

limitations: Hamas did not possess the military arsenal many had suggested; neither Iran nor any other regional player was capable of displacing Egypt as the central mediator (between Israel and Hamas, as well as among Palestinians); and, to a degree, Iranian support hurt the Islamist movement as much as it helped, by allowing detractors to paint it as alien to the Sunni Arab body politic.

Still, seen from Cairo, Tehran's policies and backing of militant Arab groups defy both the regional order and domestic stability. . . . Cairo claimed that Iran had torpedoed earlier Palestinian reconciliation talks and regularly blames Tehran for encouraging Hamas's supposedly more hard-line external wing. It also depicted Hasan Nasrallah's strong denunciations of Egypt's attitude throughout the crisis and calls on the Egyptian people to take action against the regime as well as Hizballah's alleged operations from within Egypt as the most pernicious manifestations of Iranian designs. The regime exploited Nasrallah's words as well as attacks from the Arab media to mobilize nationalist and, in some respects, anti-Shi'ite feelings.

During and after the war, Egyptian ire also targeted Syria and Qatar, both of whom were suspected of seeking to displace or at a minimum lessen Cairo's role and of forming a new three-way axis with Iran. Egypt accused Syria of encouraging the Damascus-based Hamas leadership to scuttle the November 2008 reconciliation talks, reacted bitterly to the Syrian media's war coverage and tacit endorsement of Nasrallah's diatribe, and was incensed by Qatar's decision to host a separate meeting of Arab states on 16 January 2009. . . . If anything, Qatar's positioning was all the more infuriating and less understood. . . .

The regional battle for influence was one of the more important of the war's subplots. Buoyed by Arab public opinion and media, the so-called radical axis enjoyed strong momentum. Often on the defensive, Egypt ultimately maintained its preeminence in Israeli-Palestinian and Palestinian-Palestinian talks, fending off attempts by others (including Turkey, Qatar, and France) to insert themselves, much to Hamas's and Syria's disappointment.

From Egypt's vantage point, the overall balance sheet appears mixed. Despite the loss of prestige in the eyes of Arab public opinion, officials express satisfaction at having demonstrated their centrality, as Cairo became the focus of indirect cease-fire talks and prisoner exchange negotiations as well

as inter-Palestinian reconciliation efforts. In this, it was aided by forceful indications that the United States would not allow any third party to supplant Cairo.

But the battle is not over, and the war's ripple effects are yet to be fully felt. As Arab polarization grew to almost unprecedented heights, Saudi Arabia, fearful of the consequences, appeared interested in mending fences with Syria. . . . Mubarak and his foreign minister stayed away from the Arab summit in Doha in late March 2009. . . . The summit itself did little to heal the regional rift. Finally, Fatah-Hamas reconciliation talks were halted in early April without any breakthrough, despite Egypt's heightened interest and far more engaged role as a mediator present in all discussions.

The most dramatic turn in the struggle occurred in April 2009, when Egypt announced it had uncovered an extensive network of Iranian-supported Hizballah operatives operating on its territory with the aim of gathering intelligence, recruiting new members, carrying out attacks against Israeli tourists, and smuggling weapons to Hamas. In the ensuing sharp exchange of words, Nasrallah acknowledged that Hizballah members were present in Egypt but sought to turn the tables by explaining they were doing what Cairo ought to have done all along, namely help the Palestinians in Gaza [see Doc. B1 below for Nasrallah's response]. . . .

The Muslim Brothers have had a relatively nuanced reaction, evidently worrying that they might be associated with foreign interference and so pay a political price, yet reiterating that Hizballah was right in aiding the resistance and Egypt wrong in not doing so. It is premature to measure the full scope of the event's fallout. The wide-ranging ramifications touch Egypt's relations with Iran, its posture toward Hamas, and Hizballah's standing in the region. For now, they have coincided with stepped-up Egyptian efforts to pressure Hamas, both politically and financially, to curb its weapons smuggling and manufacturing and perhaps to force it to choose between Cairo and Tehran. . . .

