

Double Standards

How the International Community has Taught Israel that it is Above the Law

Are Security Council resolutions to be honored and enforced, or cast aside without consequence? Will the United Nations serve the purpose of its founding, or will it be irrelevant? ...We want the resolutions of the world's most important multilateral body to be enforced.

– U.S. President George W. Bush, Address to the U.N. General Assembly, September 12, 2002

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Foreword

One of the key legal principles to emerge on the international scene in recent years has been that of the rule of law. Two characteristics of this principle are that the law must conform to certain standards of justice and that the rules should be applied on a basis of equality to all the legal subjects.

The concept of rule of law is reflected in the object and purposes of the United Nations Charter. The Preamble proclaims the intent of the Organisation "to establish conditions under which justice and respect for [international] obligations...can be maintained", and Article (1) confirms that one of its purposes is to settle international disputes "in conformity with the principles of justice and international law".

The contemporary development of international law has also witnessed the emergence of a core of norms for the protection of the fundamental interests and values of the international community as a whole. Violations of such norms, such as serious breaches of the prohibition to use force, the right to self-determination and fundamental norms of human rights and humanitarian law, touch on the very fabric of the international legal order and hence are the concern of each and every State.

In addition, the Security Council has come to consider conduct in violation of such norms as constituting a threat to international peace and security, thus entitling it to undertake enforcement action under Chapter VII. In consequence, the Council has applied mandatory non-military sanctions under Article 41 of the Charter, including arms and comprehensive trade embargoes, urged non-recognition of illegal situations and entities, authorised States and regional organisations to resort to military force, extended the mandates of peacekeeping operations, intervened to prevent the massacre of innocent civilians, and held individuals accountable before international tribunals. The General Assembly has not hesitated in the past when faced with the paralysis of the Security Council, to assert its secondary responsibility in the field of international peace and security by calling for the adoption of economic, financial and diplomatic sanctions, notably in the case of South Africa, but also in the case of Israel.

In the case of the Palestinian-Israeli conflict, the United Nations has over the years affirmed a corpus of rules that must act as a legal framework for any negotiated settlement. The United Nations had succeeded to the League of Nations in its responsibilities towards the Palestinian peoples and assumed particular responsibility for the realization of their right to self-determination. On this basis, UN political organs have over the years upheld and reaffirmed on numerous occasions, the inalienable right to self-determination of the Palestinian peoples, including their right to statehood. They have condemned the excessive use of force against Palestinians, the deportations of civilians and the widespread and systematic policies and practices of the occupying Power which violate human rights and humanitarian law. They have qualified measures to settle the occupied territories as null and void. They have called for the application of the 1949 Geneva conventions and the withdrawal of Israel from these territories. They have affirmed the right of return of Palestinian refugees.

However, in stark contrast to the above-mentioned enforcement action taken under Chapter VII in other similar types of situations, no enforcement action or any other action to implement UN resolutions and international law has been ordered by the Security Council in respect of the Palestinian-Israeli conflict, even at the height of Israel's recent defiance of the Council's calls for

withdrawal of Israeli troops from Palestinian cities and the Secretary-General's initiative for a fact-finding mission.

This thoroughly researched comparative study of the action taken by UN political organs, demonstrates in a clear, balanced and fair manner this lack of even-handedness in the United Nations' approach to this situation. Double standards in collective responses to breaches of fundamental norms of international law which are of concern to the international community as a whole, and in respect of a territory for which the United Nations continues to have a special responsibility, endanger the principle of the rule of law in international affairs on which the legitimacy and authority of the Organisation depend. It is therefore in the interest of all Member States to ensure, through the United Nations, the even-handed application of international law equally to all States and peoples.

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Introduction

This brief report aims to contrast the international responses to the Palestinian-Israeli conflict with those in six similar conflict situations (Bosnia, Kosovo, Rwanda, East Timor, Iraq-Kuwait and Iraq-Kurds). The comparative analysis is organised around four issues:

- Grave human rights violations and violations of international humanitarian law;
- Colonies and demographic manipulation;
- Right of return for refugees or displaced persons;
- Withdrawal of forces from territory subject to armed occupation.

The paper considers the responses of the UN Security Council (UNSC), the UN General Assembly (UNGA), the UN Human Rights Commission and in some cases the European Union (EU) and the Organisation of Security and Cooperation in Europe (OSCE).¹

To best display the findings of this work in a very condensed way, the material is displayed through the means of analytical tables. These tables are organized into three main sections. The top section reveals the way in which international agencies have identified the practice in question as a fundamental violation of international law and have condemned it. The middle section highlights the subsequent demands for action to remedy the violation. The final section in each of the tables addresses the enforcement actions decided upon by the relevant international organs. As few international institutions have an enforcement capacity, this last section generally focuses on the UN Security Council and the EU, the latter in relation to economic sanctions.

The tables are accompanied by a brief analytical presentation.

¹ A considerably larger research effort in assembling the responses of these organizations was expended than is visible in these pages. A fuller set of materials can be made available to those who are interested.

1. Grave Human Rights Violations and Violations of Humanitarian Law

All states are bound to respect and secure basic and fundamental rights under all circumstances. In cases of conflict or armed occupation, this catalogue of non-derogable rights (i.e., rights that cannot be suspended even in times of public emergency) is strengthened further by provisions of humanitarian law.

While individual or sporadic violations of human rights are addressed through specialized monitoring bodies or on occasion through international human rights courts or tribunals, grave and persistent violations can be identified and condemned by the United Nations Commission on Human Rights and, in particularly dramatic circumstances, acted upon by the General Assembly or even the Security Council.

The treatment of the Palestinian population of the Israeli occupied territories has been considered and consistently condemned by the Commission on Human Rights and the General Assembly over the past five decades. Violations that have been identified include torture, arbitrary killings, deportations, destruction of houses and property and the systematic denial of fundamental freedoms. Moreover, particular practices directly related to the occupation regime and in violation of humanitarian law have also been highlighted in these texts. These include assassinations, mass and arbitrary arrests, unjustified expropriations or destruction of property and expulsions. In this way, the practices of Israel in relation to the occupied territories have been classified by UN agencies in exactly the same terms as have the situations in Bosnia and Herzegovina, Kosovo, East Timor, Rwanda, occupied Kuwait and Iraq.

