or organisational policy to commit such an attack. Article 7 of the Statute of the International Criminal Court lists several specific crimes against humanity: murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty; torture; rape and sexual violence; persecution; enforced disappearance; apartheid; and other inhumane acts. While the Tribunal is confident that findings could be reached under each of these respective headings, given the specific focus of this extraordinary session and the resources available, the RToP limits itself to findings with respect to: (i) murder; (ii) extermination; and (iii) persecution.

10. The preponderance of the evidence received by the RToP clearly establishes that an attack against a civilian population has taken place.



The sheer scale of civilian deaths, injuries, and the destruction of civilian housing, provide a clear indication that a *prima facie* case can be established that operation *protective edge* was overwhelmingly directed at the civilian population of Gaza.

11. In light of the testimony received and summarised above regarding the extent of the loss of life and destruction of property caused by Israel, considered alongside the data compiled by the various offices of the UN and human rights organisations on the ground, the Tribunal finds that there is compelling evidence establishing a strong *prima facie* case that the attack against the civilian population of Gaza was widespread and systematic.
12. In relation to the policy requirement, the Tribunal has heard testimony pertaining specifically to three policy directives of the Israeli military, namely: the Dahiya Doctrine (which involves the deliberate use of disproportionate force to collectively punish the civilian population for the acts of resistance groups or political leaders); the Hannibal Directive (the destruction of an entire area for the purpose of preventing the capture of Israeli soldiers); and the Red Line policy (which involves the creation of a “kill zone” beyond an arbitrary and invisible “red line” around houses occupied by Israeli forces). Each of these policies deliberately and flagrantly disregards protections afforded to civilians and civilian property under international humanitarian law, and fundamentally involves indiscriminate violence against the civilian population of Gaza. As such their implementation amounts to a *prima facie* case of a specific policy on the part of the Government of Israel and the Israeli occupying forces to target civilian areas with

disregard for civilian life. The Tribunal finds that there is a compelling case to be made that the contextual elements of crimes against humanity, as outlined above, are satisfied for the purposes of Article 7 of the Statute of the International Criminal Court; specifically with respect to the selected crimes of: (i) murder; (ii) extermination; and (iii) persecution.

### Murder

13. The crime against humanity of murder requires that the perpetrator kills (or causes the death) of one or more persons. The International Criminal Tribunal for the former Yugoslavia has defined murder as the “unlawful, intentional killing of a human being.” The RToP finds that a strong *prima facie* case can be made that a significant proportion of the Palestinian civilian fatalities during operation *protective edge* were the result of deliberate, unlawful and intentional killings. The RToP has heard testimony relating to a number of individual incidents, such as the deliberate execution of Salem Khalil Shammaly for crossing an imaginary red line while searching for family members in Shuja’iyya and the deeply disturbing circumstances of the killing of 64 year-old Mohammed Tawfiq Qudeh in his own home. The RToP finds that their deaths are *prima facie* examples of the crime against humanity of murder, in addition to the war crime of wilful killing.

### Extermination

14. Under the Statute of the International Criminal Court, the crime of extermination includes both mass killings and the intentional infliction of conditions of life

(including deprivation of access to food, water or medical treatment) calculated to bring about the destruction of part of a population. There is therefore a degree of common ground between the crime against humanity of extermination and the crime of genocide. However, while the crime of extermination frequently involves a large number of victims, it differs from genocide in that it does not require that the victim(s) be part of a protected group, or that the perpetrator had the specific intent to bring about the destruction of the group in whole or in part.

15. During the course of this extraordinary session, the RToP has received detailed and wide-ranging testimony with respect to attacks on civilian populations and protected civilian property which directly resulted in the mass fatalities. In particular, the Tribunal has received detailed testimony relating to attacks on medical facilities and personnel. The deliberate and indiscriminate targeting of medical infrastructure contributed substantially to the loss of civilian life. Additional deliberate and indiscriminate attacks on civilian infrastructure such as the Gazan power plant also contributed to the increase in the death toll. Coupled with the denial of a humanitarian corridor, the sealing of the Erez and Rafah crossings and the targeting of UNRWA infrastructure, this contributed to the infliction of conditions of life calculated to bring about the destruction of part of the population of Gaza.

