

**INTERNATIONAL COURT OF JUSTICE**

**REQUEST FOR AN ADVISORY OPINION BY THE UNITED NATIONS  
GENERAL ASSEMBLY IN RESOLUTION 77/247 OF 30 DECEMBER 2022  
PERTAINING TO THE QUESTION OF PALESTINE**

**WRITTEN STATEMENT OF THE STATE OF PALESTINE**



**VOLUME I**

**24 July 2023**



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## **WRITTEN STATEMENT OF THE STATE OF PALESTINE**

### **Chapter 1.**

#### **INTRODUCTION**

1.1. This Written Statement is filed by the State of Palestine in accordance with the Order of the Court dated 3 February 2023 in response to the United Nations General Assembly's request for an Advisory Opinion regarding the question of Palestine.

1.2. This Introduction recounts the history of the proceedings and terms of the Request (I), before setting out the historical and legal context in which the Request arises (II). It then addresses the Court's jurisdiction to deal with the Request and the absence of any compelling reasons to refrain from rendering the Advisory Opinion sought by the General Assembly (III). It concludes by describing the structure of the remainder of this Written Statement, consisting of Chapters 2 through 7, and one Volume of Annexes (IV).

#### **I. Terms of the Request and History of the Proceedings**

1.3. The Request was made by the General Assembly in resolution 77/247 of 30 December 2022. In that resolution, the General Assembly decided, pursuant to Article 96, paragraph 1, of the United Nations Charter and Article 65 of the Statute of the Court, to request the International Court of Justice to render an opinion, considering the rules and principles of international law, including the Charter of the United Nations, international humanitarian law, international human rights law, relevant resolutions of the Security Council, the General Assembly and the Human Rights Council, and the Advisory Opinion of the Court of 9 July 2004, on the following questions:

“(a) What are the legal consequences arising from the ongoing violation by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures?

(b) How do the policies and practices of Israel referred to in paragraph 18 (a) above affect the legal status of the occupation, and what are the legal consequences that arise for all States and the United Nations from this status?”

1.4. As is apparent from the terms of these questions and, in particular, from the mention at the very beginning of the first question of “the ongoing violation by Israel of the right of the Palestinian people to self-determination”, although they deal with matters primarily concerning the Occupied Palestinian Territory, including East Jerusalem, they go beyond those matters as further detailed in this Written Statement.

1.5. The Request was transmitted to the Court by the United Nations Secretary-General in a letter dated 17 January 2023.

1.6. By an Order dated 3 February 2023, the Court fixed 25 July 2023 as the time-limit within which Written Statements relating to the questions may be presented to the Court and decided that the State of Palestine may do so. The State of Palestine submits this Written Statement in accordance with that Order.

## **II. The Historical and Legal Context in Which the Request Arises**

### **A. PALESTINE UNDER THE OTTOMAN EMPIRE AND THE BRITISH MANDATE**

1.7. Palestine is a territory between the Mediterranean Sea and the Jordan River, at the confluence of three continents, and a land holy for the three monotheistic religions. It has a rich history that has shaped the identity of its people and their diversity. The Palestinian people are the product, actors, witnesses and victims of this history, with a continued presence on the land of Palestine for millennia. Their roots go as far back as the ancient Canaanites, and their nation was forged by those who inhabited this land and all those who found their way to its shores and their descendants.

1.8. In contemporary history, and as noted by the Court in its Advisory Opinion on the *Wall*:

“Palestine was part of the Ottoman Empire. At the end of the First World War, a class ‘A’ Mandate for Palestine was entrusted to Great Britain by the League of Nations, pursuant to paragraph 4 of Article 22 of the Covenant, which provided that:

‘Certain communities, formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone.’

The Court recalls that in its Advisory Opinion on the *International Status of South West Africa*, speaking of mandates in general, it observed that ‘The Mandate was created in the interest of the inhabitants of the territory, and of humanity in general, as an international institution with an international object – a sacred trust of civilization.’ ... The Court also held in this regard that ‘two principles were considered to be of paramount importance: the principle of non-annexation and the principle that the well-being and development of ... peoples [not yet able to govern themselves] form[ed] ‘a sacred trust of civilization’ ...’<sup>1</sup>.

1.9. The mandate was only to be a “temporary tutelage” until the realization of sovereignty and independence by the people of Palestine<sup>2</sup>. However, the Balfour Declaration issued by Great Britain in 1917, which was incorporated into the mandate granted to it at the San Remo Conference in April 1920, directly contradicted the sacred trust to ensure the independence of the people of Palestine. The Declaration proclaimed:

“His Majesty’s Government view with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavours to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine or the rights and political status enjoyed by Jews in any other country.”<sup>3</sup>

1.10. At its essence, the Balfour Declaration disregarded the national identity and national rights of the Palestinian people, referring to them vaguely as the “non-Jewish communities in Palestine”. Instead, it promised “a national home” to others in the territory specifically designated for the independence of the people of Palestine. The Declaration’s dismissiveness of the existence and rights of the Palestinian people as a nation, subject only to the recognition of their “civil and

<sup>1</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 165, para. 70 (hereafter: the “Wall Opinion”).

<sup>2</sup> *Ibid.*, Separate Opinion of Judge Elaraby, pp. 249-250, para. 2.1.

<sup>3</sup> *Mandate for Palestine, Interim report of the Mandatory to the League of Nations/ Balfour Declaration text*, 30 July 1921 (<https://tinyurl.com/49fntw29>).

religious rights”, and its contradiction of Britain’s mandated obligation to assist the Palestinian people to become fully independent, as for every other Class “A” mandate, amounted to a breach of trust with ramifications on the question of Palestine to this day.

1.11. Instead of acting to support and facilitate Palestine’s independence, the Mandatory Power adopted deliberate policies to enforce its Balfour Declaration, including by actively promoting Jewish immigration to Palestine and acquisition of land therein<sup>4</sup> to the detriment of the Palestinian people and their rights, and despite their consistent opposition and successive revolts that were met with violent repression. While Jewish immigration accelerated due to the suffering endured by Jews in Europe, including as victims of racism and violent pogroms that culminated with the rise of Nazism and eventually the horrors of the Holocaust, this immigration was also driven by a political ideology, Zionism, which coveted the land of Palestine and denied the existence of the Palestinian people, their longstanding presence and roots in Palestine and their legitimate claim to it.

1.12. By 1947, the British policies and practices to enforce the Balfour Declaration coupled with the British decision to exit Palestine laid the groundwork for the adoption of the United Nations Partition Plan, patently at odds with the Class “A” mandate designation of Palestine and the expressed purpose of the mandate system to ensure attainment of independence and the articulated will of the Palestinian people, who were deliberately denied any participation in this process. As noted by the United Nations Special Committee on Palestine (whose Report of 3 September 1947 formed the basis of the General Assembly’s Partition Plan):

“With regard to the principle of self-determination, although international recognition was extended to this principle at the end of the First World War and it was adhered to with regard to the other Arab territories, at the time of the creation of the ‘A’ Mandates, it was not applied to Palestine, obviously because of the intention to make possible the creation of the Jewish National

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<sup>4</sup> In 1920, according to the Interim Report to the League of Nations by the British government, the population of Palestine was approximately 700,000 people, of which around 480,000 were Muslims, and 77,000 are Christians, and 76,000 are Jews, “almost all of which had entered Palestine in the last 40 years”. See *Mandate for Palestine, Interim report of the Mandatory to the League of Nations/ Balfour Declaration text*, 30 July 1921 (<https://tinyurl.com/49fntw29>). By 1947, Palestinians were over 1,2 million while Jews were over 600,000, according to the UNSCOP report to the General Assembly (*Official Records of the General Assembly*, Second session, Suppl. No. 11, A/364, Vol. I, [https://undocs.org/A/364\(Supp\)](https://undocs.org/A/364(Supp))).

Home there. Actually, it may well be said that the Jewish National Home and the *sui generis* Mandate for Palestine run counter to that principle.”<sup>5</sup>

1.13. The Partition Plan, adopted by the General Assembly in its resolution 181 (II) of 29 November 1947, allocated over 55 % of the land of Palestine to the “Jewish State” and around 42 % to the “Arab State”, and stipulated that “[t]he City of Jerusalem shall be established as a *corpus separatum* under a special international regime and shall be administered by the United Nations”. Under the Plan, the City of Jerusalem included the municipality of Jerusalem at the time, plus the surrounding villages and towns, including Bethlehem<sup>6</sup>.

1.14. Concerned about the proposed partition of Palestine, Sub-Committee II of the *Ad Hoc* Committee on the Palestinian Question, which was established in September 1947 by the General Assembly, stressed that:

“the people of Palestine are ripe for self-government and that it has been agreed on all hands that they should be made independent at the earliest possible date. It also follows, from what has been said above, that the General Assembly is not competent to recommend, still less to enforce, any solution other than the recognition of the independence of Palestine”<sup>7</sup>.

1.15. Sub-Committee II underlined the necessity to clarify the relevant legal issues, including, *inter alia*, “whether it lies within the power of any member or group of members of the United Nations to implement any of the proposed solutions without the consent of the people of Palestine.”<sup>8</sup>

1.16. The Sub-Committee had urged that the matter be submitted for legal review by the International Court of Justice, as the principal judicial organ of the United Nations. Yet that appeal went unheeded, leading the Sub-Committee to state that:

“A refusal to submit this question for the opinion of the International Court of Justice would amount to a confession that the United Nations are determined to make recommendations in a certain direction, not because those recommendations are in accord with the principles of international

<sup>5</sup> UNSCOP report to the General Assembly (Official Records of the General Assembly, Second session, Suppl. No. 11, A/364, Vol. I, <https://undocs.org/A/364>), p. 35, para. 176.

<sup>6</sup> General Assembly, Resolution 181 (II), 29 November 1947.

<sup>7</sup> *Ad Hoc* Committee on the Palestinian Question, Report of Sub-Committee 2, A/AC.14/32 and Add.1, 11 November 1947, para. 18 (<https://undocs.org/A/AC.14/32>).

<sup>8</sup> *Ibid.*, para. 37.

justice and fairness, but because the majority of the delegates desire to settle the problem in a certain manner, irrespective of what the merits of the question, or the legal obligations of the parties, might be. Such an attitude will not serve to enhance the prestige of the United Nations ...”<sup>9</sup>

1.17. This is particularly relevant as the General Assembly at the time did not have the universal and representative character it enjoys today following the decolonization and attainment of independence by the majority of the world’s countries. Nevertheless, these decisions, actions and proposals determining the fate of the Palestinian people were made without their consultation and without their consent, and in flagrant disregard of their fundamental right to self-determination.

1.18. The Partition Plan, whilst a recommendation, was used by the founders of Israel to further assert their territorial claim and to proclaim in May 1948 the establishment of a State “on the strength of the resolution of the United Nations General Assembly”<sup>10</sup>. During that period, the Palestinian people suffered the *Nakba* (Arabic for “catastrophe”), which refers to their ethnic cleansing and dispossession by Zionist militias and later by Israeli military forces seeking to expand the territory under Israeli control and to create a clear Jewish majority therein. This resulted in the forced displacement of two-thirds of the Palestinian population – between 750,000 and 900,000 Palestinians, now numbering with their descendants over 7 million refugees worldwide – who are still awaiting the return to their homeland more than 75 years later; the destruction of over 500 Palestinian villages; and the seizure of thousands of homes and properties. By the time an armistice agreement was concluded in 1949, Israel had seized control of 78 % of historic Palestine, far more territory than allotted to the “Jewish State” under the Partition Plan, with the remainder of historic Palestine, namely the West Bank, including East Jerusalem, and the Gaza Strip, coming under Jordanian and Egyptian administration respectively, in accordance with the 1949 Armistice Agreement, and along the armistice line, referred to as the “Green Line”.

1.19. In December 1948, the General Assembly adopted resolution 194 (III), in which the Assembly:

“[r]esolve[d] that, in view of its association with three world religions, the Jerusalem area, including the present municipality of Jerusalem *plus* the surrounding villages and towns ... should be accorded special and separate

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<sup>9</sup> *Ad Hoc Committee on the Palestinian Question, Report of Sub-Committee 2, A/AC.14/32 and Add.1, 11 November 1947, para. 40* (<https://undocs.org/A/AC.14/32>).

<sup>10</sup> For the text of the Declaration, see the Knesset website at <https://tinyurl.com/5yuwmehf>.

treatment from the rest of Palestine and should be placed under effective United Nations control,” and

“*instruct[ed]* the Conciliation Commission to present to … the General Assembly detailed proposals for a permanent international regime for the Jerusalem area … consistent with the special international status of the Jerusalem area”<sup>11</sup>.

The Assembly further:

“*[r]esolve[d]* that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible;” and

*[i]nstruct[ed]* the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation”<sup>12</sup>.

1.20. On 11 May 1949, Israel was admitted as a Member of the United Nations by resolution 273 (III) which noted “the declaration by the State of Israel that it ‘unreservedly accepts the obligations of the United Nations Charter and undertakes to honour them from the day when it becomes a Member of the United Nations’”<sup>13</sup> and “[r]ecall[ed] its resolutions of 29 November 1947 [i.e., Resolution 181 (II)] and 11 December 1948 [i.e., Resolution 194 (III)] and t[ook] note of the declarations and explanations made by the representative of the Government of Israel before the ad hoc Political Committee in respect of the implementation of the said resolutions”<sup>14</sup>.

