

Correspondence with the Israeli Embassy in London on UN Security Council resolutions being violated by Israel

In late 2002, in the run up to their invasion of Iraq the following March, the US and the UK were furiously portraying Iraq as a rogue state, which was in breach of a raft of United Nations Security Council resolutions demanding that it give up its “weapons of mass destruction” (which later proved to be non-existent).

For example, the British Foreign Secretary, Jack Straw, told the House of Commons on 25 November 2002:

“Today, Iraq stands in breach of nine separate chapter VII Security Council resolutions. It has completely ignored 23 distinct obligations out of a total of 27. That plainly cannot be allowed to continue. As President Bush said to the UN General Assembly on 12 September, the UN has either to enforce the writ of its own resolution or risk becoming irrelevant.” [1]

A few months later, the UK justified its invasion of Iraq as action to enforce the disarmament of Iraq in accordance with these Security Council resolutions.

Then, Israel was violating around 30 United Nations Security Council resolutions, which required action by Israel and Israel alone (see, for example, *United Nations Security Council Resolutions Currently Being Violated by Countries Other than Iraq* by Stephen Zunes [2]). When I became aware of this, I wrote to the Israeli Embassy in London suggesting that Israel should also heed President Bush’s call that “resolutions of the world’s most important multilateral body” be “enforced”.

The correspondence below ensued. The Embassy claimed bizarrely that Israel was not obliged to implement these Security Council resolutions, since, unlike those concerned with Iraq, they were passed under Chapter VI of the UN Charter and therefore were merely “non-binding recommendations”, which “can only be implemented through a process of negotiation, conciliation, or arbitration between the parties to a dispute”.

The Embassy eventually terminated the correspondence, because it lost the argument.

1st letter by me

Embassy of Israel
2 Palace Green
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16 December 2002

Dear Sirs

Attached is an article on UN Security Council resolutions currently being violated by countries other than Iraq. If the information in this article is true, Israel is in breach of 32 Security Council resolutions stretching back over more than 30 years.

Do you agree that Israel is in breach of these 32 resolutions? If so, how does Israel justify this failure to accept these decisions of the Security Council, as required by Article 25 of the UN Charter?

In his speech to the UN on 12 September, President Bush told the UN:

“We want the United Nations to be effective, and respectful, and successful. We want the resolutions of the world's most important multilateral body to be enforced. And right now those resolutions are being unilaterally subverted by the Iraqi regime.”

Is that not equally true of Israel?

Yours sincerely

David Morrison

(I enclosed copy of the article by Stephen Zunes).

1st reply from the Israeli Embassy

19 December 2002

Dear Dr Morrison

Thank you for your letter of 16 November [sic].

The commonly made claim that Israel is in breach of Security Council resolutions, and therefore deserves to be treated in the same way as Iraq, is factually, historically and morally wrong.

The UN Charter is founded on the understanding that different situations and disputes require different responses, and that not every conflict requires identical action. Therefore, the UN distinguishes between two sorts of Security Council resolution. Those passed under Chapter Six deal with the peaceful resolution of disputes and entitle the council to make non-binding recommendations. Those under Chapter Seven give the council broad powers to take action, including warlike action, to deal with "threats to the peace, breaches of the peace, or acts of aggression".

Such Chapter Seven resolutions, binding on all UN members, were rare during the cold war. But they were used against Iraq after its invasion of Kuwait. However, all of the resolutions relating to the Israeli-Arab conflict come under Chapter Six. By imposing sanctions – including military ones – against Iraq but not against Israel, the UN is merely acting in accordance with its own rules.

One might ask, if only for the sake of argument, what if the main Security Council resolutions on the Arab-Israeli conflict had been Chapter Seven resolutions? The problem would still then arise that the resolutions pertaining to the Israeli-Arab conflict are not unilateral – they can only be implemented through the actions of all parties.

Resolution 242 of 1967, passed after the six-day war and frequently cited in the double-standards argument, does not instruct Israel to withdraw unilaterally from the territories occupied in 1967. It also does not condemn Israel's conquest, for the very good reason that most western powers at that time thought it the result of a justifiable pre-emptive war. It calls for a negotiated settlement, based on the principle of exchanging land for peace. This is a very different matter.

Why? First is the question of borders. The diplomats who drafted Resolution 242 said afterwards that they intended to allow for some changes in the armistice lines that separated Israel and its Arab neighbours before the war of 1967. The resolution calls for withdrawal from "territories occupied in the recent conflict." The absence of the definite article, '*the*' before the word territories, was deliberate; a complete withdrawal was not envisaged, nor possible.

