

# The Amateur Computerist

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The Question of Palestine at the UN

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## Introduction

In 1947, the United Nations played a major role in partitioning the British Mandate for Palestine into an Arab and a Jewish section. The Jewish section soon declared itself the State of Israel which the UN supported. This issue of the *Amateur Computerist* is a collection of articles written between 2008 and 2019, highlighting activities at the United Nations about the Israeli/Palestinian Question originating from the 1947 partition. That question remains unsolved.

Historically, the land of Palestine goes back to pre-biblical times. In modern times, the area was ruled by the Ottoman Empire, from the 16<sup>th</sup> to the 20<sup>th</sup> century. In that time, being mostly inhabited by Muslim Arabs, there were always some Jewish and Christian communities. The Ottoman Empire collapsed by the end of WWI. The League of Nations then facilitated Britain and France to make colonies out of the Middle East Ottoman provinces as League of Nations Mandates. The British mandate for Palestine was meant to be a transitory phase until Palestine attained the status of a fully independent nation. (See: <https://www.un.org/en/situation-in-occupied-palestine-and-israel/history>.) Britain encouraged Jewish immigration to

Palestine. Eventually Britain found itself at war with the indigenous Arab Palestinians and with the Jewish settlers.

In 1947, Britain was withdrawing from its colonies and announced to the UN that it was going to end its Mandate and withdraw from Palestine. The UN created a Special Committee to prepare for the consideration of the question of the future government of Palestine. The Special Committee, rather than calling for a democratic solution based on the inhabitants, Arab and Jewish and Christian working out a joint future, recommended a plan of “partition with economic union” and an internationalization of Jerusalem. The Jewish people in Palestine supported the partition which gave them the majority of the land despite their being a minority of the population. The Arab people in Palestine opposed the partition plan. It was implemented against Arab opposition leading to the UN soon agreeing to the creation of a separate state of Israel.

In 1948, 750,000 Palestinians living on the land now called Israel were forced by armed Israelis to flee. That forced expulsion from their homes and land is known as the *Nakba* (meaning catastrophe in Arabic). (See: <https://www.un.org/unispal/about-the-nakba/>.) Many of those Palestinians and their descendants still live in refugee camps in Gaza, the West Bank and in neighboring countries, organized by the United Nations Relief and Works Agency for Palestine Refugees (UNRWA). (See: <https://www.unrwa.org/palestine-refugees>.) In addition to the Nakba, displacement and dispossession of Palestinians by Israeli government settlement activity and settler violence is ongoing. (See: <https://press.un.org/en/2023/sc15424.doc.htm>.)

Over the last 75 years, the partition of Palestine has caused many difficulties that the UN has been called on to deal with. The articles here document a little of how poorly the UN did from 2008 to 2019.

There is a need for a broad perspective of what has gone on in the past 75+ years in order to determine the

direction for a just solution to the Question of Palestine. That is the purpose of putting together this collection of articles on the UN's reaction to previous events in the conflict. There is a need to facilitate discussion and fresh thinking. We hope this collection of articles from 2008 to 2019 will contribute to meeting that need.

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[Editor's Note: On January 17, 2008 Israel increased its blockade of the Gaza strip by announcing a complete closure of all the land border crossings into Gaza. A response to that closure was debated on Jan 30 at the UN Security Council. This article about that debate first appeared in OhmyNews International on Feb. 7, 2008.]

(2008)

## **Security Council Fails to Act on Gaza Crisis**

**'The Silence Is Deafening,' Says Indonesia's U.N. Ambassador**

by Ronda Hauben

“(M)y delegation believes that silence on the situation in the Middle East is more dangerous than even meetings where there might be a raising of temperatures and heat,” explained Dumisani Kumalo, the South African ambassador to the United Nations.

Speaking in the U.N. Security Council discussion held on Jan. 30,<sup>1</sup> Kumalo was responding to a statement by the British Ambassador Sir John Sawers. The British ambassador was questioning the usefulness of the Security Council discussion on the Israeli-Palestinian question.

This exchange followed the events of the previous week. The Security Council had spent a week struggling to agree on a non-binding Presidential statement in response to the Israeli closure of all the border-crossings into the Gaza Strip. Israel's action left the Palestinians in Gaza without fresh supplies of fuel, food or other necessities vital to life upon which they relied.

By Jan. 29, however, the Council failed to agree on what such a statement should say and decided to end their efforts. No statement by the Security Council would be issued.

The original issue brought before the Council was Israel's closing of the border crossings into Gaza. From the beginning of the discussion, however, the

U.S. framing, focused the statement on the rocket attacks into Israel and the right of Israel to defend itself.

Several members of the Security Council explained that such an interpretation runs counter to the obligations of Israel, as an occupying power and that punishing the whole population of Gaza for what were the acts of a few is contrary to the tenets of the prohibition in international law against collective punishment and disproportionate actions.

In his presentation to the Security Council in its public discussion on Jan. 22, Le Luong Minh, the ambassador from Vietnam said, “(W)e consider the acts undertaken by the Israeli authorities against Palestinian civilians, like any act that literally targets the innocent civilians of a country, to be unjustifiable, even in the name of security or under any other pretext.”

Speaking in his capacity as the ambassador from Libya, Giadalla Ettlhi, who held the rotating chairmanship of the Council in January, said, “We do not believe these practices against civilians can be justified on any pretext; nor can they be equated with any other acts.”

Stating a similar view, Ambassador Michel Kufando of Burkina Faso said, “It is not for us today to engage in a rhetorical exercise but to concretely consider through a careful review of the situation what the Council and the international community can do to put an end to the blockade of Gaza. This blockade is unacceptable because it holds hostage a whole population subject to all types of privation.”

Several other ambassadors who spoke at the Jan. 22 Security Council discussion said that the right of a nation to self defense is not intended as a license to harm or blockade a civilian population as Israel is doing in Gaza.

The U.S. framing of the situation, however, is that Israel has disengaged from Gaza and therefore is no longer an occupying force in Gaza. Israel is being attacked by terrorists in Gaza. Israel has the right to self defense against Gaza. Though the U.S. framing says that Israel should, when feasible, minimize the harm to civilians, the U.S. does not propose any means of imposing such an obligation on Israel.

Others on the Security Council disagree with how the U.S. frames the situation in Gaza. The South African ambassador said that though Israel had withdrawn from Gaza, “the territory of Gaza remains under de facto Israeli occupation. Israel controls Gaza's air space and Gaza's territorial waters. By virtue of its illegal occupation Israel continues to be bound by the

Fourth Geneva Convention.”

Article 33 of the Fourth Geneva Convention of 1949, states, “No protected person may be punished for an offense he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. Pillage is prohibited. Reprisals against protected persons and their property are prohibited.”

Panama’s Ambassador Ricardo Arias said that “the State of Israel has the right to defend itself, however, measures for self-defense should be carried out in a restrained manner that is proportionate to the threat.” He further explained that “the Actions of the Government of Israel violate all humanitarian standards including the most basic rules of international law.”

Participating in the discussion but not a member of the Security Council, the Syrian Ambassador Bashar Ja’afari challenged the notion that Israel is not the occupying power in Gaza. He said that Israel’s claim, “it has withdrawn from Gaza is a blatant distortion of the facts. Israel controls international borders and all crossing points . . . . It controls the flow of food, medicines, water and electricity. In short, Israel, the occupying power as defined under international law has transformed Gaza into a sealed ghetto and the West Bank into besieged Bantustans.”

The Syrian ambassador attributed Israel’s belief that it does not have to abide by the 1949 Fourth Geneva Convention to the failure of the Security Council and the international community to condemn Israel.

At the Security Council discussion on Jan. 30, the Indonesian ambassador said “The humanitarian crisis in Gaza is dire and unacceptable. The people of Gaza have been suffering not only from the border crossings, but also from repeated military incursions by Israel.”

“Today,” he explained, “we wish to emphasize the importance of a common Council response on this humanitarian catastrophe.”

The South African ambassador added that “The situation in Occupied Palestine cannot be ignored any longer. Try as it might, this Security Council cannot remain silent and hope that the situation will change as time goes by when 1.5 million residents are left without water, electricity, and basic sewage situations.”

“We have to remember,” Kumalo said, “that the United Nations, particularly the Security Council, has a special responsibility in supporting a peaceful

resolution in the conflict in the Middle East.”

The fact that the Council was not able to issue a statement against the Israeli blockade of Gaza led the Indonesian ambassador to observe, “It is indeed a deafening silence.”

Despite the week long effort of consultations, public meetings, various proposed draft statements, experts meeting to draft statements and public discussions, the Security Council was not been able to issue a statement. Why?

One week earlier, on Jan. 23, 14 members of the Security Council had agreed on a statement in which the Council said it “expresses deep concern about the steep deterioration of the humanitarian situation in the Gaza Strip due to the closure of all the Gaza Strip’s border crossings.” (Draft PRST on the Middle East, Jan. 23, 2008 Rev 2.)

The draft statement ended with a call that “all parties cease all acts of violence including the firing of rockets into Israeli territory and all activities which are contrary to international law and endanger civilians.”

A Presidential statement issued by the Security Council, however, requires the agreement of all 15 members. Ambassador Alejandro D. Wolff, U.S. Deputy Permanent Representative to the U.N. would not agree with the statement. Wolfe said that the issue was that Israel was under siege. “We feel very strongly“ he told reporters, “that if you are going to address this situation you can’t look to the last page of a book and say ‘Gee we don’t like the ending of this story’ without knowing what preceded it. It’s out of context. It’s not fair.”<sup>2</sup>

The following day, on Thursday, the U.S. delegation introduced a number of elements it wanted to be included in the statement. At the end of the Thursday session of the Council, Kumalo told reporters he was depressed “because we still do not have an agreement and the way its going its not hopeful.”

On Friday, the U.S. Deputy Ambassador Alejandro Wolff brought an alternative statement to the Council.

The deliberations on this statement and the consideration of modifications to it went on till late in the evening on Friday. Only a few journalists were still at the stakeout when the meeting ended and brief explanations of what had happened were presented by the few Security Council members willing to speak with the press. By then the version of the U.S. statement had been modified, but it included a description of the attacks on Israel as coming from “terrorists” and

wording that Israel was suspending its closure of the crossing points.

Sources describing the Security Council's response to the modified statement on Friday were contradictory. Some sources claimed that 14 members of the Security Council were prepared to accept the modified U.S. statement, but that Libya would not agree. Another source indicated that the British and U.S. ambassadors had used a maneuver to make this claim as other members of the Security Council only agreed to consider the statement, not to approve it. On Friday evening the Libyan ambassador said he would send the draft statement to his government for its response, which he would present to the Council on Tuesday.

On Jan. 29, Libya offered alternative wording to modify several aspects of the Friday draft. Libya wanted the reference to those who launched the rockets into Israel as "terrorist groups" removed, but it accepted the wording condemning the launch of the rockets and calling for their immediate cessation. Libya objected to the wording indicating that Israel suspended its closure, as there had not been evidence this was true.

Journalists were told that the U.S. rejected the changes and that the Council had ended its effort to issue a statement.