1.21. To secure its membership in the United Nations, Israel stressed that it “held no views and pursued no policies on any questions which were inconsistent with the Charter or with the resolutions of the General Assembly and the Security

<sup>11</sup> General Assembly, Resolution 194 (III), 11 December 1948, para. 8.

<sup>12</sup> *Ibid.*, para. 11.

<sup>13</sup> General Assembly, Resolution 273 (III), 11 May 1949, preamble (footnote omitted). See also Letter dated 29 November 1948 from Israel’s Foreign Minister to the Secretary-General, S/1093, Annex.

<sup>14</sup> General Assembly, Resolution 273 (III), 11 May 1949, preamble (footnotes omitted). See also A/AC.24/SR.45-48, 50 and 51.

Council”<sup>15</sup>. It was based on that commitment that Israel was eventually granted membership.

1.22. However, immediately after membership was granted, the Israeli Foreign Minister stated that the war and its aftermath:

“had changed some elements of the pattern envisaged in the resolution of 29 November 1947 [i.e., resolution 181 (II)]. The changes must perforce find their expression in the future peace settlement. There was no intrinsic reason why those modifications, based on new realities, should not become the subject of general consent.”<sup>16</sup>

1.23. Israel had thus immediately indicated that what it had achieved by the use of force, including its military conquest of half of the territory allotted to the Arab State in resolution 181 (II) and West Jerusalem, should be accepted as “new realities”. It would also continue to deny Palestinian refugees their right of return guaranteed by international law and resolution 194 (III). Israel has thus, since its establishment and its subsequent attainment of Membership of the United Nations, been in breach of the United Nations Charter and its relevant resolutions. This reliance on the use of force to determine outcomes and seek their imposition began a pattern of policies and practices that Israel would continue in the following decades.

#### B. THE WAR OF 1967 AND THE ISRAELI OCCUPATION OF THE REMAINDER OF PALESTINE (THE WEST BANK, INCLUDING EAST JERUSALEM, AND THE GAZA STRIP)

1.24. In June 1967, Israeli armed forces unlawfully seized control of the West Bank, including East Jerusalem, and the Gaza Strip. For the past 56 years, Israel has continuously occupied and exercised control over these areas, which are collectively referred to by the United Nations and its agencies as the Occupied Palestinian Territory, including East Jerusalem (OPT), and, alternately, as the State of Palestine.

1.25. On 22 November 1967, the Security Council adopted resolution 242 (1967) which responded to Israel’s conquest of the West Bank, including East Jerusalem, and the Gaza Strip, and other Arab territories by emphasizing “the

<sup>15</sup> Official Records of the General Assembly, Third Session, *Ad Hoc Political Committee*, Forty-fifth meeting, 5 May 1949, A/AC.24/SR.45, p. 230 (<https://undocs.org/A/AC.24/SR.45>).

<sup>16</sup> Official Records of the General Assembly, Third Session, 207<sup>th</sup> plenary meeting, 11 May 1949, A/PV.207, p. 334 (Moshe Sharett) (<https://undocs.org/A/PV.207>).

inadmissibility of the acquisition of territory by war”, and by calling unambiguously for the “[w]ithdrawal of Israel armed forces from territories occupied in the recent conflict”<sup>17</sup>. Israel refused to comply with these demands, and it continues to defy them to the present day.

1.26. In the more than a half-century since Israel seized control of the OPT by force, the Security Council and General Assembly have adopted hundreds of resolutions which have condemned its policies and practices. These include Israel’s continued occupation of the OPT; its establishment of hundreds of settlements in, and transfer of over 700,000 settlers into the OPT; and its discriminatory and oppressive treatment of the Palestinian people. These resolutions have also demanded that Israel withdraw its military forces from the OPT and dismantle its settlements, in accordance with international law, and cease its violations of the rights of the Palestinian people, including their right to self-determination. Israel has failed to comply with, and continues to egregiously violate, every one of these resolutions.

1.27. As shown in this Written Statement, instead of respecting its obligations under the relevant United Nations resolutions and international law, Israel has maintained and entrenched its occupation of the Palestinian territory with the objective of making it permanent. To this end, Israel has gone so far as to annex East Jerusalem and the rest of the West Bank by a variety of *de jure* and *de facto* means. Its most senior government officials have asserted that Israel will never give up this territory, notwithstanding the express prohibition on acquisition of territory by use of force derived from Article 2 (4) of the UN Charter, and other binding instruments of international law.

1.28. Moreover, in annexing East Jerusalem and merging it with West Jerusalem – which Israel seized by military force in 1948 – and by declaring the Holy City its capital, in violation of international law, including the UN Charter and General Assembly resolution 181 (II), Israel has flouted the internationally-recognized special status of Jerusalem. By settling more than 230,000 of its citizens within East Jerusalem with the express aim of creating a Jewish Israeli majority, Israel has changed the demographic composition of the Holy City and aimed to forcibly alter its character and status.

1.29. As the evidence compiled by competent United Nations organs and cited throughout this Written Statement demonstrates, in East Jerusalem and the rest of the West Bank, Israel has: extended its own domestic laws and legal systems to this

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<sup>17</sup> Security Council, Resolution 242 (1967), 22 November 1967, preamble, para.1.

Palestinian territory; expropriated large swathes of land for its military forces and hundreds of thousands of settlers; displaced Palestinians, including entire communities, from their own homes and lands to facilitate and promote the growth and expansion of its illegal colonial settlements; and taken over the natural resources of the territory for its own ends. In the Gaza Strip, while Israel has removed its 8,000 settlers, only to install 12,000 settlers in the West Bank, it continues to impose a suffocating 16-year land, air and sea blockade as a further means of controlling the territory and population, despite the catastrophic humanitarian consequences. All of this is being committed daily and publicly in grave breach of international law.

1.30. Moreover, on both sides of the Green Line, the Israeli government has adopted and imposed a system of racial discrimination against Palestinians and denied their fundamental rights. This regime is most apparent in the OPT. The evidence described herein – based again on authoritative United Nations reports and sources – demonstrates that Israel has imposed a dual legal system, divided along racial lines, which includes separate laws, separate courts, separate procedures and separate punishments that openly discriminate against Palestinians in favour of the Israeli settlers transferred to and living illegally in the same territory.

1.31. Palestinians are subjected to a plethora of racially-based and internationally unlawful restrictions on their civil, political, economic, social and cultural rights under a regime that is designed to subjugate them and prevent their exercise of the right of self-determination in their own homeland. United Nations Special procedures, respected human rights organizations and Israeli officials have expressly characterized this racial discrimination as tantamount to apartheid.

1.32. Despite these historic injustices – from the Balfour Declaration to the present - the Palestinian people have sought a way forward. They have done so in good faith and in compliance with international law, to achieve freedom, justice and peace. To this end, despite enduring decades of displacement, suffering, trauma and loss, they agreed forty years ago to a historic compromise on the basis of the relevant United Nations resolutions, including as they pertain to the inalienable rights of the Palestinian people to self-determination and independence and the right of return of Palestinian refugees, and in accordance with the international consensus of two democratic States: a free, independent and sovereign State of Palestine living side by side with Israel, in peace and security, on the pre-1967 borders. This historic compromise aimed at securing the inalienable rights of the Palestinian people and advancing just and lasting peace.

1.33. However, the initiation of a peace process and every iteration of it over the past four decades have failed to bring an end to Israel's occupation, colonization and annexation of Palestinian territory, its subjugation of, and discrimination against, the Palestinian people, and its denial of their fundamental rights, including the right to self-determination. To the contrary, during this time Israel's illegal policies and actions have become more and more entrenched with the aim of creating further faits accomplis and imposing by force an outcome in violation of fundamental norms of international law. Rather than respecting the inalienable rights of the Palestinian people and facilitating the realization of the two-State solution by ending its occupation, Israel has chosen to pursue a policy of apartheid between the Mediterranean Sea and the Jordan River. It has become abundantly clear that for Israel, Palestinians who remain on the territory of historic Palestine must either accept subsisting in territorial enclaves deprived of their fundamental rights or must leave their homeland altogether to join their millions of compatriots in forced exile.

#### C. THE *WALL* OPINION

1.34. This Request is not the first occasion in which the Court has been called upon to examine the legality of Israel's conduct in the OPT. In 2003, Israel began the construction of a wall in the OPT that entailed the appropriation of Palestinian territory and a clear attempt to incorporate Israeli settlements that have been illegally established in the OPT on the western side of the Wall so as to annex Palestinian land, and the natural resources it contains, to Israel, all in grave breach of international law.

1.35. By resolution ES-10/14, adopted on 8 December 2003, the Court was requested to advise the General Assembly on “the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem ..., considering the rules and principles of international law”<sup>18</sup>.

1.36. In its Advisory Opinion of 9 July 2004 (“the *Wall* Opinion”), the Court found, *inter alia*, that:

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<sup>18</sup> General Assembly, Resolution ES-10/14, Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory, 8 December 2003.

“The construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated régime, are contrary to international law”<sup>19</sup>.

1.37. The principal findings of the Court regarding the construction of the Wall in the OPT included the following:

- Israel, as occupying Power, is under a legal obligation to comply with the Fourth Geneva Convention in the OPT<sup>20</sup>;
- All Israeli settlements are illegal as they violate Article 49, paragraph 6, of the Fourth Geneva Convention<sup>21</sup>;
- Israel is bound by international human rights conventions in the OPT and, consequently, its conduct is to be measured against both international human rights law and international humanitarian law, including the Fourth Geneva Convention<sup>22</sup>;
- The Palestinian people have the right to self-determination<sup>23</sup>; the construction of the Wall “severely impedes the exercise by the Palestinian people of its right to self-determination”<sup>24</sup> and Israel is in breach of its “obligation to respect that right”<sup>25</sup>;
- The establishment of a closed area between the Wall and the Green Line and the creation of enclaves violates the inhabitants’ right to freedom of movement (“with the exception of Israeli citizens and those assimilated thereto”<sup>26</sup>) and violates Article 12 of the International Covenant on Civil and Political Rights. It also violates the rights to work, health, education and an adequate standard of living as contained in the International Covenant on Economic, Social and Cultural Rights<sup>27</sup>;

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<sup>19</sup> *Wall Opinion*, p. 201, para. 163.

<sup>20</sup> *Ibid.*, pp. 173-177, paras. 90-101.

<sup>21</sup> *Ibid.*, pp. 183-184, paras. 120-121.

<sup>22</sup> *Ibid.*, p. 181, para. 114.

<sup>23</sup> *Ibid.*, pp. 182-183, para. 118.

<sup>24</sup> *Ibid.*, p. 184, para. 122.

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*, pp. 189-193, paras. 133-136.

- The destruction of property for the construction of the Wall violates Article 53 of the Fourth Geneva Convention and cannot be justified on grounds of military necessity or national security<sup>28</sup>;
- The territories occupied by Israel since 1967 including East Jerusalem “remain occupied territories” and illegal measures aimed at changing the status of the City of Jerusalem “have done nothing to alter this situation”<sup>29</sup>;
- The construction of the Wall by Israel in the OPT, including in and around East Jerusalem, and its associated régime are contrary to international law; and Israel is obliged under the law to cease the construction of the Wall, to dismantle it and make reparations for its construction<sup>30</sup>;
- All States are under a legal obligation not to recognize the illegal situation resulting from the construction of the Wall, nor render aid or assist in maintaining it, and to ensure compliance by Israel with the Fourth Geneva Convention<sup>31</sup>;
- The United Nations, especially the General Assembly and Security Council, should consider what further action is required to bring an end to the illegal situation resulting from the construction of the Wall and its associated régime, “taking due account of the present Advisory Opinion”<sup>32</sup>.

1.38. Following the *Wall* Opinion, numerous resolutions were adopted by the Security Council, the General Assembly, and the Human Rights Council, demanding that Israel comply with the legal obligations identified by the Court and condemning Israel’s persistent failure to do so. In this respect, the *Wall* Opinion – and the resolutions which affirm and demand compliance with it – constitute an *acquis* against which subsequent Israeli practices in the OPT may be assessed.

1.39. In 2004 both the request from the General Assembly and the Opinion addressed to it by the Court were limited to *one* question pertaining to “the legal consequences arising from the construction of the wall”<sup>33</sup>. Thus, the Court was not requested – and therefore did not touch upon – the legality of the occupation as such, nor did it address various other violations committed by Israel in the entire

<sup>28</sup> *Ibid.*, pp. 192-194, para. 135-137.

<sup>29</sup> *Ibid.*, p. 167, para. 78.

<sup>30</sup> *Ibid.*, pp. 201-202, para. 163.

<sup>31</sup> *Ibid.*, p. 202, para. 163.

<sup>32</sup> *Ibid.*

<sup>33</sup> General Assembly, Resolution ES-10/14, Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory, 8 December 2003.

OPT and against the Palestinian people as a whole which had previously been condemned by the United Nations including, *inter alia*, acts of deportation<sup>34</sup>, massacre<sup>35</sup>, violence, incitement, intrusion in the vicinity of Holy places<sup>36</sup>, military attacks<sup>37</sup> and the unlawful use of force against Palestinians “resulting in injury and loss of human life”<sup>38</sup>, the destruction of property<sup>39</sup>, civilian and security infrastructure<sup>40</sup>, systemic and widespread restrictions on civil, social and economic rights creating a “dire humanitarian situation of the Palestinian civilian population”<sup>41</sup>, and the denial of return and compensation for loss suffered by Palestinian refugees<sup>42</sup>.

