

Palestinian and Israeli Human Rights Organisations call for End to International Donor Complicity in Israeli Violations of International Law

On 2 March 2009, major international donors convened in Sharm al-Sheikh to collectively respond to the destruction caused by Israel's 23 day military offensive on the Gaza Strip (the offensive). During the conference, a total of \$4.5 billion was pledged in reconstruction funds for Gaza. In light of the extensive destruction across the Gaza Strip, especially the destruction of civilian homes and infrastructure, reconstruction is urgent.

However, as Palestinian and Israeli human rights organisations, we must note that by agreeing to reconstruction without specific, binding assurances from the State of Israel, international donors are effectively underwriting Israel's illegal actions in the occupied Palestinian territory (oPt). International law – including, international human rights law, international humanitarian law (IHL), and the law of state responsibility for wrongful acts – places specific, binding obligations on the State of Israel (based, *inter alia*, on its duties as an Occupying Power) with respect to the maintenance and development of normal life in occupied territory. By repeatedly restricting their action to providing aid, without holding Israel accountable for its specific obligations, international donors are relieving Israel of its legally binding responsibilities.

Aid must be accompanied by strict assurances that are effectively monitored: Israel must not be allowed to act with impunity. The State of Israel must accept responsibility for its actions, and fulfil all of its legal obligations. By repeatedly covering the cost of the occupation, without insisting that Israel comply with international law, the international community is implicitly encouraging violations of international law – including grave breaches of the Geneva Conventions and war crimes – perpetrated by Israeli forces in the oPt. As High Contracting Parties to the Geneva Conventions of 1949, individual donor States may be in violation of their legally binding obligation “to ensure respect” for the Convention “in all circumstances.” While the international community turns a blind eye and pays the cost of the occupation, Israel is encouraged to continue acting outside the limits of international law.

The situation in the oPt is one of international armed conflict and belligerent occupation. The applicable bodies of humanitarian law include, *inter alia*, the Geneva Conventions of 1949, the Hague Regulations of 1907, and customary international law. As the Occupying Power for almost 42 years, Israel also has extensive extraterritorial human rights obligations with respect to the protection of the residents of the Gaza Strip, and the assurance of life in the territory. Finally, the principles of international law regulate the actions of all States. Of particular relevance are the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts, which place additional, pressing obligations on the State of Israel consequent to, *inter alia*, the recent offensive. These bodies of law converge to establish a comprehensive legal framework regulating the current situation.

The Impact of International Donors

Many of the projects funded by international donors have subsequently been destroyed by the Israeli military. In the Gaza Strip, such projects include the Gaza Seaport, the Industrial Estate, and the Gaza International Airport. Following the eruption of the second *Intifada* in 2000, the majority of donor aid has been focused on emergency crisis relief aimed at combating the

immediate effects of Israel's occupation policy, including the impact of the Annexation Wall, restrictions on movement and the import and export of goods, the razing of agricultural land, the destruction of infrastructure, and the closure policy.

International aid to the oPt – funded by the taxpayers of the international community – constitutes a significant amount of money. In the five year period between 1999 and 2004, the oPt received at least \$5.147 billion in international aid. At the Paris Conference in 2007, international donors pledged \$7.7 billion between 2008 and 2010 in support of the Palestinian Reform and Development Programme. As noted, an additional \$4.5 billion was pledged at the recent Sharm el-Sheikh conference, exclusively aimed at repairing the damage caused by Israel's assault.

This aid is necessary to sustain the Palestinian people, and to prevent a widespread humanitarian emergency; given the extent of the destruction in the Gaza Strip it is essential to ensure the basic requirements of human existence. However, Israel's continuing occupation is the root cause of the Palestinian's financial and humanitarian crisis. It impacts on the ability of Palestinian's to develop, to trade, and to secure their future. The State of Israel bears legal responsibility for the consequences of its actions. By underwriting the cost of the occupation, and in the process effectively disregarding Israel's international obligations, the international community is relieving Israel of accountability and facilitating impunity.

International Humanitarian Law

As the Occupying Power in the Gaza Strip, the State of Israel has specific obligations under IHL with respect to the care and protection of the occupied Palestinian population. This responsibility is consequent to the degree of control exercised by Israel as the Occupying Power, and the fundamental impact this has on the lives of the civilian population. As far as possible, civilians must be protected from the effects of hostilities.

IHL considers the Occupying Power to be responsible for all branches of public order and civil life. This requirement, first codified in Article 43 of the Hague Regulations, places a specific obligation on the Occupying Power with respect to, *inter alia*, the maintenance and provision of infrastructure, health, education, quality of life, shelter, and public works (including sewage treatment, power and water); in other words, the material conditions under which the population of the occupied territory live. Should the Occupying Power destroy these essential objects, it is obliged to repair them, in order to facilitate normal life. This is in keeping with the *status quo ante bellum* requirement of occupation law, which holds that an Occupying Power must restore an occupied territory to its pre-war state and – should the occupation persist over a protracted period of time – allow it to develop. Reconstruction consequent to destruction is thus one specific obligation placed on the Occupying Power within the broader context of its duty towards the occupied territory. Given the reality of the current situation, it is inappropriate that the State of Israel should directly participate in the physical process of reconstruction. Rather, in light of its primary responsibility, Israel must first, acknowledge its legal obligations as regards the reconstruction process, and second, ensure the provision of all necessary reconstruction materials and equipment.

