

10 Jahre Mauer in Palästina - Beschluss der VDJ & Sondervotum

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Auf seiner Bundesvorstandssitzung am 5. Juli 2014 in Bremen hat der Bundesvorstand der VDJ mehrheitlich beschlossen, das nachstehende, am 9. Juli 2014 2014 veröffentlichte Schreiben an den Generalsekretär der Vereinten Nationen Ban Ki-moon und die Hohen Vertragsparteien der Genfer Konventionen anlässlich des 10. Jahrestages des Gutachtens des Internationalen Gerichtshofs zur Mauer in den besetzten palästinensischen Gebieten zu unterstützen. Der Entscheidung ging eine sehr kontroverse Diskussion über den Inhalt des Schreibens insgesamt und insbesondere über die zur Verfügung stehenden internationalen Maßnahmen gegen Israel voraus. Der Kollege Sebastian Baunack machte im Bundesvorstand deutlich, dass er mit den Inhalten des Schreibens nicht einverstanden sei. Seine abweichende Stellungnahme ist im Anschluss an das Schreiben vom 09.07.2014 dokumentiert.

Auch angesichts der Eskalation des israelisch-palästinensischen Konflikts ist die Suche nach juristischen Instrumenten der Streitbeilegung in diesem Konflikt sowie die grundsätzliche Debatte um eine rechtspolitische Positionierung weiterzuführen.

pdf-Version

10 Years after the Advisory Opinion on the Wall in Occupied Palestine:

Time for Concrete Action

To:

Secretary-General of the United Nations Ban ki Moon

High Contracting Parties to the Geneva Conventions

This letter is joined by XX legal experts concerned with the ongoing

breaches of international law in the occupied Palestinian territories violating the Palestinian people's individual and collective human rights. We are pursuing mechanisms to end impunity for these breaches and violations on the occasion of the tenth anniversary of the International Court of Justice (ICJ) **Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory** of 9 July 2004.[1] We take note also of the main outcomes of subsequent efforts by independent legal experts, UN bodies and civil institutions[2] to promote good practice and operational measures aimed at ending Israeli violations and ensuring respect for international law in the pursuit of justice, peace and world order.

The Court arrived at its Advisory Opinion following essentially the same rules and procedures as in its binding judgements in other contentious cases. Further, the Advisory Opinion's high status and legal effect derive from the fact that it is the official pronouncement of the principal judicial organ of the United Nations.

The 2004 ICJ opinion authoritatively elucidates (1) the international legal framework that applies to the Israeli occupation (2) the connection between the Wall and Israel's illegal settler-colony enterprise and (3) the responsible actors and their legal obligations. The ICJ concluded that the "construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated régime, are contrary to international law." [3] The Court found that construction of the Wall and its associated regime violate multiple norms binding on all States under both treaties and customary law, including peremptory norms from which no derogation is permitted.[4] The Court ruled that:

- Israel cannot rely on a right of self-defence, or on a state of necessity, in order to preclude the wrongfulness of the construction of the Wall[5];
- Israel is under an obligation to terminate its breaches of international law, to cease the construction of the Wall, to dismantle its structures, and to repeal or render ineffective all related legislative and regulatory acts; Israel is further under an obligation to make reparation for all damage caused by the Wall [6];
- All States are under an obligation not to recognize the illegal situation resulting from the construction of the Wall and not to render aid or assistance in maintaining the situation created by such construction and its associated regime[7];
- All High Contracting Parties (HCPs) to the **Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949** have an additional obligation to respect and ensure Israel's and other States' compliance with international humanitarian law as embodied in that Convention[8];
- The United Nations, and especially the General Assembly

and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the Wall and the associated régime. [9]

The 150 states^[10] that voted in favour of UN General Assembly resolution ES-10/15^[11] explicitly have acknowledged the duty of Israel and all UN Member States to 'comply with their legal obligations as mentioned in the advisory opinion.'^[12] Following the ICJ advisory to consider further action, the General Assembly acclaimed '**Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law**,'^[13] and established the United Nations Register of Damage (UNRoD) caused by the construction of the wall in the occupied Palestinian territory.^[14]

Subsequent legal analysis of Israeli violations and their consequences for Palestinian human rights have reaffirmed and complemented the **ICJ Advisory Opinion** in response to the particular question that the General Assembly put to it.^[15] The **ICJ Advisory Opinion** already had underlined that the Wall was a component of the wider Israeli annexation and settlement enterprise that systematically violates Palestinians' human rights. Consecutive UN Special Rapporteurs on the situation of human rights in the oPt have found that Israel's occupation regime, integrating the settler colonies and the Wall, has resulted in institutionalized discrimination, segregation and systematic and severe violation of Palestinians' human rights. They have characterized this Israeli regime as one 'of prolonged occupation with features of colonialism and apartheid.'^[16] UN treaty bodies such as the UN Committee on the Elimination of Racial Discrimination (CERD)^[17] and independent legal studies^[18] have supported these findings. It follows that these Israeli violations trigger not only state responsibility, but also individual criminal liability under the Rome Statute of the ICC and other standards of international criminal law.^[19]