1.40. Considering the limited scope of the General Assembly’s request in resolution ES-10/14, the Court demanded the repeal of the illegal measures adopted by Israel, focusing in this regard upon those acts “adopted with a view to [the] construction [of the Wall], and to the establishment of its associated régime”<sup>43</sup>. Nevertheless, when the Court concluded that the construction of the Wall was unlawful under international law, it expressed concern about the broader context of associated measures including the establishment and expansion of Israeli settlements and the potential Israeli annexation of Palestinian territory – issues which are now at the core of the present Request for an Advisory Opinion.

1.41. In this respect, the Court itself opined that “the construction of the wall and its associated régime create a ‘fait accompli’ on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to *de facto* annexation.”<sup>44</sup>

#### D. DEVELOPMENTS SINCE THE *WALL* OPINION

1.42. The observations of the Court in 2004 have proven to be prescient. Two decades later, it is evident that – as fully demonstrated in this Written Statement – “the construction of the wall and its associated regime [have] create[d] a ‘fait

<sup>34</sup> Security Council, Resolution 726 (1992), 6 January 1992, para. 1.

<sup>35</sup> Security Council, Resolution 904 (1994), 18 March 1994, para. 1.

<sup>36</sup> Security Council, Resolution 1073 (1996), 28 September 1996, preamble and para. 1.

<sup>37</sup> Security Council, Resolution 1402 (2002), 30 March 2002, preamble.

<sup>38</sup> Security Council, Resolution 1322 (2000), 7 October 2000, para. 2.

<sup>39</sup> Security Council, Resolution 267 (1969), 1 April 1969, para. 2 (“Deplores the loss of civilian life and damage to property”).

<sup>40</sup> Security Council, Resolution 1435 (2002), 24 September 2002, para. 2.

<sup>41</sup> Security Council, Resolution 1405 (2002), 19 April 2002, preamble.

<sup>42</sup> General Assembly, Resolution 194 (III), 11 December 1948, para. 11.

<sup>43</sup> *Wall Opinion*, p. 198, para. 151.

<sup>44</sup> *Ibid.*, p. 184, para. 121.

accompli' on the ground that [has] become permanent in which case, and notwithstanding the formal characterization of the wall by Israel, it [is] tantamount to *de facto* annexation"<sup>45</sup>.

1.43. In the 19 years since the Court rendered the *Wall* Opinion, Israel has continued to construct the Wall in flagrant disregard of the Court's findings as to the illegality of this activity and Israel's obligations to desist. Israel has also continued to expand its vast network of settlements in East Jerusalem and the rest of the West Bank. Alongside this, Israel has continued to extend the application of its domestic laws and legal systems; to expropriate land and natural resources in the West Bank for its own benefit; and to undertake measures aimed at connecting its illegal settlements to each other and to Israel itself through the construction and integration of roads and other infrastructure, for the purpose of establishing facts on the ground intended to make its seizure and colonization of the OPT irreversible.

1.44. Israel has also continued to perpetrate systematic racial discrimination against the Palestinians now indistinguishable from apartheid, and violations of their fundamental rights as human beings, for the purpose of subjugating them and defeating their national aspiration to realize their inalienable rights, notably to self-determination, including their right to the independence of their State.

1.45. More generally, in the years since the *Wall* Opinion, Israel has abandoned any remaining pretense that its over half-century occupation of the OPT is temporary, as it is required to be under international law. Israel's leaders have repeatedly declared that Israel will never relinquish its purported "sovereignty" over the whole of Jerusalem or evacuate any of the hundreds of Israeli settlements throughout the West Bank, including East Jerusalem, transferring instead more Israeli settlers into what they refer to as "Judea and Samaria". According to its current Prime Minister, Benjamin Netanyahu, Israel is committed to:

*"applying Israeli sovereignty over all of the communities in Judea and Samaria, both those in [settlement] blocs, including the area of the blocs, and also those outside the blocs, as well as additional areas that are vital for our security and for ensuring our heritage."*<sup>46</sup>

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<sup>45</sup> *Ibid.*

<sup>46</sup> Israel Prime Minister's Office, "Cabinet Approves PM Netanyahu's Proposal to Establish the Community of Mevo'ot Yericho & PM Remarks at the Start of the Cabinet Meeting", 15 September 2019 (<https://tinyurl.com/22tfxt2n>).

#### E. THE GENERAL ASSEMBLY'S CURRENT REQUEST FOR AN ADVISORY OPINION

1.46. Israel's breaches of international law in the OPT and of the rights of the Palestinian people have been condemned by numerous United Nations resolutions and are well documented in a vast collection of reports by the Secretary-General of the United Nations, the High Commissioner for Human Rights, the United Nations Office for the Coordination of Humanitarian Affairs and other United Nations agencies, Special Committees, Independent Commissions of Inquiry and Fact-finding missions, Special Rapporteurs, human rights treaty bodies and an array of other United Nations bodies, as well as respected non-governmental organizations, in the State of Palestine, Israel and internationally. The number and extent of those reports is a testament not only to the gravity, prolongation and systematic nature of Israel's violations of its international obligations, but also the depth of the international community's recognition of this unjust situation and its effect on the efforts to secure a just and peaceful solution.

1.47. With the adoption of resolution 77/247 on 30 December 2022, the General Assembly once again affirmed the United Nations' longstanding efforts to ensure that Israel complies with international law in regard to the question of Palestine, in line with its permanent responsibility towards this question until it is justly resolved in all aspects, a responsibility continually reaffirmed in relevant resolutions.

1.48. The formulation of the questions on which the Court has been asked to render an Advisory Opinion emanates directly from the evidence documented in the resolutions and reports referred to above, namely that Israel is committing an "ongoing violation ... of the right of the Palestinian people to self-determination"; that it has engaged in "prolonged occupation, settlement and annexation of" the OPT; that it has adopted "measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem"; and that it has adopted "discriminatory legislation and measures". The existence of these facts and violations is established by overwhelming evidence drawn from the United Nations record, which is addressed in detail in this Written Statement.

1.49. The questions referred to the Court by the General Assembly seek to elucidate the legal consequences of these facts and violations. The authoritative identification of those consequences by the Court is vital towards holding Israel to account for its internationally wrongful acts and bringing those acts to an end once and for all, essential for ending the historical injustice endured by the Palestinian people and ensuring the attainment of their inalienable rights, which continue to be precluded by the continuation and exacerbation of this unlawful situation. As the

United Nations Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and in Israel (“the Independent International Commission of Inquiry”) explained following the adoption of resolution 77/247:

“a definitive clarification of the legal consequences of Israel’s refusal to end the occupation, and what the obligation of third parties to ensure respect for international law are, will be crucial to member States and the UN in considering what further measures should be adopted to ensure full compliance with international law.”<sup>47</sup>

1.50. Importantly, the Court’s consideration of these questions and its Advisory Opinion on these issues will provide authoritative guidance to all States and the United Nations to ensure they do not recognize this illegal situation, do not render aid or assistance in maintaining it, and cooperate to bring it to an end and help realize the right of the Palestinian people to self-determination. Only sustained impunity can explain how Israel has been able to commit such grave breaches and for such a long period of time. The Advisory Opinion will therefore help guide States and the United Nations in implementing their obligation to advance accountability and the rule of international law.

1.51. The State of Palestine welcomes the General Assembly’s request to the Court to perform the function that it is uniquely equipped to perform: to render an impartial and authoritative judicial determination of the extent and nature of Israel’s internationally wrongful acts and the legal consequences to which they give rise for Israel, and for the international community as a whole. The State of Palestine has full confidence that the principal judicial organ of the United Nations and the guardian of the international legal order will faithfully fulfil that solemn responsibility and approaches the Court with utmost respect and conviction in the rule of international law and its capacity to deliver justice when guiding national and international action.

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<sup>47</sup> “Commission of Inquiry welcomes General Assembly resolution requesting an ICJ Advisory Opinion relating to the Israeli occupation of Palestinian territory”, United Nations Press Release, 31 December 2022 (<https://tinyurl.com/26c6u6e9>).

### **III. Jurisdiction of the Court**

1.52. Article 96, paragraph 1, of the United Nations Charter provides:

“The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.”<sup>48</sup>

1.53. Article 65, paragraph 1, of the Court’s Statute further stipulates:

“The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.”<sup>49</sup>

1.54. These provisions suffice to establish the competence of the General Assembly to request an advisory opinion from the Court and the jurisdiction of the Court to give the requested opinion.

1.55. Resolution 77/247, which provided for the Request, was adopted by a clear majority of the members of the United Nations which voted on the matter, and it must therefore be considered as the expression of the legally valid will of the General Assembly.

1.56. Notwithstanding the permissive language of Article 65, paragraph 1, of the Court’s Statute, the Court has never declined to give a requested Advisory Opinion. In accordance with the constant jurisprudence of the Court<sup>50</sup>, only “compelling reasons” could lead it to such a refusal. In the case at hand, such reasons clearly do not exist. On the contrary, the legal questions referred to the Court are both urgent and relevant, not least in view of recent developments in the OPT concerning continuing and intensifying breaches of international law, including of the United Nations Charter and peremptory norms of international law which are addressed in the chapters that follow.

1.57. Furthermore, the General Assembly’s Request for an Advisory Opinion arises in the context of the United Nations’ permanent responsibility for resolving the question of Palestine, which, as noted by the Court in its advisory opinion on

<sup>48</sup> United Nations Charter, Article 96, para.1.

<sup>49</sup> United Nations Charter, Article 65, para.1.

<sup>50</sup> *Wall* Opinion, p. 156, para. 44. See also *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion*, I.C.J. Reports 2010, p. 416, para. 30; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, I.C.J. Reports 2019, p. 113, para. 65.

the Wall, stems from its Charter duties relating to matters of international peace and security, and “has its origin in the Mandate and the Partition Resolution concerning Palestine”<sup>51</sup>. As the Court noted:

“This responsibility has been described by the General Assembly as ‘a permanent responsibility towards the question of Palestine until the question is resolved in all its aspects in a satisfactory manner in accordance with international legitimacy’ .... Within the institutional framework of the Organization, this responsibility has been manifested by the adoption of many Security Council and General Assembly resolutions, and by the creation of several subsidiary bodies specifically established to assist in the realization of the inalienable rights of the Palestinian people.”<sup>52</sup>

1.58. To date, the Security Council has adopted approximately 90 resolutions on the Palestine question. These resolutions are complemented by an important and copious body of resolutions from the General Assembly which also qualify the situation as a threat to international peace and security<sup>53</sup>. Through these resolutions, adopted over the course of the last 75 years, the United Nations has repeatedly recognized its “permanent responsibility towards the question of Palestine until the question is resolved in all its aspects”<sup>54</sup>.

1.59. Throughout this period, the Security Council and General Assembly resolutions on Palestine have affirmed a number of fundamental principles of direct relevance to the questions set out in the Request, namely:

- (i) the inadmissibility of the acquisition of territory by force<sup>55</sup>;
- (ii) the applicability of the Fourth Geneva Convention of 1949 to the OPT<sup>56</sup>;
- (iii) the invalidity and illegality of legislative, administrative measures, practices and policies which purport to alter the character, status and demographic composition of the Holy City of Jerusalem<sup>57</sup> and the Occupied Palestinian Territory as a whole, including the establishment of Israeli settlements<sup>58</sup>;

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<sup>51</sup> *Wall Opinion*, p. 159, para. 49.

<sup>52</sup> *Ibid.*

<sup>53</sup> General Assembly, Resolution ES-10/2, 25 April 1997, preamble.

<sup>54</sup> General Assembly, Resolution 75/20, 2 December 2020, preamble.

<sup>55</sup> See paras. 2.15-2.43 below.

<sup>56</sup> See paras. 2.3-2.9 below.

<sup>57</sup> See paras. 3.12-3.145 below.

<sup>58</sup> See paras. 3.72-3.117 and 3.194-3.238 below.

- (iv) the principle that, as an occupying Power, Israel bears human rights obligations towards the Palestinian population in the OPT<sup>59</sup>; and
- (v) the duty of every State including Israel, to promote the realization of the right to self-determination of the Palestinian people.

1.60. As extensively documented in this Written Statement, Israel has consistently violated those resolutions and defied the principles referred to therein.

1.61. In resolution 77/247, and in numerous resolutions preceding it, the General Assembly stressed “as a matter of urgency” the necessity for “the United Nations system to continue to support and assist the Palestinian people in the early realization of their inalienable human rights, including their right to self-determination”. This call echoes the Court’s statement in the *Wall* Opinion that:

“The Court, being concerned to lend its support to the purposes and principles laid down in the United Nations Charter, in particular the maintenance of international peace and security and the peaceful settlement of disputes, would emphasize the urgent necessity for the United Nations as a whole to redouble its efforts to bring the Israeli-Palestinian conflict, which continues to pose a threat to international peace and security, to a speedy conclusion, thereby establishing a just and lasting peace in the region.”<sup>60</sup>

1.62. The same considerations require the Court to answer the legal questions submitted to it by the General Assembly in resolution 77/247. The General Assembly’s decision to seek the opinion of the Court on a broader range of issues relevant to question of Palestine as a whole, as opposed to a particular feature of it such as the Wall, is intended to obtain indispensable guidance for international action based on the law at this critical juncture for the Palestinian people and for the prospects for achievement of just and lasting peace.

