‘Depraved Indifference’ in the UN Security Council Resolution

The latest betrayal of Israel is potentially lethal in making Jews trespassers and criminals on their own land

by Richard L. Cravatts

The shameful and morally-incoherent December 23rd Resolution 2334 by the UN Security Council demanding that “Israel immediately and completely cease all settlement activities in the occupied Palestinian territory, including East Jerusalem,” also includes careless language that proclaims that Israeli settlements, which are “dangerously imperiling the viability of the two-state solution,” have “no legal validity.”

The United States, contrary to its customary role, abstained from the vote, which passed by a count of 14 in favor out of

15 countries, and this departure marks in a new low in the U.S.'s relations with Israel, even though the State Department under President Obama has, during the last eight years, promiscuously referred to the Israeli settlements as "unhelpful," "obstructions to peace," and "illegitimate."

In fact, the UNSC resolution is not only factually spurious and legally flawed; it is not only diplomatically defective; it is, in a manner that jeopardizes Israel's safety, the lives of its citizens, and its ability to even justify itself in the community of nations, a potentially lethal resolution that was hobbled together by a pack of moral degenerates attempting to use lawfare as a club against Israel in pursuit of some hallucinatory dream of "two states living side by side in peace." The U.S. abstention was, as Senator Daniel Patrick Moynihan put it in 1980 after a similar UN betrayal, essentially an act of acquiescence.

In the law, the Court has found that a defendant can be charged with "depraved indifference," in which the "defendant's act was imminently dangerous and presented a very high risk of death to others and that it was committed under circumstances which evidenced a wanton indifference to human life or a depravity of mind . . . ." In these cases, and in the case of this UN resolution, the defendant's "crime differs from intentional murder in that it results not from a specific, conscious intent to cause death, but from an indifference to or disregard of the risks attending defendant's conduct."

The high-minded, but perilously misguided, mandarins of the Security Council have voted for a resolution that has absolutely neither the intent nor ability to effect peace; in fact, its language all but insures that the exact opposite result is very likely: namely, that Israeli citizens in the Jewish Quarter, at the Western Wall, on the Temple Mount, in Jewish neighborhoods in Jerusalem, and anywhere in Judea and Samaria (where Jews have lived since biblical times) can, and

most definitely will, now be considered criminal trespassers, violators of international law, illegal settlers, squatters on land now deemed to be Palestinian property off limits only to Jews—judenrein.

As a result of this latest UN resolution, even those Jewish Jerusalem neighborhoods which everyone has agreed would be folded into Israel upon the creation of a Palestinian state can now be deemed "illegal" and their inhabitants criminal trespassers.

It is, of course, completely fallacious to overlook the fact that not only all of the land that is current-day Israel, but also Gaza and the West Bank, is part of the land granted to the Jews as part of the League of Nations Palestine Mandate, which recognized the right of the Jewish people to "close settlement" in a portion of those territories gained after the breakup of the Ottoman Empire after World War I. According to Eugene V. Rostow, the late legal scholar and one of the authors of UN Security Council Resolution 242 written after the 1967 war to outline peace negotiations, "the Jewish right of settlement in Palestine west of the Jordan River, that is, in Israel, the West Bank, Jerusalem, and the Gaza Strip, was made unassailable. That right has never been terminated and cannot be terminated except by a recognized peace between Israel and its neighbors," something which Israel's intransigent Arab neighbors have never seemed prepared to do.

Moreover, Rostow contended, "The Jewish right of settlement in the West Bank is conferred by the same provisions of the Mandate under which Jews settled in Haifa, Tel Aviv, and Jerusalem before the State of Israel was created," and "the Jewish right of settlement in the area is equivalent in every way to the right of the existing Palestinian population to live there."

