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BRIEFING NOTES

Europe's role in strengthening and protecting Universal Justice

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By

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Preamble

The International Criminal Court (ICC)

The last decade has seen some major welcome developments by the international community to promote universal justice and human rights. This is manifest, for instance, in the establishment of the **International Criminal Court (ICC)** in The Hague following the 1998 **Rome Statute**. The ICC was set up in an effort to end the impunity of offenders who commit the most serious crimes, including war crimes, crimes against humanity and genocide. The urgent need for the establishment of such an independent body, to ensure that no individual would be beyond impunity, was cemented by the horrors unfolding in the Balkans in the 1990's as well as the Rwandan genocide in 1994. However, while efforts were made to set up tribunals into crimes committed in those regions, no similar efforts were made to bring Israel to account for its offences against the Palestinian people despite numerous calls for international tribunals into Israeli war crimes.

Universal Jurisdiction

Efforts to advance and protect the role of **universal jurisdiction** have been a further development in advancing human rights and seeking justice for the victims of some of the world's most heinous crimes. The idea behind universal jurisdiction is that no country should be a safe haven for those individuals who commit the crimes universally recognised to be amongst the most grave, including war crimes and crimes against humanity. Universal jurisdiction is a concept that ranks extremely highly with proponents and advocates of human rights as it ultimately means that anyone can be prosecuted for those crimes regardless of where they are in the world. The arrest of Augusto Pinochet in London in 1998 is one of the most well known examples of universal jurisdiction implemented in recent history.

Culture of Israeli impunity

Notwithstanding, a culture of impunity continues to persist in many parts of the world. It is particularly worrying in relation to Israel and its ongoing mistreatment of the Palestinian people. Israel in particular seems to have become largely immune to both international opinion and law. Despite regularly committing grave breaches of international law, in a manner which many independent bodies including the UN have declared to amount to war crimes and even crimes against humanity, Israel has remained illusive when it comes to facing justice. With the assistance of the international community, who have



not been living up to their obligations under international law, Israel has found itself immune to prosecution, and the Palestinians have found themselves entirely without recourse to justice for the daily and gross human rights violations being committed against their people.

The ICC has yet to be used to bring about prosecutions for Israeli war crimes and universal jurisdiction too is under threat with moves currently underway to change the law in the United Kingdom, for instance, to allow Israelis accused of war crimes to visit the UK without fear of prosecution.

Central Issues:

1. Israel's Ongoing Belligerent Occupation of Palestine.

- **Ongoing Occupation** - Occupation is usually considered to be a temporary state of affairs following the invasion of one country by another. However, not in Israel's case. More than four decades after its 1967 conquest of large swathes of Palestinian land it still remains in "Occupation" of that land. This includes the areas of the West Bank, East Jerusalem, the Gaza Strip and Golan Heights. Its occupation is both aggressive and belligerent and yet it has established an illegal and immoral status quo that all too often remains uncontested by the international community. The Israeli occupation has brought along with it horrific elements of colonialism, dictatorship, oppression, apartheid-like policies and what is widely regarded as a creeping genocide of the Palestinian people.
- **Gaza** - Although Israel officially withdrew its troops and settlers from Gaza in 2005, it still most certainly retains effective control of Gaza's borders and access points by land, sea and air. In no way can Israel realistically assert that Gaza is no longer under Israeli Occupation. The siege imposed on Gaza by Israel has extended for more than three years now and has resulted in the deaths of Gazan civilians, malnutrition, a water crisis, the collapse of the economy, the widespread destruction of civilian infrastructure and the overall devastation of Gazan society as a whole.



- **West Bank** - The West Bank too remains under occupation in a manner, and for a duration, that is completely incompatible with international human rights and humanitarian legislation and standards. The Occupation is illegal and includes within its remit the creation of the devastating and illegal “Apartheid wall”; the forcible demolition of Palestinian family homes; the arrest of children; the restrictions on access to places of worship; the restrictions on freedom of movement and many other hallmarks of an oppressive occupying regime all of which are contrary to international law.

However, despite the illegality of many of Israel’s acts of atrocity committed against the Palestinian people this state of affairs has not only been quietly accepted by members of the international community but it has also been actively encouraged by many as well which makes them indirectly complicit in allowing these human rights violations to continue unabated.