#### **IV. Structure of this Written Statement**

1.63. The State of Palestine’s Written Statement comprises seven chapters. Following this introductory chapter, Chapter 2 identifies the relevant rules and principles of international law. It highlights, in particular, among others, three peremptory norms of general international law, derogation from which is not permitted: (1) the inadmissibility of the acquisition of territory through the threat

<sup>59</sup> See paras. 4.7-4.202 below.

<sup>60</sup> *Wall* Opinion, p. 200, para. 161.

or use of force; (2) the prohibition against imposing regimes of racial discrimination and/or apartheid; and (3) the obligation to respect the right of peoples to self-determination.

1.64. Chapter 3 then addresses, in Part A, Israel's illegal annexation of Jerusalem and the unlawful changes which Israel has made to the demographic composition, character and status of the Holy City, and in Part B, Israel's illegal annexation of the rest of the West Bank. As set out in Part A, since it seized control by force of West Jerusalem (in 1948) and East Jerusalem (in 1967), Israel has enacted numerous laws and administrative orders declaring and purporting to exercise "sovereignty" over Jerusalem and its environs. In defiance of numerous resolutions of the Security Council and General Assembly, Israel's leaders and governments have repeatedly declared and acted as though Jerusalem is the "eternal capital of the State of Israel" – a position which the Knesset has expressly articulated codified in Israel's constitutional "Basic Law". In addition, Israel has built 14 settlements in East Jerusalem, which it has populated with more than 230,000 Israeli settlers to create a Jewish Israeli majority and further entrench its dominion over the Holy City. Throughout its decades-long occupation, Israel has also demolished thousands of Palestinian homes and deprived the Palestinian inhabitants of the City of their rights in a calculated effort to drive out the indigenous Palestinian population and further manipulate the demographic composition of the City.

1.65. Part B of Chapter 3 demonstrates how Israel has enacted legislation and administrative measures and orders which both expressly and implicitly assert Israel's "sovereignty" over the rest of the West Bank. Senior Israeli government officials, including successive Prime Ministers, have made numerous public declarations of Israel's "sovereignty" over the West Bank and Israel's resolve to retain this occupied territory permanently. Those annexationist laws and words have been accompanied by a very wide array of annexationist deeds, including the establishment of more than 270 illegal Israeli settlements, housing nearly half a million Israel settlers, throughout the West Bank in pursuit of a deliberate policy to colonize the territory and create physical facts on the ground which aim to permanently entrench Israel's presence in and control of the West Bank. In parallel and with the same purpose, Israel has created a coercive environment that operates to forcibly displace Palestinians from the West Bank.

1.66. Chapter 4 addresses the discriminatory legislation and measures which Israel has implemented and by which it has established a systematic regime of racial discrimination against the Palestinian people tantamount to apartheid. That regime

– which both assumes and enshrines the existence of a stark racial hierarchy between Israeli Jews and Palestinian Arabs, exists on both sides of the Green Line and is exacerbated in the OPT, where it involves the application of different laws and legal systems to the two distinct racial groups living in the same occupied territory. This system of racial discrimination and persecution impairs and violates the rights of Palestinians to life, liberty, freedom of expression and assembly, freedom of movement, freedom of religion and an array of economic, social and cultural rights, in violation of international humanitarian law and international human rights law, and the *jus cogens* prohibition against racial discrimination and apartheid, for the purpose of suppressing the rights and legitimate national aspirations of the Palestinian people and maintaining permanent Israeli control of the OPT.

1.67. Chapter 5 explains why Israel’s actions described in Chapters 3 and 4 constitute a grave, flagrant and ongoing denial of the right of the Palestinian people to self-determination. Colonization, annexation, racial discrimination and apartheid are recognized as egregious breaches of that fundamental right. The Chapter shows that the Palestinian people’s right to self-determination has long been recognized by the United Nations and the international community as a whole. In its 2004 Advisory Opinion, the Court recognized that the Palestinian people have the right of self-determination, affirmed it as an *erga omnes* right and found that Israel was in violation of it. Chapter 5 demonstrates that Israel remains in violation of this *jus cogens* norm, notwithstanding the opinion of this Court and the longstanding position of the United Nations that it must respect that right.

1.68. In Chapter 6, the State of Palestine explains why the facts recounted in the preceding chapters lead inexorably to the conclusion that Israel’s occupation of the OPT, in its entirety, is in and of itself an internationally wrongful act. Israel’s occupation and continued presence in the OPT breach several peremptory norms of general international law from which no derogation is permitted, notably: (1) the inadmissibility of the acquisition of territory through the use of force; (2) the prohibition against racial discrimination and apartheid; and (3) the obligation to respect the right of peoples to self-determination. These intentional breaches of fundamental international legal norms are indistinguishable from the occupation itself and reflect its unlawful purpose.

1.69. Chapter 7 addresses, in Part A, the legal consequences for Israel of its internationally wrongful acts. Two fundamental obligations arise as a result of Israel’s illegal actions:

- (a) First, Israel is required to cease – completely, unconditionally and immediately – all of its breaches of international law and to provide appropriate assurances and guarantees that those breaches will not be repeated.
- (b) Second, Israel is required to make full reparation for the injury suffered by the State of Palestine and the Palestinian people as a result of Israel's breaches of international law.

1.70. Finally, Part B of Chapter 7 addresses the legal consequences for third States and for international organizations, including the United Nations, of Israel's internationally wrongful acts. Three distinct but related obligations arise:

- (a) First, the obligation of non-recognition requires both States and international organizations, including the United Nations, to refrain from recognizing as lawful the situation which Israel has created by virtue of these wrongful acts;
- (b) Second, they are also obliged to refrain from contributing to the violation of the rights of the Palestinian people;
- (c) Third, States and the United Nations have a positive duty to cooperate to protect the rights of the Palestinian people and to bring an end to Israel's violation of those rights.

1.71. This Written Statement is accompanied by one volume of Annexes, which contains documents which the State of Palestine considers may be of assistance to the Court, but which are not contained in the dossier of documents which have already been supplied to the Court by the United Nations, and may not be readily accessible online.



## **Chapter 2.**

### **APPLICABLE LAW**

2.1. The General Assembly has asked the Court to render its Advisory Opinion:

“considering the rules and principles of international law, including the Charter of the United Nations, international humanitarian law, international human rights law, relevant resolutions of the Security Council, the General Assembly and the Human Rights Council, and the advisory opinion of the Court of 9 July 2004.”<sup>61</sup>

2.2. This Chapter will first identify the applicable rules of international humanitarian law and international human rights law (Section I) whose violation underlies and is integral to Israel’s breach of peremptory norms of general international law (Section II).

#### **I. Applicable Rules of International Humanitarian Law and International Human Rights Law**

##### **A. INTERNATIONAL HUMANITARIAN LAW**

2.3. It is settled that the 1907 Hague Convention IV Respecting the Laws and Customs of War on Land, with its annexed Regulations<sup>62</sup>, and the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War<sup>63</sup>, apply to the OPT<sup>64</sup>. As noted by the Court in the *Wall* Opinion, the 1907 Hague Regulations “have become part of customary law” and therefore apply to the OPT<sup>65</sup>.

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<sup>61</sup> General Assembly, Resolution 77/247, 30 December 2022, para. 18.

<sup>62</sup> Convention Respecting the Laws and Customs of War on Land, 18 October 1907, 36 Stat. 2277 (entry into force: 26 January 1910), Annex (hereinafter: “1907 Hague Regulations”).

<sup>63</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, United Nations, *Treaty Series (UNTS)*, Vol. 75, p. 287 (entry into force: 21 October 1950) (hereinafter “Fourth Geneva Convention”).

<sup>64</sup> *Wall* Opinion, pp. 172 and 177, paras. 89 and 101.

<sup>65</sup> *Ibid.*, para. 89. See also *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 256, para. 75; *Judgment of the International Military Tribunal of Nuremberg*, 30 September and 1 October 1946, p. 455; *Armed Activities on the Territory of the Congo, Judgment, I.C.J. Reports 2005*, p. 229, para. 171.

Likewise, after dispensing with Israel's argument that the Fourth Geneva Convention does not apply *de jure* to the OPT, the Court found as a matter of treaty law that it does indeed apply, as it would to "any occupied territory in the event of an armed conflict arising between two or more High Contracting Parties"<sup>66</sup>.

2.4. Of note, the armed conflict since 1967, including Israel's occupation of the OPT and other Arab territories, has involved High Contracting Parties to the Fourth Geneva Convention, namely Israel<sup>67</sup>, Egypt<sup>68</sup>, Jordan<sup>69</sup>, Syria<sup>70</sup>, the State of Palestine<sup>71</sup>. Among these, only Israel has entered reservations to the treaty, none of which are relevant to these proceedings<sup>72</sup>. Also relevant to these proceedings is the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Civilian Victims of International Armed Conflicts of 8 June 1977<sup>73</sup>. All of the above-mentioned States, with the exception of Israel, are party to Additional Protocol I<sup>74</sup>.

2.5. As to customary law, in view of its number of High Contracting Parties – 196 States as at 30 June 2023 – the Fourth Geneva Convention is widely regarded as a codification of custom<sup>75</sup>. This was the position taken by the Secretary-General in his May 1993 report on the establishment of the International Criminal Tribunal for the former Yugoslavia, where he stated that:

"The part of conventional international humanitarian law which has *beyond doubt become part of international customary law* is the law applicable in armed conflict as embodied in: the Geneva Conventions of 12 August 1949 for the Protection of War Victims ..."<sup>76</sup>

<sup>66</sup> *Wall Opinion*, p. 177, para. 101.

<sup>67</sup> Signed on 12 August 1949; Ratified on 6 July 1951.

<sup>68</sup> Signed on 12 August 1949; Ratified on 10 November 1952.

<sup>69</sup> Ratified on 29 May 1951.

<sup>70</sup> Signed on 12 August 1949; Ratified on 2 November 1953.

<sup>71</sup> See International Committee of the Red Cross (ICRC), *International Humanitarian Law Database*, online, *Palestine* (<https://tinyurl.com/5w9vxxtd>).

<sup>72</sup> See ICRC, *International Humanitarian Law Database*, online, *Israel* (<https://tinyurl.com/bdevyce9>). See also *Wall Opinion*, p. 173, para. 91.

<sup>73</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Civilian Victims of International Armed Conflicts of 8 June 1977, UNTS, Vol. 1125, p. 3 (hereinafter: "Additional Protocol I").

<sup>74</sup> Egypt ratified on 9 October 1992; Jordan ratified on 1 May 1979; Syria acceded on 14 November 1983; and the State of Palestine acceded on 2 April 2014.

<sup>75</sup> For a restatement of customary international humanitarian law see J. Henckaerts, and L. Doswald-Beck, *Customary International Humanitarian Law, Volume I: Rules* (ICRC and Cambridge University Press, 2005).

<sup>76</sup> Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993), 3 May 1993, S/25704, para. 35 (emphasis added) (<https://undocs.org/S/25704>).

2.6. The report of the Secretary-General was subsequently endorsed by the Security Council in resolution 827 of 5 May 1993<sup>77</sup>.

2.7. Since 1967, the Security Council and General Assembly have consistently reaffirmed the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory, including East Jerusalem, and called on Israel to scrupulously abide by its obligations and responsibilities under it. Moreover, the 10<sup>th</sup> Emergency Special Session, first convened in April 1997, also repeatedly affirmed this position and invited the High Contracting Parties to convene on several occasions to address this and other pertinent legal issues<sup>78</sup>.

2.8. In 2001, the Conference of High Contracting Parties, “reaffirm[ed]” the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory, including East Jerusalem, and called, *inter alia*, upon “the Occupying Power to immediately refrain from committing grave breaches involving any of the acts mentioned in article 147 of the Fourth Geneva Convention, such as wilful killing, torture, unlawful deportation, wilful depriving of the rights of fair and regular trial, extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly. The participating High Contracting Parties recall[ed] that according to article 148 no High Contracting Party shall be allowed to absolve itself of any liability incurred by itself in respect to grave breaches. The participating High Contracting Parties also recall[ed] the responsibilities of the Occupying Power according to art. 29 of the Fourth Geneva Convention for the treatment of protected persons”.<sup>79</sup>

2.9. Following the *Wall* Opinion, numerous resolutions of the Security Council, General Assembly and Human Rights Council have affirmed the continued applicability of the Fourth Geneva Convention to the OPT. For example, in resolution 2334 (2016) of 23 December 2016, the Security Council reaffirmed “the obligation of Israel, the occupying Power, to abide scrupulously by its legal obligations and responsibilities under the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War”<sup>80</sup>. Likewise, in resolution 77/247 of 30 December 2022 – containing the request for the Court’s advisory opinion in this

<sup>77</sup> Security Council, Resolution 827 (1993), 25 May 1993, preamble and para. 1. It is also widely accepted that many provisions of Additional Protocol I are declaratory of customary international law. See J. Pictet *et al.*, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (ICRC, 1987), p. 20, para. 7.

<sup>78</sup> See, e.g., General Assembly, Resolution ES-10/7, Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory, 20 October 2000.

<sup>79</sup> Conference of High Contracting Parties to the Fourth Geneva Convention, Declaration, 5 December 2001, para. 13 (<https://tinyurl.com/4bs9pde3>).