While the Security Council did not issue a statement about Israel's closing the border crossings to Gaza, the Committee on the Exercise of the Inalienable Rights of the Palestinian People, created by the General Assembly in 1975, explained that "The Bureau deeply regrets that the Security Council, having considered the situation at a recent meeting, once again failed to act in response to the grave situation in the Occupied Palestinian Territory."

This Committee of 22 member states and 22 observers created by the U.N.'s General Assembly demonstrated that it was possible to issue a statement on the situation in Gaza that is consistent with the obligations of Article 33 of the Geneva Convention.

The statement says: "The Bureau wishes to restate its position of condemning the killing of innocent civilians by both sides, including Israeli operations and the firing of rockets from Gaza. At the same time, the Bureau considers it totally unacceptable and unjust that the entire civilian population of the Gaza Strip is subjected to a suffocating economic blockade for the actions of a few militant groups. The Bureau supports the Palestinian Authority proposal to assume responsibility for the Palestinian side of all of the Gaza Strip's border crossings."

All 15 members of the Security Council had said they were concerned for the deteriorating situation in Gaza, it was the U.S. alone that prevented the Council from issuing a non-binding Presidential statement on Jan. 23 expressing the concern of the Council. The U.S. introduced elements for changes in the statement in the Council and then the following day presented an alternative statement which changed how the problem was to be framed. Then it tried to shift the blame to Libya for the failure of the Council to issue a statement condemning Israel's actions in Gaza.

The Security Council, as the South African Ambassador Kumalo explained, has a special obligation with regard to peace and security in the Middle East and particularly with regard to the Israeli-Palestinian conflict. Article 24 of the U.N. Charter confers on the Security Council the "primary responsibility for the maintenance of international peace and security" and obliges the Security Council to carry out its duties on behalf of all the member nations of the U.N. When the Council is unable to act in an issue so crucial to its obligations under the U.N. charter, it is failing in its duties not only on the particular issue, but also in the obligations it has to all the member nations of the U.N. This represents a serious problem to be considered by the member nations.

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**Notes:**

1. See: Security Council Documents:  
S/PV.5824 Security Council 5824<sup>th</sup> meeting, Jan.22, 2008, 10 a.m.  
S/PV.5824 (Resumption 1) Security Council 5824<sup>th</sup> meeting, Jan. 22, 2008 3 p.m.  
S/PV.5827 Security Council 5827, Jan. 30, 2008 10 a.m.
  2. Ambassador Alejandro D. Wolff, U.S. Deputy Permanent Representative, on the situation in the Middle East, at the Security Council Stakeout, January 24, 2008.
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[Editor's Note: On December 27, 2008, Israel began a 22-day war in Gaza. This article appeared in OhmyNews International the next day on December 28, 2008 at: [http://english.ohmynews.com/articleview/article\\_view.asp?menu=c10400&no=384512&rel\\_no=1](http://english.ohmynews.com/articleview/article_view.asp?menu=c10400&no=384512&rel_no=1) (no longer available).]

## (2008) Response to Israeli Attacks on Gaza

by Ronda Hauben

Reporting from the United Nations, Saturday night Dec. 27, 2008 through Sunday morning, Dec. 28. – I arrived at the United Nations around 9:35 p.m. (EST) after learning that there were to be Security Council consultations about what is happening in Gaza. The Security Council consultations were scheduled for 10 p.m. (EST).

The Libyan delegation, on behalf of the Arab League, had asked for a meeting of the Security Council to respond to the Israeli attacks on Gaza.

Soon after the members arrived, some members of the delegations told the press that the Security Council members were working on a statement which would urge Israel to halt its military operations in Gaza. Also, the statement was to call for cessation of rocket attacks on Israel from Gaza.

Another element for the statement was said to be to call for the opening of the border crossings into Gaza and unrestricted humanitarian access to the area.

A few others who spoke with the press informally were quick to point out that the draft effort to fashion a statement was not something agreed to in any way yet by the members of the Security Council. The discussion among the members of the Security Council was said to be about whether they would hold a meeting this evening and if so what the meeting would do.

A representative of one of the delegations said that his delegation wanted either a statement that all members of the Security Council agreed on presented to the press this evening, or else an open meeting where all members would speak freely.

Five hours after the meeting began, members of the Security Council emerged from their consultations. They had indeed agreed on a statement to be read to the press.

The statement contained several points. These included:

- 1) There was serious concern about “the escalation of the situation in Gaza.”
- 2) The call for “an immediate halt to all violence.”
- 3) The call for “all parties to stop immediately all military activities.”
- 4) The call for the opening of the border crossings “to ensure the continuous provision of humanitarian supplies.”

The statement “stressed the need for the restoration of calm” toward finding a political solution for the settlement of the Palestinian-Israeli conflict.

Several of the parties came to speak briefly to the press after the Security Council issued its statement.

The American ambassador to the UN, Zalmay Khalilzad, wanted it known that he attributed the root cause of the problem to Hamas’ rocket attacks on Israel. He limited the questions he would answer after being confronted with questions from reporters asking if what Israel was doing in killing over 200 Palestinians was not a disproportionate response.

Russian Ambassador Vitaly Churkin indicated that there were different views among Security Council members about what the root cause of the problem was, but that the bottom line was that the situation in Gaza had slipped, and that it was important to stop the bloodshed. He expressed his appreciation that the matter had been brought to the Security Council as a result of a decision of foreign ministers, and that a statement had been issued by the Council.

When asked what the Security Council would do to follow up on the statement, he said that the statement had been crafted with some understanding by the Israeli government that it was issued, and he expected that the parties assumed that there were certain responsibilities given that the Security Council had issued a statement.

The Palestinian observer at the UN explained that if Israel didn’t comply, the Arab nations would come back knocking at the door of the Security Council.

Israeli Ambassador Gabriela Shalev said that the Security Council didn’t have to be in such a rush to issue a statement.

The French ambassador, Jean-Maurice Ripert, said that the statement made clear that the border crossings to Gaza had to be open including having access allowed to NGOs, diplomats, and journalists.

While the members of the Security Council were discussing what the Security Council would do, others at the United Nations presented their view of the situation.

The Secretary-General, Ban Ki-moon, via his spokesperson had issued a statement on Saturday, Dec. 27. It contained a general statement about Israel's obligation to uphold humanitarian law, and human rights law, in general condemning "excessive use of force," but condemning by name Hamas for ongoing rocket attacks on Israel. The statement is posted at the UN.

The President of the General Assembly, Miguel d'Escoto Brockmann, announced he would cut short his brief Christmas holiday to return to the UN from Nicaragua.

His spokesperson, Enrique Yeves, told journalists, "The General Assembly President is extremely worried about the whole situation. He believes it is time for the international community to act to prevent this kind of aggression from Israel against the civilian population of Palestine."

"If we fail," Yeves explained, "we will all be guilty by omission."

The president of the General Assembly is following very closely the situation in New York, said Yeves, and he gave journalists a copy of Brockmann's statement.

The statement expressed in a clear and forthright manner that he condemned the actions by Israel. The statement by the president of the General Assembly is:

The behavior by Israel in bombarding Gaza is simply the commission of wanton aggression by a very powerful state against a territory that [it] illegally occupies.

Time has come to take firm action if the United Nations does not want to be rightly accused of complicity by omission.

The Israeli air strikes on the Gaza Strip represent severe and massive violations of international humanitarian law as defined in the Geneva Conventions, both in regard to the obligations of an Occupying Power and in the requirements of the laws of war. Those violations include:

Collective punishment – the entire 1.5 million people who live in the crowded Gaza Strip are being punished for the actions of a few militants.

Targeting civilians – the air strikes were aimed at civilian areas in one of the most crowded stretches of land in the world, certainly the most densely populated area of the Middle East.

Disproportionate military response – the air strikes have not only destroyed every police and security office of Gaza's elected government, but have killed and injured hundreds of civilians; at least one strike reportedly hit groups of students attempting to find transportation home from the university.

I remind all member states of the United Nations that the UN continues to be bound to an independent obligation to protect any civilian population facing massive violations of international humanitarian law regardless of what country may be responsible for those violations.

I call on all Member States, as well as officials and every relevant organ of the United Nations system, to move expeditiously not only to condemn Israel's serious violations, but to develop new approaches to providing real protection for the Palestinian people.

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[Editor's Note: In early January 2009 the UN continued to fail to take action addressing the Israeli hostilities in Gaza, This article about that failure appeared in OhmyNews International on January 6, 2009 at: [http://english.ohmynews.com/articleview/article\\_view.asp?menu=c10400&no=384569&rel\\_no=1](http://english.ohmynews.com/articleview/article_view.asp?menu=c10400&no=384569&rel_no=1). (no longer available.)]

**(2009)**  
**The World Has  
Been Watching**  
**The UN and the Failure to Act to  
Stop Attack on Gaza**

by Ronda Hauben

On the evening of Jan. 3, 2009, the President of the General Assembly, Father Miguel d'Escoto Brockmann, arrived at the UN as the Security Council was preparing to hold a closed door meeting about the 2008 Gaza crisis.

Earlier in the day, Israel had escalated the previous eight days of bombing of Gaza by beginning a ground invasion into the territory.

The situation in Gaza is that 1.5 million civilians are trapped in a virtual prison. For 18 months prior to the invasion, Israel has blockaded the crossing points

into Gaza that it controls and Egypt has closed the one crossing point it has control over.

Responding to the question from a journalist about what his reaction was to Israel's actions in Gaza and the Israeli ground attack, Brockmann said, "I think it's a monstrosity. There's no other way to name it."<sup>1</sup>

He went on to explain that "once again the world is watching in dismay the disfunctionality of the Security Council." The shame of this, he said, is that "people are dying."

Such activity by the Security Council, Brockmann said, is "what is responsible for the loss of prestige and the bad image" that the disfunctionality results in. "The Security Council," he explained, "is in very urgent need of profound reform."

Subsequent events on Jan. 3 at the Security Council demonstrated the accuracy of Brockmann's description of the current state of the Security Council.

This was the first meeting of the Security Council in 2009. Five newly elected nations replaced five outgoing members. The new members were Turkey, Mexico, Uganda, Japan and Austria. They replaced Indonesia, Panama, South Africa, Belgium and Italy.

A problem, however, seemed to be that the newly elected members did not have the same understanding of the dynamics and how to deal with them that the outgoing elected members had learned from their two years on the council.

While several of the outgoing members had voiced<sup>2</sup> their commitment to having open meetings of the Security Council – especially when there was a dispute that couldn't be resolved – the new members and others on the Council allowed the meeting on Jan. 3 to be a closed meeting. The discussion and actions of the Security Council were only available from second hand reports.

During a similar meeting of the 2008 Security Council on Dec. 27-28, one of the outgoing ambassadors, South Africa's Domisani Kumalo told journalists that he was insisting on an open meeting if the Security Council did not, at least, come to an agreed upon statement for the press.

At the first Security Council meeting in 2009, however, it is reported that no ambassador insisted on an open meeting. Hence there was neither an agreed upon press statement from Council members, nor was there an open meeting.

Describing the events of the Jan. 3 meeting, the Egyptian Ambassador, Maged A. Abdelaziz, told the press that, "we find regrettably that the Security

Council is downgrading its response."<sup>3</sup> He was referring to the fact that the U.S. Ambassador Alejandro D. Wolff would not even agree to make the previous weekend's press statement into a Presidential statement. Nor would the U.S. agree to a press statement like that of the previous Saturday, calling for an immediate halt to all violence.