Articles 55 and 56 of the Fourth Geneva Convention explicitly require that the Occupying Power should – to the fullest extent of the means available to it – ensure the supply of food and medicines, while ensuring and maintaining the health system. This requirement places the

Occupying Power under a definite obligation to maintain at a reasonable level the material conditions of the occupied population. Though the phrase 'to the fullest extent of the means available to it' recognises that such obligations may be difficult to achieve, particularly in the context of ongoing hostilities, the Occupying Power should nevertheless utilize all means at its disposal. The requirement that the provision of material should be limited to food and medicine is now widely regarded as too restrictive, given the humanitarian purpose underlying the obligation. Consequently, Article 69 of Additional Protocol I additionally mentions the provision of clothing, bedding and shelter. Given the extent of the damage to civilian objects in the Gaza Strip, including approximately 21,000 homes, the responsibility relating to shelter is particularly pertinent: it is essential to the maintenance of the material conditions under which the occupied population live.

IHL holds that, in the event of destruction arising consequent to the conduct of hostilities, urgent action to provide shelter is required, both in the short, and long-term. The Occupying Power is at all times responsible for supplying the population under its control. In the current context, Israel is clearly not taking the measures necessary to maintain the life of the occupied territory.

International Human Rights Law

In the contentious *DRC v. Uganda* case, the International Court of Justice confirmed that an Occupying Power is bound by its human rights obligations as regards its actions in occupied territory. The Court found Uganda "internationally responsible for violations of human rights law" committed in occupied territory, and also "for failing to comply with its obligations as an occupying Power ... in respect of violations of international human rights law and international humanitarian law in the occupied territory." This, and other judgments of the International Court of Justice (including *The Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*), and international human rights mechanisms – such as the Human Rights Committee and other treaty bodies – confirm that an Occupying Power is bound by its human rights treaty obligations in occupied territory. With respect to Israel, such binding obligations include the provisions of the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the Convention on the Rights of the Child (CRC).

In, *DRC v. Uganda*, the ICJ placed positive and negative obligations on Uganda as the Occupying Power. Uganda was found responsible both for acts of commission and omission, namely not taking measures "to ensure respect for human rights ... in the occupied territories." The obligation to ensure – a positive obligation – is a key feature of any human right. It requires that States take positive steps in giving effect to human rights obligations, including the realisation of economic, social and cultural rights; Article 2(1) of ICESCR requires that such positive steps are taken "to the maximum of ... available resources."

An Occupying Power is required to progressively develop, *inter alia*, a territory's educational and health systems, road network, and power or telecommunications infrastructure. It is evident that human rights law places a positive obligation on Israel to safeguard the human rights of the population under its control. Israel has extensively destroyed homes, factories, industries, and other infrastructure within the occupied Gaza Strip. This has evident implications for such fundamental human rights as the right to life (Article 6, ICCPR), the right to health (Article 12,

ICESCR), and the right to adequate food, clothing, and housing (Article 11, ICESCR). It must be noted that the right to health includes both physical and mental well-being. In the aftermath of the offensive, Palestinian's mental health is of paramount importance. Without appropriate attention it is an issue that may affect the psychological structure and profile of Gaza's population for decades to come.

As a Member State of the United Nations, and in accordance with Articles 55 and 56 of the UN Charter, the State of Israel has pledged to promote higher standards of living, and conditions of economic and social progress and development.

Israel is therefore under an obligation to protect the rights of the citizens of the Gaza Strip, and to repair the damage done.

State Responsibility for Internationally Wrongful Acts

International law defines an internationally wrongful act as a breach of a State's international obligation. The International Law Commission's Articles on State Responsibility for Wrongful Acts (ILC Articles) set out clear guidelines regarding the consequences of such breaches. In the current context, the State of Israel committed numerous internationally wrongful acts – including war crimes and grave breaches of the Geneva Conventions – over the course of its 23 day military offensive in the Gaza Strip. These wrongful acts included the extensive destruction of property not warranted by military necessity, and violations of the principle of distinction, a key component in customary international humanitarian law. These violations engage the responsibility of the State of Israel, as specified in Article 1 of the ILC Articles.

Article 31 of the ILC Articles affirm that the State of Israel "is under an obligation to make full reparation" for any injury caused by its wrongful actions. This injury, "includes any damage, whether material or moral" caused by the responsible State. The Permanent Court of Justice confirmed this responsibility in the *Factory at Chorzów* case – which concerned the Polish occupation of a factory in Germany – holding that reparation "is the indispensable complement of a failure to apply a convention". The responsible State must endeavour to "wipe out all the consequences of the illegal act". The Court further held that reparation must entail "restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear".