The Commission on Human Rights, the General Assembly and on occasion the Security Council have also acted upon these findings by demanding that Israel's repressive and unlawful practices must cease. In relation to the Commission and the Assembly, these demands are strong and consistent. The Security Council has, however, only referred to the need to comply with human rights and humanitarian law (in particular the 4th Geneva Convention) in general terms. This contrasts sharply with the demands for the cessation of similar practices expressed very strongly, at times in Chapter VII enforcement resolutions, by the Security Council, in all the other comparison cases.

In terms of remedies, the contrast is even more pronounced. In all of the comparative cases, the Council adopted enforcement measures.² The measures cover a full range of enforcement actions, including:

- Arms embargo;
- Comprehensive economic sanctions;
- International presence, from monitors all the way to coalition forces with enforcement authority to ensure compliance with humanitarian law and the protection of civilian populations;
- International accountability to violations established through international tribunals.

Literally none of these remedies has been adopted in relation to the Palestinian case. This finding is strengthened by the failure of the Council even to condemn expressly the disproportionate use of force by Israel in spring 2002, when it invaded Palestinian controlled territories, destroyed the local governmental infrastructure established according to the Oslo Accords and razed entire Palestinian neighbourhoods while it simultaneously obstructed humanitarian and medical assistance to civilian populations. Israel argued that their actions were justified by the purported need to counter alleged terrorism emanating from these areas. However, whether or not there was a campaign of terrorism connected with the areas that were occupied, under no circumstances is Israel entitled to engage in a use of force that is disproportionate to the offence or that violates the human and humanitarian entitlements of the civilian populations affected by such measures.

² Resolution 688 (1991) is the only example of a resolution that failed to be adopted under Chapter VII, despite its mandatory character, the fact that it triggered military enforcement by a coalition of states which did not meet with significant objection, and called for the deployment of an international humanitarian and monitoring presence. Compliance with that resolution was also made part of the compliance review in relation to the lifting of sanctions against Iraq and was, therefore, considered to be part of a package of mandatory demands.

In its initial resolution on the subject, Resolution 1397 (2002), the Security Council only noted in the preamble the need to ensure the safety of civilians and to respect universally accepted norms of humanitarian law. It did not even relate this ‘need’ in specific terms to the Palestinian civilian populations threatened with attack. The operative parts of the resolution did not even mention the legal requirement to exercise restraint by complying with international humanitarian law. After Israel’s Good Friday attack was launched, the Council expressed concern in Resolution 1402 (2002) equally at the further deterioration of the situation, including the recent suicide bombings in Israel and the military attack against the headquarters of the president of the Palestinian Authority. There was however not even a reminder that Israel would need to ensure that its military response, whether justified as a response to terrorist action or not, would under all circumstances have to comply with humanitarian law. That latter concept does not even appear in the text of the resolution. One week later, the Council passed another resolution, Resolution 1403 (2002), which did not condemn Israel for its failure to withdraw, despite calls by the Council to do so.

The Council only responded to the humanitarian emergency caused by the Israeli attacks in relation to the Jenin refugee camp—one instance amongst a large number of the manifestly disproportionate and indiscriminate uses of force against civilian concentrations. In Resolution 1405 (2002) the Council merely expressed concern in relation to the “dire humanitarian situation of the Palestinian civilian population”. It was only *after* it had noted “reports from the Jenin refugee camp of an unknown number of death and destruction”, the Council, “stressed the need for all concerned to ensure the safety of civilians and to respect the universally accepted norm of international humanitarian law”. The extremely weak language of this resolution was very far removed from the mandatory demands that are normally triggered by situations of this kind and again lacked any enforcement provisions.

In other instances of outright attacks against civilian populations, especially concentrations of refugees, the Council has issued very strong and unambiguous condemnations of the party responsible for such grave breaches of humanitarian law. For example, in Yugoslavia, the Council established, under Chapter VII, a commission to inquire into international responsibility for grave breaches of the Geneva Conventions while it also threatened the perpetrators of these war crimes with international prosecution. In the case of grave breaches of humanitarian law committed against Palestinians the Council meekly shielded itself behind the UN Secretary General, merely welcoming *his* initiative to “develop accurate information regarding recent events in the Jenin refugee camp through a fact-finding team.” Hence, the resolution was not an initiative of the Council itself. There was no compulsion for Israel to cooperate fully with the Commission as witnessed by Israel’s refusal to allow the Commission to conduct its fact-finding mission; a refusal that went without the imposition of sanctions against Israel. The unwillingness of the Security Council to insist upon a mission under Chapter VII authority, fully under the control of the Security Council and independent of the consent of Israel and of conditions for the investigation it might wish to set, highlights once again the double standard in the treatment of this situation as compared to others.

Table 1 Grave human rights violations and violations of international humanitarian law