Based on the above, UN fact-finding missions and Special Rapporteurs, as well as human rights organizations around the world, have engaged in the study of third-party responsibilities and extraterritorial human rights obligations.^[20] They have analysed how states, parastatal and private actors provide recognition and/or otherwise assist in the commission or maintenance of these crimes, gross violations of human rights and serious violations of IHL.^[21] Taking into consideration the IHL framework, human rights conventions,^[22] the **Apartheid Convention**^[23] and the **Rome Statute of the ICC**, such analysis has demonstrated the obligation of states to adopt practical measures in economic and business operations, in order to comply with their duties under international law and avoid, or terminate complicity with illegal situations.

Primary responsibility to promote and protect human rights, and to ensure respect for international law and human rights by nonstate

actors, remains with States. However, legal development over the last years has stressed the liability of corporations, parastatal institutions and financial actors. In 2006, the International Red Cross has stressed that IHL binds not only states and armed groups but as well business enterprises.[24] In 2011, the UN Human Rights Council resolution A/HRC/RES/17/4 adopting the ***UN Guiding Principles on Business and Human Rights*** underlined that transnational corporations and other business enterprises have a responsibility to respect human rights.[25] The UN Special Representative for Business and Human Rights has concluded that corporations now are considered bearers of duties under international criminal law.[26]

Some non-State actors already have been denounced for their noncompliance with their international law and human rights obligations. Among these entities are the parastatal Jewish National Fund, World Zionist Organization, and Mekorot, as well as Israeli and transnational corporations such as Elbit Systems, Sodastream, Ahava, G4S, Veolia Group, Alstom, Dexia Bank, and institutions of the Israeli banking system, among others.[27]

Since 2004, some States and private bodies have developed good practices or policies, including divestment from, or termination of/abstention from contracts with entities involved in Israeli violations of international law. The EU Guidelines on eligibility of Israeli entities for grants, prizes and financial instruments[28] and the relevant Non-Aligned Movement resolutions[29] are notable examples of the exercise of collective extraterritorial obligations.

States, public entities, parastatal organisations and private actors?whether located in, operating partially in, providing services or products to, transacting with or trading in services or products of Israeli settler colonies, or otherwise engaged in projects executed totally or partially under Israeli control in the oPt and/or not ?undertaken in accordance with the wishes of the peoples of [Non-Self-Governing] Territories, and their contribution to the development of such Territories?[30]?are under self-executing obligations to cooperate in taking the following measures:

1. Terminate all funding, contracts or other economic and institutional relations with actors enabling, supporting or encouraging the continuation of Israeli violations of international law. To this end, investigations must consider the fungibility of financial trails, products and technology transfer.
2. Ban/terminate all trade in products partially or totally produced in the illegal settler colonies. The labelling of products as originating from the colonies, while continuing to trade, is not sufficient to meet the obligations of nonrecognition of, and noncooperation with the illegal situation. The WTO regime does not impede this corrective trade measure.[31]

Individual States and governments, in particular, should:

1. Adopt policies and prohibitive legislation, and develop, produce and widely disseminate informational guidelines, in order to ensure that companies and other entities under their jurisdiction are sufficiently apprised of the legal consequences of their role in Israeli violations, and in order that no party evade its obligations.
2. High Contracting Parties to the Geneva Conventions are further obliged to exercise domestic and universal jurisdiction, in order to pursue and prosecute or extradite violators of IHL^[32];
3. State parties are likewise required to pursue and prosecute, or extradite, as appropriate, authors of crimes specified in the ***Apartheid Convention*** and the ***Rome Statute of the ICC***;
4. States and organs of the United Nations must ensure that Israel make timely, effective and adequate reparation for all damages suffered from its conduct and that of its agents.^[33]

International law provides for States to comply with these obligations individually and by way of international cooperation, as well as through the organs and mechanisms of the United Nations. Among the available measures are:

- Implementing trade, military and/or diplomatic sanctions as a countermeasure^[34];
- Supporting the accession of Palestine to the Rome Statute^[35] ;
- Depositing a statement affirming applicability of the Fourth Geneva Convention in the oPt, including Jerusalem, the West Bank and Gaza Strip;
- Re-constituting the UN Special Committee and Center against Apartheid, charged to investigate Israeli apartheid, recommend measures to combat it, and monitor compliance of all States and private entities in light of their individual, collective, domestic and extraterritorial obligations vis-à-vis Israel's regime of prolonged occupation with its features of colonialism and apartheid, which the Wall exemplifies^[36];
- Development of an UN Agenda for Action in consultation with the UN human rights treaty bodies, ILO compliance mechanisms, legal advisors to the Secretary-General and the depositary of the IV Geneva Convention;
- Through the General Assembly, mandating the UN Register of Damage to develop the capacity to determine reparations for losses, costs and damages to any party as a consequence of the Separation Wall's development, construction and/or maintenance.