Article 35 of the ILC Articles holds that reparation has a broad meaning, encompassing any action that needs to be taken by the responsible State. Should restitution in kind prove impossible, compensation is proposed as an alternative. It is presented, however, that, given the current closure regime imposed on the Gaza Strip, compensation is an inappropriate response, incapable of 'wiping out' all the consequences of Israel's illegal acts. The Israeli military extensively destroyed, or damaged, Gaza's infrastructure. At least 21,000 homes were completely destroyed or severely damaged, along with thousands of *dunums* of agricultural land, and approximately 1,500 factories and workshops. The road, water, sewage and electricity networks were heavily damaged, and in some cases rendered unusable. It is evident that, in the absence of reconstruction materials, and in light of the fact that restitution in kind should be the principal form of reparation (Article 34, ILC Articles), pure compensation is inadequate, and inappropriate.

Article 16 of the ILC Articles also places an obligation on the individual states of the international community not to aid or assist the commission of an internationally wrongful act. Such aid and assistance includes, *inter alia*, financing the wrongful conduct in question. Article 41 explicitly prohibits States from rendering aid or assistance used to maintain the situation created by a serious breach of international law. By continually covering the financial costs associated with Israel's illegal actions in the oPt, individual States are in breach of their own international obligations, and complicit in the occupation's violations of international law.

The State of Israel must accept responsibility for its illegal actions – as demanded by international law – and rebuild those sections of the Gaza Strip which it destroyed or damaged. Given the reality of the current situation, it is inappropriate that the State of Israel should directly participate in the physical process of reconstruction. Rather, in light of its primary responsibility with respect to restitution in kind, Israel must first, acknowledge its financial obligations as regards the reconstruction process, and second, ensure the provision of all necessary reconstruction materials and equipment.

In the interim, thousands of families remain homeless, and the Gaza Strip's fragile economy continues to deteriorate.

The Continuing Isolation of the Gaza Strip

In June 2007, in response to the Hamas movement's takeover of the territory, the State of Israel imposed a drastically tightened closure regime on the Gaza Strip. The supply of goods – including essential foodstuffs and medical provisions – has been severely restricted, and is insufficient to meet the fundamental needs of the population. Electricity and fuel cuts, which affect the operation of essential services such as hospitals, and water and sanitation works, were also imposed. The closure contributes to a steadily worsening humanitarian crisis in the Gaza Strip. In spite of the extensive suffering and destruction caused by the offensive, this policy – which has now been in place for 22 months – continues to this day.

The restrictions on goods extend to essential reconstruction materials. Despite the extensive destruction, thousands of homeless civilians, and a dilapidated infrastructure (including the electricity, water, and sanitation networks), Israel has refused to allow reconstruction materials through the borders. As long as the borders remain closed, reconstruction and recovery are impossible.

This situation renders reconstruction pledges meaningless. International funds will, at best lie idle, or at worst, be wasted, as long as Israel refuses to allow reconstruction materials into the Gaza Strip.

Conclusion

As human rights organisations we are calling for international donors to demand specific, concrete assurances from the State of Israel. These assurances, and the political will necessary to ensure their compliance, must form an integral part of international assistance to the Palestinian people. As the responsible party, Israel must accept the consequences of its actions. As illustrated herein, the State of Israel is subject to explicit legal obligations: it bears the responsibility for reconstructing and maintaining the Gaza Strip. Bank rolling the occupation without demanding

an end to its violations of international law, is equivalent to tacit complicity on the part of the international community

Reconstruction aid must be accompanied by strict conditions and assurances from the State of Israel. Otherwise, the taxpayers of the international community will continue to support an endless cycle of aid-destruction-aid-reconstruction. The Palestinian people will continue to suffer at the hands of a brutal and illegal occupation.

We further note that, Israel's primary responsibility notwithstanding, international reconstruction materials must not be procured in Israel. The State of Israel must not profit from its illegal actions, and the destruction it has wrought.

International assistance is most appropriate at the political level. It has become increasingly evident that international aid alone cannot resolve the conflict. In order to facilitate long-term development and recovery, political will and political action are required. All potential avenues that accord with humanitarian and human rights law must be pursued in order to ensure the State of Israel's compliance with international law. We call on the taxpayers of the international community to pressurise their governments, to lobby on behalf of the Palestinian people, and to ensure that their money is no longer wasted by governments willing to fund a school but not willing to take action in response to that school's destruction, or to ensure that the cement necessarily for its reconstruction is permitted to enter Gaza.

International aid is currently being used to finance the consequences of an illegal occupation, and the accompanying serious violations of IHL and international human rights law.

Signed on behalf of:

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Gaza Community Mental Health Program (GCMHP)
Gisha: Legal Center for Freedom of Movement
Israeli Committee Against House Demolitions (ICAHD)
ITTIJAH – Union of Arab Community Based Organisations
Palestinian NGO Network (PNGO)
Physicians for Human Rights – Israel (PHR)
Public Committee against Torture in Israel (PCATI)
Women's Affairs Centre (WAC)

This document, and the accompanying factsheet are open for further signature. Please contact PCHR for further details, pchr@pchgaza.org