		Israel	Bosnia	Kosovo	East Timor	Rwanda	Iraq (Occupation of Kuwait)	Iraq (Kurdish refugees)
Condemnations	UNSC	<p>S/RES/1322 (2000) <i>Condemns</i> acts of violence, especially the excessive use of force against Palestinians, resulting in injury and loss of human life; S/RES/726 (1992) <i>Strongly condemns</i> the decision of Israel ... to resume deportations of Palestinian civilians from the occupied Palestinian territories,</p>	<p>S/RES/1034 (1995) <i>Condemns...in the strongest possible terms</i> the violations of international humanitarian law and of human rights...showing a consistent pattern of summary executions, rape, mass expulsions, arbitrary detentions, forced labour and large-scale disappearances.</p> <p>S/RES/771 (1992) <i>Strongly condemns</i> any violation of international humanitarian law, including...the practice of 'ethnic cleansing';</p>	<p>S/RES/1199 (1998) <i>Deeply concerned also</i> by reports of increasing violations of human rights and international humanitarian law, and <i>emphasizing</i> the need to ensure that the rights of all inhabitants of Kosovo are respected;</p>	<p>S/RES/1272 (1999) <i>Expressing its concern</i> at reports indicating that systematic, widespread and flagrant violations of international humanitarian and human rights law have been committed in East Timor</p>	<p>S/RES/925 (1994) <i>Reiterating its strong condemnation</i> of the ongoing violence in Rwanda and, in particular, the systematic killing of thousands of civilians:</p>	<p>S/RES/665 (1990) <i>Deploring</i> the loss of innocent lives stemming from the Iraqi invasion of Kuwait ...</p> <p>S/RES/674 (1990) <i>Condemning</i> the actions of the Iraqi authorities... to Mistreat and oppress Kuwaiti and third-State nationals...and other actions such as the forced departure of Kuwaitis and relocation of population...</p>	<p>S/RES/688 (1991) <i>Condemns</i> the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish populated areas ...</p>
	UNGA	<p>A/RES/46/76 (1991) <i>Condemns</i> those policies and practices of Israel, the occupying Power, which violate the human rights of the Palestinian people in the occupied Palestinian territory, ...</p> <p>A/RES/41/101 (1986) <i>Strongly condemns</i> the constant and deliberate violations of the fundamental rights of the Palestinian people:</p> <p>A/RES 1985/41 (1985) <i>Strongly condemns</i> Israel for its human rights violations: assassinations, mass arrests among the civilian population, abductions, demolition of houses, desecration of places of worship and other inhuman acts;</p>	<p>A/RES/47/147 <i>Condemns</i> in the strongest possible terms the abhorrent practice of 'ethnic cleansing'... which flagrantly violates the most fundamental principles of human rights; <i>Condemns</i> in particular the violation of human rights and humanitarian law in connection with detention, including killings, torture and the systematic practice of rape, ...</p>	<p>A/RES/49/208 23 Dec 1994 <i>Strongly condemns</i> the measures and practices of discrimination and the violations of human rights of ethnic Albanians in Kosovo committed by the authorities of the FRY</p>	<p>A/37/30 (1982) <i>Concerned</i> at the humanitarian situation prevailing in the Territory and believing that all efforts should be made by the international community to improve the living conditions of the people of East Timor and to guarantee to those people the effective enjoyment of their fundamental human rights,</p>	<p>A/C.3/53/L.29/Rev.1(1998) <i>Reiterates its strong condemnation</i> of the crime of genocide and crimes against humanity committed in Rwanda in 1994;</p> <p><i>Expresses its deep concern</i> at the continued serious violations of human rights and international humanitarian law in Rwanda</p>	<p>A/RES/45/170 (1990) <i>Condemns</i> the Iraqi authorities and occupied forces for their serious violations of human rights against the Kuwaiti people... in particular the continued and increasing acts of torture, arrests, summary executions, disappearances and abductions:</p>	<p>A/RES/46/134 (1991) <i>Deeply concerned</i> by ... the forced displacement of hundreds of thousands of Kurds and the destruction of Kurdish towns and villages, as well as ... by the deportation of thousands of Kurdish families.</p>

		Israel	Bosnia	Kosovo	East Timor	Rwanda	Iraq (Occupation of Kuwait)	Iraq (Kurdish refugees)
	UN Human Rights Commission	E/CN.4/RES/S-5/1 (date?) <i>Gravely concerned</i> at the widespread, systematic and gross violations of human rights perpetrated by Israel as the occupying power... E/CN.4/1982/1 (1982) <i>Declares</i> that Israel's grave breaches of the Geneva Convention ... are war crimes and an affront to humanity	E/CN.4/RES/1993/7 <i>Condemns</i> in the strongest terms all violations of human rights and international humanitarian law... <i>Condemns</i> ... the forced transfer of populations, attacks on non-military targets, summary executions, arbitrary detention of civilians, the systematic practice of rape...	E/CN.4./1994/72 9 Mar 1994 <i>Strongly condemns</i> ... the measures and practices of discrimination against the violations of the human rights of ethnic Albanians of Kosovo ...	E/CN.4/RES/1999/S-4/1 <i>Condemns</i> ... the widespread, systematic and gross violations of human rights and international humanitarian law in East Timor:	E/CN.4/S-3/4 <i>Condemns in the strongest terms</i> all breaches of international humanitarian law and all violations and abuses of human rights in Rwanda...	E/CN.4/1992/84 <i>Strongly condemns</i> the failure of Iraq to treat all prisoners of war and detained civilians in accordance with the internationally recognized principles of humanitarian law...	E/CN.4/RES/1001/74 <i>Expresses grave concern</i> at the flagrant violations of human rights by the Government of Iraq
Demands	UNSC	S/RES/1322 (2000) <i>Calls</i> for the immediate cessation of violence, and for all necessary steps to be taken to ensure that violence ceases... <i>Calls upon</i> Israel ... to abide scrupulously by its legal obligations and its obligations under the Fourth Geneva Convention RES/237 (1967) <i>Considering</i> that essential and inalienable human rights should be respected ... <i>Calls</i> upon the Government of Israel, to ensure the safety, welfare and security of the inhabitants of the areas where military operations have taken place ...	S/RES/1992 771 (1992) <i>Demands that</i> all parties ... immediately cease and desist from all breaches of international humanitarian law ...; S/RES/1134 (1995) <i>Reaffirms its demands</i> that the Bosnian Serb party give immediate and unrestricted access to the areas in question (Srebrenica ...), including for the purpose of investigating atrocities.	S/RES/1199 (1998) <i>Demands</i> that the FRY ... cease all action by the security forces affecting the civilian population. S/RES/1199 (1998) <i>Demands</i> that the FRY ... enable effective and continuous international monitoring by the European Community Monitoring Mission...	S/RES/1272 (1999) ... <i>calls</i> for the immediate end (of all acts of violence), and demands that those responsible for such violence be brought to justice	S/RES/925 (1994) <i>Demands</i> that all parties to the conflict cease hostilities, agree to a cease-fire and immediately take steps to bring an end to systematic killings in areas under their control;	S/RES/674 (1990) <i>Demands</i> that the Iraqi authorities immediately cease and desist from ... mistreating and oppressing Kuwaiti and third-Party nationals and other actions such as those reported to the Council...	S/RES/688 (1991) <i>Demands</i> that Iraq immediately end this repression (of the Iraqi civilian population). <i>Insists</i> that Iraq allow immediate access by international humanitarian organizations to all those in need of assistance in all parts of Iraq and to make available all necessary facilities for their operations;
	UNGA	A/RES/2546(XXIV) 1969 <i>Urgently calls upon</i> the Government of Israel to desist forthwith from its reported repressive practices and policies towards the civilian population in the occupied territories and to comply with its obligations under the Geneva Convention	A/RES/47/147 (1992) <i>Demands</i> that all parties... cease... those violations... and take all necessary measures to ensure the enjoyment of human rights and fundamental freedoms: <i>Demands</i> an immediate end to the practice of "ethnic cleansing"... and to reverse the effects of that practice;	A/RES/49/208 (1994) <i>Demands</i> that the authorities of the FRY cooperate fully and immediately with the Special Rapporteur of the Commission on the situation of human rights in the territory of the former Yugoslavia;	<i>See SC resolution above</i>	<i>See SC resolution above</i>	A/RES/46/135 (1991) Requests the Government of Iraq to provide information on all Kuwaiti persons... deported from Kuwait... and information on persons arrested in Kuwait.	A/RES/46/134 (1991) Calls upon [Iraq]... to abide by its obligations ... to respect and ensure these rights for individuals irrespective of their origin within its territory and subject to its jurisdiction, including Kurds and Shiites.