Significantly, Israel's escalation of violence against Palestinians in Gaza, represented by the Israeli land invasion, was greeted with official silence at the first meeting of 2009 of the Security Council. The Security Council was silent on the fact that the large number of civilian deaths and injuries and the massive destruction of civilian targets in Gaza demonstrated that Israel was committing widespread collective punishment of civilians in Gaza.<sup>4</sup>

During Brockmann's comments to the press, he had referred to "other possible steps" that were being considered.

Some member nations of the UN are pointing to General Assembly Resolution 377 "Uniting for Peace"<sup>5</sup> as a procedure to be invoked to respond to the problem when a permanent member of the Security Council blocks action on an urgent issue, as the U.S. did on Jan. 3.

The Uniting for Peace resolution notes that the blocking of urgent action by a permanent member of the Security Council does not relieve the members of the UN of their responsibility under the charter. Under Article 24 of the UN charter, members of the UN confer "on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf."

When the Security Council fails to carry out such duties however, the General Assembly can assume the responsibility. If the General Assembly is in session, a meeting is to be called. If the General Assembly is not in session, as is currently the case, there is a procedure to call for an Emergency Session, which is to meet within 24 hours of the request.

There have been press reports that member nations of the UN, like members of the 57 nations of the Organization of Islamic Conference (OIC), or like members of the 117 non-aligned nations are working to start the process to call for an emergency meeting of the General Assembly about the Gaza crisis if the Security Council continues to be unable to act on the need for a cease fire and the opening of the border



crossings into Gaza.<sup>6</sup>

There have been ongoing and growing demonstrations around the world of people upset about the lack of action by their governments to find a way to stop Israel's bombardment of Gaza. The persistent failure of the UN Security Council over the past 18 months to stop the siege of Gaza has helped to set the conditions for the current attack on the Palestinians by Israel.

Angry demonstrations around the world are evidence that this inaction is an affront, not only to the besieged Palestinians but to people around the world who condemn Israel's invasion of Gaza. In his comments to the press on Jan. 3, Brockmann said that "what is really responsible [for the current violent situation in Gaza—ed.] I think is the unfulfilled resolutions of the Security Council" with regard to the Palestinian crisis.

"The world has been watching," he noted.

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#### Notes:

1. Media Stakeout: Informal comments to the Media by H.E. Mr. Miguel d'Escoto Brockmann, President of the 63<sup>rd</sup> session of the General Assembly on the situation in the Middle East, including the Palestinian question. [Webcast: Archived Video - 7 minutes] <http://webcast.un.org/ramgen/ondemand/stakeout/2009/so090103pm2.rm>. (No longer available.)

See: also Ronda Hauben "Security Council and Others at UN Respond to Israeli Attacks on Gaza, Press statement issued by Security Council after 5 hours of consultations," *OhmyNews International*, Dec. 28, 2008. [http://english.ohmynews.com/articleview/article\\_view.asp?menu=c10400&no=384512&rel\\_no=1](http://english.ohmynews.com/articleview/article_view.asp?menu=c10400&no=384512&rel_no=1). (No longer available.)

2. Ronda Hauben, "Security Council Fails to Act on Gaza Crisis: The Silence is Deafening Says Indonesia's Ambassador to the UN," *OhmyNews International*, Feb. 7, 2008. [http://english.ohmynews.com/articleview/article\\_view.asp?article\\_class=16&no=381689&rel\\_no=1](http://english.ohmynews.com/articleview/article_view.asp?article_class=16&no=381689&rel_no=1). (No longer available.)

3. Egypt Media Stakeout: Permanent Representative of Egypt, H.E. Mr. Maged A. Abdelaziz [See: especially Minutes 18:47-20:52] <http://webcast.un.org/ramgen/ondemand/stakeout/2009/so090103pm3.rm>. (No longer available.)

4. Article 33 of the Fourth Geneva Convention of 1949, states, "No protected person may be punished for an offense he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. Pillage is prohibited. Reprisals against protected persons and their property are prohibited."

5. General Assembly Resolution A/RES/377(V) A 3 November 1950 377 (V). Uniting for Peace. [https://en.wikipedia.org/wiki/United\\_Nations\\_General\\_Assembly\\_Resolution\\_377](https://en.wikipedia.org/wiki/United_Nations_General_Assembly_Resolution_377).

6. Indonesia and Malaysia are two such nations. See: for example, Abdul Khalik and Lilian Budianto, "RI pushes for UN emergency meeting" *The Jakarta Post*, Jakarta. <https://www.thejakartapost.com/news/2009/01/06/ri-pushes-un-emergency-meeting.html>.

"President Susilo Bambang Yudhoyono said Monday that Indonesia would continue its political and diplomatic efforts to push the Security Council to issue a resolution to stop Israeli attacks and force both sides to return to peaceful dialog to solve the conflict."

"But if we can't get a resolution through the Security Council then we will use the alternative of an emergency meeting at the General Assembly to force a cease fire to stop the hostilities that have claimed many lives," he told reporters at the Presidential office.

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[Editor's Note: During Israel's 2008-2009 military operations in Gaza, this article appeared in OhmyNews International on January 12, 2009 at: [http://english.ohmynews.com/articleview/article\\_view.asp?no=384602&rel\\_no=1](http://english.ohmynews.com/articleview/article_view.asp?no=384602&rel_no=1) (no longer available).]

(2009)

## Israel Attempts to Justify Its Attack on Gaza

by Ronda Hauben

In a letter submitted to Ban Ki-moon, the Secretary-General of the United Nations, and to the President of the Security Council for the month of January (S/2009/6, Jan. 6, 2009), Israel informs them that it has expanded its military operations in the Gaza Strip. Israel claims this is its right under Article 51 of the Charter of the United Nations. Israel states that this is a "defensive military operation" and that it has begun this military operation only "after exhausting all other means."

The letter states "Israel is not at war with the Palestinian people." It states that Israel is doing its "utmost to avoid and minimize civilian casualties and to take the necessary precautionary measures in accordance with Israel's obligations under international humanitarian law." Also Israel claims that it "makes – and will continue to make every effort to allow humanitarian relief into the Gaza Strip."

Describing the nature of Israel's attack on the political infrastructure of Gaza, Sarah Leah Whitson, the Executive Director of the Middle East and North American Division of Human Rights Watch, in a press conference at the United Nations, presented a different view of what Israel is doing. She explained that under international law only combatants who are actively engaged in fighting are legitimate subjects of attack. (Press Conference, Jan. 7, 2009.<sup>1</sup>)

In its bombardment, Israel has targeted the polit-



ical and civilian infrastructure such as police stations. It is Israel's burden of proof to show that the police were indeed Hamas militants. Instead, Whitson noted, Israel targeted police stations "on a blanket basis."

Similarly, she pointed out, Israel targeted a Hamas Official at the Ministry of Health, and the Hamas media broadcasting station.

Whitson maintained that under international law, the closure of the crossing points into Gaza, the blockade that Israel and Egypt have participated in imposing on the people of Gaza, is the imposition of collective punishment on a civilian population. The people suffering from the effects of the blockade are civilians, rather than the effects being restricted to the combatants Israel claimed it was fighting. Moreover, Israel, as the occupying power over Gaza, has the primary responsibility to provide food and medicine for the people of Gaza, but instead has prevented the people from having access to the goods and services necessary for life.

The rationale presented by Israel in its letter to the United Nations is quite different from the facts. The claim that its military bombardment of Gaza is defensive in nature is contrary to its announcement that it has attacked the political infrastructure of Gaza, a political infrastructure that was the result of the Palestinian people voting in January 2006 for Hamas as its political representatives.

In an interview by UN radio with Richard Falk, the UN Human Rights Rapporteur on the Occupied Palestinian territories, about the crisis in Gaza (Interview on Gaza, Jan. 2, 2009.<sup>2</sup>) Falk maintains that the "maintenance of a blockade on a society is treated as an act of war." Imposing such a blockade and then militarily attacking the people of Gaza, as Israel has done since Dec. 27, is "a massive and severe violation of the prohibition on collective punishment which is contained in Article 33 of the Geneva convention." Falk also explains that Israel's failure to provide adequate food and medicine for a population that is under its occupation, is a continuing violation of Article 55 of the same international treaty.

Falk describes how Hamas adhered to the cease-fire agreed to in June 2008 by not launching rocket attacks on Israel, but that Israel broke the cease-fire agreement by failing to restore humanitarian supplies as they had agreed to do. (UN radio, Interview with Richard Falk, Jan. 9, 2009.<sup>3</sup>) Israel is not defending its own territory from an invasion, but attacking another political community, one that it has a responsibility to

maintain under humanitarian law. According to Falk, Israel, by controlling land, sea and air access to Gaza, is the occupying power in Gaza.

It was not only that Israel failed to allow food, fuel, and medical supplies into Gaza as it was obliged to do under its agreement with Hamas, but on Nov. 4, 2008, when much of the world was distracted with the U.S. election, Israel launched an attack on Gaza, resulting in at least six deaths. This act of Israel broke the cease-fire. Hence Israel's attack on Gaza is not defensive as its actions were the cause of the escalation of hostilities. Then when Hamas offered to agree to a continuation of the cease-fire for 10 years if the blockade was lifted, Israel ignored the offer. Falk says Israel's action in ignoring the offer by Hamas to negotiate how to continue the cease-fire "is a violation of international law which requires a government to use every diplomatic option before they have recourse to war."

An article by Jimmy Carter similarly details how Hamas did not break the cease-fire, just as it was Hamas that offered to negotiate with Israel to extend the cease-fire. (Jimmy Carter, "Gaza: an unnecessary war," 1/8/09, *Mercury News*.<sup>4</sup>) Carter notes that the people of Gaza "were being starved" by Israel's actions enforcing the blockade. Carter describes his efforts in mid-December to extend the soon-to-expire six-month cease-fire deadline. The issue for Hamas was the opening of the crossing points into Gaza to restore access to needed supplies for the people of Gaza. Carter reports that Israeli officials "informally proposed that 15 percent of normal supplies might be possible." Carter relates how this was "unacceptable to Hamas and hostilities erupted."

While Israel has presented its rationale for its attack on Gaza to the United Nations, claiming that it is acting in a just manner, the Security Council has passed a binding resolution calling for a cease-fire and withdrawal from Gaza. Israel is ignoring the resolution, though as a member state of the United Nations, it has an obligation to abide by the decisions of the Security Council.

Under Article 33 of the Charter of the United Nations, the Security Council has the authority to call upon the parties to settle their dispute by peaceful means. More civilians are being killed and wounded every day that Israel continues its military attack and blockade of Gaza, yet Israel continues to ignore its obligations to cease its attacks.

The crisis in Gaza is a test of the United Nations

and the international community. Can a means be found to require Israel to live up to its obligations as an occupying power to the Palestinian people in their struggle for self determination? This is a critical challenge facing the United Nations and the international community.

Many protests and demonstrations are taking place around the world in support of the Palestinian people and against the attack by Israel on Gaza. These demonstrations are an indication that there is public opinion and grassroots pressure for the United Nations and member nations to let Israel know the need to fulfill its obligations under the UN charter and international law. The struggle of the Palestinian people for self-determination and against occupation, as covered under Article 73 and 74 of the Charter of the UN, is a struggle that deserves the support of the member nations and of people around the world.