The failure of the United Nations and individual Member States to uphold their binding obligations to uphold international law and world order in this case undermines the international system and faith in international law. Ten years after the ICJ decision, we urge the United Nations, its Member States and organs, finally to comply with their obligations and take legally permissible measures to ensure the

removal of the Israeli Wall from occupied Palestinian territory and the associated regime of settler colonies, institutionalized discrimination and annexation. This requires applying the lessons of conflagrations past, combatting the related violations by any and all parties, and effecting the full reparation of victims now for the resulting costs, losses and damages in compliance with the reparations framework that the General Assembly has adopted by acclamation.

In the face these persistent grave breaches, gross violations and codified crimes, ten years of inertia is far too long.

Initial signatories:

- **John Dugard**, Chair in Public International Law, member of the UN International Law Commission, former UN Special Rapporteur on Diplomatic Protection, former UN Special Rapporteur for the Occupied Palestinian Territories
- **Richard Falk**, Milbank Professor of International Law Emeritus, Princeton University, UN Special Rapporteur for the Occupied Palestinian Territories, 2008-2014.
- **Michael Mansfield**, Queens Council
- **Lord Anthony Gifford**, Queens Council
- **Daniel Machover**, head of civil litigation for Hickman & Rose Solicitors in London, UK and was the co-founder of Lawyers for Palestinian Human Rights in 1988
- **Paulo Sérgio Pinheiro**, Adjunct Professor of International Studies, Watson Institute for International Studies, Brown University, USA; Research Associate, Center for the Study of Violence, University of São Paulo, NEV/USP, Brazil
- **Peter Hansen**, Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) from 1996-2005.
- **Diana Buttu**, Palestinian-Canadian lawyer and a former spokesperson for the Palestine Liberation Organization
- **Maria Lahood**, Centre for Constitutional Rights USA
- **Karen Abu Zayd**, Human Rights Council appointed Commissioner (for the Commission of Inquiry on Syria)
- **George Bisharat**, University of California Hastings College of the Law
- **Tom Moerenhout**, consultant at the Geneva Graduate Institute of International and Development Studies

Organizações signatárias:

- Palestinian Centre for Human Rights (Centro Palestino pelos Direitos Humanos)
- Arab Organization for Human Rights (Organização Árabe pelos Direitos Humanos)
- Palestinian Non-Governmental Organizations Network (Rede das ONGs Palestinas)
- Addameer Association for Human Rights (Associação pelos Direitos Humanos)
- Al Mezan Center for Human Rights (Al Mezan Centro pelos

[1] ?Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,? Advisory Opinion of 9 July 2004 [heretofore: **ICJ Advisory Opinion**], at: <http://www.icj-cij.org/docket/files/131/1671.pdf>.

[2] See, for example: Ingrid Jaradat/al-Haq, ?**State Responsibility in Connection with Israel?s Illegal Settlement Enterprise in the Occupied Palestinian Territory,**?

http://www.alhaq.org/images/stories/PDF/2012/Legal_Memo_State_Responsibility_FINAL_16_07.pdf;

Tom Moerenhout, ?**The Obligation to Withhold from Trading in Order Not to Recognize and Assist Settlements and their Economic Activity in Occupied Territories,**? *Journal of International Humanitarian Legal Studies*, Volume 3, Issue 2, pages 344-385; François Dubuisson, **The International Obligations of the European Union and its Member States with regard to Economic Relations with Israeli Settlements,**? (Brussels: CNCD-11.11.11, February 2014), at:

<http://www.madeinillegality.org/IMG/pdf/en-report-dubuisson-madeinillegality.pdf>; ?**Feasting on the Occupation: Illegality of Settlement Produce and the Responsibility of EU Member States under International Law,**? (Ramallah: Al-Haq, 2013), at: <http://www.alhaq.org/publications/publications-index/item/feasting-on-the-occupation-illegality-of-settlement-produce-and-the-responsibility-of-eu-members-states-under-international-law>; **The Proceedings of the Russell Tribunal on Palestine**, <http://www.russelltribunalonpalestine.com/en/sessions>;

[3] **ICJ Advisory Opinion**, op. cit., paras. 142, 147, 162, 163.