## Persecution

16. The crime against humanity of persecution involves the intentional and severe deprivation of fundamental human rights against members of a group or collectivity. The group must be targeted for a discriminatory

purpose, such as on political, racial, national, ethnic, cultural, gender or religious grounds. This element of discriminatory intent makes the crime of persecution somewhat similar to the crime of genocide, although crucially persecution does not require the establishment of a specific intent to destroy the group in whole or in part. The RToP determines that persecutory acts may be considered under the following three categories of conduct:

- discriminatory acts causing physical or mental harm;
  - discriminatory infringements on freedom;
  - offences against property for discriminatory purposes.
17. In line with the findings adopted in previous sessions of the RToP and the continuing escalation of violence against the Palestinian people, the Tribunal finds that the actions and policies of the Government of Israel and the Israeli military are inherently discriminatory against the Palestinian people. The Tribunal determines that in its actions and policies the Government of Israel and Israeli military discriminate against the Palestinian people, and in this instance specifically the people of Gaza, on the basis of, inter alia, political affiliation, nationality, ethnicity, religion, culture and gender. The Tribunal finds grounds to believe that a host of additional crimes and violations of fundamental human rights have been and continue to be committed on discriminatory grounds against the Palestinian people and the population of Gaza. In this respect, the Tribunal notes the following non-exhaustive list of violations: murder; torture (including the case of 16-year-old Ahmad Abu Raida, who was abducted by the Israeli military, whipped with a wire and threatened with sexual assault while under interrogation, and forced to act as a human shield for the Israelis);

sexual violence (such as Khalil Al-Najjar, the imam in Khuza'a who was forced to strip naked in public); physical violence not constituting torture; cruel and inhumane treatment or subjection to inhumane conditions; constant humiliation and degradation; terrorising the civilian population (including examples of Gazan citizens being instructed by the Israeli military to remain in their homes and then being subjected to bombardment); unlawful arrest and detention; imprisonment or confinement; restrictions on freedom of movement (including the denial of a humanitarian corridor or ability to leave the territory of Gaza); and the confiscation or destruction of private dwellings, businesses, religious buildings, cultural or symbolic buildings or means of subsistence.

#### IV. GENOCIDE

18. The international crime of genocide relates to any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such:
  - killing members of the group;
  - causing serious bodily or mental harm to members of the group;
  - deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
  - imposing measures intended to prevent births within the group;
  - forcibly transferring children of the group to another group.
19. Direct and public incitement to genocide is also an international crime, irrespective of whether anyone acts as a result of the incitement.
20. It is clear that the Palestinians constitute a national group under the definition of genocide. It has been established that Israeli military activities considered under the heads of war crimes and crimes against humanity meet the acts set forth in sub-paragraphs (a) to (c) above.
21. The crime of genocide is closely related to crimes against humanity. Where persecution as a crime against humanity aims to protect specific groups from discrimination, the criminalisation of genocide aims to protect such groups (national, racial, ethnic, religious) from elimination. The sometimes fine distinction between the two crimes, characterised by the "intent to destroy" element, was explained by the judges at the Yugoslavia Tribunal: "When persecution escalates to the extreme form of wilful and deliberate acts designed to destroy a group or part of a group, it can be held that such persecution amounts to genocide."
22. Israel's policies and practices in Palestine have for decades aimed at ensuring that Palestinians submit to Israeli domination. This has been effected through settler colonial policies based on the displacement and dispossession of Palestinians since the establishment of the state of Israel in 1948. This process continues today through the settlement of the West Bank and imposition of a regime of apartheid and segregation, the siege of Gaza and the prolonged collective punishment of its people, as well as the criminal conduct of repeated military operations and systemic violations of Palestinian human rights designed to ensure that Palestinians forfeit their right to self-determination and continue to leave their country.
23. Throughout that period, Israel's occupation policies appeared to be aimed at the control and subjugation of the Palestinian people, rather than their physical destruction as such.

Recent years have seen an upsurge in vigilante-style “price tag” attacks on Palestinian people, homes, and religious sites in the West Bank and Israel. Characterised by racist threats against Palestinians, such rhetoric escalated rapidly and across all forms of media and public discourse in Israel during the summer of 2014. The scale and intensity of operation *protective edge* indicates an unprecedented escalation of violence against the Palestinian people. For this reason, the RToP is compelled to now, for the first time, give serious examination to Israeli policy in light of the prohibition of genocide in international law.