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**Notes:**

1. UN Press Conference: Yazdan Al Amawi, team leader, Care's West Bank and Gaza program, Allyn Dhynes, communications manager, World Vision International, Sarah Leah Whitson, Middle East and North Africa director, Human Rights Watch, to brief on the humanitarian situation in Gaza. January 7, 2009. <http://webcast.un.org/ramgen/ondemand/pressconference/2009/pc090107am1.rm>. (No longer available.)
  2. UN radio's Samir Aldarabi spoke to Richard Falk, the UN Human Rights Rapporteur on the Occupied Palestinian territories about the situation in Gaza. January 2, 2009 <http://www.unmultimedia.org/radio/english/detail/67184.html>. (No longer available.)
  3. UN Radio's Samir Imtair Aldarabi spoke to Richard Falk, the UN Human Rights Council's Special Rapporteur on the Occupied Palestinian Territories about the human rights violations in Gaza. January 9, 2009. <http://downloads.unmultimedia.org/radio/en/real/2009/090109-falk2.rm?save>. (No longer available.)
  4. Jimmy Carter, "Gaza: An Unnecessary War," *The Mercury News*, January 8, 2009. <https://www.mercurynews.com/2009/01/08/jimmy-carter-gaza-an-unnecessary-war/> (access restricted)
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[Editor's Note: On January 18, 2009, a truce/ceasefire ended the 22-day conflict in Gaza known as the 2008-2009 Gaza War. UN officials visited Gaza soon thereafter. The following article about two such visits appeared in OhmyNews International on January 30, 2009 at: [http://english.ohmynews.com/articleview/article\\_view.asp?menu=c10400&no=384718&rel\\_no=1](http://english.ohmynews.com/articleview/article_view.asp?menu=c10400&no=384718&rel_no=1) (no longer available).]

(2009)  
**UN Officials Present  
Need to End  
Israeli Siege of Gaza  
to Security Council**

by Ronda Hauben

"Every Gazan projects a sense of having stared death in the face. Every Gazan has a tale of profound grief to tell," recounted Karen AbuZayd, the Commissioner General of the United Nations Relief and Works Agency (UNRWA) in her presentation to the Security Council on Tuesday before they went into closed session.

She reported that there had been a systematic destruction in Gaza to schools, universities, residential buildings, factories, shops and farms. (Karen AbuZayd's Statement to the Security Council, Jan. 27, 2009)<sup>1</sup>

AbuZayd told the Security Council that "There is rage against the attackers for often failing to distinguish between military targets and civilians and there is also resentment against the international community for having allowed first the siege and then the war to go on for so long."<sup>2</sup>

Also speaking to the Security Council before they went into closed session was John Holmes, the Under-Secretary-General for Humanitarian Affairs and Emergency Relief. Holmes explains how he visited Gaza from Jan. 21 to 25, 2009.

Describing the widespread destruction to Gaza's economic and civil infrastructure, he reported, for example, that the entire industrial and residential area in East Jabalia had been systematically bulldozed, along with other serious damage to medical facilities, water, sanitation and other critical infrastructure, including damage to UN facilities. "I saw the UNRWA compound warehouse still smouldering, and the OCHA office in the UNSCO compound, where my own staff used to work, damaged beyond use," Holmes reported.

Both AbuZayd and Holmes emphasized the impossibility of any improvement in the situation in Gaza without the lifting by Israel of the blockade. “All Gaza’s borders must be opened and kept open continuously (including at Karni, Sofa, Nahal Oz, Kerem Shalom, Erez and Rafah) to allow two way freedom of movement for people, goods and cash,” AbuZayd told the Security Council.

“Recovery requires the free inflow of humanitarian and commercial supplies,” she stressed. “Reconstruction demands open borders that enable the importation of construction materials and the export of products and goods from Gaza.”

“Let me emphasize again,” Holmes reiterated, “the unacceptability of the status quo ante, with a limited trickle of items into Gaza continuing the effective collective punishment of the civilian population – and the resultant counterproductive reliance on tunnels for daily essentials, and further build up of frustration of anger.”

He explained the critical need to open Gaza to at least 500 truckloads of goods daily, including commercial traffic, up from the 120 truckloads that Israel allows on “good days,” in contrast to the frequent situation when fewer than 120 truckloads are given permission to enter Gaza, and the times when no trucks are allowed to enter as the crossing points are closed by Israel.

Holmes also described how many humanitarian workers, including those from international NGOs, “continue to be refused regular entry” to Gaza.

“We already see relief goods piling up in Egypt for lack of ready access,” Holmes reported. Reminding the members of the Security Council that they themselves passed Resolution 1860 (2009) which provides for “unimpeded provision and distribution throughout Gaza of humanitarian assistance,” Holmes pointed to the importance of this critical principle.

Moreover, Holmes explained that “Israel has a particular responsibility as the occupying power in this context, because of its control of Gaza’s borders with Israel, to respect the relevant provisions of international humanitarian law.” (See: for example, Articles 73 and 74 of the United Nations Charter)

As soon as the reports by Holmes and AbuZayd had been presented, the Security Council went into a closed session.

When the closed session with Holmes and AbuZayd was over, these two UN officials came to speak with the press.

No member of the Security Council, however, was available to speak with the press. Journalists wondered why not even the Security Council President was available to comment on these important reports on the situation in Gaza and the need for the Security Council to act on getting Israel to lift the siege.

Had the reports about devastated Gaza as a “giant open-air prison” fallen on deaf ears at the Security Council?

The lack of any public response from any member of the Security Council to these two heart wrenching reports is but another sign of the failure of the Security Council to demonstrate its ability to carry out its mandate.

The failure of the Security Council to act with regard to the siege against Gaza began over a year ago.<sup>3</sup>

The growing calls for Security Council reform can only be further fueled by this lack of action by the Security Council, which the Indonesian ambassador described as, “The silence is deafening.”

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**Notes:**

1. See: Security Council: The situation in the Middle East, including the Palestinian question. [Print version of talk, Security Council S/PV.6077], also Webcast : version of Archived Video – English: 26 minutes. <http://webcast.un.org/ramgen/ondemand/sc/2009/sc090127pm2>. (No longer available.)

2. For background see: for example: Ronda Hauben, “Marathon UN Meeting on Gaza Goes Nowhere: The ability of the Security Council to function breaking down,” *OhmyNews International*, March 4, 2008. [http://english.ohmynews.com/articleview/article\\_view.asp?menu=c10400&no=381957&rel\\_no=1](http://english.ohmynews.com/articleview/article_view.asp?menu=c10400&no=381957&rel_no=1). (No longer available.)

Ronda Hauben, “Israel Attempts to Justify Its Attack on Gaza. The obligations of Israel as an occupying power under the UN Charter,” *OhmyNews International*, Jan. 12, 2009. (Available in this issue.)

3. Ronda Hauben, “Security Council Fails to Act on Gaza Crisis ‘The silence is deafening,’ says Indonesia’s UN Ambassador,” *OhmyNews International*, Feb. 7, 2008. [http://english.ohmynews.com/articleview/article\\_view.asp?menu=c10400&no=381689&rel\\_no=1](http://english.ohmynews.com/articleview/article_view.asp?menu=c10400&no=381689&rel_no=1). (No longer available online. Available in this issue.)

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[Editor's Note: For 22 days, from Dec 27, 2008 to January 18, 2009 there was an Israel/Palestinian conflict in the occupied Gaza strip. On January 29, 2009, a panel was held at the World Economic Forum Annual Meeting in Davos, Switzerland, titled "Gaza: The Case for Middle East Peace." The following article is a report about that panel. It appeared in OhmyNews International on February 22, 2009 at: [http://english.ohmynews.com/article/view/article\\_view.asp?menu=c10400&no=384849&rel\\_no=1](http://english.ohmynews.com/article/view/article_view.asp?menu=c10400&no=384849&rel_no=1) (No longer available.)]

(2009)

## What Principles Guide the UN in Creating a Palestinian-Israeli Peace Framework?

Davos Talks by Recep Tayyip Erdogan and Amr Moussa on Steps Needed to Build Peace Process

by Ronda Hauben

### Part I. – Analysis of Situation

The Palestinians in Gaza continue to suffer under the siege created by Israel and Egypt closing the border crossings into Gaza. Who is responsible? What can be done to get the siege lifted?

Such questions are on the minds of many people around the world. The siege of Gaza has gone on for many months and continues, even after the devastation, deaths and injuries of the Palestinians caused by the recent 22-day Israeli military assault on Gaza.

Though these are serious questions, they rarely get public attention and discussion. One recent exception surprisingly was a panel held at the World Economic Forum in Davos last month. The panel session was titled "Gaza: The Case for Middle East Peace." David Ignatius of the Washington Post was the moderator. On the panel were the UN Secretary-General, Ban Ki Moon, the Secretary-General of the Arab League Amr Moussa, the Prime Minister of Turkey, Recep Tayyip Erdogan and the President of Israel, Shimon Peres.

In his instructions to the panel, Ignatius asked members to discuss, "What needs to be done to prevent the Middle East peace process from slipping back."<sup>1</sup>

After Ban Ki-moon gave a short set of comments, Erdogan was called on to speak. He proposed that "we need to do a proper analysis of the current situation in order to determine what steps need to be

taken."

He pointed to the period six months earlier when there was a cease fire agreed to by Israel and Hamas. The Turkish Prime Minister reminded the audience that for six months there had been "No problem for rocket attacks" on Israel. The Israeli obligation for the cease fire then was "to lift the embargo," that Israel had imposed on Gaza.

But Israel didn't fulfill its part of the truce agreement.

Erdogan went on to discuss what he saw as one of the key problems to be solved if the circumstances of the Palestinians had any chance of being improved.

That problem was how to heal the breach between the Palestinian factions, particularly between Hamas and Fatah.

Erdogan pointed to the fact that Hamas had won the parliamentary election of January 2006. Actually Hamas won 76 of 132 seats, while Fatah only got 43.<sup>2</sup>

Erdogan explained, "We are talking about democracy. So if we would like to see democracy take root, then we must respect first of all the people who have received the votes of the people of the country they are running in."

"So we may not like them, but we have to respect the process," he emphasized.

Instead, Israel arrested several of Hamas government ministers and members of Parliament and put them in prison. Erdogan described how in the middle of December 2008, he had asked Prime Minister Olmert, as a gesture of good will, to release these prisoners, along with the Palestinian women and children they had in Israeli prisons. Olmert told Erdogan that he would talk to his colleagues in Israel and respond the next day. No response was forthcoming. Four days later Israel started the war on Gaza.

Erdogan expressed his conviction that the UN should be taking the lead in working to solve the Palestinian crisis and that he was hopeful that the new U.S. administration would put its weight behind a solution.

"There's got to be a new opening and Hamas must be considered in the process," Erdogan proposed. He offered Turkey's help in the process.

### Part II. – Occupation Breeds Resistance

Next the moderator asked Amr Moussa to speak to the question of how to achieve unity among the Palestinians, and what he felt the new U.S. administration could do to help the situation.