		Israel	Bosnia	Kosovo	East Timor	Rwanda	Iraq (Occupation of Kuwait)	Iraq (Kurdish refugees)
	UN Human Rights Commission	RES/1 (XXXVI) (1980) <i>Demands</i> that Israel cease forthwith all acts of torture and ill-treatment of Arab detainees and prisoners	E/CN.4/1992/S-1/1 (1992) <i>Demands</i> that all parties in the former Yugoslavia cooperate fully with the Special Rapporteur. E/CN.4.RES/1993/7 (1993) <i>Demands</i> the immediate internationally supervised release of all persons arbitrarily or illegally detained in the former Yugoslavia and the immediate closure of all detention facilities ..	C/CN.4/1995/89 (1995) <i>Urgently demands</i> that the authorities of the FRY (a) cease all human rights violations, discriminatory measures and practices against ethnic Albanians in Kosovo, in particular arbitrary detention and the violation of the right to a fair trial and the practice of torture and other cruel, inhuman and degrading treatment.	E/CN.4/1999.S/4.1 (1999) <i>Calls upon</i> [Indonesia] to ensure that human rights and international humanitarian law are fully respected in regard to all persons within its jurisdiction...	E/CN.4/S-3/4 <i>Calls upon</i> all the parties involved to cease immediately these breaches, violations and abuses and to take all necessary steps to ensure full respect for human rights and fundamental freedoms and for humanitarian law:	E/CN.4/1992/84 ... <i>Insists</i> that [Iraq] refrain from subjecting [prisoners of war] to acts of violence. E/CN.4/1992/84 <i>Calls upon</i> the Government of Iraq to release immediately all persons arbitrarily arrested and detained, including Kuwaitis and nationals of other states	E/CN.4/RES/1991/74 <i>Urges</i> the Government of Iraq ... to guarantee full respect for human rights of all persons in Iraq irrespective of their origin, halt deportation of Iraqi citizens...
Actions	UNSC	<i>No action taken</i>	S/RES/808 (1993) <i>Decides</i> that an international tribunal shall be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of former Yugoslavia... S/RES/780 (1992) <i>Requests</i> the Secretary-General to establish an Impartial Commission of Experts to examine and analyse... information;	S/RES/1160 (1998) Acting under Chapter VII... <i>Decides</i> that all States shall ... prevent the sale or supply to the FRY... of arms and related materiel of all types... <i>Urges</i> the Office of the Prosecutor of the International Tribunal ... to begin gathering information related to the violence in Kosovo ... S/RES/1244 (1999) <i>Authorizes</i> Member States...to establish [an] international security presence in Kosovo...	S/RES/1271 (1999) Acting under Chapter VII... <i>Decides</i> to establish... UNTAET, [with] responsibility for the administration of East Timor and will be empowered to exercise all legislative and executive authority... S/RES/1246 (1999) <i>Decides</i> ... to establish UNAMET	S/RES/918 (1994) Acting under Chapter VII... <i>Decides</i> ... to establish an international tribunal [to prosecute those] responsible for genocide and other serious violations of international humanitarian law.	S/RES/678 (1990) Acting under Chapter VII... <i>Authorise</i> member states ... to use all necessary means to ... restore international peace and security in the area.	S/RES/688 (1991) <i>Requests</i> the Secretary General to pursue his humanitarian efforts in Iraq and to report ...on the plight...of the Kurdish population., suffering from the repression inflicted b the Iraqi authorities.
	UNGA	A/RES/2443 (XXIII) (1968) <i>Decides</i> to establish a Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories, composed of three Member States;	A/RES/47/147 (1992) <i>Requests</i> the Secretary General to make all necessary resources available for the Special Rapporteur to carry out his mandate...to ensure continuous effective monitoring of the human rights situation.	<i>See UNSC resolution</i>	<i>See UNSC resolution</i>	<i>See UNSC resolution</i>	<i>See UNSC resolution</i>	<i>See UNSC resolution</i>

		Israel	Bosnia	Kosovo	East Timor	Rwanda	Iraq (Occupation of Kuwait)	Iraq (Kurdish refugees)
	UN Human Rights Commission	E/CN.4/RES/S-5/1 Decides to establish ... a human rights inquiry commission... to gather... information on violations of human rights... by the Israeli occupying Power in the occupied Palestinian territories...	E/CN.4/1992/S-1/1 (1992) Requests its Chairman to appoint a Special Rapporteur to investigate first-hand the human rights situation in ... former Yugoslavia.	See UNSC resolution above	E/CN.4/1999.S/4.1 (1999) Calls upon the Secretary General to establish an international commission of enquiry. Requests the various Special Rapporteurs to carry out missions to East Timor.	E/CN.4/S-3/4 Requests the Chairman to appoint a Special Rapporteur ... to investigate at first hand the human rights situation in Rwanda ...	See UNSC resolution above	See UNSC resolution Above
	CSCE		CSO of CSCE, 22. October 1991 Formation of a human rights rapporteur mission.	CSO of CSCE, 20 May 1992 CSCE Conflict Prevention Centre entrusted with fact-finding mission to Kosovo.				
	EU		96/184/CSFP European Community and its Member States decided on 5 July 1991 to impose an embargo on armaments and military equipment applicable to the whole of Yugoslavia;	Council Regulation (EC) N. 926/98 27 April 1998 The supply or sale... to the FRY of equipment which might be used for internal repression of terrorism... shall be prohibited. Common Position by the Council... 7 May 1998 ... Funds held abroad by the FRY and Serbian Governments will be frozen.				
	US State Department		Public Notice 1427 Notice is hereby given that all licenses and approvals to export or otherwise transfer defence articles and defence services to Yugoslavia... are suspended.		Public Notice No. 3137 Notice is hereby given that all licenses and approvals to export or otherwise transfer defence articles or defence services to Indonesia... are suspended.	Public Notice 2016 Notice is hereby given that all licenses or approvals to export or otherwise transfer defence articles or defence services to Rwanda are suspended...		