24. The Tribunal has received evidence demonstrating a vitriolic upswing in racist rhetoric and incitement during the summer of 2014. The evidence shows that such incitement manifested itself across many levels of Israeli society, on both social and traditional media, from football fans, police officers, media commentators, religious leaders, legislators, and government ministers. This can be understood in varying degrees as incitement to racism, hatred, and violence. The evidence shows that the speech and language used in the summer of 2014 did, on occasion, reach the threshold where it can only be understood as constituting direct and public incitement to genocide.

25. Some of this incitement, in a manner similar to genocidal situations elsewhere, is characterised not only by explicit calls for violence against the target group, but also by the employment of sexualised (rape), gendered, and dehumanising memes, motifs, and prejudices. The RToP heard evidence of multiple examples of such incitement, one notable instance being Israeli legislator Ayelet Shaked’s widely reported publication in July

2014 defining “the entire Palestinian people [as] the enemy”, arguing for the destruction of “its elderly and its women, its cities and its villages, its property and its infrastructure”, and stating that the “mothers of terrorists” should be destroyed, “as should the physical homes in which they raised the snakes.”

26. The RToP notes that the legal definition of genocide demands proof of a specific intent on the part of the perpetrator not simply to target people belonging to a protected group, but to target them with the intention of destroying the group. It would be for a criminal court to determine whether such specific intent is present in a given situation, on the basis of scrutiny of the relevant evidence for the purposes of prosecution of such crimes. The RToP notes that alternative, broader understandings of genocide beyond that defined for the purposes of individual criminal responsibility have also been suggested as applying to the situation in Gaza. The cumulative effect of the long-standing regime of collective punishment in Gaza appears to inflict conditions of life calculated to bring about the incremental destruction of the Palestinians as a group in Gaza. This process has been exacerbated by the scale of the violence in operation *protective edge*, the continuation of the siege of Gaza and the denial of the capacity to rebuild. The Tribunal emphasises the potential for a regime of persecution, such as that demonstrated in section III above, to become genocidal in effect. In light of the clear escalation in the physical and rhetorical violence deployed in respect of Gaza in the summer of 2014, the RToP emphasises the obligation of all state parties to the 1948 Genocide Convention “to take such action under the Charter of the United Nations as

they consider appropriate for the prevention and suppression of acts of genocide.”

**27.** The prohibition of genocide – and of direct and public incitement to genocide – constitutes a *jus cogens* (non-derogable) norm of international law. According to the 1948 Genocide Convention, individuals who attempt or who incite to genocide “shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals”. It is thus incumbent on all states to take the appropriate action in line with their legal obligations to investigate and prosecute those responsible for such crimes. It is further incumbent on all states to ensure that the state of Israel does not, through the persons of its military and government “engage in conspiracy, incitement, attempt and complicity in genocide.”

**28.** The evidence received by the Tribunal demonstrates that the state of Israel is failing to respect its obligations to prevent and to punish the crime of direct and public incitement to genocide. This is in keeping with the warning issued by the Special Advisers of the UN Secretary-General on the Prevention of Genocide, and on the Responsibility to Protect, in July 2014, in response to Israel’s actions in Palestine: “We are equally disturbed by the flagrant use of hate speech in the social media, particularly against the Palestinian population.” The Special Advisers noted that individual Israelis had disseminated messages that could be dehumanising to the Palestinians and had called for the killing of members of this group. The Advisers reasserted that incitement to commit atrocity crimes is prohibited under international law.

**29.** Previous sessions of the RToP have established that the Israeli state is implementing

an apartheid system based on the dominance of Israeli Jews over Palestinians. Beyond the prolonged siege and collective punishment of the Palestinians of Gaza, the ongoing settlement project in the West Bank, and the now regular massive military assaults on the civilian population of the Gaza Strip, one must add the increase in aggravated racist hate speech. It is recognised that in a situation where patterns of crimes against humanity are perpetrated with impunity, and where direct and public incitement to genocide is manifest throughout society, it is very conceivable that individuals or the state may choose to exploit these conditions in order to perpetrate the crime of genocide. Alert to the increase in anti-Palestinian speech which constitutes the international crime of direct and public incitement to genocide, and the failure of the Israeli state to fulfil its obligations to prevent and punish incitement to genocide, the RToP is at this time compelled to place the international community on notice as to the risk of the crime of genocide being perpetrated. The jury has listened to alarming evidence over the course of this extraordinary session; we have a genuine fear that in an environment of impunity and an absence of sanction for serious and repeated criminality, the lessons from Rwanda and other mass atrocities may once again go unheeded.