<sup>80</sup> Security Council, Resolution 2334 (2016), 23 December 2016, preamble.

matter – the General Assembly reaffirmed “the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem”<sup>81</sup>. In addition, in resolution 49/4 of 31 March 2022, the Human Rights Council recalled that the Fourth Geneva Convention “is applicable to the Occupied Palestinian Territory, including East Jerusalem”<sup>82</sup>. This position has also been unequivocally confirmed by the Conference of the High Contracting Parties to the Fourth Geneva Convention who, in 2014, “emphasize[d] the continued applicability and relevance of the Fourth Geneva Convention” to the OPT, and “call[ed] on the occupying Power to fully and effectively respect the Fourth Geneva Convention in the Occupied Palestinian Territory, including East Jerusalem”<sup>83</sup>.

## B. INTERNATIONAL HUMAN RIGHTS LAW

2.10. A variety of international human rights treaties apply to these proceedings. Among the most important of these are: the International Covenant on Civil and Political Rights (ICCPR)<sup>84</sup>, the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>85</sup>, the International Convention on the Elimination of all forms of Racial Discrimination (CERD)<sup>86</sup>, the International Convention on the Elimination of all forms of Discrimination Against Women

<sup>81</sup> General Assembly, Resolution 77/247, 30 December 2022, preamble.

<sup>82</sup> Human Rights Council, Resolution 49/4, 31 March 2022, preamble.

<sup>83</sup> Letter dated 29 December 2014 from the Permanent Representative of Switzerland to the United Nations addressed to the Secretary-General, Annex, “Declaration of 17 December 2014 adopted by the Conference of High Contracting Parties to the Fourth Geneva Convention”, A/69/711-S/2015/1 (<https://undocs.org/A/69/711>). Practice of United Nations Special Procedures affirms the continued application of the whole of the Fourth Geneva Convention to the OPT, including provisions otherwise excluded by operation of the “one year after” rule in Article 6 (3). See, e.g., Report of the United Nations Fact-Finding Mission on the Gaza Conflict, 25 September 2009, A/HRC/12/48, paras. 46, 50, 53, and 1169 (<https://undocs.org/A/HRC/12/48>); Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 13 April 2017, A/HRC/34/70, para. 25 (<https://undocs.org/A/HRC/34/70>).

<sup>84</sup> International Covenant on Civil and Political Rights, 16 December 1966 (entry into force: 23 March 1976) *UNTS*, Vol. 999, p. 171 (ratified by Israel on 3 October 1991).

<sup>85</sup> International Covenant on Economic, Social and Cultural Rights, 16 December 1966 (entry into force: 3 January 1976), *UNTS*, Vol. 993, p. 3 (ratified by Israel on 3 October 1991).

<sup>86</sup> International Convention on the Elimination of all forms of Racial Discrimination, 7 March 1966 (entry into force: 4 January 1969), *UNTS*, Vol. 660, p. 195 (ratified by Israel on 3 January 1979).

(CEDAW)<sup>87</sup>, the Convention on the Rights of the Child (CRC)<sup>88</sup>, and the Convention Against Torture and other forms of Cruel, Inhuman or Degrading Treatment or Punishment (CAT)<sup>89</sup>. Both the State of Palestine and Israel are parties to these treaties<sup>90</sup>.

2.11. All the United Nations bodies monitoring adherence to these treaties have confirmed that they apply to Israel's actions in the OPT. These bodies have uniformly and categorically rejected Israel's argument that its human rights treaty obligations do not exist in the OPT<sup>91</sup>. For example, on 2 May 2022 the Human Rights Committee:

“reiterate[d] its concern that the State party maintains its position that the Covenant does not apply with respect to individuals under its jurisdiction, but outside its territory, despite the interpretation to the contrary of article 2 (1) supported by the jurisprudence of the Committee, various other treaty bodies, the International Court of Justice and State practice. It is further concerned at the State party’s position that international human

<sup>87</sup> Convention on the Elimination of all forms of Discrimination Against Women, 18 December 1979 (entry into force: 3 September 1981), *UNTS*, Vol. 1249, p. 13 (ratified by Israel on 3 October 1991).

<sup>88</sup> Convention on the Rights of the Child, 20 November 1989 (entry into force: 2 September 1990), *UNTS*, Vol. 1577, p. 3 (ratified by Israel on 3 October 1991).

<sup>89</sup> Convention Against Torture and other forms of Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984 (entry into force: 26 June 1987), *UNTS*, Vol. 1465, p. 65 (ratified by Israel on 3 October 1991).

<sup>90</sup> Relevant treaty accession dates for Palestine are as follows: ICCPR (2 July 2014); ICESCR (2 July 2014); CERD (2 May 2014); CEDAW (2 July 2014); CRC (2 May 2014); CAT (2 May 2014).

<sup>91</sup> See, e.g., Human Rights Committee, Concluding observations on the fifth periodic report of Israel, 5 May 2022, CCPR/C ISR/CO/5, para. 6 (<https://undocs.org/CCPR/C/ISR/CO/5>); Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of Israel, 12 November 2019, E/C.12/ISR/CO/4, para. 8 (<https://undocs.org/E.C.12/ISR/CO/4>); Committee on the Elimination of all forms of Racial Discrimination, Concluding observations on the combined seventeenth to nineteenth reports of Israel, 27 January 2020, CERD/C/ISR/CO/17-19, para. 9 (<https://undocs.org/CERD/C/ISR/CO/17-19>); Committee on the Elimination of Discrimination Against Women, Concluding observations on the sixth periodic report of Israel, 17 November 2017, CEDAW/C/ISR/CO/6, para. 14 (<https://undocs.org/CEDAW/C/ISR/CO/6>); Committee on the Rights of the Child, Concluding observations on the second to fourth periodic reports of Israel, 4 July 2013, CRC/C/ISR/CO/2-4, para. 3 (<https://undocs.org/CRC/C/ISR/CO/2-4>); Committee Against Torture, Concluding observations on the fifth periodic report of Israel, 3 June 2016, CAT/C/ISR/CO/5, para. 8 (<https://undocs.org/CAT/C/ISR/CO/5>).

rights law does not apply when international humanitarian law is applicable (art. 2).<sup>92</sup>

2.12. In the *Wall* Opinion, the Court found that each of the ICCPR, ICESCR and CRC apply to the OPT<sup>93</sup>. More generally, the Court considered that “the protection offered by human rights conventions does not cease in case of armed conflict”, subject only to specific derogation provisions that may exist in relevant conventions<sup>94</sup>. It further held that human rights law instruments are applicable “in respect of acts done by a State in the exercise of its jurisdiction outside its own territory”<sup>95</sup>.

2.13. As to customary law, various human rights norms that exist as customary principles of law also bind Israel, including in respect of its occupation of the OPT. Among the human rights instruments that are codifications of custom, the Universal Declaration of Human Rights is a primary example<sup>96</sup>.

## **II. Peremptory Norms of General International Law Applicable to these Proceedings**

2.14. As stated by the International Law Commission (ILC), peremptory norms of general international law (*jus cogens*) embody “three essential characteristics”: (1) they protect values fundamental to the international legal order “shared by the international community as a whole”; (2) they are “universally applicable” by virtue of their non-derogability, since States cannot derogate from them by creating their own special rules that conflict with them; and (3) they are “hierarchically superior to other norms of international law” not having the same character<sup>97</sup>, entailing obligations of an *erga omnes* character. The Court itself has recognized the *erga omnes* character of such obligations.

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<sup>92</sup> Human Rights Committee, Concluding observations on the fifth periodic report of Israel, 5 May 2022, CCPR/C ISR/CO/5, para. 6 (<https://undocs.org/CCPR/C/ISR/CO/5>).

<sup>93</sup> *Wall* Opinion, pp. 180-181, paras. 111, 112 and 113.

<sup>94</sup> *Ibid.*, p. 178, para. 106.

<sup>95</sup> *Ibid.*, p. 178 and 180, paras. 106 and 111. See also *Armed Activities on the Territory of the Congo, Judgment, I.C.J. Reports 2005*, pp. 242-243, para. 216; *Application of the International Convention on the Elimination of all Forms of Racial Discrimination, Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008*, p. 386, para. 109.

<sup>96</sup> General Assembly, Resolution 217 A (III), Universal Declaration of Human Rights, 10 December 1948.

<sup>97</sup> Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (*Jus Cogens*), *Report of the International Law Commission*, Seventy-

## A. THE INADMISSIBILITY OF TERRITORIAL ACQUISITION BY THREAT OR USE OF FORCE

2.15. The prohibition against the threat or use of force against the territorial integrity or political independence of another State is enshrined in Article 2 (4) of the United Nations Charter and is an indispensable cornerstone of the international legal order. It has found universal expression in the principle prohibiting the acquisition of territory by force. Article 2 (4) provides that:

“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.”<sup>98</sup>

2.16. In *Armed Activities on the Territory of the Congo*, the Court explained that “the prohibition against the use of force is a cornerstone of the United Nations Charter.”<sup>99</sup>

2.17. The term “force” as used in Article 2 (4) necessarily includes armed force<sup>100</sup>. As such, the Article applies, *inter alia*, to a situation of military occupation which *ipso facto* entails an ongoing use of force within and against the occupied territory, and prohibits the acquisition of that territory, or any part of it, by the occupying military forces<sup>101</sup>.

2.18. Likewise, the prohibition on the use of force applies where force is used in any other manner inconsistent with the “Purposes of the United Nations”. This includes the purpose of developing “friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”, as set out in Article 1 (2) of the United Nations Charter<sup>102</sup>.

2.19. This prohibition was reflected and consolidated in three landmark resolutions adopted by the General Assembly: resolution 2625 (XXV) of

third session (18 April–3 June and 4 July–5 August 2022), A/77/10, pp. 18 and 22–24, paras. (2)–(3), (10) and (14) of the commentary to Conclusion 2.

<sup>98</sup> Charter of the United Nations, Article 2 (4).

<sup>99</sup> *Armed Activities on the Territory of the Congo, Judgment, I.C.J. Reports 2005*, p. 223, para. 148.

<sup>100</sup> B. Simma *et al.* (eds.), *The Charter of the United Nations: A Commentary*, 2<sup>nd</sup> edition (Oxford University Press, 2002), p. 25. See also *Military and Paramilitary Activities in and against Nicaragua, Merits, Judgment, I.C.J. Reports 1986*, p. 101, para. 191.

<sup>101</sup> See, e.g., *Wall Opinion*, p. 171, para. 87.

<sup>102</sup> United Nations Charter, Article 1 (2).

24 October 1970, entitled “Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States”<sup>103</sup>; resolution 3314 (XXIX) of 14 December 1974, entitled “Definition of Aggression”<sup>104</sup>; and resolution 42/22 of 18 November 1987, entitled the “Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations”<sup>105</sup>.

2.20. In resolution 2625 (XXV), the General Assembly adopted by consensus seven principles deriving from the Charter and elaborated their content. It did so in a manner so as to ensure their applicability to *all* States, not merely to United Nations Members, such was the Assembly’s regard for the central importance of these fundamental principles to the maintenance of international peace and security<sup>106</sup>. The Assembly accordingly declared that “[t]he principles of the Charter which are embodied in this Declaration constitute basic principles of international law”, and consequently appealed “to all States to be guided by these principles in their international conduct and to develop their mutual relations on the basis of the strict observance of these principles”<sup>107</sup>. As noted by the Court in *Military and Paramilitary Activities in and against Nicaragua*, “[t]he effect of consent to the text of” the Friendly Relations Declaration “cannot be understood as merely that of a ‘reiteration or elucidation’ of the treaty commitment undertaken in the Charter. On the contrary, it may be understood as an acceptance of the validity of the rule or set of rules declared by the resolution … themselves”<sup>108</sup>. The Friendly Relations Declaration has been approvingly referred to by this Court on multiple occasions<sup>109</sup>.

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<sup>103</sup> General Assembly, Resolution 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, 24 October 1970 (hereinafter: “Friendly Relations Declaration”).

<sup>104</sup> General Assembly, Resolution 3314 (XXIX), Definition of Aggression, 14 December 1974.

<sup>105</sup> General Assembly, Resolution 42/22, Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, 18 November 1987.

<sup>106</sup> H. Keller, “Friendly Relations Declaration (1970)”, *Max Planck Encyclopedia of International Law* (June 2009), para. 13.

<sup>107</sup> Friendly Relations Declaration, General Part, para. 3.

<sup>108</sup> *Military and Paramilitary Activities in and against Nicaragua, Merits, Judgment, I.C.J. Reports 1986*, pp. 99-100, para. 188.

<sup>109</sup> See, e.g., *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, pp. 133 and 139, paras. 155 and 180; *Armed Activities on the Territory of the Congo, Judgment, I.C.J. Reports 2005*, pp. 226 and 268, paras. 162 et 300.

2.21. The first principle set out in the Friendly Relations Declaration provides that:

“States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations.”<sup>110</sup>

2.22. In detailing the content of this principle, the Friendly Relations Declaration affirms that:

- “The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force”;
- “Every State has the duty to refrain from any forcible action which deprives peoples ... of their right to self-determination and freedom and independence”; and
- “No territorial acquisition resulting from the threat or use of force shall be recognized as legal”<sup>111</sup>.