[4] Such as the prohibitions against the acquisition of territory by force, population transfer and the violation of the Palestinian people?s right to self-determination; absolute prohibitions against torture, etc.

[5] **ICJ Advisory Opinion**, op. cit., paras. 137, 139, 142.

[6] *Ibid.*, paras. 149-54.

[7] See also S/RES/465, 1 March 1980, para. 7.

[8] *Ibid.*, paras. 154-59.

[9] *Ibid.*, para. 160.

[10] The only countries not voting in favour of the resolution were: Against - Marshall Islands, Micronesia (Federated States of), Palau, United States of America ; Abstaining - Cameroon, Canada, El Salvador, Nauru, Papua New Guinea, Solomon Islands, Tonga, Uganda, Uruguay, Vanuatu.

[11] ?Advisory opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, including in and around East Jerusalem,? ES-

10/15, 2 August 2004, at:

<http://unispal.un.org/UNISPAL.NSF/0/F3B95E613518A0AC85256EEB00683444>

[12] Ibid., paras. 1 and 2.

[13] ?Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,? A/RES/60/147, 21 March 2006, at:

<http://www.un.org/Docs/asp/ws.asp?m=A/RES/60/147>.

[14] ?Establishment of the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory,? ES-10/17, 24 January 2007, at:

[http://www.unrod.org/docs/Resolution%20ES-](http://www.unrod.org/docs/Resolution%20ES-10%2017%20of%20the%20General%20Assembly%20of%2024%20January%202007%20.pdf)

[10%2017%20of%20the%20General%20Assembly%20of%2024%20January%202007%20.pdf](http://www.unrod.org/docs/Resolution%20ES-10%2017%20of%20the%20General%20Assembly%20of%2024%20January%202007%20.pdf)

. The Resolution recalled that ?Israel is under an obligation to make reparation for all damage caused by the construction of the wall in the occupied Palestinian territory, including in and around East Jerusalem? and recognized ?the necessity of accurately documenting the damage caused by the construction of the wall for the purpose of fulfilling the obligation to make the above-mentioned reparations, including restitution and compensation, in accordance with the rules and principles of international law.? The same Resolution notes that ?the act of registration of damage, as such, does not entail, at this stage, an evaluation or assessment of the loss or damage caused by the construction of the wall,? which is implicitly a function of measures yet to be determined.

[15] ?What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the report of the Secretary General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?? See ?Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory,? ES-10/14, 8 December 2003, at:

<http://unispal.un.org/UNISPAL.NSF/0/F953B744269B9B7485256E1500776DCA>

[16] John Dugard, *"Implementation of General Assembly resolution 60/251 of 15 March 2006 entitled "Human Rights Council": Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967"*

[http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=461e52b12;](http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=461e52b12)

Richard Falk, *?Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, submitted in accordance with Human Rights Council resolution 5/1,?*

<http://unispal.un.org/UNISPAL.NSF/0/69BEC99AF727EAC2852577C3004AAD8A>

; Human Sciences Research Council of South Africa, ***Occupation, Colonialism, Apartheid?: A re-assessment of Israel's practices in the occupied Palestinian territories under international law*** (Cape Town: HSRC, 2009), at:

<http://www.hlrn.org/img/documents/HSRC%20study%20-%20Occupation,%20Colonialism,%20Apartheid%20-%20full.pdf>.

[17] CERD, 'Concluding Observations: Israel,' CERD/C/ISR/CO/13, 14 June 2007, paras. 17-19; and

CERD/C/ISR/CO/14-16, 9 March 2012, paras. 11, 15, 24-27.

[18] Human Sciences Research Council of South Africa, ***Occupation, Colonialism, Apartheid?: A re-assessment of Israel's practices in the occupied Palestinian territories under international law*** (Cape Town: HSRC, 2009), at:

<http://www.hlrn.org/img/documents/HSRC%20study%20-%20Occupation,%20Colonialism,%20Apartheid%20-%20full.pdf>; and Third Russell Tribunal on Palestine, Cape Town, 5-7 November 2011, at:

<http://www.russelltribunalonpalestine.com/en/sessions/south-africa>.

[19] Notably, the CERD findings repeat the concern over Israel's failure to uphold its obligations under Article 3 of the Convention on the Elimination of All Forms of Racial Discrimination, which obliges States parties to combat the crime of apartheid.

[20] See, for instance, ***Maastricht Principles on Extraterritorial Obligation of States in the area of Economic, Social and Cultural Rights***, 2011, at: <http://www.etoconsortium.org/en/library/maastricht-principles/>.

