

# Apartheid or Not Apartheid? The Russell Tribunal on Palestine, South Africa Session, November 2011

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## Abstract

Apartheid or not apartheid?: that was the question addressed by participants – both jurors and expert witnesses – in the third session of the Russell Tribunal on Palestine over the course of its deliberations in Cape Town, South Africa, from the 5th to the 7th of November, 2011. Specifically, that is, the tribunal adherents were concerned to learn “whether Israel’s policy and certain practices affecting the Palestinian population in Israeli territory and the Palestinian territories occupied by Israel” could be taken to have (1) “amount(ed) to a ‘breach on the international legal prohibition of apartheid,’” and/or (2) did these policies and practices “constitute persecution as a crime against humanity”? This article discusses some of the contributions to that discussion, the competing political and humanitarian stakes, and the vexed comparisons/contrasts between apartheid South Africa and Israel.

## Keywords

Russell Tribunal on Palestine, apartheid, Palestine, South Africa, Israel

Apartheid or not apartheid?: that was the question addressed by participants – both jurors and expert witnesses – in the third session of the Russell Tribunal on Palestine over the course of its deliberations in Cape Town, South Africa, from the 5th to the 7th of November, 2011. Specifically, that is, the tribunal adherents were concerned to learn “whether Israel’s policy and certain practices affecting the Palestinian population in Israeli territory and the Palestinian territories occupied by Israel” could be taken to have (1) “amount(ed) to a ‘breach on the international legal prohibition of apartheid,’” and/or (2) did these policies and practices “constitute persecution as a crime against

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humanity”<sup>1</sup>? The jurors, representing legal scholars, writers, diplomats, and Nobel laureates, heard testimonies regarding those questions and their attendant legal and socio-cultural ramifications from a broad international spectrum of political activists and committed humanitarians hailing from Israel/Palestine, South Africa, and Euro- and Latin America, speaking to topics that ranged – historically and geographically – from South Africa’s notorious apartheid pass laws to Israel’s ongoing policy of house demolition. The contributors to the Tribunal’s discussions and eventual findings convened in Cape Town’s District Six Museum, itself perhaps a fitting venue for such an exchange, communally housing as it now does the artifacts, remnants, and remembrances of the still internationally condemned forced removals under apartheid of the district’s mixed race communities, a venue which currently, in the “new South Africa,” provides a vital and critical space for multiple and multi-disciplinary educational and community events, whether local, national, or international.<sup>2</sup>

Prior to its 2010–2013 hearings on the “question of Palestine,” summoned in 2009 pursuant to Israel’s brutal assault on Gaza in late 2008/early 2009, “Operation Cast Lead,” and the persistent “failure to implement” the International Court of Justice’s 2004 opinion on the illegal construction of the “apartheid” wall in the Occupied Territories, the Russell Tribunal had convened international consultations concerning United States aggression in Vietnam (1969), the 1973 Pinochet military coup d’état in Chile (1974–76), and Iraq (2004), again relating to yet another US-initiated aggression, in this case the military invasion and occupation of that country in 2003, allegedly in pursuit of the Bush-declared “global war on terror.” Founded in 1966 by the eminent, if politically outspoken, British philosopher Bertrand Russell, in the company of such intellectual luminaries of the period as Jean-Paul Sartre, James Baldwin, Julio Cortázar, Simone de Beauvoir, Tariq Ali, Isaac Deutscher, and Peter Weiss, the Russell Tribunal – or the International War Crimes Tribunal, as it was also known – has come over the decades since its inception to function, according to its own most recent self-description, as an “international citizen-based Tribunal of conscience created in response to the demands of civil society (NGOs, charities, unions, faith-based organisations) to inform and mobilise public opinion and put pressure on decision makers.” Although the Tribunal has no legal jurisdiction or authority to implement its conclusions, the body nonetheless has succeeded over the course of its several conventions in mobilizing an august genealogical roster of international opinion-makers and cultural innovators, including Nobel laureates and eminent literati, such as Colombian novelist Gabriel García Márquez (Chile), Indian writer and social justice activist Arundhati Roy (Iraq) or French philosopher Jacques Derrida (Iraq), together with prominent jurists and human rights activists, to speak importantly and critically to multiple “courts of world opinion.”