Furthermore, resolution 242 cannot be implemented without arriving at a negotiated agreement.

For example, the resolution calls for a "just" settlement of the Palestinian refugee issue. The UN General Assembly resolution 194 of 1948, gives all refugees of 1948 (Palestinian and Jewish) the right to return, or to get compensation. The resolution states that these refugees have to be

willing to "live at peace with their neighbours" yet the Palestinians, having rejected the UN-sanctioned partition of Palestine, were not prepared to live in peace with the new Jewish state. More than half a century later, the Palestinians claim 3.8m refugees, making the return of all of them an impossibility if Israel is to remain a Jewish, democratic state. A compromise can certainly be negotiated, as Ehud Barak attempted at Camp David in 2000 without reciprocity from Yasser Arafat. But there exists no Security Council blueprint to solve it.

Israel has already made peace with Egypt and Jordan based on the principles set out by the Security Council in resolutions 242 and 338 (Chapter Six), and we will hopefully reach peace with our other neighbours. These resolutions were accepted by all parties as the basis of the Madrid Peace Conference. They also provided the basis for our peacemaking with the Palestinians: for our mutual recognition, for the Oslo accords, and for nearly a decade of peace negotiations. These negotiations broke off as a result of the Palestinian side's decision to revert to a strategy of violence and terrorism and its rejection, both in word and deed, of the right of States in the region to live in peace within secure and recognized boundaries, as required by resolutions 242 and 338.

Unlike resolutions concerning Iraq therefore, the Council's resolutions on the Israeli- Palestinian conflict do not envision Israeli actions without reciprocal commitment and implementation by other parties to the dispute. They are part and parcel of a number of interdependent actions aimed at ending the violence and terrorism and returning the parties to a political process. They cannot be compared to Chapter Seven resolutions addressing the threat posed by the aggressive intentions of one regime to both the region and the world.

But beyond all this lies a more significant, and indeed more fundamental distinction between Iraq and Israel. Israel is a country confronting the daily threat of terrorist attacks against its civilians, as well as repeated threats to destroy it, including threats from remote neighbours like Iran and Iraq. Are we to forget that just months before the Gulf War, Saddam Hussein threatened to "completely burn half of Israel", and that in the course of that war 39 Iraqi scud missiles fell on Israeli cities without any provocation?

Is there a double standard at work here? I would ask you to do a simple test. Take two states, one a dictatorship, a serial violator of mandatory, unilateral Security Council resolutions and human rights, dedicated to the acquisition of chemical, biological and nuclear weapons, and fighting for regional domination. The other a democracy put to the test of survival for decades, committed to the rule of law and freedom of speech, and always committed to peace, both for ourselves and for our neighbours.

I leave the answer to you.

Yours sincerely

Michael Rosen
Public Affairs Spokesman

2nd letter by me

26 December 2002

Dear Mr Rosen

Thank you for your letter of 19 December.

You write that the “commonly made claim that Israel is in breach of Security Council resolutions ... is factually, historically and morally wrong”. I am at a loss to understand how that assertion can be justified.

There are many Security Council resolutions requesting action by Israel, and Israel alone, where Israel has not carried out the action requested. To my mind therefore, it cannot be denied that Israel is in breach of Security Council resolutions.

I cite as examples those Security Council resolutions passed since 1979 calling for the dismantling of Jewish settlements in the West Bank and Gaza and the cessation of further settlement activity, for example, resolution 446 passed on 22 March 1979, which:

“Calls once more upon Israel, as the occupying Power, to abide scrupulously by the 1949 Fourth Geneva Convention, to rescind its previous measures and to desist from taking any action which would result in changing the legal status and geographical nature and materially affecting the demographic composition of the Arab territories occupied since 1967, including Jerusalem, and, in particular, not to transfer parts of its own civilian population into the occupied Arab territories.”

It cannot be denied that this resolution calls for Israel to dismantle existing settlements and cease further settlement activity. It equally cannot be denied that the number of Jewish settlements, and the number of Jewish settlers, has increased dramatically since 22 March 1979. In my view therefore, it cannot be denied that Israel is in breach of Security Council resolution 446 and of subsequent Security Council resolutions calling for the end of settlement activity in the West Bank and Gaza.

It is true, as you say, that all Security Council resolutions requesting action by Israel are Chapter VI resolutions. But there is nothing in the UN Charter to justify your assertion that such resolutions are merely “non-binding recommendations”, unlike Chapter VII resolutions that are “binding on all UN members”.