Moussa said there must be a recognition that Israel's assault on Gaza "was not just a reaction for some rockets being launched against Southern Israel." This situation in Gaza and in the rest of the Palestinian territory is a problem of a foreign military occupation, he explained.

"The siege, the blockade of Gaza," Moussa maintained, "is a very severe situation." He argued that "you cannot ask people in Gaza living in starvation and hunger because of the blockad ... to be calm and ask them why do you throw stones against your occupiers?" "This," Moussa said, "is against the nature of people. You strangle them, you starve them and then you ask them to be quiet?"

He went on to refer to Israel's claim that the smuggling into Gaza must be stopped. Moussa said, "You strangle them, not a single window of opportunity, and then you talk to them about illicit trade?"

Instead, "If you want to prevent this, you have to open the crossing points," Moussa explained. "You have to give them food, you have to give them water, to give them medicine."

He added that the "Palestinians had believed the call for them to practice democracy, to have an election."

But then he described how when, " Hamas won, and half an hour, twenty-five minutes after the announcement of the results of the election, Hamas was served notice that aid would be suspended and then came the blockade."

"It is not a question of Israel reacting to some rockets," Moussa emphasized, "it is much deeper than that, it is an action of occupation, it is an action of blockade, then a reaction of resistance, then the reaction of destruction carried out by Israel."

Moussa also referred to Israel's failure to respond to the Arab initiative.

In 2002, the Arab nations decided at a Summit that they were ready, at their highest levels, to agree to peace with Israel. They proposed to recognize Israel and carry out any agreements signed with Israel in exchange for the creation of a Palestinian State with borders similar to those before 1967. But in the seven years that transpired after the offer of the initiative, Israel failed to respond in any authorized way to the authorized message from the Arab summit.

Referring to Ban Ki-moon's brief presentation to the panel, Moussa said there are three or four things that need to be done now. He listed these as a cease fire, opening of the crossings, stopping illicit traffic

and the reconciliation between the Palestinians.

Moussa also said he had another point to make. But the moderator cut him off, before he could explain.

Unfortunately, instead of providing for a similar short period for the Israeli president to make his comments, the moderator allowed Peres to speak for twice the time he had given to each of the two previous speakers. When Erdogan asked for time to respond to Peres, however, Ignatius told him there was no time. This led Erdogan to leave the panel in protest.

The issues raised by these two talks were a significant statement of what is needed to deal with the crisis facing the Palestinians in Gaza.

### Part III. – Principles for UN Actions in Palestinian Crisis

Had there been time for discussion in the panel held at Davos, it would have been helpful to put this discussion in the context of a United Nations General Assembly document presented in January 2008.<sup>3</sup>

This document is a report by the Human Rights Rapporteur John Dugard, discussing what he believes to be the law governing the United Nations participation in the Palestinian situation.

Dugard refers to the problem represented by the Quartet, comprised of the European Union, Russia, United Nations, and United States which was established in 2002 to facilitate the Middle-East Peace Process negotiations. and the UN's participation in it, with the Secretary-General representing the UN.

Dugard explains how on July 20, 2004 the General Assembly adopted resolution ES-10/15. This resolution called on Israel to comply with the Advisory Opinion of the International Court of Justice issued by the court titled the "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory."<sup>4</sup>

The International Court of Justice is the judicial organ of the United Nations. It is, according to Dugard "now part of the law of the United Nations." In addition the General Assembly by a large majority gave its approval to the decision. As such the Advisory Opinion is one of the authoritative statements of the applicable international law relating to the framework for peace in the Middle East.

While this law isn't binding on three of the Quartet members, the U.S., Russia, or the EU (though the Russians and the EU members did vote in favor of the UN resolution approving the advisory opinion), the

UN as a member of the Quartet is bound by the Advisory Opinion. As a representative of the UN, the Secretary-General, Dugard argues, is by law obliged to uphold the principles of the Advisory Opinion in his participation in the Quartet.

The Secretary-General or his representative is by law obliged to be guided by the Opinion and to endeavor in good faith to do his or her best to ensure compliance with the opinion.

In his statement about what is happening in the Palestinian situation, Dugard points to the fact that Palestine is an occupied territory and that Israel has obligations regarding its treatment of the Palestinians.

Dugard argues that the root cause of the violence in the Israeli-Palestinian context is the occupation, not any act of Hamas or others.

He notes that the right of the Palestinian people for self-determination is in general recognized. But such a recognition “should not take the form of support – political, economic or military – for one [Palestinian] faction at the expense of the other.”

A critical factor in the Palestinian situation is the need for reconciliation between the two major Palestinian factions, Fatah and Hamas, Dugard maintains. The Quartet explains Dugard, instead “pursues a divisive policy of preferring one faction over the other, of speaking to one faction but not to the other; of dealing with one faction while isolating the other.”

In negotiations between the Palestinian Authority and Israel, what was being done was a negotiation among unequal partners. The problem with this is that it doesn’t make it possible to have the negotiations reflect a normative framework.

As the UN draft resolution A/HRC/7/17 of Dugard’s report states: “In the opinion of the Special Rapporteur negotiations should take place within a normative framework, with the guiding norms to be found in international law, particularly international humanitarian law and human rights law, and the Advisory Opinion of the International Court of Justice and Security Council resolutions.”

“Negotiations on issues such as boundaries, settlements, East Jerusalem, the return of refugees and the isolation of Gaza should be informed by such norms and not by political horse-trading,” Dugard’s report advises.

The experience of the negotiations that led to a democratic South Africa in the mid 1990s is offered as an example in Dugard’s report, as it places the efforts toward a solution to the problem within a framework

of accepted democratic principles, and international law (with special reference to human rights law).

## Part IV – Need for Normative Framework

What the presentations by Erdogan and Moussa at the World Economic Forum and the UN report document by Dugard have in common is that they look for the underlying principles that are needed to guide efforts to settle the Palestinian-Israeli crisis.

These principles are based on the obligations under international law, established and accepted by most of the international community via its support for the Advisory Opinion. The Palestinians are in a situation where they suffer from Israeli occupation.

These principles include:

- 1) Recognizing the Palestinian right to resist occupation.
- 2) Treating the Palestinian factions of Fatah and Hamas with equality so as to encourage unity.
- 3) Letting Israel know that it has the obligation to negotiate with the Palestinians in a way that is conducive to recognizing and implementing the principles of international law, not in a way that treats the Palestinians as less than equals.
- 4) That the UN uphold the principles of international law.

A particular example of the need to apply these principles is raised by Dugard’s report when it discusses the role the UN Secretary-General has played in the Quartet. The U.S., the EU, Russia and the UN (represented by the Secretary-General) are part of the Quartet which is supposedly providing a framework for peace negotiations between Israel and Palestine.

The problem Dugard observes is that the Quartet does not recognize the principles of the Advisory Decision. While this is a course of action that can be taken by the U.S., the EU or Russia, it is not appropriate for the Secretary-General acting on behalf of the UN to discard these principles. Dugard’s report proposes that the Secretary-General is “in law obliged to be guided by the Opinion and to endeavor in good faith to do his or her best to ensure compliance” with it. In this context he proposes that it is necessary for the Secretary-General to either withdraw from the Quartet or to explain “why he is unable to do so and how he justifies remaining in the Quartet in the light of its refusal to be guided by the law of the United Nations.”

Unless international law becomes the framework under which the international community, including the UN’s Secretary-General, operates to work toward



a solution to the Gaza crisis, there seems no way to end the devastation that the Israeli government believes it has the right to inflict on the Palestinians.

The recent panel at Davos on the crisis in Gaza demonstrated that there are nations like Turkey and international representatives like the Secretary-General of the Arab League willing to explain to the world the principles needed to guide the efforts for a peaceful solution. It is imperative that there be serious discussion around the world about these principles and also efforts to hold the UN and other international and national entities accountable for the implementation of these principles.

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Notes:

1. A webcast of the session is online at: Gaza: The Case for Middle East Peace:

<https://www.youtube.com/watch?v=cR4zRbPy2kY>.

For a partial transcript:

<https://wewritewhatwelike.com/2009/01/31/transcripts-of-erdogan-moussa-peres-and-erdogan-again-at-davos/>.

2. Scott Wilson, " Hamas Sweeps Palestinian Elections, Complicating Peace Efforts in Mideast," *The Washington Post*, Jan. 27, 2006; Page A01. Available at:

<https://www.washingtonpost.com/archive/politics/2006/01/27/hamas-sweeps-palestinian-elections-complicating-peace-efforts-in-mideast/8a4a4412-5f9b-4583-8607-51c7dd3781f4/>.

3. General Assembly Draft Resolution A/HRC/7/17 21 January 2008, Human Rights Situation in Palestine and Other Occupied Arab Territories. Report of the Special Rapporteur on the Situation of human rights in the Palestinian territories occupied since 1967, John Dugard. Available at:

<https://www.rightdocs.org/doc/a-hrc-7-17/>.

4. Advisory opinion requested by General Assembly on Dec. 8, 2003 from International Court of Justice regarding legal consequences of construction of the wall built by Israel in the Occupied Palestinian Territories. Issued July 9, 2004. <https://www.icj-cij.org/case/131>.

Among the advisory opinion's principle findings were:

- 1) Palestinian people have the right to self determination.
  - 2) Israel is under a legal obligation to comply with 4<sup>th</sup> Geneva Convention in Occupied Palestinian Territories
  - 3) Israel is bound by international human rights conventions in the Occupied Palestinian Territories.
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[Editor's Note: From September 2008 to September 2009, H.E. Father Miguel d'Escoto Brockmann, M.M. was the President of the 63<sup>rd</sup> session of the United Nations General Assembly. On September 14, 2009 he finished his term and made a **Farewell Speech**. This is a shortened version of his remarks concerning the issues considered by the 63<sup>rd</sup> Session. His whole Farewell Speech can be seen at: <https://www.voltairenet.org/article162248.html>.]

(2009)

## In the Shadow of Deep Crises

by Miguel d'Escoto Brockmann  
President of the 63<sup>rd</sup> Session of the  
UN General Assembly

Dear Brothers and Sisters,

*Tempus fugit*, the Romans used to say, and they were right. Time flies: it is running out for us. And as time passes us by, so too do the opportunities for us to do what we must to ensure a fitting future for the coming generations . . . .

One year ago, from this very rostrum, I shared with you the vision of what I hoped to achieve during my year in this high office, to which you, with such trust and affection, had elected me. Now the time has come to take stock . . . .



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Father Miguel d'Escoto Brockmann (far left) with reporters and staff at the UN

## Palestine: A Scandal that has Caused Me Much Sorrow

My greatest frustration this year has been the Palestine situation. The Question of Palestine continues to be the most serious and prolonged unresolved political and human rights issue on the agenda of the United Nations since its inception. The evident lack of commitment for resolving it is a scandal that has caused me much sorrow.

I promised a proactive Presidency, and sincerely



believe that I did everything I possibly could in this regard, requesting and attempting to persuade those who should have been most closely involved to call for the convocation of the General Assembly to consider the Palestine situation. However, whether at the time of the three-week invasion of Gaza that began on 27 December or now, all I received was advice to give the process more time, because things were always on the point of being resolved and we should do nothing that could endanger the success that was always just beyond our reach. [Father Brockmann is here and below likely referring to the Permanent Observer Mission of Palestine to the United Nations representing the Palestinian Authority.]