2. Colonies and Demographic Manipulation

The 1990s have been characterized by a proliferation of the practice of demographic manipulation. This practice seeks to change the population balance of a territory in order to consolidate a territorial claim, even if the territory in question has been acquired through the use of force. At the international level, this practice occurred in relation to the Iraqi occupation of Kuwait, where the Security Council condemned the demographic manipulation that was attempted by Iraq and resisted it through comprehensive sanctions and by authorizing the use of force to end the occupation that was supported by this technique.

In the case of Bosnia and Herzegovina, the attempt to exterminate or forcibly remove through a campaign of terror one part of the population was denounced as ethnic cleansing and possible genocide. This campaign was part of the attempt of Yugoslavia to acquire territory (Greater Serbia) by establishing a claim to neighbouring territory on the basis of the ethnic appurtenance of the 'cleansed' population in those areas. Comprehensive sanctions were followed by the use of force to resist this campaign, leading to the adoption of the Dayton peace accords which were enforced internationally.

The attempt to 'settle' Kosovo with ethnic Serbs, while driving out large numbers of the majority ethnic Albanian population was similarly opposed. The attempted demographic manipulation was expressly denounced, as was the campaign of discrimination and terror, and ultimately forcible deportation, that was intended to secure Serb dominance in the territory. Tough Chapter VII action was followed by a forcible international coalition operation that was justified in terms of the need to protect the majority population that was in the process of being cleared from its own territory.

The attempt to establish ethnic Hutu dominance in Rwanda by means of genocide was strongly resisted by the United Nations organs. An arms embargo was followed by an (alas belated) international coalition operation to help terminate this appalling practice. Similarly, the attempt to partially displace the indigenous population of East Timor and replace it with elements of an imported Indonesian population and ruling elite was also resisted, up to the point of the deployment of an international coalition force under a UN mandate. In the case of Iraq, the campaign to drive out ethnic Kurds from northern Iraq and Shia "marsh Arabs" from southern Iraq was also opposed by the United Nations organs. While no forcible mandate was forthcoming, this practice incurred military action outside of a formal UN mandate that has not been internationally opposed.

In other instances of ethnic displacements 'by design' to consolidate territorial claims, strong condemnation was forthcoming, followed by demands to cease this practice and reverse its consequences. These include the conflicts involving Ngorno Karabakh, and Southern Ossitia and Abkhasia, and also the Transdnistr region.

Israel carries out similar actions, (although not that of the actual physical destruction of an 'undesirable population'). The original ethnic balance of the territories, which used to be almost entirely Palestinian, has been disrupted by generating a situation of forced displacement. This has been consolidated by economically disenfranchising the Palestinian population through isolation, the disruption of economic activities, arbitrary expropriations, deportations and a policy that has actively resisted refugee returns. In addition, the illegal colonies have been and continue to be very extensively deployed in a way calculated specifically to maximize the disruption of the geographic unity of Palestinian territories and establish illegitimate claims to Palestinian lands. The purported annexation of East Jerusalem gives formal expression to this policy. In stark contrast to all of the above cases, no action other than issuing condemnatory statements has been adopted.

Table 2. Colonies and Demographic Manipulations

		Israel	Bosnia	Kosovo
Condemnations	UNSC	S/RES/465 (1980) <i>Determines</i> that all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of Palestinian or other Arab territories occupied since 1967, including Jerusalem, ... have no legal validity and that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Fourth Geneva Convention ...	S/RES/757 (1992) <i>Deploring also</i> that its call for the immediate cessation of forcible expulsions and attempts to change the ethnic composition of the population has not been heeded... <i>References to "ethnic cleansing" and other extreme actions that incorporate settlement and demographic manipulation are common in other UNSC resolutions, e.g. S/RES/836 (1993)</i> <i>Reaffirms</i> the unacceptability of the acquisition of territory by the use of force. S/RES/757 (1992)	<i>In this case the issue of any possible attempts at changing the ethnic structure were addressed by the Security Council demanding the right to return for refugees – see "Table 3: Right to Return"</i>
	UNGA	S/RES/465 (1980) <i>Strongly deploring</i> the refusal by Israel to co-operate with the Commission... A/RES/2851 (XXVI) 20 December 1971 4. <i>Reaffirms</i> that all measures taken by Israel to settle the occupied territories, including occupied Jerusalem, are completely null and void. A/RES/34/90 (1979) <i>Condemns ...</i> the establishment of new Israeli settlements and expansion of the existing settlements on private and public Arab lands, and transfer of an alien population thereto;	<i>Deeply concerned</i> at developments in Croatia, including the persistent expulsions of non-Serb civilians. A/RES/47/147 (1992) <i>Condemns in the strongest possible</i> terms the abhorrent practice of "ethnic cleansing"	A/RES/53/164 (1998) <i>Strongly condemns ...</i> the mass forced displacement of civilians.
	UN Commission on Human Rights	E/CN.4/1982/1 (1982) <i>Strongly condemns</i> Israeli policies and practices, administrative and legislative measures to promote and expand the establishment of settler colonies in the occupied territories ...	<i>See above UNSC resolutions</i>	E/CN. 4/1995/89 <i>Recalling in particular</i> the attempts to change the ethnic structure of Kosovo...
	EU	EU 7590/01 (Presse 134) (2001) <i>Expresses great concern</i> at the continuing Israeli settlement activities, including the plans for establishment of new settlements and the expansion of existing ones. ... Settlements change the physical character and demographic composition of the Occupied Territories. All settlement activities are illegal and constitute a major obstacle to peace.		
Demands	UNSC	S/RES/465 (1980) <i>Calls upon</i> all States not to provide Israel with any assistance to be used specifically in connexion with settlements in occupied territories	S/RES/752 (1992) <i>Calls upon</i> all parties and others concerned to ensure that forcible expulsions of persons from the areas where they live and any attempts to change the ethnic composition of the population, anywhere in the former Socialist Federal Republic of Yugoslavia, cease immediately;	<i>See above</i>
	UN Commission on Human Rights	<i>See above UNSC resolutions</i>	<i>See above UNSC resolutions</i>	E/CN. 4/1995/89 <i>Urgently demands...</i> the [FRY] abrogate the official settlement policy of the [FRY] which is conducive to heightening of ethnic tensions...
Action	UNSC	S/RES/465 (1980) <i>Establishes a Commission ...</i> to examine the situation relating to settlements in the Arab territories occupied since 1967, including Jerusalem.	S/RES/808 (1993) <i>Decides</i> that an international tribunal shall be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of former Yugoslavia...	S/RES/1244 (1999) <i>Authorizes</i> Member States...to establish [an] international security presence in Kosovo...