Quite the reverse. Article 25 of the Charter says that:

“The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.”

There is no distinction there between Chapter VI and Chapter VII resolutions. Since Article 25 is in Chapter V, and not in Chapter VI nor in Chapter VII, surely it must apply to both Chapter VI and Chapter VII resolutions?

That was certainly the view of the International Court of Justice in its Advisory Opinion of 21 June 1971 (which arose from a request by the Security Council for an advisory opinion on the legal consequences for States of the continued presence of South Africa in Namibia). Paragraph 113 of this opinion says:

“It has been contended that Article 25 of the Charter applies only to enforcement measures adopted under Chapter VII of the Charter. It is not possible to find in the Charter any support for this view. Article 25 is not confined to decisions in regard to enforcement action but applies to ‘the decisions of the Security Council’ adopted in accordance with the Charter. Moreover, that Article is placed, not in Chapter VII, but immediately after Article 24 in that part of the Charter which deals with the functions and powers of the Security Council. If Article 25 had reference solely to decisions of the Security Council concerning enforcement action under Articles 41 and 42 of the Charter, that is to say, if it were only such decisions which had binding effect, then Article 25 would be superfluous, since this effect is secured by Articles 48 and 49 of the Charter.”

That leaves no room for doubt that, in the opinion of the International Court of Justice, Chapter VI and Chapter VII resolutions of the Security Council are equally binding. It is therefore difficult to avoid the conclusion that Israel is in breach of Security Council resolutions.

Yours sincerely

David Morrison

2nd reply from the Israeli Embassy

30 December 2002

Dear Dr Morrison

Thank you for your letter of 26 December.

The distinctiveness of Chapter VI and VII resolutions has long been acknowledged by Palestinian diplomats, and is, indeed, one of their main complaints. A Palestine Liberation Organization report, entitled "Double Standards" and published on September 24 2002, pointed out - as you have - that over the years the UN Security Council has upheld the Palestinians' right to statehood, condemned Israel's settlements and called for Israel to withdraw. But "no enforcement action or any other action to implement UN resolutions and international law has been ordered by the Security Council."

The report neglects to explain the very simple reason for this, however. All Chapter VI resolutions (ones which deal with "Pacific Resolution of Disputes") can only be implemented through a process of negotiation, conciliation, or arbitration between the parties to a dispute. All UN Security Resolutions concerning Israel fall under this category, and cannot be self-enforced by Israel alone; they all require a negotiating process.

Chapter Seven resolutions however, deal with "Threats to Peace, Breaches of the Peace and Acts of Aggression." When Iraq invaded Kuwait in 1990, the UN Security Council adopted all its resolutions against Iraq under Chapter VII of the UN Charter. The implementation of those resolutions was not contingent on Iraqi-Kuwaiti negotiations, for Iraq engaged in a clear-cut act of aggression. Moreover, UN resolutions on Iraq are self-enforcing, requiring Iraq alone to comply with their terms. However, the UN recognised, under Article 42 of the UN Charter, the need for special military measures to be taken if a Chapter VII resolution is ignored by an aggressor.

We can clearly spend a long time debating the minutiae of the UN Charter. However, there is surely a more pertinent observation to be made; that of the disproportionate amount of time spent debating the State of Israel within the Security Council and the wider UN organisation.

Israel is the object of more investigative committees, special representatives and rapporteurs than any other state in the UN system. The special representative of the Director-General of UNESCO visited Israel 51 times during 27 years of activity. A "Special Mission" has been sent by the Director-General of the ILO to Israel and the territories every year for the past 17 years. In addition, the Commission on Human Rights routinely adopts disproportionate resolutions concerning Israel. Of all condemnations of this agency, 26 percent refer to Israel alone, while rogue states such as Syria and Libya are never criticised.

To give but one example of the blatant double standard at work. On 24 May 2000, Israel withdrew its forces from Lebanon and redeployed them south of the international border, the "blue line" designated by the UN as separating the two countries. However, despite Israel's full and confirmed compliance with Security Council resolution 425 (1978), Hizbullah, with the assistance of both the Lebanese and Syrian Governments, has continually launched attacks

against Israel across the Blue Line. These attacks violate basic norms of international law, most recently reaffirmed by Security Council resolution 1373, which obligates all States to prevent their territory from serving as a base for terrorist operations.

As an occupier of a neighboring country, recognised as a State that sponsors terrorism, and as a State that grants some of the world's most vicious terrorist organisations safe harbor in its territory, Syria's policies stand in blatant contradiction to the principles of the United Nations Charter. Yet earlier this year, Syria served as President of the UN Security Council.