Prominent among the distinguished supporters and testifiers at the Russell Tribunal on Palestine’s four sessions (in Barcelona, London, Cape Town, and New York) were

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1. All references to the proceedings of Cape Town session of the Russell Tribunal on Palestine can be found at: <http://www.russelltribunalonpalestine.com/en/sessions/south-africa>.
  2. For more information on the museum and its activities and mission, see the District Six Museum website: <http://www.districtsix.co.za/>.

South African Nobel Peace Prize laureate, Archbishop Desmond Tutu and acclaimed African American novelist Alice Walker. Each of the Tribunal's sessions addressed a specific concern with regard to accountability of selected international constituencies for the historic and contemporary circumstances prevailing in Israeli-occupied Palestine. In Barcelona, in March 2010, for example, the session's objective was to "consider the complicities and omissions of the European Union and its member states in the ongoing occupation of Palestinian territories by Israel and the perpetuation of the violations of international law committed by Israel, in total impunity."<sup>3</sup> The second session, held in London, sought to examine in turn the "international corporate complicity in Israel's violations of international human rights law, international humanitarian law, and war crimes." The fourth and final session of the Tribunal, held in early October 2012 in New York City ultimately "focused on the responsibility of the United States of America (US) and the United Nations (UN) regarding breaches of international law towards Palestine and Palestinians." The third session, held at the District Six Museum in Cape Town, South Africa, was concerned, by contrast to these other sessions, to determine whether "Israel's rule over the Palestinian people may be characterized as a regime of apartheid, with its individual actions constituting crimes of apartheid; and that of persecution." The Tribunal's findings in Cape Town thus threatened perhaps to go well beyond even the ever-courted courts of world opinion and enter into the rather more judicious jurisdiction of international law, invoking as they did United Nations resolutions and international agreements and treaties that could eventually be cited in inviting Israeli politicians and officials to appear before international courts, indicted for crimes committed against the Palestinian people and in violation of those resolutions, agreements, and treaties. The deliberations that took place in Cape Town's historic District Six Museum, however, with its poignant but pressing resonances of apartheid's forced removals and ethnic divisions and racial divides, also had significant historical, indeed geo-political, implications, regarding the disputed rhetorical linkage between South Africa's former system of apartheid and Israel's ongoing – if not, as some would argue, escalating – military occupation policies in Palestine.

## I. But Why Palestine?

Why Palestine indeed, a seeming anachronism, if now near iconic, of nationalist aspirations from a foregone era of liberation struggles and resistance movements lost in a deterritorializing landscape of globalized preoccupations? The question has repercussions for Israel – the other half of the contested narrative – as well, as described by political scientist Wendy Brown in her reading of "walled states" and "waning sovereignty": "If Israel's plight," Brown writes, "stems in part from having been established as a settler colony precisely when colonialism across (sic) the globe was being condemned and dismantled, if it is in this regard cursed by a globally rejected past in its present, Israel also seems to have the strange honor of honing the demographic and political-military tactics