3. The Right to Return of Refugees and Displaced Persons

As was noted in the previous section, the practice of demographic manipulation through colonies and through the disenfranchisement and partial displacement of the original Palestinian population, has been internationally resisted in all cases other than Israel. In fact, in all of the cases mentioned above, the right to return of the displaced populations lay at the core of international demands. In most of these cases, this demand has been enforced through military action, followed by an international security presence to safeguard the process of refugee returns.

The right of refugees or the displaced to return lies at the very heart of all of these international operations, and it is a key component of all peace-settlements that have been adopted. The right to return is a crucial element of the Dayton accords. While this has proved difficult in practice, tremendous international resources have been invested in the attempt to enable those who were subjected to displacement by design to return to their homes.

Throughout 1998, the return of the displaced and of refugees to Kosovo was also a key demand of the Security Council acting under Chapter VII. This demand was followed up in September/October of that year with a threat to use of force. This ultimately led to the Holbrooke agreement that foresaw an organized return of the displaced and refugees. Similarly, this was a non-negotiable condition in the Rambouillet talks on Kosovo. The use of force by NATO in relation to the Federal Republic of Yugoslavia was only suspended once it had been established that there would be no barriers to returns. When large parts of the ethnic Serb population left the territory in the wake of the success of the NATO campaign, their return became one of the highest priorities of the newly installed UN interim authority in Kosovo.

Other cases of the demand for return concern Tutsis from Rwanda who had been moved into Zaire. The Security Council authorized the deployment of an international coalition force led by Canada (ultimately not deployed) to achieve this aim. Similarly, the return of Eastern Timorese who were moved across the boundary into Indonesia has been a mandatory demand of the Security Council.

This pattern of the demand for the safe and secure return of the displaced and refugees to their homes is unbroken, also in other parts of the world. Other examples of such demands include the conflicts in the Caucasus, to which reference was made above, and displacement and refugee crises in Africa, from Nigeria and the Western Sahara, to the southern tip of the continent – where the right of return was realized for those who had sought shelter in the front-line states during the campaign against *apartheid* in Namibia and South Africa.

The right of Palestinian refugees to return home to mainland Israel or to the occupied territories has been a key demand of the Palestinians since 1948. As can be seen, in 1948 and 1968, Israel faced demands from the international community to ensure the right of return for refugees whose movements stemmed from those particular conflicts. However subsequently these international demands have diminished and there have been attempts to declare this as a non-negotiable issue in Israel-Palestine peace negotiations. Such a practice would, however, fly in the face of all other precedents.

Table 3 Right to Return

		Israel	Bosnia	Kosovo	East Timor	Rwanda
Affirmation of Right to Return and/or Demands	UNSC	No relevant resolutions	<i>Insisting</i> that all displaced persons have the right to return in peace to their former homes; S/RES/820 (1993)	S/RES/1199 (1998) Acting under Chapter VII, <i>Demands</i> to facilitate the unimpeded return of refugees and displaced persons under programmes agreed with UNHCR and the ICRC, providing State aid for the reconstruction of destroyed homes; S/RES/1199 (1998) <i>Deeply concerned</i> by the flow of refugees ..., as well as by the increasing numbers of displaced persons within Kosovo... up to 50,000 of whom the United Nations High Commissioner for Refugees has estimated are without shelter and other basic necessities.	S/RES/1319 (2000) <i>Calls</i> on the Indonesian authorities to take immediate and effective measures to ensure the safe return of refugees who choose to go back to East Timor, and stresses the need for parallel programmes to resettle individuals who choose not to return.	S/RES/997 (1995) <i>Decides ...</i> to adjust the mandate of UNAMIR to ... Assist the Government of Rwanda in facilitating the voluntary and safe return of refugees and integration in their home communities.
	UNGA	A/RES/194 (III) 1948 <i>Resolves</i> that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date... A/RES/2452 (XXIII) 19 December 1968 <i>Calls upon</i> the Government of Israel to take effective and immediate steps for the return without delay of those inhabitants who have fled the areas since the outbreak of hostilities..	A/RES/47/147 (1992) <i>Reaffirms</i> the right of all persons to return to their homes in safety and dignity, considers invalid all acts made under duress affecting ownership of property and other related questions and recognizes the right of victims of "ethnic cleansing" to receive reparation for their losses;	A/RES/53/164 (1998) <i>Calls upon</i> the authorities of the [FRY] and ethnic Albanian leaders to allow for and facilitate the free and unhindered return to their homes... of all internally displaced persons and refugees...	<i>See UNSC condemnation above</i>	A/RES/49/206 <i>Condemns</i> those preventing... the voluntary repatriation of refugees...
	UN Commission for Human Rights	Res/6 (XXIV) 27 February 1968 <i>Affirms</i> the right of all the inhabitants who have left since the outbreak of hostilities in the Middle East to return ...	<i>See UN SC condemnations above</i>	E/CN.4/1998/79 (1998) <i>Insists</i> that the [FRY] allow the return in safety and dignity of ethnic Albanian refugees to Kosovo.	E/CN.4/S-3/4 <i>Calls upon</i> the parties to the conflict to ensure ... those fleeing from the conflict areas... the right to return under safe conditions.	<i>See UN SC condemnation above</i>

