

Article by former UN Legal Counsel Hans Corell in the Swedish daily Dagens Nyheter on 12 June 2010

Translation from the Swedish by the author

Only Respect for International Law Can Make the Peace Process Move ¹

Expert on international law: The UN Security Council has a heavy responsibility to apply international law with the same vigor and consequence in the Middle East as elsewhere. In the matter of “Ship to Gaza”, peacetime international law stands against the law on naval warfare. Irrespective of the position taken in this question, what happened is wholly unacceptable. To make the process that after all is underway bear fruit, the Security Council should now, applying Chapter VII of the UN Charter, order Israel to stop the illegal settlements on the West Bank, establish an international impartial investigation of what happened to “Ship to Gaza”, and refer the actions by the Israeli and Palestinian parties during the war in Gaza at the turn of the year 2008-2009 to the International Criminal Court. The good forces on both sides must be supported, writes Hans Corell.

The events of the last several days in connection with Israel’s actions against the ships that participated in operation “Ship to Gaza” has caused an intense debate in media all over the world. The Israeli government and military have rightly been criticized, not least in Israeli media.

In the debate, the argument has been made that it is the international law of peacetime that applies. Israel is therefore not allowed to board ships of other nations outside the territorial sea. Israel, on her side, maintains that there is authority to apply the laws of naval warfare on blockade and the right to stop ships already in international waters.

Irrespective of one’s opinion in this matter, what happened is wholly unacceptable. An impartial investigation must be conducted under the auspices of the Security Council of the United Nations.

It is, however, of extreme importance that what has happened is viewed in a greater context. What we have witnessed is “only” the latest element in a pattern that is due to the fact that other states do not apply international law with sufficient vigor and consequence in the Middle East. Here, the same yardstick is not used as elsewhere. The criticism must be directed, in particular, to the UN Security Council and its five permanent members.

There is no doubt that Israel has a legitimate interest in protecting herself against attacks from Gaza and a right to prohibit that weapons are brought into the area. The actions by Hamas in this context must be forcefully condemned, and those responsible for the rocket attacks must be brought to justice.

¹ Please note that, as customary, the headline and the summary were formulated by the editor.

But it is equally important that the actions by Israel are investigated in an impartial manner. We remember the proposal by the so-called Goldstone Commission from September 2009: the UN Security Council should refer the actions by the parties during the war in Gaza to the International Criminal Court (ICC). But, so far, nothing has come out of this, and the intense discussion about the war has now abated.

And this is precisely what is typical for the Middle East. Who speaks, for example, today about Israel's in itself legitimate, but wholly disproportionate defense attack against Lebanon in 2006? For years the development in the Middle East has been allowed to continue rendering more difficult a two-state solution and peace in the region.

The situation for the Palestinians is increasingly untenable. Is there even a light at the horizon? A necessary precondition for peace is that Israel changes her politics. But Israel must also have a credible opposite party. A stumbling block here is the notorious inability of the Palestinians to act in an organized manner. The split between Fatah and Hamas has seriously damaged the Palestinians' cause.

But also other actors have reason to ask themselves whether they have acted wisely here. How could, for example, Europe and the U.S. commit such a tremendous blunder as they did when Hamas won the elections in Gaza in 2006? The observers of the electoral process had reported that the elections had been conducted in democratic order. In spite of this, Europe and the U.S. simply pulled down the curtain and discontinued the assistance to Gaza. Hamas was not even given a chance.

Had it not been wiser to launch a powerful diplomatic offensive towards Hamas: if you are prepared to act as it behooves a democracy, we will give you all support. But an indispensable condition is that the rocket attacks against Israel end and that you accept a two-state solution and Israel's right to exist.

Where to begin? In my opinion the only realistic way ahead is to apply international law and in particular the UN Charter with consequence.

Let us for a moment visualize the Middle East somewhere in sub-Saharan Africa. Which country had then been first on the barricades demanding that settlements on occupied land should be dismantled and that suspected war criminals should be brought to justice? Correct: the United States of America.

With the consent of the U.S., the UN Security Council has requested the ICC Prosecutor to investigate the situation in Sudan. In spite of a proposal to this effect, the Council has not been able to make such a decision with respect to Gaza.

After President Obama's speech in Cairo in June 2009, when among other things he raised the question of the settlements, we were probably many who hoped for a marked change in the U.S. policy vis-à-vis Israel. But how much has happened?

Some time ago, the American General David Petraeus made the point that the U.S. policy vis-à-vis Israel is putting U.S. security in jeopardy. Maybe this will have effect? President Obama's words at West Point on 22 May about stronger international standards and institutions represent a welcome marking against his predecessor's contempt for multilateral action.

To make the peace process in the Middle East begin working as it should, the good forces in Israel must be supported. Many Israelis distance themselves from the government's policy. Before my latest visit to the region this year I read "The Holocaust Is Over; We Must Rise From Its Ashes". This book was written by Avraham Burg, former Speaker of the Israeli parliament (Knesset). His criticism of the policies of the Israeli government – and not only the present – is devastating.²

We must never ever forget the Holocaust. But how should we honor its victims? It ought to be self-evident! By respecting – all of us with no exception – the international rules that we have negotiated and agreed upon to prevent repetition of such tragedies, in particular the UN Charter, human rights and humanitarian law.

It is also important to bring about a change in the conditions of the Palestinians without jeopardizing Israel's security. The present situation in Gaza is unacceptable and must be solved quickly and in a constructive manner.

In the longer perspective, the Palestinians must receive assistance to establish the institutions that are necessary in a democracy under the rule of law. A two-state solution depends on the Palestinians being able to maintain law and order in their territory in a credible and effective manner.

Let us hope that the process that after all is underway will bear fruit. But, in applying international law, the main actors must then play their part with consequence.

Therefore, the Security Council should now, applying Chapter VII of the UN Charter:

- Order Israel to stop the illegal settlements on the West Bank and to present a plan for the dismantling of the existing settlements;
- Establish an international impartial investigation of what happened when the ships that participated in "Ship to Gaza" were boarded;
- Request the ICC Prosecutor to investigate the actions of both parties during the war in Gaza in December 2008 and January 2009.

But this will not happen, someone objects. How naïve! The U.S. will never agree to this. The answer is patently obvious: for your own safety, to enhance the safety in the Middle East and consequently also in the world, to support the good forces on both sides.

² The book came out in 2008 and harshly criticizes the Israeli political establishment.

Such action, in accordance with the law and impartial, would also be a first step towards a different atmosphere in the region. Maybe it could even result in Iran having a government that belongs in the 21st century.

Here, a heavy responsibility also falls on Europe which must bring its act together and contribute with a united and forceful effort to lead the development in the right direction.

Hans Corell

Hans Corell is Chairman of the Board of Trustees of the Raoul Wallenberg Institute for Human Rights and Humanitarian Law. He was Legal Adviser of the Ministry of Justice 1981-1984 and of the Ministry for Foreign Affairs 1984-1994. He was Under-Secretary-General for Legal Affairs and the Legal Counsel of the United Nations 1994-2004.

Read more by Hans Corell on this webpage, www.havc.se

UN reform: “Who Needs Reforming the Most – the UN or its Members?” The Responsibility of the Security Council: "Security Council Reform: Rule of Law More Important Than Additional Members". A few words at a manifestation for peace between Israel and Palestine on 10 January 2009 .