3. See Asa Winstanley and Frank Barat (Eds), *Corporate Complicity in Israel's Occupation* (London: Pluto Press, 2011).

and technologies of the global future.”<sup>4</sup> Invoking an analogous chronological anomaly regarding the “humanitarian condition” of Palestinian refugees, Ilana Feldman reminds the international community that the “Palestinian refugee community constitutes one of the largest and longest-lasting refugee populations in the world,” thus raising the question of “what happens as humanitarianism moves from crisis response to a condition of life.”<sup>5</sup> Addressing in turn a similar narratological conundrum, former Secretary General of the United Nations, Kofi Annan, a Ghanaian whose UN tenure was in no small part involved in issues arising from his native continent of Africa, nonetheless in his recent memoir, *Interventions*, in which he recollects his “life in war and peace,” admonished his readers that it was the question of Palestine that remains ever crucial to the adjudication of a persistent international imbroglio: “As I told the Security Council before I left in 2006,” Annan wrote, “the Israeli-Palestinian conflict is not simply one unresolved problem among many. No other issue carries such a powerful symbolic and emotional charge affecting people far from the zone of conflict.”<sup>6</sup> It was then that “not simply one unresolved problem” that the Russell Tribunal on Palestine spoke to – in London on corporate complicity (from providing bulldozers for house demolitions, through exporting cosmetics extracted from Red Sea resources to facilitating arms trade and security apparatus<sup>7</sup>) in perpetuating the conflict, in Barcelona on the role of the European Union, in New York regarding the collusion of the United States and the United Nations, and in South Africa on the connections between apartheid South Africa and Israel.

## II. And Why South Africa?

Apartheid or not apartheid? Yes, that was very much the question posed to the conferees gathered in Cape Town in November 2011. The opprobrium that has long become attached to the very term itself over its decades-long identification with a distinctive – and internationally vilified – brutally racist South African regime disturbed its distressed application to the Israel/Palestine situation, raising indignant questions both of the appropriateness of the analogy (as in Israel is not an apartheid state) and with well-disciplined regard for the historicity of the lexical usage (in other words, while there are distinct and irrefutable similarities between apartheid South Africa and Israel, the historical specificities need nonetheless to be recognized and rendered legible). Noted South African jurist and international legal advocate, Richard J. Goldstone, for example, whose 2009 UN-sponsored report on Israel’s “Operation Cast Lead” in Gaza in 2008–2009 (“The Goldstone Report”) generated widespread controversy and condemnation from Israel and its supporters, wrote some two years later in an op-ed for the *New York Times* that the term “apartheid” is an “unfair and inaccurate slander against Israel,

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4. Wendy Brown, *Walled States, Waning Sovereignty* (New York: Zone Books, 2010), pp. 33–4.
  5. Ilana Feldman, “The Humanitarian Condition: Palestinian Refugees and the Politics of Living,” *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 3(2) (2012).
  6. Kofi Annan, *Interventions: A Life in War and Peace* (with Nader Mousavideh) (New York: Penguin Press, 2012), p. 254.
  7. See Winstanley and Barat (note 3).

calculated to retard rather than advance peace negotiations.”<sup>8</sup> More recently still, however, the Israeli newspaper *Haaretz* published the results of a poll dissenting with the opinion of the once esteemed Justice Goldstone (even while sharing his obeisances towards Israeli authorities). Among the poll’s findings were that a majority of Israelis maintains that there is apartheid in Israel – and that they support it. According to *Haaretz* critical commentator and author of *The Punishment of Gaza* (2010) Gideon Levy’s sardonic, if not altogether bitter, remarks on that remarkable poll, “Given the current reality, making peace would be an almost anti-democratic act; Most Israelis don’t want it. A just, egalitarian society would also violate the wishes of most Israelis: That, too, is something they don’t want. They’re satisfied with the racism, comfortable with the occupation, pleased with the apartheid; things are very good for them in this country. That’s what they told the pollsters.”<sup>9</sup>