2.23. In resolution 3314 (XXIX), the General Assembly adopted a definition of aggression based on Article 2 (4) of the Charter:

“Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations ....”<sup>112</sup>

2.24. Resolution 3314 (XXIX) included among the acts that would qualify as aggression “[t]he invasion or attack by the armed forces of a State of the territory of another State, or any *military occupation*, however temporary, resulting from such invasion or attack, or any *annexation* by the use of force of the territory of another State or part thereof”<sup>113</sup>.

2.25. The ILC recognized the *jus cogens* character of the prohibition of aggression<sup>114</sup>. The crime of aggression was also considered by the Rome Statute as

<sup>110</sup> Friendly Relations Declaration, Annex, para. 1

<sup>111</sup> *Ibid.*

<sup>112</sup> General Assembly, Resolution 3314 (XXIX), 14 December 1974, Annex, Article 1.

<sup>113</sup> *Ibid.*, Article 3 (a) (emphasis added).

<sup>114</sup> Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (*Jus Cogens*), *Report of the International Law Commission*, Seventy-

one of the most serious crimes, of concern to the international community as a whole, that the International Criminal Court had jurisdiction over<sup>115</sup>.

2.26. In resolution 42/22, the General Assembly reiterated that “[e]very State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations”, adding that “[s]uch a threat or use of force constitutes a violation of international law and of the Charter of the United Nations, and entails international responsibility”. The Declaration further provided that “[n]either acquisition of territory resulting from the threat or use of force nor any occupation of territory resulting from the threat or use of force in contravention of international law will be recognized as legal acquisition or occupation”<sup>116</sup>.

2.27. The fundamental principle prohibiting the acquisition of territory through the threat or use of force is thus rooted in the purpose of safeguarding two of the most fundamental values of the international system – squarely at issue in this case – namely, the illegality of territorial acquisition resulting from the threat or use of force, and the obligation to respect the right of peoples to self-determination. In the *Wall* Opinion, this Court unreservedly affirmed the prohibition against “territorial acquisition resulting from the threat or use of force” as set out in the Friendly Relations Declaration:<sup>117</sup>

“As the Court stated in its Judgment in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, the principles as to the use of force incorporated in the Charter reflect customary international law (see I.C.J. Reports 1986, pp. 98-101, paras. 187-190); the same is true of its corollary entailing the illegality of territorial acquisition resulting from the threat or use of force.”<sup>118</sup>

2.28. The Court further observed that “both the General Assembly and the Security Council have referred, with regard to Palestine, to the customary rule of ‘the inadmissibility of the acquisition of territory by war’”<sup>119</sup>. Among the

<sup>115</sup> third session (18 April–3 June and 4 July–5 August 2022), A/77/10, pp. 86-87, para. (7) of the commentary to Conclusion 23 and its annex.

<sup>116</sup> Rome Statute of the International Criminal Court, UNTS, Vol. 2187, p. 90, Articles 5 and 8 bis.

<sup>117</sup> General Assembly, Resolution 42/22, 18 November 1987, Annex, Part I, paras. 1 and 10.

<sup>118</sup> *Wall* Opinion, p. 171, para. 87.

<sup>119</sup> *Ibid.*

<sup>119</sup> *Ibid.*, pp. 182-183, para. 117.

resolutions referred to by the Court in this regard are Security Council resolution 242 (1967) of 22 November 1967 and General Assembly resolution ES-10/14 of 8 December 2003<sup>120</sup>.

2.29. There are numerous resolutions affirming the application of the principle prohibiting the acquisition of territory by force to the OPT which *predate* the Court's 2004 *Wall* Opinion. They include Security Council resolutions 267 (1969) of 3 July 1969<sup>121</sup>, 298 (1971) of 25 September 1971<sup>122</sup>, 476 (1980) of 30 June 1980<sup>123</sup>, and 478 (1980) of 20 August 1980<sup>124</sup>, and General Assembly resolutions 2628 (XXV) of 4 November 1970<sup>125</sup>, 32/20 of 25 November 1977<sup>126</sup>, 35/207 of 16 December 1980<sup>127</sup>, 40/168 A of 16 December 1985<sup>128</sup>, 45/83 A of 13 December 1990<sup>129</sup>, 50/84 D of 15 December 1995<sup>130</sup>, and 55/55 of 1 December 2000<sup>131</sup>. These represent only a small sample of those affirming this principle.

2.30. Since the *Wall* Opinion, the prohibition on acquisition of territory by force in respect of the OPT has been recalled continuously through further resolutions of the Security Council, General Assembly, and Human Rights Council. These, most recently, include Security Council resolution 2334 (2016) of 23 December 2016<sup>132</sup>, General Assembly resolution 77/25 of 30 November 2022<sup>133</sup>, and Human Rights Council resolution 49/4 of 31 March 2022<sup>134</sup>, each of which expressly reaffirms “the inadmissibility of the acquisition of territory by force”. Again, these resolutions represent only a sample

<sup>120</sup> *Ibid.*, p. 139, 166 and 182-183, paras. 1, 74 and 117.

<sup>121</sup> Security Council, Resolution 267 (1969), 3 July 1969, preamble (“Reaffirming the established principle that acquisition of territory by military conquest is inadmissible”).

<sup>122</sup> Security Council, Resolution 298 (1971), 25 September 1971, preamble (“Reaffirming the principle that acquisition of territory by military conquest is inadmissible”).

<sup>123</sup> Security Council, Resolution 476 (1980), 30 June 1980, preamble (“Reaffirming that the acquisition of territory by force is inadmissible”).

<sup>124</sup> Security Council, Resolution 478 (1980), 20 August 1980, preamble (“Reaffirming again that the acquisition of territory by force is inadmissible”).

<sup>125</sup> General Assembly, Resolution 2628 (XXV), 4 November 1970, preamble.

<sup>126</sup> General Assembly, Resolution 32/20, 25 November 1977, preamble.

<sup>127</sup> General Assembly, Resolution 35/207, 16 December 1980, preamble.

<sup>128</sup> General Assembly, Resolution 40/168, 16 December 1985, preamble.

<sup>129</sup> General Assembly, Resolution 45/83 A, 13 December 1990, preamble.

<sup>130</sup> General Assembly, Resolution 50/84 D, 15 December 1995, preamble.

<sup>131</sup> General Assembly, Resolution 55/55, 1 December 2000, preamble.

<sup>132</sup> Security Council, Resolution 2334 (2016), 23 December 2016, preamble

<sup>133</sup> General Assembly, Resolution 77/25, 30 November 2022, preamble.

<sup>134</sup> Human Rights Council, Resolution 52/34, 4 April 2022, preamble.

of numerous similar resolutions that have been adopted in the period from 2004 to the present day.

2.31. To these have been added the views of other competent organs and bodies of the United Nations. The Economic and Social Council, for example, has affirmed the application of the prohibition on acquisition of territory by force to the OPT<sup>135</sup>, as have various United Nations special procedures, as described below.

2.32. Thus, in its 14 September 2022 report to the General Assembly, the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and in Israel (hereinafter “UN Commission of Inquiry on the OPT and Israel”) recommended that:

“the Security Council urgently consider measures to ensure that Israel immediately complies with its international legal obligations and with prior Council resolutions, including those in which the Council has called for an end to the occupation, has declared the acquisition of territory by force inadmissible and has found that settlement activity constitutes a flagrant violation of international law.”<sup>136</sup>

2.33. Likewise, multiple United Nations Special Rapporteurs for the Situation of Human Rights in the Palestinian territories occupied by Israel since 1967 have affirmed the application of the prohibition on acquisition of territory by force to the OPT<sup>137</sup>.

2.34. In sum, the key principles set out in the United Nations Charter and developed and affirmed by various organs of the United Nations over decades, including the Security Council, General Assembly, Human Rights Council,

<sup>135</sup> Economic and Social Council, Resolution 2022/22, 1 August 2022, preamble.

<sup>136</sup> Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and in Israel, 14 September 2022, A/77/328, para. 94 (<https://undocs.org/A/77/328>).

<sup>137</sup> See, e.g., Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967, 8 September 2003, E/CN.4/2004/6, para. 14 (<https://undocs.org/E/CN.4/2004/6>); Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2018, A/73/447, para. 27 (<https://undocs.org/A/73/447>); Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 23 October 2017, A/72/556, para. 31 (<https://undocs.org/A/72/556>); and Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 21 September 2022, A/77/356, para. 10 (<https://undocs.org/A/77/356>).

Economic and Social Council, and this Court, make it clear that the situation in the OPT is governed by the following:

- that the territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force<sup>138</sup>;
- that no territorial acquisition resulting from the threat or use of force shall be recognized as legal<sup>139</sup>; and
- that the prohibition on acquisition of territory applies to the OPT<sup>140</sup>.

2.35. This prohibition underlies the rules that govern the law of belligerent occupation. The first of these rules is that occupation is a temporary condition during which the occupying power may act only as *de facto* administrator of the territory in trust and good faith and for the benefit of the protected population.

2.36. Occupation is thus an exceptional and provisional state of affairs, under which the belligerent occupant is prohibited from permanently altering the status of the occupied territory, and is prevented from depriving protected persons from the protections assured to them under international humanitarian law, as stipulated in Article 47 of the Fourth Geneva Convention.

2.37. The ICRC commentary on Article 47 is abundantly clear regarding the intentions of the drafters of the Convention:

“The occupation of territory in wartime is essentially a *temporary, de facto* situation, which deprives the occupied power of neither its statehood nor its sovereignty; it merely interferes with its power to exercise its rights. That is what distinguishes occupation from annexation, whereby the Occupying Power acquires all or part of the occupied territory and incorporates it in its own territory.”<sup>141</sup>

2.38. Accordingly, a second rule of belligerent occupation is that it does not result in a transfer of sovereign title to the occupant. This principle was well-

<sup>138</sup> Friendly Relations Declaration, Annex, para. 1.

<sup>139</sup> *Ibid.*

<sup>140</sup> Security Council, Resolution 2334 (2016), 23 December 2016, preamble and para. 4; *Wall Opinion*, p. 182, para. 117.

<sup>141</sup> J. Pictet, *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (ICRC, 1958), p. 275 (emphasis added).

articulated by Oppenheim when he stated that belligerent occupation does not yield so much as “an atom of sovereignty in the authority of the occupant”<sup>142</sup>.

2.39. This is reflected in Article 4 of Additional Protocol I, which provides that:

“The application of the Conventions and of this Protocol … shall not affect the legal status of the Parties to the conflict. Neither the occupation of a territory nor the application of the Conventions and this Protocol shall affect the legal status of the territory in question.”<sup>143</sup>

2.40. This provision is a codification of customary international law. According to the ICRC commentary on Article 4 of Additional Protocol I:

“everyone recognized this principle as an uncontested principle of international law which was, moreover, underlying both the Hague Regulations and the Fourth Geneva Convention. Nowadays it follows from the inadmissibility of the use of force, as laid down in the Charter of the United Nations, and elaborated in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (Resolution 2625(XXV) of the United Nations General Assembly).”<sup>144</sup>

2.41. In a June 2020 Expert Meeting convened by the ICRC, the core principles of the law of belligerent occupation were reaffirmed. According to the Experts, “[a]s a general rule” the law of belligerent occupation:

“provides the legal framework for the temporary exercise of authority by the occupant .... Under occupation law, the *sovereign title relating to the occupied territory does not pass to the occupant*, who has, therefore, to preserve as far as possible the *status quo ante* ....”<sup>145</sup>

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<sup>142</sup> L. Oppenheim, “The Legal Relations Between an Occupying Power and the Inhabitants”, *Law Quarterly Review*, Vol. 33, 1917, no. 4, p. 364, quoted in Y. Dinstein, “The International Law of Belligerent Occupation and Human Rights”, *Israel Yearbook on Human Rights*, Vol. 8, 1978, p. 106.

<sup>143</sup> Additional Protocol I, Article 4.

<sup>144</sup> J. Pictet et al., *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (ICRC, 1987), p. 73, para. 172.

<sup>145</sup> T. Ferraro (ed.), *Occupation and Other Forms of Administration of Foreign Territory*, Expert Meeting, (ICRC, 2012), p. 7, fn. 1.

2.42. Both the “temporariness” and “non-sovereign” principles that underpin the law of belligerent occupation have been affirmed by the General Assembly and the Security Council in relation to Israel’s occupation of Palestine<sup>146</sup>.

2.43. As shown in Chapter 3, Israel has indisputably violated these principles by its assertion of “sovereignty” over East Jerusalem and the West Bank, its *de jure* and *de facto* annexation of these parts of the OPT, and its pledge never to surrender them or permit the Palestinian people to exercise their right of self-determination therein. These unlawful acts, contrary to peremptory norms of general international law, render the occupation an internationally wrongful act of an ongoing character.

## B. THE PROHIBITION AGAINST RACIAL DISCRIMINATION AND APARTHEID

2.44. The prohibition of racial discrimination and apartheid is reflected most extensively in CERD. As the Court has very recently underlined, 182 States are parties to CERD – a fact which “confirm[s]” the “universal character” of that Convention<sup>147</sup>. Those parties include both the State of Palestine and Israel.

2.45. There can be no doubt that the prohibition of racial discrimination, as codified in CERD, forms part of customary international law, and has long been recognized as a peremptory norm of a universal character. As early as 1970, in *Barcelona Traction*, the Court considered the prohibition of racial discrimination to be a norm of *erga omnes* character, stating that:

“[s]uch obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination.”<sup>148</sup>

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<sup>146</sup> The General Assembly has clearly and unequivocally endorsed these principles. See General Assembly, Resolution 77/126, 12 December 2023. The Security Council has recognized them insofar as it has, for years, reaffirmed the inadmissibility of acquisition of territory through the threat or use of force in its resolutions on the occupied Palestinian territory. See, e.g., Security Council, Resolution 2334 (2016), 23 December 2016.