[21] A large majority of Israeli companies, financial and parastatal institutions are involved in the construction of the Wall and the settlement project and the maintenance of the situation created by them. Transnational companies are expanding their economic activities in the occupied Palestinian territory as part of, or for the benefit of settlements, or maintain commercial relations with Israeli companies involved in the settlements. Especially the homeland security industry (and connected sectors) maintain a symbiotic relationship with Israeli violations of international norms as they provide a testing ground for their technology. At least 1,400 corporations are active in settlements and thirteen industrial zones, as well as agricultural zones have been established on the West Bank; they benefit from public investments and preferential fiscal regimes. Jaradat/al Haq, op. cit.

[22] The Independent Fact-finding Mission on the Israeli settlements and the Human Rights Council have explicitly affirmed the applicability of these principles to business activities in the occupied Palestinian

territory. *Human rights situation in Palestine and other occupied Arab territories Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem*, A/HRC/22/63, 7 February 2013, paras. 17, 104, at:

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-63_en.pdf.

[23] *International Convention on the Suppression and Punishment of the Crime of Apartheid*, General Assembly resolution 3068 (XXVIII), 30 November 1973, entry into force 18 July 1976, at: <http://legal.un.org/avl/ha/cspca/cspca.html>.

[24] ICRC (2006). Business and international humanitarian law, p. 14, at:

http://www.icrc.org/eng/assets/files/other/icrc_002_0882.pdf

[25] International guidelines and principles such as the UN *Global Compact*, the OECD *Guidelines for Multinational Enterprises* have been adopted to reflect the standard of the UN Guiding Principles.

[26] The United Nations Secretary-General's Special Representative for Business and Human Rights John Ruggie's reports indicate that in the course of the past few decades, the legal status of corporations in international law has shifted to some extent from the classical position, with corporations now considered bearers of duties under international criminal law. See Emeka Duruigbo, *Corporate Accountability and Liability for International Human Rights Abuses: Recent Changes and Recurring Challenges*, 6 Northwestern Journal of International Human Rights. 222 (2008), at:

<http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1073&context=njihr>

[27] Other corporations well-known for their dealings with the Israeli occupation include Caterpillar Inc. (United States), Ahava (Israel), Volvo Group (Sweden), Riwal Holding Group (Netherlands), Hewlett Packard (USA), Mehadrin (Israel), Motorola (USA), Assa Abloy (Sweden), and Cemex (Mexico), etc.

[28] European Commission, *Guidelines on the eligibility of Israeli entities and their activities in the territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the EU from 2014 onwards*, Notice 2013/C 205/05, Official Journal of the European Union, Vol. 56 (19 July 2013), pp. 9-11, at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:205:FULL:EN:PDF>

[29] The Non-Aligned Movement has adopted several declarations calling for specific actions to be taken including legislative measures, collectively, regionally and individually, to prevent any products of the illegal Israeli settlements from entering their markets, consistent with obligations under international treaties, to decline entry to Israeli settlers and to impose sanctions on companies and entities involved in construction of the Wall and other illegal colonization activities in the occupied Palestinian territory, including East Jerusalem. Non-Aligned Movement, *Declaration on Palestine*, XIV Ministerial Conference of the Non-Aligned Movement, 19 August 2004, at: <http://www.nam.gov.za/media/040820a.htm>.

[30] Under-Secretary-General for Legal Affairs Hans Correll, The Legal Counsel, *Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council*, S/2002/161, 12 February 2002, paras. 21-22, at: <http://www.arso.org/Olaeng.pdf>.

[31] Moerenhout, op. cit.

[32] *Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949*, Article 146.

[33] A/RES/60/147, 21 March 2006.

[34] General Assembly resolution *The situation in the Middle East*, A/37/123, 16 December 1982, para. 13.

[35] On 21 January 2009, Government of Palestine Minister of Justice `Ali al-Khashn declared under Article 12 (3) of the Rome Statute, recognizing the jurisdiction of the International Criminal Court for the purpose of identifying, prosecuting and judging the authors and accomplices of acts committed on the territory of Palestine since 1 July 2002. The ICC Registrar acknowledged receipt of the declaration in 2009/404/SA/LASS, 23 January 2009. See *Al-Haq Position Paper on Issues Arising from the Palestinian Authority's Submission of a Declaration to the Prosecutor of the International Criminal Court under Article 12(3) of the Rome Statute*, (Ramallah: Al-Haq, 14 December 2009), at: [http://www.alhaq.org/pdfs/position-paper-icc-\(14December2009\).pdf](http://www.alhaq.org/pdfs/position-paper-icc-(14December2009).pdf).