While acknowledging the vexed complications of the rhetorical resonances arising shrilly from the unreconstructed use of the term “apartheid” in referring to contemporary – and historical – Israel, the Russell Tribunal on Palestine’s Cape Town session focused instead on the definition of apartheid as delineated in international law, referring in particular to the 1973 United Nations International Convention on the Suppression and Punishment of the Crime of Apartheid, which in its preambles referred as well to previous UN resolutions and declarations for its legitimacy at the time – and thus too for its arguably continued legitimacy and relevance. Those international instruments included: the Charter of the United Nations, the Universal Declaration of Human Rights (UDHR), the Declaration on the Granting of Independence to Colonial Countries and Peoples, and the International Convention on the Elimination of All Forms of Racial Discrimination, as well as the Convention on the Prevention and Punishment of the Crime of Genocide. Critical to the deliberations of the Cape Town session of the Russell Tribunal was the interpretation of the UN convention on apartheid, determining that its provisions for the “suppression and punishment of the crime of apartheid” did not apply exclusively to South Africa, noting the wording of Article II that the “term ‘the crime of apartheid’ [...] shall include similar policies and practices of racial segregation as practices in southern Africa ...” Apartheid? Or not apartheid? That was indeed – and remains – the question.

### III. Some Responses from Cape Town ...

According to the findings of the South African session of the Russell Tribunal, the operative term to describe Israeli practices in occupied Palestine was, finally, “apartheid,” at least in terms of international law, arguing that apartheid’s “legal definition

8. Richard J. Goldstone, “Israel and the Apartheid Slander,” *New York Times*, October 31, 2011. See also *Human Rights in Palestine and Other Occupied Arab Territories: Report of the United Nations Fact Finding Mission on the Gaza Conflict* (“The Goldstone Report”) A/HRC/12/48. Human Rights Council, United Nations, 15 September 2009; and Barbara Harlow, review of “The Goldstone Report,” *Race and Class* 52(3) (2010).

9. Gideon Levy, “Meet the Israelis,” *Haaretz*, October 25, 2012. Available at: [www.haaretz.com](http://www.haaretz.com).

applies to any situation anywhere in the world where the following three core elements exist: (i) that two distinct racial groups can be identified; (ii) that ‘inhuman acts’ are committed against the subordinate group; and (iii) that such acts are committed systematically in the context of an institutionalized regime of domination by one group over another” (5.3). In arguing that the “status of the prohibition of apartheid [...] is a universal prohibition, which although formulated in response to the situation in southern Africa was always intended to apply beyond southern Africa” (5.16), the Tribunal’s nine internationally recognized jurors (diplomats, jurists, writers, Nobel Prize laureates) relied importantly on the testimony presented by similarly credentialed witnesses, from Israel/Palestine, South Africa, and the European Union.

The three days of the Tribunal’s South Africa hearings – from the 5th to the 7th of November, 2011 – in Cape Town’s historic District Six Museum, were opened with remarks from Archbishop Emeritus Desmond Tutu, who described to the audience a deep “sadness” on his part in noting the recognition of *déjà vu* in contemplating the situation of Palestinians in Israel: “Unfortunately, for many of us in South Africa, what we see in the Holy Land has a sense of replay of things we experienced in our part of the world.” Following Tutu’s opening comments, the first testimony was presented by Raji Sourani, director of the Gaza-based Palestinian Centre for Human Rights, “setting the legal context” for Palestinian claims to the right of self-determination, a context that was further adumbrated by South African professor of law, Max du Plessis, who argued that “Reference to South Africa should therefore be treated as a comparative case useful to illuminating possible practices that fall within the ambit of the [UN] Apartheid Committee.” John Dugard, South African anti-apartheid activist and later UN Special Rapporteur for the human rights situation in the Occupied Palestinian Territories (OPT) from 2001 through 2008, expanded on such a comparison in describing his own experience as a South African in Israel/Palestine, noting poignantly the political and personal vilification<sup>10</sup> that can be incurred by critics, even UN-appointed, of Israeli policies: “From my first visit to Israel/OPT,” Dugard recalled,

I was struck by the similarities between apartheid in South Africa and the practices and policies of Israel in the OPT. These similarities became more obvious as I became better informed about the situation. As Special Rapporteur I deliberately refrained from making any such comparisons until 2005 as I feared that such comparisons would prevent many governments in the West from taking my reports seriously. (As it was they tended to dismiss reports as being too critical of Israel.) However, after 2005 I decided that I could not in good conscience refrain from making such comparisons.