<sup>147</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination, Preliminary Objections, Judgment, I.C.J. Reports 2021*, p. 99, para. 87.

<sup>148</sup> *Barcelona Traction, Light and Power Company, Limited (New Application: 1962), Second phase, Judgment, I.C.J. Reports 1970*, p. 32, para. 34.

2.46. The ILC has also for many years accepted the *jus cogens* character of the prohibition of racial discrimination<sup>149</sup>, confirming it most recently in 2022<sup>150</sup>.

2.47. The practice of apartheid is considered to be a particularly egregious form of discrimination, as reflected in its prohibition and criminalization in numerous treaties. The CERD provides that “States Parties particularly condemn racial segregation and *apartheid* and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction”<sup>151</sup>. The 1973 Convention on the Suppression and Punishment of the Crime of Apartheid provides for the prosecution of persons guilty of committing the crime of apartheid<sup>152</sup>. Additional Protocol I to the Geneva Conventions of 1977 also declares that “practices of apartheid” based on racial discrimination constitute a grave breach of the Protocol<sup>153</sup>. Finally, in 1998 the crime of apartheid was included as a crime against humanity in the Rome Statute of the International Criminal Court<sup>154</sup>.

2.48. Repeated resolutions of the General Assembly<sup>155</sup>, and the Security Council<sup>156</sup>, coupled with the condemnation and criminalization of apartheid in the above-mentioned treaties, have resulted in an acceptance of the unlawfulness of apartheid under customary international law<sup>157</sup> and recognition that the prohibition of apartheid is of a *jus cogens* character. The ILC reconfirmed that the prohibition of apartheid qualifies as a peremptory norm of general international law in 2022<sup>158</sup>.

<sup>149</sup> See Articles on Responsibility of States for Internationally Wrongful Acts, *ILC Yearbook*, 2001, Vol. II, Part Two, p. 112, para. (4) of the commentary to Article 40.

<sup>150</sup> Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (*Jus Cogens*), *Report of the International Law Commission*, Seventy-third session (18 April–3 June and 4 July–5 August 2022), A/77/10, pp. 87–88, para. (11) of the commentary to Conclusion 23 and its annex.

<sup>151</sup> CERD, Article 3 (emphasis added). See also the Preamble of this convention.

<sup>152</sup> Convention on the Suppression and Punishment of the Crime of Apartheid, *UNTS*, Vol. 1015, p. 243 (entry into force: 18 July 1976), Articles 2 and 5.

<sup>153</sup> Additional Protocol I, Article 85 (4) (c).

<sup>154</sup> Rome Statute of the International Criminal Court, *UNTS*, Vol. 2187, p. 90, Article 7 (1) (j).

<sup>155</sup> See, e.g., Resolutions 1761 (XVII) of 1962, 2396 (XXII) of 1968 and 39/72 of 1984.

<sup>156</sup> See, e.g., Resolutions 134(1960), 181 (1963), 282 (1970), 418 (1977), 569 (1985).

<sup>157</sup> See M. Jackson, “The definition of apartheid in customary international law and the International Convention on the Elimination of All Forms of Racial Discrimination”, *The International and Comparative Law Quarterly*, Vol. 71, 2022, no. 4, p. 835; A. Cassese, P. Gaeta et al., *Cassese’s International Criminal Law*, 3<sup>rd</sup> ed (Oxford University Press, 2013), p. 107; J.-M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law, Volume I: Rules* (ICRC and Cambridge University Press, 2005), pp. 588–589.

<sup>158</sup> Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (*Jus Cogens*), *Report of the International Law Commission*, Seventy-third session (18 April–3 June and 4 July–5 August 2022), A/77/10, pp. 87–88, para. (11) of the commentary to Conclusion 23 and its annex. See also Articles on Responsibility of States for

2.49. The General Assembly, as well as other United Nations bodies have repeatedly condemned a wide range of Israeli policies and practices that discriminate against and disproportionately affect Palestinians, and that deny them their fundamental rights<sup>159</sup>.

2.50. As shown in Chapter 4, in blatant violation of these *jus cogens* norms and *erga omnes* obligations, Israel has deliberately imposed and maintained a system of racial discrimination tantamount to apartheid against Palestinians. It has done so for the purpose of prolonging its occupation indefinitely and asserting its permanent dominion over the OPT, and preventing self-determination by the Palestinian people in their ancestral land, privileging one racial group to the detriment of the fundamental rights of the other between the Jordan River and the Mediterranean Sea. In so doing, it has denied Palestinians the most basic of fundamental human rights – the right to life, to freely determine their political status, to economic, social and cultural development, to freedom from arbitrary arrest, detention or punishment, to freedom from torture and other cruel or inhumane treatment, to freedom of movement, to freedom of religious exercise, *inter alia* – recognized in the Universal Declaration of Human Rights and other applicable instruments to which Israel is a party.

### C. THE OBLIGATION TO RESPECT THE RIGHT OF SELF-DETERMINATION

2.51. It is well settled that the obligation to respect a people's right of self-determination is a peremptory norm of general international law. As the Court noted in the *East Timor* case, the right to self-determination “is one of the essential principles of contemporary international law”, enjoying an *erga omnes* character<sup>160</sup>. In addition to being a principle of “universal application” which has *erga omnes* effects, the right of self-determination is also a *jus cogens* norm<sup>161</sup>.

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Internationally Wrongful Acts, *ILC Yearbook*, 2001, Vol. II, Part Two, p. 112, para. (4) of the commentary to Article 40.

<sup>159</sup> See, e.g., General Assembly, Resolution 77/126, 30 December 2022; Human Rights Council, Resolution 49/29, 1 April 2022, para. 7 (c) (<https://undocs.org/A/HRC/RES/49/29>).

<sup>160</sup> *East Timor, Judgment, I.C.J. Reports 1995*, p. 102, para. 29. See also *Wall Opinion*, pp. 171-172, para. 88; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 139, para. 180.

<sup>161</sup> M. Shaw, *Title to Territory in Africa: International Legal Issues* (Oxford University Press, 1986), p. 91; D. Raic, *Statehood and the Law of Self-Determination* (Martinus Nijhoff Publishers, 2002), p. 219. See also Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (*Jus Cogens*), *Report of the International Law Commission*, Seventy-third session (18 April–3 June and 4 July–5 August 2022), A/77/10, p. 88, para. (14) of the commentary to Conclusion 23 and its annex.

2.52. In 1971, the Court emphasized that developments in international law had made the principle of self-determination applicable not merely to Trust territories, but to all non-self-governing territories, and that self-determination was the “ultimate objective” of the “sacred trust” to which Article 22(1) of the Covenant of the League of Nations referred<sup>162</sup>. In the *Wall* Opinion, the Court recalled that the right of peoples to self-determination was now “one of the essential principles of contemporary international law” and was a right *erga omnes*<sup>163</sup>. In its Advisory Opinion on *Chagos*, the Court confirmed that by the 1960s the right to self-determination existed in customary international law, and that one of its essential corollaries was a right to territorial integrity<sup>164</sup>.

2.53. The United Nations Charter explicitly affirms, as one of the primary purposes of the organization, the development of “friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”<sup>165</sup>. The recognition given to the principle of self-determination, as one of the purposes of the United Nations Charter, was reinforced in the text of Articles 55 and 56 in Chapter IX of the Charter. Article 55 specified that the United Nations should work towards “the creation of conditions of stability and well-being ... based on respect for the principle of equal rights and self-determination”. By Article 56, Member States pledged themselves “to take joint and separate action in co-operation with the Organization for the achievement” of those purposes. These provisions marked “an important turning point”, signalling the maturation of the principle of self-determination and foreshadowing its evolution, through practice, into a precept “directly binding on states”<sup>166</sup>.

2.54. A key development in State practice, as noted by the Court in both the *Namibia* and *Chagos* cases, was the adoption of the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV) of 14 December 1960). This was applicable to all peoples and territories which “have not yet attained independence”. By resolution 1514 (XV), the General Assembly proclaimed, “the necessity of bringing to a speedy and

<sup>162</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, *Advisory Opinion*, I.C.J. Reports 1971, p. 31, paras. 52-53.

<sup>163</sup> *Wall* Opinion, p. 172, para. 88. See also *East Timor*, *Judgment*, I.C.J. Reports 1995, p. 102, para. 28.

<sup>164</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, *Advisory Opinion*, I.C.J. Reports 2019, p. 134, para. 160.

<sup>165</sup> Charter of the United Nations, Article 1 (2).

<sup>166</sup> A. Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge University Press, 1995), p. 43.

unconditional end colonialism *in all its forms and manifestations*<sup>167</sup> and provided, *inter alia*, that:

“1. The subjection of peoples to alien subjugation, domination, and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.

.....

6. Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purpose and principles of the Charter of the United Nations.”

2.55. Whilst resolution 1514 (XV) was formally only a recommendation, it had, as the Court observed in the *Chagos* case:

“a declaratory character with regard to the right to self-determination as a customary norm, in view of its content and the conditions of its adoption ... None of the States participating in the vote contested the existence of the right of peoples to self-determination”<sup>168</sup>.

2.56. The Court further pointed out that, “[t]he wording used in resolution 1514 (XV) has a normative character, in so far as it affirms that ‘all peoples have the right to self-determination’”<sup>169</sup>. The Court concluded that by the middle of the 1960s, if not sometime earlier, the recognition of the right to self-determination had entered the corpus of international law<sup>170</sup>. The language of resolution 1514 (XV) makes clear that self-determination is not only a right (as opposed to a mere principle), but it is a right enjoyed by *all* peoples subject to alien

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<sup>167</sup> General Assembly, Resolution 1514 (XV), Declaration on the Granting of Independence to Colonial Countries and Peoples, 14 December 1960 (emphasis added).

<sup>168</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, I.C.J. Reports 2019, p. 132, para. 152.

<sup>169</sup> *Ibid.*, pp. 132-133, para. 153.

<sup>170</sup> *Ibid.*, p. 132, para. 150. The Court suggests thereby that self-determination had become a principle of customary international law. See D. Raic, *Statehood and the Law of Self-Determination* (Martinus Nijhoff Publishers, 2002), p. 217. The view that resolution 1514 (XV) also represented a definitive interpretation of the United Nations Charter itself has also been widely held. See, e.g., T.A. Mensah who points out that “no one in the General Assembly questioned the assertion that the resolution was entirely within the letter and spirit of the Charter” (*Self-Determination Under United Nations’ Auspices: The Role of the United Nations in the Application of the Principle of Self-Determination for Nations and Peoples* (Yale Law School, 1968), pp. 80-81). See also M. Shaw, *Title to Territory in Africa: International Legal Issues* (Oxford University Press, 1986), pp. 74 and 76 (describing resolution 1514 (XV) as an authoritative interpretation of the Charter).

subjugation, domination and exploitation. It is thus not confined merely to territories that continued to be held as colonies, but extends also to all those peoples and territories subject to alien rule that “have not yet attained independence”. Paragraph 6 of resolution 1514 (XV) also makes clear that the right to self-determination carries with it a prohibition on the partial or total disruption of the national unity and territorial integrity of the country concerned<sup>171</sup>.

2.57. On 16 December 1966, the General Assembly adopted the ICCPR and the ICESCR. Common Article 1 of each Covenant declares that “all peoples have the right to self-determination”. Following the language of resolution 1514 (XV), common Article 1 goes on to state that “[b]y virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”. Common Article 1, however, goes further than the Declaration on Decolonization in providing that:

“States parties ... shall promote the realization of the right to self-determination and shall respect the right in conformity with the provisions of the Charter of the United Nations.”<sup>172</sup>

2.58. The Covenants proclaim the right to self-determination as a human right that belongs to “all peoples”, and the corresponding duty on all States to both respect and promote that right. They also make clear that self-determination implies a right of all peoples to “freely dispose of their natural wealth and resources”, and to do so “for their own ends”. They recall, in that sense, the terms of resolution 1803 (XVII) of 14 December 1962, which described the “permanent sovereignty over natural wealth and resources” to be “a basic constituent of the right to self-determination”.

2.59. As noted, the Friendly Relations Declaration was intended to represent a definitive statement of the relevant principles of the United Nations Charter<sup>173</sup>. Building upon the language of both the Colonial Declaration and the two International Covenants, it states that:

“by virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right

<sup>171</sup> General Assembly Resolution 1514 (XV), 14 December 1960, para. 6.

<sup>172</sup> ICCPR, Article 1 and ICESCR, Article 1 (emphasis added).

<sup>173</sup> M. Shaw, *Title to Territory in Africa: International Legal Issues* (Oxford University Press, 1986), p. 82, stating that: “[t]he Declaration was intended to act as an elucidation of certain important Charter provisions, although not as an actual amendment of the Charter, and was adopted by member States on that basis”.

freely to determine ... their political status and to pursue their economic, social and cultural development.”

2.60. As noted, the Declaration reiterates that:

“Every State has the duty to refrain from any forcible action which deprives peoples ... of their right to self-determination and freedom and independence”;

and:

“Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country.”