Faced with this situation, I sincerely did not know what to do. I wanted to help Palestine, but those who should supposedly have been most interested denied their support for reasons of “caution” that I was incapable of understanding. I hope that they were right and that I was wrong. Otherwise, we face an ugly situation of constant complicity with the aggression against the rights of the noble and long-suffering Palestinian people.

A just resolution of the Question of Palestine must be based on the content of international law, and will only be attained when the unity of the Palestinian people has been achieved and the international community speaks with all its representatives who enjoy credibility and have been democratically elected. In addition to the withdrawal of the Israelis from all territories illegally occupied since 1967, international law demands that all Palestinians displaced during the creation of the State of Israel, their children and grandchildren, be permitted to return to their homeland of Palestine.

My chief consultant on humanitarian affairs, Dr. Kevin Cahill, was sent to Gaza from 17 to 22 February to prepare a report on the humanitarian situation in Gaza immediately after the aggression. Dr. Cahill’s report was issued on Wednesday 19 August, on the occasion of World Humanitarian Day commemorating the sacrifices of United Nations staff in conflict zones; it had originally been intended for release at a Special Session on Gaza, but that did not take place for the reasons mentioned.

I find disgraceful the passivity and apparent indifference of some highly influential members of the Security Council to the fact that the blockade of Gaza has continued uninterrupted for two years, in flagrant violation of international law and of the resolution of

the Security Council itself, causing immense damage and suffering to the Palestinian population of Gaza. This situation threatens to become even more serious if immediate measures are not taken, now that winter is approaching. Now is the time to demonstrate, with actions and not simply words, a true commitment to the concept of the Responsibility to Protect.

## Main Lesson or Perception

It would be inappropriate for me to leave without sharing with you what I feel is the main lesson or perception I have gained during this year of work, dedication and total commitment to the cause of peace through the democratization of the United Nations; the revitalization of the General Assembly; the complete abolition of nuclear weapons by the year 2020, the 75<sup>th</sup> anniversary of the dropping of atomic bombs on Hiroshima and Nagasaki; the eradication of poverty and hunger, which this year passed the psychological barrier of a billion people suffering hunger throughout the world; the taking of measures to ensure the availability of clean water and food for all; the promotion of effective policies for dealing with climate change; putting an end to the crime of human trafficking, as well as to the disgrace of the ill treatment of and discrimination against women; guaranteeing the right to education for children and youths, including that of girls and boys in situations of armed combat or humanitarian disasters caused by natural phenomena; as well as guaranteeing universal access to health, which is an ethical and religious imperative.

In all these endeavours, the ongoing counsel of Brother David Andrews of the Congregation of the Holy Cross, as well as of Maude Barlow, Mohamed Bedjaoui, Byron Blake, Leonardo Boff, Noam Chomsky, Ramsey Clark, Michael Clark, Kevin Cahill, Aldo Diaz Lacayo, François Houtart, Michael Kennedy, Francisco Lacayo Parajón, Carlos Emilio López, Paul Oquist, Nuripan Sen, Joseph Stiglitz and Oscar-René Vargas, was of great use to this Presidency, which we intended to be a team effort from the beginning. However, clearly, our greatest gratitude is to God, our Lord, for having allowed us to contribute in some small way to the cause of world peace.

During this year, there was much talk of the need to reform the United Nations and to do everything possible to improve its image, credibility and effectiveness. According to data from the latest poll by the Pew Research Center’s Global Attitudes project, carried out in 24 nations and the Palestinian Territo-

ries, there has been a noticeable improvement in the perception of the United Nations. This gives us happiness, but not satisfaction. Much remains to be done if the United Nations is to become worthy of the prestige, trust and credibility it needs to carry out its mission effectively, a mission that is so important in today's troubled world.

It is said that the League of Nations failed because those who sponsored it lacked the power or will needed to make it a reality. I believe that something similar can be said of the United Nations. I am one of those who believe that the United Nations has the potential as an organization to be indispensable to humanity's efforts to survive the crises converging to threaten its extinction. The main problem, without a doubt, is that not all its founders really believed, or believe even today, in the vision or principles explicit and implicit in its underlying Charter.

I believe that it is not far-fetched to note that the whole world knows that, among many other truths, some of our most powerful and influential Member States definitely do not believe in the rule of law in international relations and are of the view, moreover, that complying with the legal norms to which we formally commit, when signing the Charter, is something that applies only to weak countries. With such a low level of commitment, it should not be surprising that the United Nations has been unable to achieve the main objectives for which it was created.

Certain Member States think that they can act according to the law of the jungle, and defend the right of the strongest to do whatever they feel like with total and absolute impunity, and remain accountable to no one. They think nothing of railing against multilateralism, proclaiming the virtues of unilateralism while simultaneously pontificating unashamedly from their privileged seats on the Security Council about the need for all Member States conscientiously to fulfill their obligations under the Charter, or be sanctioned (selectively of course) for failing to do so. The sovereign equality of all Member States and the obligation to prevent wars are, for them, minor details that need not be taken very seriously.

All of this, and many other equally serious anomalies, is what has brought many to believe in the urgency of the need to reform the United Nations. But during this year as President of the General Assembly, I have come to the conclusion that the time has already passed for reforming or mending our Organization. What we need to do is to reinvent it, and we need

urgently to do it *ad majorem gloriam Dei*, which is to say, for the good of the Earth and of humanity.

In the 64 years since the creation of the United Nations, there have been many scientific advances and development in the ethical consciousness of mankind that allow us to clarify the main elements of this other world, possible and indispensable for our survival, and to proceed on that basis to the drafting of a proposed Declaration on the Common Good of the Earth and Humanity. Once the consensus of Member States has been obtained on this Declaration, this shared vision will have to be converted into a draft for a new Charter of the United Nations, one that is attuned to the needs and knowledge of the twenty-first century . . .

*Tempus fugit.* Time is running out. In Copenhagen [at the 2009 United Nations Climate Change Conference] we will have the opportunity to show that we understand well what that means and that we are determined to do what is needed to defend life.

Thank you.

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[Editor's Note: In 2004, the UN International Court of Justice (ICJ) decided that Israeli settlements on occupied Palestinian land were against international law. But the settlement activity continued. In 2009, the Security Council addressed the settlement question again and also in 2011. The following article documenting the U.S. veto first appeared on taz.de on February 28, 2011 at: [https://blogs.taz.de/no\\_settlements\\_130\\_cosponsors/](https://blogs.taz.de/no_settlements_130_cosponsors/). (No longer available.)]

(2011)  
**130 Nations Co-sponsor  
Security Council Resolution  
Condemning Israeli  
Settlements**

by Ronda Hauben

It was Friday afternoon, February 18, 2011 at the UN Security Council stakeout shortly before 3 p.m. Watching Ambassadors and their staff members coming down the stairs at the UN leading to the Security Council, one had the sense something significant was happening. Not only did the crowd arriving include Ambassadors from the 15 nations on the Security Council, but a large number of Ambassadors of nations not currently on the Security Council, along with other members of their delegations, hurried into the Security

Council chambers.

This was not a usual situation for the Security Council. Clearly more than a few nations judged that the meeting would be important. The Security Council was to vote on a draft Resolution condemning Israeli settlements being built on Palestinian land occupied by Israel. This meeting was also unusual in that 130 member nations had agreed in advance to co-sponsor the draft Resolution. To have such a large number of nations sponsoring a Security Council resolution was rare.

Israeli settlement activity had been formally declared illegal in the 2004 decision of the International Court of Justice (ICJ), the court charged with determining legal disputes that is connected with the United Nations.<sup>1</sup>

Also this was to be the first Security Council resolution on the Palestine Question to be brought up during the U.S. Presidency of Barack Obama. President Obama had put on record that his administration opposed Israeli settlement activity.

Though the meeting had originally been set for 3 pm, the many Ambassadors who had come for the meeting stood around talking for almost an hour. The reason for the delay was not evident. Only several days later did I learn the reason for the hour long postponement of the formal meeting.

The original draft Resolution had been prepared several weeks earlier. One hundred and thirty nations were listed as co-sponsors of the original draft Resolution S/2011/24.<sup>2</sup> Only a few days before the meeting to vote was to be held, however, the UN Secretariat for Security Council Affairs informed the SC Presidency that co-sponsors could only be listed on the resolution if they first applied to participate under Rule 37 of the Provisional Rules of Procedure of the Security Council. Only then would it be possible for a UN member who was not a member of the Security Council to co-sponsor a resolution under Rule 38 of the Provisional Rules of Procedure.

This interpretation of the Rules was only brought to the attention of the Security Council Presidency a few days before the vote was to take place. In this short period of time, only 80 of the 130 co-sponsors were able to be listed as official co-sponsors of the draft Resolution. These circumstances leave the question why the UN Secretariat for Security Council Affairs did not bring these requirements to the attention of the Brazilian presidency sooner since the draft Resolution had been available for several weeks before

it was to be voted on.

At last at 3:57 p.m. the formal meeting began.<sup>3</sup>

The Brazilian Ambassador to the UN acting as the President of the Security Council for February, Maria Luiza Ribeiro Viotti, opened the meeting. To introduce the draft Resolution, Nawaf Salam, the Lebanese Ambassador to the UN, spoke. He explained how the International Court of Justice (ICJ) had declared settlements illegal in its 2004 advisory opinion on the separation wall. He quoted from the decision:

(T)he Israeli settlements in the occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law. (See: A/ES-10/273, para 120.)

Under paragraph 6 of article 49 of the 4<sup>th</sup> Geneva Convention an occupying power is forbidden from altering a territory it is occupying or from seizing any of the occupied peoples' land or possessions. Hence all settlement activity in occupied Palestinian territory is illegal, including newly planned settlements.

The Lebanese Ambassador also referred to prior Security Council resolutions such as SCR 446 (1979) declaring Israeli settlements in occupied Palestinian land illegal, and to other agreements like the Road Map which required that Israel freeze its settlement activity. Also, the Lebanese Ambassador referred to the large number of nations sponsoring this draft Resolution, a number he said was "unprecedented."

Ambassador Viotti, the Brazilian Security Council President called for a vote on the draft Resolution.

Those watching the meeting live on UN TV waited to learn how the U.S. would vote. There were 14 votes in favor of the Resolution.<sup>4</sup> One vote, that of the U.S., a permanent member of the Security Council, was cast against the Resolution.

Ambassador Viotti explained that, "The draft Resolution has not been adopted, owing to a negative vote of a permanent member of the Council."

After the vote, the U.S. Ambassador, Susan Rice, explained the reason for her veto. She said that a Security Council resolution condemning settlements would prevent Israel from negotiating with the Palestinians. Passing the draft Resolution would only lead to more settlements, she warned. The Security Council was not the place to take up this problem, according to Ambassador Rice.

Speaking in favor of its vote supporting the draft Resolution, was the United Kingdom's Ambassador

Mark Lyall Grant. His statement was also made on behalf of France and Germany, both of which had voted in favor of the draft Resolution.