Nor could Dugard’s compatriots curb such comparisons: Ran Greenstein from the University of the Witwatersrand and Zwelinzima Vavi, General Secretary of the Congress of South African Trade Unions (COSATU), both focused on the historical connections – and differences – between South African and Israeli exploitative labor practices. For Greenstein, for example, a “key difference” was to be noted in that

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10. As former US president Jimmy Carter discovered following the publication of his 2007 book, *Palestine: Peace Not Apartheid* (Simon and Schuster).

“apartheid was about exploiting indigenous people, not expelling them from their own land.” Vavi concurred, perhaps even more emphatically, noting two major differences between the apartheid and Israeli labor systems and their respective abuses: “First,” Vavi noted, “while the South African state and White capital remained till the very end entirely dependent on Black labour, the Israeli state and Israeli capitalism have divested themselves of this dependency. Second, and following on the first, is that while in apartheid South Africa the state attempted to keep Black people ‘in their place’ so they could be pliant workers that were easy to exploit, the apartheid Israeli state wishes to ethnically cleanse the Palestinian working class and the Palestinian people more generally.”

COSATU’s Vavi was the final speaker on the first day of the Tribunal’s Cape Town hearings, discussions that, having set the international parameters for the legal implications of the use of the term of “apartheid” with reference to Israel, had dealt importantly with the labor histories of the two countries. Speakers on day two introduced still further examples of “apartheid” practices on the part of Israel, including the curtailment of freedoms of movement, expression, and peaceful assembly, all enshrined in the UDHR, as well as the political detention and torture of Palestinian prisoners, condemned by the Convention Against Torture. Jeff Halper, coordinator of the Israel Committee Against House Demolition (ICAHD), presented evidence from his decades-long experience resisting Israeli policies towards its occupied Palestinian population, especially regarding “two articles of the Apartheid Convention: Article II (c) concerning measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country [... and] Article II(d) regarding measures designed to divide the population of Israel/Palestine along racial lines.” “Ultimately,” according to Halper, following Vavi’s suggestive reading of Israel’s labor policy as tantamount to “ethnic cleansing,” Israel’s house demolition policy “is to make conditions so miserable for middle-class Palestinians that they leave the country, leaving the masses poor, leaderless and malleable. In this way,” Halper went on, “Israel can effectively control the entire country, Palestinian state or not.”

While house demolitions, which constitute an internationally reprehensible form of collective punishment, targeting as they do the homes of the families of Palestinian activists, prisoners, and militants, are perhaps the most egregiously visible form of forced removal, the ruins and detritus from these rubble-making demolitions have an antecedent in the Absentee Property Laws that the state of Israel has been elaborating since its establishment in 1948, laws that were provocatively central to Ghassan Kanafani’s 1969 Palestinian novella, *Returning to Haifa*.<sup>11</sup> Kanafani, who was assassinated by the Israeli Mossad in a car-bomb explosion in Beirut in 1972, featured in this story a Palestinian couple, Said S. and his wife Safiyya, who, following the Six Day/June 1967 War and Israel’s military occupation of the West Bank and Gaza, were able to revisit their home in Haifa, abandoned twenty years earlier in the 1948 fighting that accompanied Israel’s state-making. The couple’s erstwhile home is now, however, occupied by an elderly

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11. Ghassan Kanafani. “Returning to Haifa,” in *Palestine’s Children: Returning to Haifa and Other Stories*. Translated by Barbara Harlow and Karen E. Riley (Boulder, CO and London: Lynne Rienner, 2000).