## V. CONSEQUENCES AND ACTION

**30.** In view of the above findings, the Russell Tribunal on Palestine calls on the state of Israel to immediately:

- end the occupation and respect the Palestinian right to self-determination;

- fully respect its obligations under international law;
- provide full reparations to the victims of human rights violations;
- release all political prisoners;
- genuinely investigate and prosecute any individual suspected of being responsible for international crimes;
- act to prevent and punish any acts in violation of the Convention against Genocide.

### 31. To Israel and Egypt:

- immediately lift the siege and blockade of Gaza and permit the unhindered reconstruction of the Gaza Strip as well as permitting unhindered access to media, humanitarian, and human rights organisations.

### 32. To the European Union:

- in line with EU policy on restrictive measures, to pursue the objectives of preserving peace, strengthening international security, developing and consolidating democracy and the rule of law, and respect for human rights and fundamental freedoms, to adopt restrictive measures against Israel, and specifically:
  - to suspend the EU-Israel Association Agreement;
  - to suspend the EU-Israel scientific cooperation agreement and to immediately cease cooperation with Israeli military companies;
  - to impose a comprehensive arms embargo on Israel, including prohibitions on the sale, supply, transfer or export of arms and related materiel of all types; and a

prohibition on the provision of financing and technical assistance, brokering services and other services related to military activities;

- to suspend the import of all military equipment from Israel;
- to actively encourage Israel and Palestine to immediately ratify the Rome Statute in line with EU policy on the International Criminal Court;
- to claim reimbursement for damages to EU and/or member state funded infrastructure destroyed by the Israeli military;
- all EU member states to recognise the State of Palestine;
- to advocate and act for the implementation of the International Court of Justice recommendations in its 2004 Advisory Opinion on the legality of the Wall.

### 33. To UN member states:

- all states to cooperate to bring to an end the illegal situation arising from Israel's occupation, siege and crimes in the Gaza Strip. In light of the obligation not to render aid or assistance, all states must consider appropriate measures to exert sufficient pressure on Israel, including the imposition of sanctions, the severing of diplomatic relations collectively through international organisations or, in the absence of consensus, individually by breaking bilateral relations with Israel;
- the UN General Assembly to call for a full arms embargo against the state of Israel;
- all states to fulfil their duty "to take such action under the Charter of the United

Nations as they consider appropriate for the prevention and suppression of acts of genocide”;

- the United States and member states of the European Union to cease exerting pressure on the Palestinian authorities to refrain from engaging the mechanisms of international justice;
- all parties to cooperate with the UN Human Rights Council Commission of Inquiry and to ensure that the Commission is granted full access to Israel and Gaza for the purposes of its investigations;
- UN human rights mechanisms to investigate the violations of the fundamental freedoms and rights of journalists, media workers, and medical personnel;
- donor states to undertake a full reconfiguration of the international aid regime in Palestine, such that it ceases to underwrite Israeli occupation and destruction;
- all States to support full realisation of Palestinian self-determination, including full Palestinian membership of the UN;
- in light of the Responsibility to Protect doctrine, all states to ensure that, in light of the continued denial of Palestinian human rights, steps are taken to prevent further atrocities.

#### 34. To the Palestine authorities:

- the State of Palestine to accede without further delay to the Rome Statute of the International Criminal Court;
- fully cooperate with the Human Rights Council Commission of Inquiry;
- fully engage the mechanisms of international justice.

#### 35. To global civil society:

- to fully support, develop, and expand the Boycott, Divestment and Sanctions movement;
- to support activism aimed at denying Israeli firms and organisations supporting or profiting from the occupation access to international markets;
- to show solidarity with activists taking action to shut down firms aiding and abetting the commission of crimes against Palestinians, such as Elbit Systems in the UK;
- to actively lobby and pressurise governments to take immediate action to ensure they are not contributing to Israeli crimes and to ensure they are acting in line with the edicts and principles of international law.



# Postface

## THE LEGACY OF THE RUSSELL TRIBUNAL AND THE SUSTAINABILITY OF THE MOVEMENT

When the International Organising Committee of the Russell Tribunal on Palestine was dismantled in December 2013, few could have imagined that another session of the Tribunal would take place less than a year later.

But this is what is at stake for anyone working for justice in Palestine. You have to be on your toes, ready to act at any given moment. The impunity that Israel enjoys worldwide and the complicity of third parties - including states, corporations and institutions - in its violations of the law enable this state to hit the Palestinians at will. Whenever and wherever it wants.