[36] Consistent also with the Russell Tribunal on Palestine, *Actions Required and Recommended*, Cape Town session, 5-7 November 2011, 7.2.6, at <http://www.russelltribunalonpalestine.com/en/sessions/south-africa/south-africa-session-%e2%80%94full-findings>,

?Mißverständnisse sind nach Möglichkeit zu vermeiden. Ich weiß so gut wie irgendwer und jedermann, daß Israel objektiv die unerfreuliche Rolle der Besatzungsmacht trägt. Alles zu justifizieren, was die diversen Regierungen Israels unternehmen fällt mir nicht ein. Meine persönlichen Beziehungen zu diesem Land, von dem Thomas Mann in der Josephs-Tetralogie gesagt hat, es sei ?ein Mittelmeer-Land, nicht gerade heimatlich etwas staubig und steinig?, sind quasi null: Ich habe es niemals besucht, spreche seine Sprache nicht, seine Kultur ist mir auf geradezu schmäbliche Weise fremd, seine Religion ist nicht die meine. Dennoch ist das Bestehen dieses Staatswesens mir wichtiger als das Irgendeines anderen.?[1]

Jean Améry, Der ehrbare Antisemitismus, Die Zeit, 25. Juli 1969

Die Entscheidung der VDJ, den Aufruf ?10 Years after the Advisory Opinion on the Wall in Occupied Palestine: Time for Concrete Action? zu unterstützen, ist mit Hinblick auf die Grundüberzeugung linker antifaschistischer Rechtspolitik nicht zu tragen. Der Aufruf kulminiert in folgender Forderung: ? Among the available measures are: Implementing trade, military and/or diplomatic sanctions as a countermeasure?. Der Aufruf fordert demnach diplomatische, wirtschaftliche und militärische Sanktionen gegen den Staat Israel.

Dies verkennt folgendes:

In einer linken antifaschistischen Rechtspolitik muss klar erkennbar und deutlich sein, dass Israel als Schutzort für jüdische Menschen nach der Shoa besteht und bestehen muss und dass es bei allem Unbill und aller Hässlichkeit seiner Handlungen als Besatzungsmacht auch in der Lage sein muss, den Schutz seiner Bevölkerung vor antisemitischen Angriffen sicherzustellen. Dies schließt aus, dass (deutsche) Linke Boykotte oder Sanktionen gegen Israel fordern, insbesondere militärische Sanktionen.

Israel ist Konsequenz aus der Shoa und den Vernichtungslagern der deutschen Nationalsozialisten und ihrer zahlreichen Kollaborateure. Er wurde von jüdischen Freiheitskämpfern in einem Unabhängigkeitskampf gegen das britische Mandat und gegen den erbitterten Widerstand des mit Hitler kooperierenden Muftis von Jerusalem erkämpft.[2] Der Zivilisationsbruch der Shoa macht einen jüdischen Staat als Bollwerk gegen antisemitische Verfolgung für Jüdinnen und Juden in aller Welt auch heute noch zu einer Notwendigkeit.

Israel ist ein kleines Land, kaum größer als Brandenburg. In ihm leben sechs Millionen Menschen aus über 140 Ländern. Israel ist damit ein multiethnischer Staat, welchen einzig eint, dass er der einzige jüdische

Staat auf der Welt ist und in Zeiten des Antisemitismus einen Schutzraum für Jüdinnen und Juden vor der Gewalt des eliminatorischen Antisemitismus bietet. Und antisemitische Gewalttaten nehmen ständig zu, wie nicht nur der jüngste Anschlag auf das jüdische Museum in Brüssel zeigt^[3] Darüber hinaus ist Israel der einzige demokratische Staat im Nahen Osten, welcher Schutzrechte für (insbesondere homosexuelle und queere) Minderheiten bietet. Die großen, mächtigen und rohstoffreichen arabischen Monarchien und Diktaturen, welche Israel umgeben, haben den jüdischen Staat direkt nach seiner Gründung mit vereinter Waffengewalt angegriffen, mit dem Ziel, den Pionierstaat zu zerstören und alle Juden zu vertreiben. Erneute Angriffe folgten im Sechs Tage Krieg und im Jom-Kippur Krieg. Lediglich Jordanien und Ägypten schlossen in der Folge Frieden mit Israel, insbesondere die libanesischen Regierung und die syrische Regierung waren bis heute dazu nicht bereit. Das islamistische iranische Regime ruft heute stärker denn je zur Zerstörung Israels auf^[4] Die existentielle Bedrohung Israels ist insoweit real.

