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Standards of a Negotiated Settlement to End the Israeli Occupation

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First: Exchange of Prisoners

- 1- The ninth of July marks the second anniversary of the legal ruling by the International Court of Justice (ICJ) on the wall being built by Israel in the occupied Palestinian territories. That ruling determined the principles and regulations that apply to the current conflict according to international and humanitarian laws. The ICJ stated that the negotiated solution should abide by declared principles and regulations. In this briefing and the following research, we will seek to apply the principles and regulations set by the ICJ on some aspects of the conflict, starting with the current one about the fate of the captured Israeli soldier.
- 2- We start by praying to Allah to rest the souls of martyrs who fall victim on a daily basis to the continuous, barbaric aggression of Israel. We also hail the legendary perseverance by our people in the face of the unjust blockade imposed for no reason other than applying democracy. The same democracy Washington brags about and the wars it launches to enforce it, and which Israel boasts itself as being the only state in the Middle East to follow. The irony of the blockade is that its declared reason is the refusal of Hamas to recognize Israel or its right to exist in the Palestinian homeland. On the other hand, countries around the world, including Arab States that recognize Israel and deal with it, accept the results of Israeli elections without conditions of recognition by Israeli governments of Palestinian rights. All that these countries refer to is negotiations, as if the rights of the Palestinians are subject to negotiations or to the will of the occupier. This is a very bizarre situation to which some Arab States are, unfortunately, a party.
- 3- The captured Israeli soldier is a prisoner of war that was caught in a battlefield. He is not a civilian kidnapped from his home or from the street as the case with Israel kidnapping women, children and young men. However, all voices loudly screamed for the release of a prisoner of war who, according to international law, should be kept by resistance groups until an exchange of prisoners is arranged. Neither Israel nor any other country claimed his captivity violated international or any other laws. On the other

hand, the 10,000 Palestinians detained and locked up by Israel were arrested and detained in violation of both international and humanitarian laws. They were not captured on a battlefield and are detained in violation of said laws and must be released without condition. The abuse of their personal freedom and violation of their other human rights is a stark violation of these laws, which the International Court of Justice (ICJ) unequivocally declared Israel is bound to respect. The commitment on the part of the Palestinian resistance groups is to preserve the life of the captured Israeli soldier and to provide him with medical treatment, should he need it, in addition to treating him in a proper humane fashion, regardless of Israel's treatment of Palestinian and Arab detainees. This is the sound legal requirement that applies to both sides, in accordance with international and humanitarian laws. Palestinian and Arab detainees must be released without condition while the Israeli prisoner of war must be released once the armed conflict is over or in line with negotiations that take into consideration the terms of the Palestinian side.

- 4- According to news reports, Egyptian mediation may have reached an agreement under which resistance groups first release the Israeli soldier then Israel decides whom to release from among Palestinian detainees, in addition to releasing detained women and children. It seems the Palestinian President is satisfied with such a "deal". If such reports are true, that deal is by all means a very strange one. It is contrary to commonsense that the prisoner of war, whose captivity violates no law, should be released first while the release of Palestinian detainees is to be subject to the will of the occupying power, ignoring the simple fact that in the first place those Palestinians were detained in violation of all laws. To set priorities right, the illegal situation should be corrected first, not delayed. This means releasing Palestinian detainees first. In addition, past experiences have taught us that Israel seldom respects what it approves or agrees upon even with the presence of a third party as a guaranteeing mediator. Israel simply acts in the way it pleases.
- 5- The legal ruling of the International Court of Justice that declared the principles and regulations of international and humanitarian laws as binding to the Israelis and Palestinians also stated them as binding to other countries. The ICJ also warned other states against supporting Israel or providing it with the means to continue its violation of these principles and regulations. That commitment is determined by the International Court of Justice.
- 6- News agencies also reported that Israel put another condition on the deal; namely that Palestinian resistance groups stop firing Qassam rockets on Israeli targets. This condition is a unilateral one. It seems that Israel will insist on that condition because the rockets, as primitive as they may be, are seemingly so worrying to Israel that it has already embarked on scientific research seeking anti-missile systems to detect and destroy Qassam rockets before they explode. So, if Israel insists on that condition, there should be something given in return and of the same kind. It should not be given for free. If Israel seeks the protection of its settlements and citizens against Qassam rockets, Palestinians are also entitled to seek the protection of their property and people against Israel's aggressions. So, in return Israel should stop its violations. The violation of Palestinian rights is the cause rockets are fired. That means Israel should abide by respecting these same rights. Such commitment is met when Israel adheres to the rulings of the International Court of Justice. For example, it is not legal for Israel to continue constructing the wall while the ICJ had already ruled it should be removed and those afflicted by it compensated. Israel should also restore the conditions in Jerusalem "al-Quds" to what they were. As the ICJ has ruled, the new conditions on the ground are not legal...and so on. In other words, it is not permitted to impose restraints on resistance while the occupation continues its illegal practices, which violate international and humanitarian laws. It is absolutely unacceptable to strip people under occupation of their basic means to defend themselves while the occupying state is left armed to the teeth with weapons of mass destruction, which it does not hesitate to use extensively against vital civil targets like electric stations and water reservoirs. No Arab regime, international community, or Security Council's even modest calls for self-restraint seem to stop Israel.

- 7- Needless to say, and this worries Israel, that the Palestinian resistance is entitled to capture Israeli soldiers as long as Israel continues its aggressions. This is an internationally recognized right in the case of armed conflicts. Therefore, Palestinian resistance is entitled to capture more soldiers to use them as a pressure tool on Israel to release detainees that will not be released. Such tactics may work as a deterrent for Israel to stop its daily violations of international and humanitarian laws in the face of the helplessness we see on the part of decision-makers. Israeli commentators have already started debates on this tactic and they take it seriously after the Palestinian resistance had proved its ability to break into Israeli military posts and capture soldiers.
- 8- Some people, especially those who advocate being realistic, may see it strange on our part to insist on adhering to international legitimacy as set by the highest international court and in an historic unprecedented unanimous decision. We argue here that the International Court of Justice itself refused to recognize the 'fait accompli' as a justification for continual violation. Israel claimed the wall was a temporary procedure dictated by security reasons but the court rejected the whole argument, considering the situation on the ground to be evidence that the wall was far from being temporary even if it was for security reasons, which the court ruled against. Based on that, the court ruled it had to be removed. It is not legitimate to legalize the illegal based on realities on the ground. That so called 'reality' advocated by some led to the dismissal of some basic rights, and parting with some others, as well as, rapid official Arab steps for the normalization of relations with Israel and actual giving up of supporting the Palestinians in their resistance of occupation. It is even stranger that these advocates of 'reality' do not apply the same principle to Palestinian existence and rights while they are quick to accept a newly found 'fait accompli' that has no basis other than the desire to steal more Palestinian rights and exchange a Palestinian reality for an Israeli one.
- 9- The legal ruling by the International Court of Justice is one of the strongest weapons in favor of the Palestinian cause. Unfortunately, the National Palestinian Authority – whether it be the presidency or the government – did not give it its due consideration. The Arab countries have also ignored it completely and maintained their relations with Israel as if the ruling was never issued. The reason may be the lightweight Arab regimes generally give to the law or their concern about American or Israeli anger if such a ruling and its principles and regulations were to be put into effect. But we still hope a Palestinian government will find the courage to face Arab and Islamic countries first, the International Community second and the United Nations third, with their responsibilities according to the ICJ ruling. Failure to meet such responsibilities makes the three parties accomplices to the crimes Israel commits.

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