Our extraordinary session on Gaza, in September 2014, focused on the latest assault by the Israeli army named, for propaganda purposes, operation *protective edge*, but the witnesses and experts who testified before the Tribunal gave us a much broader and scarier picture of the situation on the ground: a very bleak overview of a sick society, a warmongering government and a complicit media apparatus. Nurit Peled, one of the people that called for the Tribunal, wrote a book entitled "Palestine in Israeli School Books" which explained and demonstrated how biased and purposely distorted the history of the "conflict" is. What was even more startling was to understand the way in which, from the words, colours and writing used in books,

Palestinians, or Arabs as they are called in Israel, are portrayed as animals and dangerous terrorists. From a very early age, Israeli Jews learn that their neighbours, who are historically the indigenous people of the land, are not to be trusted and need to be avoided and fought against.

This propaganda and brainwashing, from the moment of birth, creates the society that one of our witnesses, Israeli journalist David Sheen, showed us during his presentation: a society so closed, so paranoid, so convinced that its very existence is at stake that it is ready to condone and support the most barbaric actions by its army and its government. Seven hundred tons of munitions were dropped on Gaza in 51 days. You have to go back to Laos and Cambodia in the seventies (and swap Israel with the USA) to find examples of such ferocity in the carpet-bombing of an imprisoned population. Still, despite the facts, despite the images and the reports, 95% of Israeli Jews backed the war. They in fact went much further as they pushed their government to do more and to proceed further with the carnage. Genocidal calls were heard in the Knesset, on social and mainstream media, from religious leaders and from army commanders.

Despite all this, despite the blatant war crimes committed by the Israeli army, what did Western states do? Most of them did indeed phone Benjamin Netanyahu very quickly after operation *protective edge* was launched. Did they ask him to stop? Did they ask him to act with restraint? Proportionately? (You would



think that was the least they could do, when one of the most powerful armies in the world, an occupying power for more than 50 years, carpet-bombs an occupied defenceless population.) No. They actually did the opposite. “We’re fully behind you, Prime Minister. Do what you can to defend your people” is what was repeated day after day by the “leaders” of the Western world.

The Palestinians, asking for justice and redress, have very few allies. The peoples of the world are with them, as demonstrated by the huge outpouring of support in the streets of hundreds of cities worldwide during the Israeli aggression. They have themselves, of course, their spirit of *sumud* (steadfastness) and resistance. But the actual institutional means for justice are often blocked for them and very far out of reach.

So what is to be done? How can people around the world end Israeli impunity and start a real process of accountability not only for Israel but also for its enablers (states, corporations, institutions...)?

That’s how the idea of the Palestine Legal Action Network (PLAN) came about.

While not fooling ourselves into thinking that PLAN will bring justice to the Palestinians by itself, we are convinced that the need for such an international charity is crucial: there is an obvious need to bring the legal, the political and the campaigning together and to help solidify and globalise an international solidarity movement that is currently at a key juncture. The need for the Russell Tribunal’s work to continue and for its findings to be turned into concrete actions was also something that everyone involved in the RToP wanted. PLAN will therefore be part of the follow-up to the Tribunal.

The activists, jurists, lawyers, campaigners and academics involved in the initiative want PLAN to be used as a vehicle and a tool to build bridges, to close the existing gaps between various groups and campaigns, and to push the envelope further in the legal advocacy/actions and media fields.

Since its conception in January 2014, PLAN has already been involved in various joint actions and events. It is now time to go further, to change gear and to move more quickly.

In the future, PLAN intends to work more closely with student groups facing repercussions for their democratic actions in endorsing the BDS movement. PLAN wants to work with unions and give important legal and practical tools to the rank and file on how to actually implement the resolutions passed. PLAN will work on legal actions and campaigns against individuals, governments and corporations. PLAN will put together legal workshops whose purpose will be concrete actions and potential litigations. Finally, PLAN will work, with the help of various members of the Russell Tribunal, on the media aspect of issues. Changing the narrative used to talk about Palestine is crucial. The semantics are often tools of oppression and the idea is to turn them into tools of liberation.

It is by using all the tools at our disposal that we will transform an already amazing global movement for justice in Palestine into a sustainable and victorious one.

Frank Barat  
on behalf of PLAN

Find out more about PLAN by visiting our website: [planpalestine.org](http://planpalestine.org)