A3. PALESTINIAN AND ISRAELI HUMAN RIGHTS ORGANIZATIONS, CALL FOR AN END TO INTERNATIONAL DONOR COMPLICITY IN ISRAELI VIOLATIONS OF INTERNATIONAL LAW, 4 MAY 2009 (EXCERPTS).

Prompted by the 2 March 2009 international donors conference that pledged

\$4.5 billion for the reconstruction of Gaza, prominent Palestinian and Israeli human rights organizations were led to reflect on the broader issue of the donor community's role in underwriting the costs of Israel's repeated destruction of infrastructure and housing, and other violations of international law resulting in recurring humanitarian crises. Signatories include the Palestinian NGO Network; the Palestinian Centre for Human Rights; Al-Dameer Association for Human Rights; Al-Haq; Al-Mezan Center for Human Rights; BADIL Resource Centre for Palestinian Residency and Refugee Rights; Gaza Community Mental Health Program; Gisha: Legal Center for Freedom of Movement; the Israeli Committee Against House Demolitions; ITIJAH (Union of Arab Community-Based Organizations); Physicians for Human Rights-Israel; Public Committee Against Torture in Israel; and Women's Affairs Centre. The full letter is available online at www.pcbrgaza.org.

On 2 March 2009, major international donors convened in Sharm al-Shaykh 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 organizations, 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 fulfill 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 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 Program. As noted, an additional \$4.5 billion was pledged at the recent Sharm al-Shaykh 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 financial and humanitarian crisis. It impacts on the ability of Palestinians 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.

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 affirms 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 endeavor 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 dunams 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. . . .

Conclusion

As human rights organizations 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. . . .

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 pressurize 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 necessary 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.

A4. UN OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS, "WEST BANK MOVEMENT AND ACCESS UPDATE," JERUSALEM, MAY 2009 (EXCERPTS).

The UN Office for the Coordination of Humanitarian Affairs (OCHA) in the occupied Palestinian territories produces a biweekly report on movement and access to monitor the progress made since the 2005 U.S.-brokered Agreement on Movement and Access was signed between Israel and the Palestinian Authority (see Doc. A4 in JPS 136). The excerpts below come from the May 2009 movement and access update, an 18-page analysis synthesizing the biweekly reports in the period between September 2008 and end of March 2009.

Footnotes have been omitted for space considerations. The full report can be accessed online through www.ochaopt.org.

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2. During the reporting period the Israeli authorities implemented a number of measures, which have eased the flow of Palestinian traffic on some of the access routes into four main cities: Nablus, Hebron, Tulkarm, and Ramallah. These measures included the removal of permit requirements for vehicles entering Nablus city; the opening of two junctions allowing more direct access to Hebron city; the removal of one checkpoint on the southern route into Tulkarm city; and the opening of a "fabric of life" alternative road easing access to Ramallah city from the west.

3. At the same time, there has been further entrenchment of various mechanisms used to control Palestinian movement and access and to facilitate the movement of Israeli settlers. The key elements of this entrenchment, as were observed during this and previous periods, are: the expansion of the alternative ("fabric of life") road network; the expansion of key staffed checkpoints; and the replacement of rudimentary obstacles (e.g., earthmounds) with more permanent ones (e.g., road gates and guardrails).

4. While some of these measures eased the flow of Palestinian traffic, they exact a price from Palestinians. For example, the "fabric of life" roads reconnect Palestinian communities that were disconnected due to the restricted access of Palestinians to a main road, or due to the obstruction of a road by the barrier, at the expense of reinforcing the exclusion of Palestinians from the primary road network and of undermining the territorial contiguity between different areas. The pavement of these roads entails the expropriation of private and publicly owned land, thus further shrinking the space available for Palestinian development.

5. In its most recent comprehensive survey, OCHA field teams documented and mapped 634 physical obstacles, including 93 staffed checkpoints and 541 unstaffed obstacles (earthmounds, roadblocks, road barriers, etc.). Twenty out of the 93 checkpoints are not always staffed, including some that are rarely staffed. The overall figure represents an insignificant increase of four obstacles, compared with the parallel figure at the end of the previous reporting period