Jewish widow, Miriam, herself a refugee from post-war Poland, and the adopted mother of Said and Safiyya's abandoned son, Khaldun, now named Dov and a soldier in the Israeli army. Kanafani's novella, penned by an ardent proponent of a "democratic secular state" in all of Palestine, is both a powerful indictment of Israeli founding policy and a probing critical exploration of the Palestine Liberation Organization's (PLO) own political posturing at the time. But house demolitions figure similarly in South African literary narratives, such as Sindiwe Magona's 1998 novel *Mother to Mother*,<sup>12</sup> based on the Truth and Reconciliation Commission's (TRC) Amnesty hearings for the four young killers of Amy Biehl in a Cape Town township in 1993. While the youthfully ardent Fulbright scholar, Amy Biehl, is in South Africa to contribute to the country's post-apartheid "transition to democracy," Magona's novel is very much the story of Mandisa, the mother of one of Amy's killers, and it is South Africa's apartheid history of forced removals of its Black population that provides the larger context for both the murder – and the eventual amnesty of all four young men, an amnesty that Amy Biehl's own parents had personally and persuasively endorsed at the TRC amnesty hearings in Cape Town in 1998. Rachel Corrie's parents, however, were less satisfied, after long years of inquiry, with the August 2012 Israeli court verdict, following seven years of investigation and litigation concerning the death of their daughter in 2003. According to Jeff Halper, of the IACHD, writing in response to the verdict and just six months following his presentation to the Russell Tribunal, "For those who hoped for a just verdict on the death of Rachel Corrie,<sup>13</sup> the American student and ISM [International Solidary Movement] activist killed by an Israeli bulldozer<sup>14</sup> in Gaza in 2003 as she was defending a Palestinian home about to be demolished, this is a sad day. Not surprising, but still sad and bitter."<sup>15</sup> But according to Israeli Judge Oded Gershon, who delivered the court's opinion, the "unfortunate accident" was really Rachel's own fault: "Even when she saw the mound of earth moving towards her, she did not move away. The accident was caused by the deceased," he cynically concluded.<sup>16</sup>

#### IV. Beyond Sad Days...

Whereas Archbishop Desmond Tutu found a certain "sadness" in himself and on behalf of his compatriots as he opened the South Africa session of the Russell Tribunal on

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12. Sindiwe Magona, *Mother to Mother* (1998) (Boston, MA: Beacon Press, 1999).
  13. Rachel Corrie's commitments have been posthumously reconstructed, from her own words, in both a play and an anthology of her writings. See Rachel Corrie, *My Name Is Rachel Corrie: Acting Edition* (Dramatists Play Service, 2008) and *Let Me Stand Alone: The Journals of Rachel Corrie* (New York: W.W. Norton, 2009).
  14. A bulldozer built and supplied to Israel by the US company Caterpillar, discussed in *Corporate Complicity in Israel's Occupation*. See note 3.
  15. Jeff Halper, "In Rachel Corrie verdict, Israel deals new blow to international law," August 28, 2012. Available at: [972mag.com/in-corrie-verdict-israel-deals-new-blow-to-international-law/54770](http://972mag.com/in-corrie-verdict-israel-deals-new-blow-to-international-law/54770).
  16. Jillian Kestler-D'Amours, "Israeli Impunity Exposed: Judge Lets Army Off the Hook For Death of Young American Activist," *Electronic Intifada*, August 28, 2012. Available at: [www.alternet.org/pring/world/israeli-impunity-exposed-judge-lets-army-hook-death-young-american-activist](http://www.alternet.org/pring/world/israeli-impunity-exposed-judge-lets-army-hook-death-young-american-activist)



Palestine, and Jeff Halper, witness before that Tribunal, found the Israeli court decision regarding the murder of Rachel Corrie in Gaza to mark likewise a “day of sadness,” the courts of world opinion remain powerful venues for convening witnesses to injustice and advocates for justice, forums for the display of forensic evidence, platforms for pleading for redress of historic wrongs, and demands for the restoration of universal rights. The closing session of the Russell Tribunal on Palestine is scheduled to be held in February 2013, when it will pronounce its “final conclusions.”