The disproportionate attention accorded to Israel (a country the size of Wales with a population smaller than that of London) would be amusing if it were not so distasteful. Over the last two decades the UN has repeatedly held Emergency Special Sessions of the General Assembly on Israeli construction in Jerusalem. Such emergency special sessions of the General Assembly are rare, having been originally conceived in 1950 for emergencies like the Korean War. However, no such session has ever been convened with respect to the Chinese occupation of Tibet, the Indonesian occupation of East Timor, the Syrian occupation of Lebanon, the slaughters in Rwanda, the disappearances in Zaire or the horrors of Bosnia. So why have these sessions have been called only to condemn Israel?

The answer is abundantly clear. Candidates for the Security Council are proposed by regional blocs. In the Middle East, this means the Arab League and its allies are usually included. The automatic majority enjoyed by the Arab-Moslem bloc enables this group to pass any anti-Israel resolution, no matter how one-sided it may be. This same automatic majority blocks the adoption of any resolution that has any hint of criticism against the Palestinians or any Arab state.

In a perfect world, Israel's relationship with the United Nations would be based on the merits of its case alone; that is to say, on Israel's status as a successful and flourishing democracy well-placed and well-disposed to contribute greatly to the welfare of the international community as a whole. However, the sad reality is that the international body's treatment of Israel will continue to be linked directly to the vicissitudes of the Arab-Israeli and Israeli-Palestinian relationships, as well as to the fact that the UN is now comprised of a majority of countries that are disposed towards an anti-Israel political agenda.

Barring fundamental structural reform of the way in which the UN itself operates, so as to deny Israel's enemies the ability to hijack and politicise the proceedings of important humanitarian institutions such as the UN Committee on Human Rights and the Fourth Geneva Convention, Israel's treatment at the UN and in other international institutions will continue to be uniquely politically driven.

Yours sincerely

Michael Rosen
Public Affairs Spokesman

3rd letter by me

15 January 2003

Dear Mr Rosen

Thank you for your letter of 30 December, which I have just received.

You write:

“All Chapter VI resolutions (ones which deal with “Pacific Resolution of Disputes”) can only be implemented through a process of negotiation, conciliation, or arbitration between parties to a dispute.”

That is simply not true: Chapter VI resolutions demanding action by more than one state may indeed involve “a process of negotiation, conciliation, or arbitration between parties to a dispute”, but resolutions demanding action from only one state manifestly do not. All the state in question has to do in order to implement the resolution is to take the action demanded.

Therefore, your assertion that “all UN Security Council Resolutions concerning Israel” (which are all under Chapter VI) “cannot be self-enforced by Israel alone” is simply not true.

For example, at any time since resolution 446 was passed in 1979, Israel could have dismantled existing settlements in the West Bank and Gaza and ceased building others, as demanded by the Security Council in that resolution. There was absolutely nothing to stop resolution 446 being “self-enforced by Israel alone”. Israel chose not to “accept and carry out” this decision of the Security Council as required by Article 25 of the UN Charter. The same is true of around 30 other Security Council resolutions, which require action by Israel, and Israel alone.

Like Iraq, Israel is in breach of Security Council resolutions and, as the International Court of Justice laid down in its opinion of 21 June 1971, the Chapter VI resolutions applying to Israel are as binding as the Chapter VII resolutions applying to Iraq. The Article 25 requirement to “accept and carry out the decisions of the Security Council” applies to both.

Yours sincerely

David Morrison

4th letter by me

21 April 2003

Dear Mr Rosen

You did not reply to my letter of 15 January. I write again to seek answers to the following questions:

- 1) Does Israel accept the ruling of the International Court of Justice (*Namibia* 1971 ICJ 16, paragraph 113) that UN member states are obliged "to accept and carry out" Chapter VI (as well as Chapter VII) Security Council resolutions in accordance with Article 25 of the UN Charter?
- 2) If not, why not?
- 3) If so, does Israel accept that as a UN member it is obliged under Article 25 "to accept and carry out" resolutions such as 446, which place obligations on Israel and no other party?

Thanking you in anticipation.

Yours sincerely

David Morrison

I haven't received a reply from the Israeli Embassy.

David Morrison
March 2010

References:

- [1] www.publications.parliament.uk/pa/cm200203/cmhansrd/vo021125/debtext/21125-13.htm
- [2] www.fpif.org/commentary/2002/0210unres.html