When did the West Bank, Gaza, and East Jerusalem become Palestinian land, as Resolution 2334 affirms? The answer is:

never. In fact, when Israel acquired the West Bank and Gaza and other territory in the defensive war 1967 after being attacked by Egypt, Syria, and Jordan, the Jewish state gained legally-recognized title to those areas. In Israel's 1948 war of independence, Egypt, it will be recalled, illegally annexed Gaza at the same time Jordan illegally annexed the West Bank—actions that were not recognized by most of the international community as legitimate in establishing their respective sovereignties.

Israel's recapture of those territories in 1967, noted Professor Stephen Schwebel, State Department legal advisor and later the President of the International Court of Justice in The Hague, made the Jewish state what is referred to as the High Contracting Party of those territories, both because they were acquired in a defensive, not aggressive, war, and because they were part of the original Mandate and not previously under the sovereignty of any other High Contracting Party. "Where the prior holder of territory had seized that territory unlawfully," Schwebel wrote, referring to Jordan and Egypt, "the state which subsequently takes that territory in the lawful exercise of self-defense has, against that prior holder, better title."

While those seeking Palestinian statehood conveniently overlook the legal rights Jews still enjoy to occupy all areas of historic Palestine, they have also used another oft-cited, but defective, argument in accusing Israel of violating international law by maintaining settlements in the West Bank, that since the Six Day War, Israel has conducted a "belligerent occupation." But as Professor Julius Stone discussed in his book, *Israel and Palestine*, the fact that the West Bank and Gaza were acquired by Israel in a "sovereignty vacuum," that is, that there was an absence of High Contracting Party with legal claim to the areas, means that, in this instance, the definition of a belligerent occupant in invalid. "

The matter of Israel violating Article 49 of the Fourth Geneva Convention is one that has been used regularly, and disingenuously, as part of the cognitive war by those wishing to criminalize the settlement of Jews in the West Bank and demonize Israel for behavior in violation of international law, and, in fact, was the core of the UNSC resolution. It asserts that in allowing its citizens to move into occupied territories Israel is violating Article 49, which stipulates that "The occupying Power shall not deport or transfer parts of its own civilian population into territory it occupies." The use of this particular Geneva Convention seems particularly grotesque in the case of Israel, since it was crafted after World War II specifically to prevent a repetition of the actions of the Nazis in cleansing Germany of its own Jewish citizens and deporting them to Nazi-occupied countries for slave labor or extermination. Clearly, the intent of the Convention was to prevent belligerents from forcibly moving their citizens to other territories, for malignant purposes– something completely different than the Israel government allowing its citizens to willingly relocate and settle in territories without any current sovereignty, to which Jews have longstanding legal claim, and, whether or not the area may become a future Palestinian state, should certainly be a place where a person could live, even if he or she is a Jew.

In fact, Professor Stone observed that those enemies of Israel who point to the Fourth Geneva Convention as evidence of Israel's abuse of international law and wish to use it to end the settlements are not only legally incorrect, but morally incoherent and racist. Stone suggested that in order to recognize the validity of using the Fourth Convention against Israel, one "would have to say that the effect of Article . . . is to impose an obligation on the state of Israel to ensure (by force if necessary) that these areas, despite their millennial association with Jewish life, shall be forever judenrein."

Professor Rostow himself saw through the disingenuous talk about legal rights and resolutions when it came to the issue of the settlements. The discussion was not, in his mind, "about legal rights but about the political will to override legal rights." In fact, the settlement debate is part of the decades-old narrative created by the Palestinians and their Western enablers to write a false historical account that legitimizes Palestinian claims while air brushing away Jewish history. "Throughout Israel's occupation," Rostow observed, "the Arab countries, helped by the United States, have pushed to keep Jews out of the territories, so that at a convenient moment, or in a peace negotiation, the claim that the West Bank is 'Arab' territory could be made more plausible."

In the cognitive war against Israel, that "convenient moment," at least for the "pack of jackals" in the UN about which Senator Moynihan lamented, has apparently arrived.

Richard L. Cravatts, PhD, President Emeritus of Scholars for Peace in the Middle East, is the author of Dispatches From the Campus War Against Israel and Jews.