Die arabische Bevölkerung, welche die Angriffe der arabischen Staaten auf Israel unterstützte und mit ihrer Niederlage floh oder vertrieben wurde, findet bis heute keine Anerkennung und Rechte in diesen arabischen Staaten. Daraus resultiert viel Leid. Die Nachkommen dieser Geflüchteten werden als Druckmittel dieser Staaten gegen den Nachbarn eingesetzt. Internationaler Druck auf diese Staaten, den Flüchtlingen und insbesondere heute ihren Nachkommen gleiche Staatsbürgerrechte in den arabischen Zielstaaten zu gewähren, findet nicht statt. Gefordert wird stattdessen ein Recht aller Nachkommen der damals Vertriebenen, sich in Israel niederzulassen. Was mit Hinblick auf die deutschen Vertriebenen des zweiten Weltkriegs zu Recht als reaktionäre Forderung des Bundes der Vertriebenen anerkannt wird, wird im Hinblick auf Israel auch von deutschen Linken bereitwillig legitimiert.

Ein Frieden mit Israel wird nicht nur durch die arabischen Staaten und das iranische Regime torpediert, sondern wird auch durch politische Bewegungen in den Autonomiegebieten nicht gewollt. Die politischen Akteure in den Autonomiegebieten, insbesondere die rechten islamistischen Bewegungen islamischer Dschihad und die Hamas, streben ebenso wenig wie der sie finanzierende Iran eine Zweistaatenlösung an. In der Charta der Hamas ist eindeutig wie folgt festgelegt:

?Israel existiert und wird weiter existieren, bis der Islam es ausgelöscht hat, so wie er schon andere Länder vorher ausgelöscht hat."^[5]

Folgerichtig haben diese dominanten politischen Gruppierungen zu keinem Zeitpunkt Frieden mit dem jüdischen Staat geschlossen, sondern führen seit Jahrzehnten ständige Angriffe und Selbstmordattentate durch. Allein am 7. Juli 2014 wurden aus dem von der Hamas kontrollierten Gazastreifen 85 Raketen auf Israel

gefeuert.[6] Der israelische Staat verhält sich so, wie sich jeder Nationalstaat verhält, dessen Nachbarn seine Zerstörung fordern und ihn militärisch angreifen: er setzt sich militärisch zur Wehr. Dies ist aus antimilitaristischer Sicht zu kritisieren, aber eine andere Möglichkeit, die andauernden Angriffe zu unterbinden, ist nicht ersichtlich. Der israelische Staat hat auch eine Sperranlage gebaut, um Anschläge auf seine Zivilbevölkerung zu reduzieren. Der Verlauf dieses Sperrzauns ist von verschiedenen Gerichten als nicht rechtmäßig angesehen worden, so auch vom obersten israelischen Gerichtshof.[7] Dies ändert jedoch nichts daran, dass das tatsächliche Bestehen der Sperranlage anscheinend dazu geführt hat, dass die Zahl der durch Anschläge verletzten und getöteten Menschen sich deutlich reduziert hat.[8] Und jedes gerettete Menschenleben ist es wert, diese Sperranlage solange aufrecht zu erhalten, bis die Autonomiebehörde Willens und in der Lage ist, die Anschläge zu unterbinden.

Die Linke in Westeuropa unterstützte bis zum Sechs Tage Krieg weitgehend das sozialistische israelische Experiment samt seinen Kibbuzim und Moshavim. Nach dem Sechs Tage Krieg veränderte sich dies in Einklang mit der veränderten Position der Sowjetunion und der DDR drastisch. Israel wurde nunmehr als Brückenkopf des US-Imperialismus in der arabischen Welt gesehen. Der Zionismus galt nun nicht mehr als sozialistisch, sondern als rassistisch.[9] Im Ostblock und den westeuropäischen kommunistischen Parteien wurde nunmehr lieber Bezug auf den arabischen Sozialismus, die PFLP und auf Nasser genommen. Seit aber diese sozialistischen Bewegungen in den palästinensischen Autonomiegebieten verschwunden sind und dort ebenso wie in der gesamten arabischen Welt sich islamistische Bewegungen durchgesetzt haben, hat sich das Verhältnis der Linken zu Israel wieder verändert. Die Revolutionären Zellen erkannten schon 1991 das Problem ihrer bisherigen antizionistischen Linie in ihrer Stellungnahme "Gerd Altbartus ist tot?". Sie führten wie folgt aus:

Wir sahen Israel nicht mehr aus der Perspektive des nazistischen Vernichtungsprogramms, sondern nur noch aus dem Blickwinkel seiner Siedlungsgeschichte: Israel galt uns als Agent und Vorposten des westlichen Imperialismus mitten in der arabischen Welt, nicht aber als Ort der Zuflucht für die Überlebenden und Davongekommenen, der eine Notwendigkeit ist, solange eine neuerliche Massenvernichtung als Möglichkeit von niemandem ausgeschlossen werden kann, solange also der Antisemitismus als historisches und soziales Faktum fortlebt.?