2. Disproportionate use of force by the Israeli occupation against civilians and civilian infrastructure

There is no question about the violent nature of the Israeli military occupation. The force used by them is all too often disproportionate and targets civilians as well as civilian infrastructure and is certainly contrary to international human rights and humanitarian law. In addition to the daily examples of brutality carried out by the Occupying Israeli forces against civilian Palestinian men, women and children, there have also been massive widespread campaigns of violence and death sanctioned by Israel against civilians en masse. This includes for example:

- **The Jenin Massacre [2002]**

In 2002 the Jenin refugee camp was virtually destroyed following a major military operation launched by the Israeli forces into the camp. According to the UN the “IDF systematically used bulldozers, tanks, armoured personnel carriers and infantry, also armoured helicopters” to engage in an attack on a refugee camp that was home to some 13,000 refugees. In addition to death and injury 4,000 Palestinians were rendered homeless as a result. The Israelis did not allow even the UN access to perform an independent enquiry into the attack on the camp.



Human rights groups such as Amnesty International and Human Rights Watch have accused Israel of committing War Crimes during this assault.

- **The Invasion of Lebanon [2006]**

During this attack 1,500 people, mostly Lebanese civilians were killed and around one million people were displaced. This was done with the sanction of the Israeli government.

- **The Gaza Offensive [2008-9]**

During the 22 day period of Israel's "Operation Cast Lead" approximately 1,400 people were massacred, the vast majority of whom were civilian women and children. The indiscriminate use of weapons such as White Phosphorus and flechettes against a civilian population in a built up area shocked the world. The resultant UN sanctioned Goldstone Report declared that Israel had committed War Crimes and Crimes Against Humanity.

However, despite the hostility that Israel indiscriminately unleashes against Palestinian civilians in assaults such as these, not a single Palestinian has been compensated nor has a single Israeli leader faced justice. The international community has failed to put an end to the increasingly violent acts of the Israeli government and have failed to see Israel brought to account for any of these crimes.

Extrajudicial executions sanctioned by the state

The targeted assassination of Mahmoud Al-Mabouh 2010.

Extrajudicial executions have also been sanctioned by the Israeli state on many occasions including the recent murder of Mahmoud Al-Mabouh who was assassinated in his Dubai hotel room by an assassination squad that has been linked to the Israeli secret service agency Mossad. Passports from several European countries were also forged by the assassins and used as part of the murder plot.



The recent attack on the Gaza Freedom Flotilla in which at least nine humanitarian workers were murdered by Israeli commandos was an act of piracy in international waters. The hijacking of the boats, the attack on the civilians, the kidnap and arrest of hundreds of unarmed civilians, all were under the command of Prime Minister Benjamin Netanyahu who is responsible for sanctioning the attacks and yet the result is another “internal” enquiry of which Israel’s exoneration of itself is a foregone and unjust conclusion.

3. Efforts to curtail applications of Universal Jurisdiction

Israeli officials who sanction and actively carry out crimes against Palestinian citizens have been allowed to escape from justice. Israel consistently insists that it alone be the one to investigate any allegations into its own wrongdoing. This is obviously unacceptable as such an internal investigation lacks all the hallmarks of objectivity that must be the cornerstone of any credible investigations into crimes as serious as war crimes. Universal jurisdiction is therefore a vital tool at the disposal of the international community to ensure that justice is sought for the Palestinian people.

- All 27 members of the Council of Europe have ratified the **Fourth Geneva Convention** and therefore have a clear duty under that Convention which obliges them to pursue war criminals and bring them to justice.
- **Article 146** of the Fourth Geneva Convention clearly states that *“Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts.”*
- However, there have been *efforts to undermine that duty* and we are seeing, for reasons of political expedience, that countries are continuing to renege on those duties and responsibilities when it requires the prosecution of Israeli offenders.



Here are just two examples:

a. Spain and the case of Salah Shahadeh (2009)

Efforts were made in Spain in 2009 to establish a criminal investigation into the killing of Salah Shahadeh in 2002. Shahadeh was a Hamas leader living in the Gaza Strip. In order to kill him the Israeli army dropped a one ton bomb in his district of Al Daraj, an operation in which 14 other civilians were killed (mainly young children and babies) and 150 other people were wounded. Spanish efforts came to a sharp halt however after Israel declared that Spain had no legal jurisdiction and that the case should be investigated in Israel instead. On 30th May 2009, following intense pressure from the Israeli authorities, the Spanish National Court dropped the charges against Israeli officials and halted the investigation. Subsequently there are now also efforts being made within Spain to limit the universal jurisdiction laws to cases involving Spanish victims or taking place on Spanish soil.

This is a worrying development as this limited scope of universal jurisdiction was clearly not in the minds of the framers of the Geneva Convention at the time of writing it. Indeed surviving Nazi war suspects are still being pursued for international crimes under the Nuremberg Charter.

b. Belgium – Ariel Sharon (2001)

In 2001 a case was brought by 21 survivors of the 1982 massacre at the Sabra and Shatila refugee camps in Beirut against Ariel Sharon who had been the Commander of the Israeli Defence Force (IDF) which was in control when the massacre took place. Israel argued that Sharon was immune as he was protected from prosecution on the ground of diplomatic immunity being, as he was, the head of government. Following the resultant pressure on Belgium from both Israel and the USA (who threatened to withhold NATO funding and to move NATO out of Belgium entirely) the law was amended to make it less stringent. Sharon therefore escaped from prosecution and the victims of the massacre have yet to be given justice.