Speaking next, Vitaly Churkin, Ambassador for the Russian Federation, explained why he had voted in favor of the draft Resolution. He said that Israel's settlement activity was unilateral activity that prejudged final status issues and thus made the possibility of a negotiated settlement between Palestine and Israel ever more difficult. Also Ambassador Churkin referred to the importance of the Security Council mission he had proposed to the Middle East to contribute to advancing the peace process.

Baso Sangquo, the South African Ambassador to the UN expressed his regret that the draft Resolution had not been approved. He said that Israel must abide by its international obligations in order to be negotiating in good faith in the peace process and thus the continuing settlement activity by Israel undermined peace efforts.

In her statement about why she had voted in favor of the draft Resolution, the Brazilian Ambassador said that "the peaceful resolution of the Question of Palestine is arguably the single-most important objective for peace and stability in the world." She saw the continuing expansion of settlements in the Palestinian Occupied Territory as the most important obstacle to a solution to the question. "It is therefore only natural that the Security Council deals with this issue in a manner consistent with its primary responsibility for international peace and security." Therefore Ambassador Viotti expressed the importance of welcoming the international community, including the Security Council to be involved in the matter.

Explaining three of the reasons why Brazil had co-sponsored the draft Resolution, she said that first, "the continued disregard for international obligations relating to settlement construction poses a threat to peace and security in the region." Second, halting settlement activity should not be regarded as a concession, but as "lawful conduct under international law. The third reason she gave was that "unilateral action" shall not prevail." "(I)nternational law is always in the interest of peace. The Security Council cannot settle for less." Ambassador Viotti said that the inclusion of more countries in the peace process "would bring fresh air into the peace process."

Statements in favor of the draft Resolution were also presented by Portugal's Ambassador, Jose Filipe Moraes Cabral, by Li Baodong, China's Ambassador,

Columbia's Ambassador Nestor Osorio, Mirsada Colakovic, the Ambassador for Bosnia and Herzegovina, Raff Bukun-olu Wole Onemola, the Nigerian Ambassador, India's Ambassador, Manjeev Singh Puri, and Gabon's Ambassador Alfred Alexis Mougara Moussotsi.

Riyad Mansour, the representative for the Permanent Observer for Palestine and Meron Reuben for Israel also spoke.

Ambassador Mansour thanked all those who had helped to bring the draft to a vote in the Security Council. He said that the resolution represented an effort to remove an obstacle to the peace process. "The proper message that the Council should have sent to Israel was that its contempt for international law and the international community would no longer be tolerated." He worried that the failure of the Security Council to approve the resolution would lead to "more Israeli intransigence and impunity."

The Israeli Ambassador said that only direct negotiations between Israel and Palestine could resolve the conflict between them.

The meeting ended at 5:02 p.m. As the Ambassadors filed out of the Security Council there was little comment to journalists. Only the Lebanese Ambassador and the Palestinian Ambassador stayed to speak at the stakeout.

At the stakeout after the Security Council meeting, Riyad Mansour, the representative for the Permanent Observer for Palestine, was asked if the Palestinian Authority (PA) would now take the issue of the Israeli settlements to the General Assembly under the Uniting for Peace Resolution.<sup>5</sup> Such a resolution provides for the General Assembly to act on an issue when the Security Council is prevented from acting due to a veto by one of its permanent members. He responded that this would be one of the alternatives considered by the PA in determining what would be their next step.

Lebanon's Ambassador Salam stressed that the draft Resolution was only restating what was declared illegal activity by Israel under international law, namely the Geneva Conventions, and the decision by the International Court of Justice.<sup>6</sup>

What is striking about the meeting was that such overwhelming support was demonstrated by members of the UN for an action attempted by the Security Council. The use of the veto by the U.S. Ambassador to prevent the draft Resolution against Israeli settlement activity from being adopted, demonstrated the

failure of the Security Council to be able to support or enforce international law. The U.S. Ambassador said by her vote that it was necessary to support Israel's breach of international law with its continuing confiscation of Palestinian land in violation of Israel's obligation as an occupying power. The meeting demonstrated the stark contradiction between the obligations of international law as documented in the decision of the ICJ condemning any settlement activity on the part of Israel in the Occupied Territory of Palestine and the fact that a veto in the Security Council can be used by a single member nation like the U.S. to protect itself or another member nation in its violation of international law.

The ICJ decision speaks not only to the violation of international law in the case of Israeli actions in Palestinian Occupied Territory. It also refers to the obligation of other nations to uphold international law on this issue.

At a time when the issue of reform of the Security Council is on the agenda of the UN the flaw in the creation of the Security Council represented by the veto power of the five permanent members stands out prominently as a power badly in need of oversight.

Articles describing the PA's reaction to the February 18 Security Council meeting explain how the U.S. veto delegitimizes any illusion that the U.S. is able to play a role as an honest broker in negotiations between Israel and Palestine.<sup>7</sup> There are also reports that the PA recognizes the need to turn from relying on bilateral negotiations between Israel and Palestine to solve the problem and instead to turn to the international community for the support needed to find a solution.

The main message of the Security Council meeting of February 18 is that there is overwhelming support for the condemnation of Israel's failure to adhere to international law in its settlement activity. Similarly, the meeting demonstrated that it is an abuse of U.S. obligations as a member of the Security Council to protect Israel from the condemnation of its obligations under international law.

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Notes:

1. International Court of Justice, "Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory," Advisory Opinion July 9, 2004. [https://en.wikipedia.org/wiki/United\\_Nations\\_General\\_Assembly\\_Resolution\\_377](https://en.wikipedia.org/wiki/United_Nations_General_Assembly_Resolution_377).

2. Draft Resolution S/2011/24 February 17, 2011.

3. UN Security Council Meeting, Friday, February 18, 2011,

S/PV.6484, Transcript of meeting.

4. Security Council Meeting, 18 February 2011. "The situation in the Middle East, including the Palestinian question."

5. Riyad H. Mansour, Palestinian Observer, Security Council Media Stakeout, 18 February 2011. Informal comments to the media by H.E. Mr. Riyad H. Mansour, Permanent Observer of Palestine to the United Nations, on the situation in the Middle East including the Palestinian question.

6. Nawaf Salam, Lebanon, Security Council Media Stakeout, 18 February 2011. Informal comments to the media by H.E. Mr. Nawaf Salam, Permanent Representative of Lebanon to the United Nations, on the situation in the Middle East including the Palestinian question.

7. See: for example, Saud Abu Ramadan, "U.S. Veto on anti-Jewish settlement resolution outrages Palestinians," Xinhua, 2-19-2011.

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[Editor's Note: The following article first appeared on January 30, 2018 on the netizenblog at: <https://blogs.taz.de/netizenblog/2018/01/30/rapporteur-questions-legality/>. (No longer available.)]

## (2018) UN Rapporteur Michael Lynk Questions Legality of Israeli Occupation

by Ronda Hauben

In 2016, the UN Human Rights Council appointed S. Michael Lynk, a law professor at Western University in London, Ontario, Canada, as the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967.

In October 2017, Lynk issued his first Report to the UN. This report raises a fundamental question about the nature of the Israeli occupation of Palestine. That question is:

Whether Israel's role as occupant of Palestinian territory has now reached the point of illegality under international law?

The Report establishes the criteria for the legality of an occupation under international law. Then it uses as precedent the International Court of Justice case regarding South Africa's occupation of Namibia. In that case, the International Court of Justice decided that South Africa did not satisfy the requirements for the occupation to be a legal occupation. As a result of that judgment, the international community was obligated to pressure South Africa to cease its occupation.

Lynk's criteria for a legal occupation are the sat-

isfaction of four requirements. They are:

1. There is an absolute prohibition against annexation of any of the occupied territory.
2. The length of the occupation must be finite, meaning it must be ended in a reasonable period of time.
3. It must be carried out in good faith.
4. It must be carried out in a way that meets the best interests of the occupied.

Stated more formally, these principles are:

1. The Belligerent Occupier Cannot Annex Any of the Occupied Territory.
2. The Belligerent Occupation Must Be Temporary, and Cannot Be Either Permanent or Indefinite.
3. The Belligerent Occupation Must Be Carried Out in a Way to satisfy that it serves the best interests of the Occupied.
4. The Belligerent Occupier must administer the occupied territory in good faith including acting in full compliance with its duties and obligations under international law and as a member of the United Nations.

A year later, in his second Report, the Rapporteur takes up to demonstrate that Israel fails to satisfy all four of these requirements.

For example, Lynk proposes that the “extraordinary duration” of Israel’s occupation of Palestine would be enough to place Israel in violation of this critical element for legality of occupation, especially as no persuasive justification has been provided for the excessive longevity of the occupation.

In his Report, the Rapporteur makes the case documenting how the role of Israel as Occupier in the Palestinian territories “had crossed a red line” and that there is a need to free the Palestinian people from this illegal occupation.

In his conclusion, Lynk makes recommendations including:<sup>1</sup>

... that the Government of Israel bring a complete end to the 50 years of occupation of the Palestinian territories in as expeditious a time period as possible, under international supervision.

... that the United Nations General Assembly:

- a. Commission a United Nations study on the legality of Israel’s continued occupation of the Palestinian territory;
- b. Consider the advantages of seeking an advisory opinion from the International Court of Justice on the question of the legality of the occupation;

c. Consider commissioning a legal study on the ways and means that UN Member States can and must fulfill their obligations and duties to ensure respect for international law, including the duty of non-recognition, the duty to cooperate to bring to an end a wrongful situation and the duty to investigate and prosecute grave breaches of the Geneva Conventions;

d. Consider the adoption of a Uniting for Peace resolution<sup>2</sup> with respect to the Question of Palestine, in the event that there is a determination that Israel’s role as occupier is no longer lawful.

Lynk explained several reasons why the determination would play a helpful role in this situation:

First, it would encourage member states to take all reasonable steps to prevent or discourage national institutions, organizations and corporations within their jurisdiction from engaging in activities that would invest in, or sustain, the occupation. Second, it would encourage national and international courts to apply the appropriate laws within their jurisdiction that would prevent or discourage cooperation with entities that invest in, or sustain, the occupation. Third, it would invite the international community to review its various forms of cooperation with the occupying power as long as it continues to administer the occupation unlawfully. Fourth, it would provide a solid precedent for the international community when judging other occupations of long duration. Most of all, such a determination would confirm the moral importance of upholding the international rule of law when aiding the besieged and the vulnerable.

While Rapporteur reports only document, analyze and recommend, they can carry a moral force and they can alert the governments and peoples of the world to injustices and situations that need attention and action toward their resolution. Prof Lynk in his second Report helps direct attention to the possibility that the Israeli-Palestine dispute and conflict lacks a solution because it is not properly understood. There are many calls for a peaceful resolution and for talks between the Israeli and Palestinian leaders, but maybe those are not possible as long as Israel is mistakenly seen as a legitimate occupier of the Palestinian Territory.



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Notes:

1. Quotes in this article are from the “Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,” GA, 2<sup>nd</sup>, 23/10/2017 A/72/556. The Report is available online at: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/72/556&Lang=E>. All the Special Rapporteur reports can be accessed from: [https://ap.ohchr.org/documents/dpage\\_e.aspx?m=91](https://ap.ohchr.org/documents/dpage_e.aspx?m=91).