		Israel	Bosnia	Kosovo	East Timor	Rwanda
	EU			EU 1251/99 Press 326 (1999) All Kosovars – irrespective of their ethnic origin – must be able to stay in and return to Kosovo, and live there in peace without harassment or intimidation of any kind.		
Actions	UNSC	No action taken	S/RES/743 (1992) <i>Decides</i> to establish, under its authority, a United Nations Protection Force ... and requests the Secretary-General to take the measures necessary to ensure the earliest possible deployment. S/RES/1995 (1995) <i>Decides</i> to establish, for a period of one year from the transfer of authority from the United Nations Protection Force to the multinational implementation force (IFOR), a United Nations civilian police force (IPTF) and a United Nations civilian office S/RES/1031 (1995) Notes the leading humanitarian role which has been given by the Peace Agreement to UNHCR ... in assisting with the repatriation and relief of refugees and displaced persons, and stresses the importance of repatriation being phased, gradual and orderly;	S/RES/1244 (1999) <i>Determined</i> ... to provide for the safe and free return of all refugees and displaced persons to their homes... <i>Authorizes</i> Member States and relevant international organizations to establish [an] international security presence in Kosovo... <i>Authorizes</i> the Secretary-General... to establish an international civil presence in Kosovo... to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo;	S/RES/1264 (1999) Acting under Chapter VII... <i>Authorizes</i> the establishment of a multinational force... stresses that it is the responsibility of the Indonesian authorities to ensure the safe and return of refugees to East Timor.	S/RES/872 (1993) <i>Decides</i> to establish a peace-keeping operation under the name 'United Nations Assistance Mission for Rwanda' (UNAMIR) S/RES/997 (1995) <i>Decides</i> ... to adjust the mandate of UNAMIR to (b) Assist the Government of Rwanda in facilitating the voluntary and safe return of refugees and integration in their home communities, (c) Assist UNHCR and other international agencies in the provision of logistical support for the repatriation of refugees.

		Israel	Bosnia	Kosovo	East Timor	Rwanda
	EU			<p>EU 1251/99 Press 326 (1999) [Regarding the right to return] This was, is and will be the basis for the European Union's strong commitment (military, political, economic) in Kosovo.</p> <p>EU 09553/98, Press 209, 15 June 1998 Refugee return will require close international monitoring to generate confidence on the part of those returning that the rule of law has been re-established, The European Council decided that the Union would play its full part in an increased international monitoring effort.</p>		

4. The Obligation to Withdraw from Territories Subjected to Armed Occupation

It is a basic tenet of the international system that the acquisition of territory by force is impermissible. If the forces of one state occupy the territory of another as a result of an armed conflict, this occupation must be rapidly terminated. Hence, there followed an immediate call for the withdrawal of Turkish armed forces after their invasion of Cyprus. Israel's occupation of southern Lebanon also triggered immediate demands for a withdrawal. The Soviet invasion of Afghanistan was followed by an immediate demand for a withdrawal which was secured through UN mediation. The United Nations Security Council condemned the occupation of the Falklands/Malvinas by Argentina and did not oppose even the recapture of those territories by the United Kingdom. When Iraq occupied Kuwait, the Security Council authorized states cooperating with the government of Kuwait to re-establish control over that territory by force. However, the coalition which achieved this aim immediately relinquished the Iraqi territory it had occupied as a result of the hostilities and withdrew from it.

The same fundamental principle holds true with respect to the occupation of a territory that has not yet formed itself into a state, but that is entitled to do so. Hence, the UN General Assembly and the Security Council resisted the deployment of Moroccan armed forces in the Western Sahara and demanded their withdrawal. While the campaign to achieve this aim has lasted for several decades, it is ongoing to this day and the right of the people of the Western Sahara to determine their future through an act of self-determination, rather than an act of occupation remains undiminished. With UN mediation, the realization of this aim has come closer over the past decade.

Similarly, the armed intervention by Indonesia in East Timor, when that territory was on the verge of administering the act of colonial self-determination, was immediately followed by General Assembly and Security Council demands for a withdrawal. After a long campaign at the United Nations and a determined struggle by the people of Easter Timor, this aim was finally realized when Indonesia agreed to withdraw her forces and to permit the holding of a referendum on the question of self-determination. Despite the disruption of the withdrawal process, the people of East Timor have now elected their own President and the United Nations is assisting that new administration to establish East Timor as a functioning state.

The attempt of the Federal Republic of Yugoslavia to disrupt the territorial unity of Croatia and Bosnia and Herzegovina through direct armed occupation, or by supporting local forces, was also strongly opposed by the UN Security Council. There were demands for the immediate withdrawal of Yugoslav (or Serb) armed forces and for the cessation of support for Serb armed formations that had established control over Bosnian territory. In the latter respect, this demand was vindicated, in the end through the application of force under UN authority.

In the case of Israel, the armed occupation of the territories brought under its power in 1967 has lasted for 35 years, despite consistent calls from the UN General Assembly for Israel's unconditional withdrawal, and the UN Security Council's call for a withdrawal. More recently, international bodies have called for the withdrawal of forces from the territories that had been placed under Palestinian administration as the result of a series of agreements achieved during the 1990s. Only weeks ago, the Security Council in resolution 1402 (2002) called for the withdrawal of Israeli troops from Palestinian cities after the Israeli army had entered Palestinian territory in order to combat alleged terrorism. However, in sharp contrast to other cases, where unlawful occupation has triggered economic sanctions and at times even more decisive international action, no action has been forthcoming to vindicate this demand, either during the dramatic episode of 2002 or during the thirty-five years preceding it.