[10]

Die außerparlamentarische Linke änderte ihre Position nach den Anschlägen des 11. September 2001. Es bildeten sich zahlreiche Gruppen, welche sich dem aufkeimenden Antisemitismus, welcher sich häufig als Israelkritik tarnte, widersetzen.[11] In der Linkspartei gründeten sich der Bundesarbeitskreis Shalom und zahlreiche Landesarbeitskreise, welche gegen den linken Antizionismus anarbeiten.[12] Im Jahr 2010 erteilte auch Gregor Gysi dem linken

Antizionismus eine deutliche Absage.[13]

Die Auseinandersetzung der Linken mit Israel und dem Nahostkonflikt ist alt und von Projektionen geprägt. Zu seiner Gründung wurde Israel als sozialistisches Experiment verklärt, später als Apartheitsregime denunziert. Beides ist falsch. Wie Jean Améry richtig ausführte, kommt es nicht darauf an, alles zu rechtfertigen, was die jeweiligen Regierungen im jüdischen Staat für richtig erachten und beschließen. Aber für eine linke antifaschistische Rechtspolitik gilt es anzuerkennen, dass Israel als Schutzort für jüdische Menschen nach der Shoa besteht und bestehen muss. Dies gebietet es auch, dass wenn eine linke Kritik an der Existenz der israelischen Sperranlage erfolgen soll (nicht nur an deren konkretem Verlauf), dann auch gesagt werden muss, wie der jüdische Staat denn die in ihm lebenden Menschen vor den ständigen Anschlägen der islamistischen Gruppen, die sich die Vernichtung Israels in die Charta geschrieben haben, erfolgen soll. Solange diese militanten islamistischen Gruppen sich nicht zum Gewaltverzicht durchringen können, wird es wirksame Schutzmaßnahmen brauchen. Es gilt auch in Frage zu stellen, warum denn eigentlich eine Linke fordert, Waren aus israelischen Siedlungen zu kennzeichnen, während solche Kennzeichnungen doch für keinen anderen Staat der Welt, gleich welche Menschenrechtsverletzungen dort begangen werden, bislang erhoben werden. Und schließlich die Frage, warum deutsche Linke es für wichtig erachten, Israel für eine angeblich gewalttätige Politik zu rügen, es ihr aber keinen Kommentar wert ist, die Forderung des deutschen Bundespräsidenten nach einem verstärkten militärischen Engagement des Deutschen Staates in aller Welt zu denunzieren. Kann eine Linke dazu keine Antworten bieten und bedroht weiterhin der gewalttätige Antisemitismus Jüdinnen und Juden weltweit, so sollte die Linke sich Verurteilungen und Boykott- und Sanktionsforderungen gegen Israel enthalten.

All diese Erwägungen stehen der Entscheidung der VDJ entgegen, den Aufruf '10 Years after the Advisory Opinion on the Wall in Occupied Palestine: Time for Concrete Action?' zu unterstützen. Die Unterstützung dieser Stellungnahme stellt insoweit nicht nur eine von mehreren Positionen dar, welche miteinander vereinbar sind, sondern sie widerspricht den oben dargelegten Grundsätzen linker antifaschistischer Rechtspolitik mit Hinblick auf Israel.

[1] <http://www.zeit.de/1969/30/der-ehrbare-antisemitismus>

[2] http://www.ns-archiv.de/verfolgung/antisemitismus/mufti/in_berlin.php

[3] <http://www.amadeu-antonio-stiftung.de/die-stiftung-aktiv/themen/gegen-as/antisemitismus-heute/chronik-antisemitischer-vorfaelle-1/>

[4] <http://www.bpb.de/politik/extremismus/antisemitismus/37989/rede-ahmadinedschads?p=all>

[5] <http://embassies.gov.il/berlin/AboutIsrael/the-middle-east/naherostendokumente/Die%20radikalislamische%20Terrororganisation%20 Hamas.pdf>

[6] <http://www.haaretz.com/news/diplomacy-defense/1.603472>

[7] http://www.nytimes.com/2007/09/05/world/middleeast/05mideast.html?_r=0

[8] <http://www.mfa.gov.il/mfa/foreignpolicy/terrorism/palestinian/pages/saving%20lives-%20israel-s%20anti-terrorist%20fence%20-%20answ.aspx>

[9] <http://www.rote-ruhr-uni.com/cms/Thomas-Haury-Antisemitismus-von.html>

[10] <http://www.freilassung.de/div/texte/rz/zorn/Zorn04.htm>

[11] <http://conne-island.de/nf/136/28.html>

[12] <http://bak-shalom.de/index.php/materialien-des-bak-shalom/wir/>

[13] <http://www.rosalux.de/news/37192/absage-an-antizionismus.html>

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