2. General Assembly resolution 377(V) is known as the Uniting for Peace resolution. Adopted in 1950, the resolution resolves that if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility to act as required to maintain international peace and security ... , the General Assembly shall consider the matter immediately with the view to making recommendations to Members ... in order to restore international peace and security.

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[Editor’s Note: South African anti-apartheid activist and journalist, Dumisani Kumalo served as the Ambassador to the UN from South Africa for ten years, 1999 to 2009. There he played an active role concerning the Palestinian Question. The following article in his memory first appeared on January 23, 2019 on the netizenblog at: <https://blogs.taz.de/netizenblog/2019/01/23/in-memory-of-dumisani-kumalo/>. (No longer available.)]

(2019)

## In Memory of Dumisani Kumalo, South African Ambassador to the UN

by Ronda Hauben

My delegation believes that silence on the situation in the Middle East is more dangerous than even meetings where there might be a raising of temperatures or heat.

Dumisani Kumalo

It was with great sadness that I learned the news of the passing of Dumisani Kumalo on Sunday, January 20, 2019. Ambassador Kumalo had been appointed by Nelson Mandela in 1999 to serve as South Africa’s UN Ambassador, which he did until February 2009.

For me it was the end of an era when, ten years ago, Dumisani Kumalo left the UN. At that time, a farewell party held on the 4<sup>th</sup> floor in the Delegates Lounge, demonstrated why he was so special a figure at the UN. A number of delegates attended, some with their wives or husbands as well.

In the brief speech he gave to his friends and colleagues who had come to say how much he would be missed, Kumalo described how as a child growing up in apartheid South Africa his father told him that help for the people of South Africa in their fight against apartheid would come from the UN – from the United Nations. Little did his father know, Kumalo said, that the young boy would become the Ambassador from South Africa at the United Nations.

The significance of this memory, Kumalo explained, was that it was an example of the hope that many people around the world have in the UN. This is why it is so important, he said, that people at the UN strive to live up to that hope.

What Ambassador Kumalo represented at the UN is something I have found rare among UN officials. He was someone with a vision of the UN being the champion of the people. Moreover, he was willing to struggle against those for whom the UN only meant power politics rather than the fight for a better world.

One of my most memorable experiences at the UN was in early January 2007 when Kumalo stepped down as the head of the *G77 and China*. He was practically in tears as he recounted how during the South African presidency of the *G77 and China*, there had been a series of struggles against the U.S. Ambassador John Bolton’s view of how to restructure the UN. The *G77* fought for a multilateral UN and won some important battles.

Kumalo was then leaving but one scene of struggle, the *G77*, to enter another, a new set of battles. As the UN Ambassador for South Africa, he was beginning a two year term (January 2007 – December 2008) when South Africa became one of the ten elected members of the UN Security Council. I watched the first meeting of the newly constituted Security Council of 2007. I was surprised and delighted to see how several of the elected members (as opposed to the five permanent members) took up to outline the problems they saw with the Security Council and the need for change.

When South Africa took over the rotating presidency of the Security Council for the month of March 2007, Kumalo made it clear he was there to answer questions from journalists, which he did diligently through the course of the month long presidency. Often during his term on the Security Council he shared his frustration when the Council failed to issue a needed statement or resolution. One such example, was when in January 2008, the Council failed to ex-



press its support for Palestinians suffering because of Israel's closure of the crossing points into Gaza.

Another striking memory is of the South African and Indonesian Ambassadors' speaking out in response to the British Ambassador's proposal that the Security Council only have consultations which are closed meetings, rather than having open meetings on the issue of Palestine. The British Ambassador argued the differences among the Ambassadors led to sharp exchanges. Kumalo disagreed, stating unequivocally that the disagreements made it ever more important to have open meetings as this was a subject of vital interest and importance to the public.

There is a body of international law and decisions of the International Court of Justice (ICJ). This forms a framework of law to determine issues the Security Council is considering. During South Africa's 2007-2008 term on the Security Council, several of the P-5 Ambassadors, especially the U.S. Ambassador, demonstrated little regard for this framework in determining the U.S. position on the issues before the Security Council. Kumalo's position would in general be consistent with the tenets of international law and the ICJ legal decisions.

For example, when Israel closed the crossing points to Gaza, the U.S. supported Israel in efforts at the Security Council, claiming that Israel's action was acceptable given its right to defend itself in retaliation for rockets being fired into Southern Israel from Gaza. Kumalo and others on the Security Council condemned Israel's actions as a form of collective punishment, forbidden under international law. Kumalo also argued that Israel as the occupying state had obligations to support and provide for the well being of the Palestinians under the provisions of international law.

Kumalo supported the principles he argued were in line with international law. Often he would be criticized in South African newspapers for his actions. An example was his opposition to interference in the internal affairs of a sovereign country. When there was pressure in the Security Council to become involved with the vote for President in Zimbabwe, Kumalo argued this was not a proper issue for the Security Council to become involved with. He maintained that there were other UN organs that could be involved, not the Security Council.

When Miriam McKeba died, the South African Mission to the UN held a program to honor her life and contributions. A number of delegates spoke describing the important role McKeba had played in the struggle

for South African independence. Kumalo's talk encouraged people to carry on her struggle and to dance to her music.

At his farewell gathering at the UN in 2009, Ambassador Kumalo danced with his guests. His farewell presented the challenge to others to carry on the struggle that he had been such an important part of in his ten years of service as the Ambassador to the UN from South Africa.

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[Editor's Note: The following article first appeared on February 1, 2019 on the netizenblog at: <https://blogs.taz.de/netizenblog/2019/02/01/on-israels-annexation-of-palestinian-territory-michael-lynks-report/>. (No longer available.)]

## (2019) On Israel's Annexation of Palestinian Territory: Michael Lynk's Report

by Ronda Hauben

In 2017 Michael Lynk presented his first Report to the United Nations General Assembly. Lynk's official title is the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967. The 2017 report analyzed the obligations of an occupying nation and what happens when the occupier fails to fulfill the requirements of a legitimate occupier.<sup>1</sup>

Lynk's report specified criteria for a legal occupation. They are the satisfaction of four requirements:

1. There is an absolute prohibition against annexation of any of the occupied territory.
2. The length of the occupation must be finite, meaning it must be ended in a reasonable period of time.
3. It must be carried out in good faith.
4. It must be carried out in a way that meets the best interests of the occupied.

Lynk demonstrated that Israel has failed to meet the requirements of a legal occupation, and he called for several actions by the UN. Among these actions was that the General Assembly commission a UN study on the legality of Israel's continued occupation of the Palestinian territory.

He proposed that one of the reasons that it has not been possible to resolve the Palestinian – Israeli

conflict is because Israel is mistakenly seen as the legitimate occupier of the Palestinian Territories.

Lynk proposes that a more accurate understanding of the facts and how they apply given the principles of international law could help member states to act in accord with their obligations under International law, and it could help to clarify what actions are possible at the UN and the International Court of Justice.

Lynk reported at a UN press briefing on Oct 24, 2018 that there has been considerable interest in his 2017 Report and that he had been invited to present the keynote at conferences discussing the issues it raises.

Recently, Lynk presented a related report. Even though Israel will not allow him to visit the area he is to investigate, in this 2018 Report he documented conditions based on information he gathered by various means including correspondence, video conferences, and meetings held in Amman, Jordan. Among his conclusions is that Israel “has twice formally annexed occupied territory under its control: East Jerusalem (1967, 1980) and the Golan Heights (1981).”<sup>2</sup>

Also, his 2018 report documents the deterioration of the Human Rights situation since his last report. And he described some of the gross ways that Israel has treated the Palestinians during the period since 2017.

In the process of documenting some of the most urgent concerns he identified, he observed the continuing expansion and development of the settlements, and the proposal of legislation and actions by various officials which are aimed at formally annexing parts of the West Bank and other Palestinian Territory.

Beyond his 2017 report, the 2018 report partly focused on an analysis of the issue of “the question of annexation, examining both the applicable legal framework as well as the current situation in the Occupied Palestinian Territories (OPT).”

In modern international law, Lynk points out there is a general prohibition against annexation. Also Lynk documents several different ways that Israel has “entrenched its de facto annexation of the West Bank” toward “imposing intentionally-irreversible changes to occupied territory proscribed by international humanitarian law.” He refers specifically to the 230 settlements, to the 400,000 Israeli settlers, to the extension of Israeli laws to the West Bank, to

the unequal access to resources, to a discriminatory legal regime, and to “explicit statements by a wide circle of senior Israeli political leaders calling for the formal annexation of parts or all of the West Bank.”<sup>3</sup>

Lynk describes some of how the UN has helped stop some of the acts of annexation around the world since its founding. Particularly pointing to the principles of international law relating to occupation, Lynk writes, “Annexation is utterly incompatible with the foundational principles of the laws of occupation, which stipulates that the occupying power’s tenure is inherently temporary, not permanent or even indefinite, and that it must rule the territory as a trustee for the benefit of the protected population under occupation, and not for its own aggrandizement. Annexation is also profoundly in breach of the fundamental right to self-determination, an ‘*erga omnes*’ [statutory, applying to all] obligation under international law.”<sup>4</sup>

In his 2018 report, Lynk documents a number of specific ways that Israel’s actions in the Occupied Palestinian Territories are effectively carrying out or have carried out an annexation of “a significant part of the West Bank and is treating this territory as its own.”<sup>5</sup>

On pages 18 and 19 of his 2018 report, Lynk lists a series of recommendations for Israel and for the International Community. To Israel he recommends compliance with international standards and laws, and to the international community he recommends holding Israel to international standards, accountability and to the obligations of international humanitarian law.

And Lynk recommends the international community “commission a United Nations study on the legality of Israel’s annexation and continued occupation of the Palestinian territory.”

For two years in a row, Michael Lynk has issued reports that give a better understanding of the Israel-Palestine question which may help in the effort to find a just and lasting solution to this major outstanding question.

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Notes:

1. “UN Rapporteur Michael Lynk Questions Legality of Israeli Occupation,” Ronda Hauben, January 30, 2018. [Reprinted in this issue.]
2. See: p. 7, [https://www.ohchr.org/Documents/AboutUs/NY/GA73/A\\_73\\_45717.docx](https://www.ohchr.org/Documents/AboutUs/NY/GA73/A_73_45717.docx).

3. See: pp. 7-8, [https://www.ohchr.org/Documents/AboutUs/NY/GA73/A\\_73\\_45717.docx](https://www.ohchr.org/Documents/AboutUs/NY/GA73/A_73_45717.docx).
4. See: p. 8, [https://www.ohchr.org/Documents/AboutUs/NY/GA73/A\\_73\\_45717.docx](https://www.ohchr.org/Documents/AboutUs/NY/GA73/A_73_45717.docx).
5. See: p. 18, [https://www.ohchr.org/Documents/AboutUs/NY/GA73/A\\_73\\_45717.docx](https://www.ohchr.org/Documents/AboutUs/NY/GA73/A_73_45717.docx).

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### **EDITORIAL STAFF**

Ronda Hauben

William Rohler

Norman O. Thompson

Michael Hauben (1973-2001)

Jay Hauben

The *Amateur Computerist* invites submissions.

Articles can be submitted via e-mail:

<mailto:jrh29@columbia.edu>

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