Table 4 Withdrawal of Forces

		Israel	Bosnia	Kosovo	Iraq (Kuwait)
Demands	UN SC	<p>S/RES/242 (1967) 1. <i>Affirms</i> ... withdrawal of Israel armed forces from territories occupied in recent conflict</p> <p>S/RES/279 (1970) <i>Demands</i> the immediate withdrawal of all Israeli armed forces from Lebanese territory.</p> <p>S/RES/1402 (2002)</p> <p><i>Calls</i> for the withdrawal of Israeli troops from Palestinian cities, including Ramallah.</p>	<p>S/RES/752 (1992) <i>Demands</i> that those units of the Yugoslav People's Army and elements of the Croatian Army now in Bosnia and Herzegovina must either be withdrawn or be subject to the authority of the Government of Bosnia and Herzegovina, or be disbanded and disarmed with their weapons placed under effective international monitoring, and requests the Secretary-General to consider without delay what international assistance could be provided in this connection.</p>	<p>S/RES/1244 (1999) <i>Demands</i> ... that the [FRY] put an immediate and verifiable end to violence and repression in Kosovo, and begin and complete verifiable phased withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable, with which the deployment of the international security presence in Kosovo will be synchronized.</p>	<p>S/RES/660 (1990) <i>Condemns</i> the Iraqi invasion of Kuwait; <i>Demands</i> that Iraq withdraw immediately and unconditionally all its forces to the positions in which they were located on 1 August 1990;</p>
	UNGA	<p>RES/37/123 (1982) <i>Reaffirms</i> once more the overriding necessity of the total and unconditional withdrawal by Israel from all the Palestinian and other Arab territories occupied since 1967, including Jerusalem, which is an essential prerequisite for the establishment of a comprehensive and just peace in the Middle East;</p> <p>A/RES/40/168 (1985) <i>Condemns</i> Israel's continued occupation of the Palestinian and other Arab territories ... and demands the immediate, unconditional and total withdrawal of Israel from all the territories occupied since 1967.</p>	<p><i>See UNSC Resolution above</i></p>	<p><i>See UNSC Resolution above</i></p>	<p><i>See UNSC Resolution above</i></p>
	European Union	<p>EU/12588/01 The European Union asks the Israeli authorities to withdraw their troops immediately from the zone that is exclusively under Palestinian administration.</p>		<p>EU Declaration, 11 June 1998 <i>We insist</i> on an immediate stop to all violent action and call for the withdrawal of special police and army units.</p>	

		Israel	Bosnia	Kosovo	Iraq (Kuwait)
Actions	UN SC	S/RES/259 <i>Requests</i> the Secretary-General urgently to dispatch a Special Representative to the Arab territories under military occupation by Israel ... Requests the Government of Israel to receive the Special Representative to the Arab territories of the Secretary General, to co-operate with him and to facilitate his work;	7/RES/713 (1991) 6. <i>Decides</i> , under Chapter VII..., that all States shall, for the purposes of establishing peace and stability in Yugoslavia, immediately implement a general and complete embargo on all deliveries of weapons and military equipment to Yugoslavia ...	S/RES/1244 (1999) <i>Demands</i> ... that the [FRY]... begin and complete verifiable phased withdrawal from Kosovo... <i>Authorizes</i> the Secretary-General... to establish an international civil presence in Kosovo... to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo;	S/RES/678 (1990) Acting under Chapter VII... <i>Authorise</i> member states ... to use all necessary means to ... restore international peace and security in the area.
	UNGA	RES/37/123 16 December 1982 Calls once more upon all Member States to apply the following measures: (a) to refrain from supplying Israel with any weapons and related equipment and to suspend any military assistance ... (c) to suspend economic, financial and technological cooperation with Israel (d) to sever diplomatic, trade and cultural relations with Israel	<i>See UNSC Resolution above</i>	<i>See UNSC Resolution above</i>	<i>See UNSC Resolution above</i>
	European Union	None	94/672/PESC L266 (15.10.1994) Economic embargo	EU 6892/98 Press 76, 20 March 1998 The European Union's Council of Ministers yesterday agreed to a series of measures designed to put pressure on Belgrade to find a peaceful settlement to the Kosovo problem. These comprise an arms embargo, a refusal to supply equipment that might be used for internal repression or terrorism...	Economic embargo

5. Overall Conclusion

As the attached tables demonstrate, the practices of Israel in relation to grave and persistent violations of human rights and humanitarian law, the construction of colonies and demographic manipulation, the preclusion of the return of refugees and the maintenance of a regime of armed occupation for a quarter of a century have been correctly and clearly identified as serious violations of international law. In relation to most of these instances, there have also been strongly worded demands for a cessation of these practices and a reversal of their consequences. In this way, the Palestinian case mirrors other instances characterized by the same kind of grave violations.

Due to the inability of the Security Council to act more decisively, however, a very significant disparity has been permitted to emerge over the past decades, giving rise to a double standard informing states in their conduct at the United Nations and in other bodies. All other instances considered here have triggered vigorous measures aiming to terminate these types of violations and in all cases measures were deployed to ensure compliance with the most fundamental principles of the organized international community.

Several measures befit the current situation and are crucial to ensure Israel's compliance with UN resolutions and international law. These include:

- The deployment of international monitors to inhibit further abuses of human rights and humanitarian law and ensure the granting of full humanitarian access;
- The disengagement of Israeli occupying forces under international supervision;
- The stabilization of autonomous governance for an interim period through international involvement;
- The insistence that a final and comprehensive peace settlement be achieved within a specified time (with measures to ensure that the time-frame is met) and that cannot derogate from principles held to be non-negotiable in all other instances. These include the territorial unity and integrity of the Palestinian entity and later the Palestinian state, the reversal of demographic manipulation, in particular through the removal of the colonies, the return of expropriated land and compensation for property that was taken or destroyed, and the return of the displaced and refugees.
- The use of international sanctions, including an arms embargo, in response to obstruction of such a peace process.
- The establishment of accountability at the international level for unacceptable practices, including torture, assassination, deportation, etc.

The virtual immunity of Israel from measures that are routinely applied by the organized international community in parallel cases has had a very damaging impact on attempts to persuade the Israeli government to engage in a genuine peace process based on international standards that govern the relations of all other states.

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