In such cases we must also question the limits of immunity. Where does immunity end and justice begin?



There have also been a few recent incidents in the UK where Israeli officials who have attempted to enter the country have been faced with calls for their arrest. This includes the issue of an arrest warrant for Tzipi Livni in December 2009. That incident was immediately followed up by Labour and Conservative government ministers rushing forward and promising to change the law to protect their Israeli ally from such threats of arrest in the future; a move completely contrary to the principles of universal jurisdiction and justice.

4. Consequences of inaction

Public perception

There is already a perception in much of the world that “The West” is complicit with Israel in their grave daily offences against the people of Palestine. Supporting Israel by creating legal loopholes for them so that they can constantly circumvent justice will only confirm the perception of the EU as being complicit in Israeli War Crimes. There is no moral, ethical or legal justification to let Israel constantly evade justice. By helping it do so even the friends of Israel are causing it more harm than good. Israel claims that it is unfairly targeted by the world community but no one is trying to target Israel. A call is simply being issued for it to be treated on the same level playing field as every other country in the world and for it to abide by the same international laws that other countries do. Friends of Israel must help it to face up to its duties and responsibilities like everyone else in the world and critics of Israel must not just talk but must put their words into action.

Bias and double standards

There is a danger that the only offenders that the international community are being seen to be interested in pursuing are those from African countries. The ICC for instance has thus far only pursued African leaders in countries such as Sudan (such as Omar Hassan Al-Bashir) as well as Kenya, Uganda, the Democratic Republic of the Congo and the Central African Republic. To prosecute them and yet continue to excuse Benjamin Netanyahu and other Israel leaders and officials who have been openly and repeatedly accused of war crimes by UN agencies and international human rights bodies is sheer hypocrisy and is increasingly being seen as evidence of bias and ultimately racism. This perception of



bias will continue to tarnish the image of Europe and consequently European interests as well until they are seen to be taking a more even handed and all encompassing approach.

Nor is this good for relations within Europe; between European states and their peoples; nor between Europe and the affected countries who have deep seated grievances that should not be allowed to fester or be exploited.

5. Conclusion – Recommendations

- The offender can not be allowed to investigate themselves. It is illogical, immoral and impractical to allow the murderer/thief/rapist to investigate their own crimes. However, this is what Israel has consistently been insisting on (following the attack on Gaza in 08-09, the Flotilla massacre, etc...) At the very least, in the cases where they do insist on investigating themselves this must be followed up with a credible, transparent, independent external investigation when their own does not meet up, as it inevitably won't, to the internationally recognised legal standards of independence and impartiality. No amount of political convenience should stand in the way of justice.
- The Geneva Convention requires the High Contracting Parties to bring the concept of universal jurisdiction into their own domestic law. However, several European member states have yet to incorporate universal jurisdiction into their own domestic laws. The EU Council members should oblige those who have not yet done so to do so at the earliest opportunity.
- Independence and protection of the judiciary from political interference.
- Under the Fourth Geneva Convention the High Contracting Parties are under an obligation to pursue and prosecute suspected war criminals. We therefore encourage you to seek stronger efforts from countries such as the UK to fulfil that obligation and encourage you to express grave concern over efforts to water down existing laws in order to accommodate for the visits of suspected war criminals in Britain including, Tzipi Livni, Ariel Sharon etc...



- The European Council and all signatories to the Geneva Convention should do their best to help persuade Britain and other countries to remain firm to the principles of universal jurisdiction and not change domestic law to accommodate for Israeli war crimes as a result of misplaced loyalty or political pressure.
- The laws of universal jurisdiction are vital in the context of war crimes and crimes of a similarly heinous nature and must be protected and nurtured by all European states.
- We urge the European Council members to give their full backing and support to the UN Sanctioned Goldstone Report into violations committed during Israel's twenty-two day incursion into Gaza in December 2008 - January 2009.
- The European Council members should all fully co-operate with the Dubai authorities in their attempts to apprehend and prosecute those implicated in the state-sponsored assassination of Mahmoud Al-Mabhouh and the related crimes.
- The European Council should insist that damages be paid to them as a result of all damage and loss done to their property during the numerous Israeli incursions, raids, and attacks on civilian infrastructure in the Occupied Palestinian Territories over the years.