2.61. In 2019, in the *Chagos* Advisory Opinion the Court reaffirmed that by “recognizing the right to self-determination as one of the ‘basic principles of international law’, the Declaration confirmed its normative character under customary international law”<sup>174</sup>.

2.62. United Nations bodies have long recognized the right of self-determination of the Palestinian people. In 1970, for example, the General Assembly adopted resolution 2649 (XXV) which condemned “those Governments that deny the right to self-determination of peoples recognized as being entitled to it, especially of the peoples of southern Africa and Palestine”<sup>175</sup>; and in resolution 2672 C (XXV) of 8 December 1970 it recognized “that the people of Palestine are entitled to equal rights and self-determination, in accordance with the Charter of the United Nations” and that “full respect for the inalienable rights of the people of Palestine is an indispensable element in the establishment of a just and lasting peace in the Middle East”.<sup>176</sup>

2.63. These resolutions were followed by repeated affirmation by the General Assembly of the “inalienable rights of the Palestinian people” to self-determination and national independence and sovereignty, and the right of Palestinians to return

<sup>174</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 133, para. 155.

<sup>175</sup> General Assembly, Resolution 2649, 30 November 1970, para. 5.

<sup>176</sup> General Assembly, Resolution 2672 C (XXV), 8 December 1970, para. 1.

to their homes and properties; urging all States and international organizations to support the right of the Palestinian people to self-determination<sup>177</sup>.

2.64. In the *Wall* Opinion, the Court reiterated that the right of self-determination has an *erga omnes* character, and recognized that the Palestinian people possess such a right:

“As regards the principle of the right of peoples to self-determination, the Court observes that the existence of a “Palestinian people” is no longer in issue.”<sup>178</sup>

And it went on in to hold that the construction of the Wall:

“severely impedes the exercise by the Palestinian people of its right to self-determination, and is therefore a breach of Israel’s obligation to respect that right.”<sup>179</sup>

2.65. As shown in Chapter 5, Israel has not only breached its obligation in this regard, but has actively aimed to suppress the Palestinian people’s right of self-determination, including their right to independence of their State on the Palestinian territory occupied by Israel in 1967, including East Jerusalem.

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<sup>177</sup> See, e.g., Resolution 3236 (XXIX), 22 November 1974; for a more recent example see Resolution 77/208, 15 December 2022.

<sup>178</sup> *Wall* Opinion, pp. 181-182, para. 118.

<sup>179</sup> *Ibid.*, p. 184, para. 122.

## Chapter 3.

### ISRAEL'S ANNEXATION OF PALESTINIAN TERRITORY

3.1. In its Request for an Advisory Opinion, the General Assembly has asked the Court to determine *inter alia* what are the legal consequences arising from “Israel’s prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem”. The Occupied Palestinian Territory is shown below, in **Figure 3.1**.

3.2. This Chapter is presented in two Parts. Part A addresses the measures adopted by Israel to annex the Holy City of Jerusalem by attempting to permanently alter its demographic composition, character and status. Part B then demonstrates that similar tools have been used to annex the rest of the West Bank.

3.3. As elaborated in Chapter 2, the rules governing the law of belligerent occupation were designed, *inter alia*, to prevent military occupation from becoming a means to unlawful acquisition of territory. Belligerent occupation corresponds to a fundamentally temporary situation during which the occupying Power is solely conferred with provisional powers of administration. The occupying Power must administer the occupied territory for the benefit of the people living under occupation. The occupant does not acquire sovereignty over the territory it occupies.

3.4. Transfer of the occupant’s population into the occupied territory, as well as the forcible transfer of the existing population from the occupied territory, are expressly prohibited, *inter alia* by Article 49 (6) of the Fourth Geneva Convention, which stipulates that “[t]he Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies”. The drafters introduced this provision to guard against occupying Powers abusing their position as temporary administrators of occupied territories to introduce permanent demographic changes to such territories as a means of conquest. As noted by the ICRC commentary, this provision was specifically “intended to prevent a practice adopted during the Second World War by certain Powers, which transferred portions of their own population to occupied territory for political and racial reasons

or in order, as they claimed, to colonize those territories.”<sup>180</sup> Thus, Israel’s policies and practices – including its implanting of more than 230,000 of its citizens into East Jerusalem and its environs, and more than 460,000 in the rest of the West Bank, in more than 280 government-supported settlements, and, at the same time, its displacement of hundreds of thousands of Palestinians from their homes, villages, towns and cities, and the OPT itself – are comparable to those adopted by colonial powers in earlier times, which sought to acquire dominion and control over other territories and their resources, and to exploit them for their own benefit. The settlements and their associated regime offer irrefutable proof of Israel’s intention to colonize and maintain permanent possession of the Palestinian territory that it has occupied for the past 56 years.

3.5. As documented in both Parts A and B of this Chapter, Israel’s own leaders – including a succession of Prime Ministers – have repeatedly declared that Israel is “sovereign” in Jerusalem, and in “Judea and Samaria” (the names by which it refers to the West Bank), and that it will never relinquish its control of these parts of the OPT.

3.6. From 1967 to this day, Israel has confined Palestinians to only 13 % of East Jerusalem and 40 % of the rest of the West Bank, enabling it to seize Palestinian land to facilitate the establishment, development and expansion of its ever-increasing number of settlements, which its leaders have publicly pledged never to remove. In this manner, it has continually created facts on the ground which, by virtue of their number and strategic location, aim to make its presence in the territory and its dominion over it permanent. The Israeli official now responsible for administration of the OPT has even given a name to this policy: “victory by settlement”<sup>181</sup>.

3.7. To further entrench its presence in the OPT, Israel has built a vast network of infrastructures, including the Wall and a system of roads to establish a continuum among Israeli settlements and between the settlements and Israel, fragmenting the Palestinian people into separate and disconnected communities and disrupting the territorial integrity and contiguity of the land of the State of Palestine. By these measures, Israel has imposed the forcible displacement and confinement of Palestinians while establishing and expanding its illegal settlements, effectively

<sup>180</sup> J. Pictet, *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, Geneva, ICRC, 1958, p. 283 (Article 49 (6)).

<sup>181</sup> “MK’s controversial plan nixes two-state solution, calls for annexation”, *The Jerusalem Post*, 11 September 2017 (<https://tinyurl.com/yp88a3uz>).



Sources: United Nations' Office for the Coordination of Humanitarian Affairs, (OCHA)  
<https://www.ochaopt.org/content/west-bank-access-restrictions-may-2023>

Palestinian Academic Society for the Study of International Affairs, (PASSIA)  
<http://www.passia.org/maps/view/60>

Figure 3.1



grabbing maximum Palestinian land with minimum Palestinians on it and exposing its occupation as a façade to facilitate the achievement of its ultimate objective: the colonization and permanent acquisition of Palestinian territory.

3.8. Immediately following the war of June 1967, the Israeli government began to establish its settlements in the OPT while fully aware of the categorical prohibition on doing so, and on the acquisition of conquered territory in general, under international law. Theodor Meron, then Legal Advisor to the Israeli Ministry of Foreign Affairs, provided a legal opinion in September 1967 to the Government of Israel on the illegality of these settlements. Reflecting in 2017 on his legal advice 50 years prior, Professor Meron stated:

“[T]he establishment of civilian settlements in the occupied West Bank and other conquered territories violates the Fourth Geneva Convention related to the protection of victims of war and, specifically, its prohibition on settlements (Article 49 (6)). This prohibition, I wrote, is categorical and ‘not conditioned on the motives or purposes of the transfer, and is aimed at preventing colonialization on conquered territory by citizens of the conquering state.’ ... With reference to the position of the government of Israel that the West Bank was disputed territory, and therefore not ‘occupied territory,’ I opined that this position had not been accepted by the international community, which regards the territory concerned as normal occupied territory. Israeli settlements in the area of ‘Etzion Bloc’ would be viewed as evidence of an intent to annex that area, I warned.”<sup>182</sup>

3.9. Since then, Israel has continued its policies and practices aimed at exercising permanent dominion over the OPT, including East Jerusalem, despite being condemned repeatedly by the international community for doing so, including in numerous Security Council and General Assembly resolutions. In 2016, the Security Council, in its resolution 2334, “guided by the purposes and principles of the Charter of the United Nations”, and “reaffirming, *inter alia*, the inadmissibility of the acquisition of territory by force”, condemned “all measures aimed at altering the demographic composition, character and status of the Palestinian Territory occupied since 1967, including East Jerusalem, including, *inter alia*, the construction and expansion of settlements, transfer of Israeli settlers, confiscation of land, demolition of homes and displacement of Palestinian civilians, in violation of international humanitarian law and relevant resolutions”. The Council further

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<sup>182</sup> T. Meron, “The West Bank and International Humanitarian Law on the Eve of the Fiftieth Anniversary of the Six-Day War”, *American Journal of International Law*, Vol. 111, 2017, No. 2, p. 358 (footnotes omitted).

reaffirmed “that the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace;” and it reiterated “its demand that Israel immediately and completely cease all settlement activities in the occupied Palestinian territory, including East Jerusalem, and that it fully respect all of its legal obligations in this regard”. The Council expressly recalled the Court’s Advisory Opinion of 9 July 2004, thus highlighting its importance<sup>183</sup>.

3.10. More recently, in December 2022, the General Assembly, in its resolution 77/126, stressed “that the occupation of a territory is to be a temporary, de facto situation, whereby the occupying Power can neither claim possession nor exert its sovereignty over the territory it occupies”; and recalled “in this regard the principle of the inadmissibility of the acquisition of land by force and therefore the illegality of the annexation of any part of the Occupied Palestinian Territory, including East Jerusalem, which constitutes a breach of international law, undermines the viability of the two-State solution and challenges the prospects for a just, lasting and comprehensive peace settlement”. The Assembly also expressed “its grave concern at recent statements calling for the annexation by Israel of areas in the Occupied Palestinian Territory;” and condemned “in this regard settlement activities in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan and any activities involving the confiscation of land, the disruption of the livelihood of protected persons, the forced transfer of civilians and the annexation of land, whether de facto or through national legislation”<sup>184</sup>.

3.11. This Chapter demonstrates that the breaches committed by Israel of the rules governing the law of occupation have been undertaken in deliberate pursuit of an overall objective that violates the cardinal principle derived from Article 2 (4) of the United Nations Charter, the cornerstone of the post-World War II international law-based order: the inadmissibility of the acquisition of territory by force. As shown below, acquisition of the OPT is the *raison d'être* of the occupation itself.

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<sup>183</sup> Security Council, Resolution 2334 (2016), 23 December 2016, preamble.

<sup>184</sup> General Assembly, Resolution 77/126, 12 December 2022, paras. 7 and 8.

## Part A.

### **ISRAEL'S ANNEXATION OF JERUSALEM AND CHANGES TO ITS DEMOGRAPHIC COMPOSITION, CHARACTER AND STATUS**

3.12. Israel captured East Jerusalem by armed force in June 1967 and, before the end of that month, formally annexed it by binding it with West Jerusalem – which Israel had controlled since unlawfully seizing it by military force in 1948 – and integrating the entirety of the Holy City into the Israeli State. In the words of its Defense Minister at the time, General Moshe Dayan:

“The Israeli Defense Forces have liberated Jerusalem. We have reunited ... the capital of Israel. We have returned to this most sacred shrine, never to part from it again.”<sup>185</sup>

3.13. The 1967 annexation was not limited to East Jerusalem itself; it extended broadly into adjacent Palestinian areas in the occupied West Bank, encompassing more than 70 square kilometres. Following this, Israel enacted laws to formalize the annexation, aiming to make it irreversible. Israeli leaders themselves have repeatedly declared the annexation of Jerusalem and its environs to be permanent and proclaimed that Israel would never divest itself of any part of the Holy City under any circumstances. In the words of its current Prime Minister: “We will forever keep Jerusalem united under Israel’s sovereignty.”<sup>186</sup>

3.14. To ensure that this would be the case, Israel has filled the annexed territory with more than 230,000 Israeli settlers – a number which continues to grow – and by this transfer of its own population, it has radically changed the demographic composition and character of Jerusalem and its environs to ensure an Israeli Jewish majority. The location of these settlements aims at encircling the city to sever it from its Palestinian environment. At the same time, and for the same purpose, Israel has forcibly displaced thousands of Palestinians from the City by revoking their residency, refusing to grant building permits, demolishing their homes and colluding with settler organizations to drive them out of the city and force them to relocate elsewhere in the West Bank or outside of the OPT. To further

<sup>185</sup> United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People, *The Status of Jerusalem*, New York, United Nations, 1997, p. 12 (footnote omitted) (<https://tinyurl.com/24nbftype>).

<sup>186</sup> Israel Prime Minister’s Office, “PM Netanyahu’s Remarks at the State Ceremony at Ammunition Hill Marking 48 Years to the Reunification of Jerusalem”, 17 May 2015 (emphasis added) (<https://tinyurl.com/ycx7j3nk>).

strengthen its hold, Israel has built infrastructure – roads, transmission lines and access to water – that tightly bind East and West Jerusalem to each other and to Israel itself, and it has extended the Wall that the Court declared illegal in 2004, further severing Jerusalem from the rest of Palestine, removing entire Palestinian communities from the City and entrenching the annexation even more deeply.

3.15. Israel's annexation of Jerusalem and its environs was, and remains, a flagrant breach of international law. It violates the United Nations Charter and the well-established rule of law prohibiting the acquisition of territory by military conquest, as recognized in multiple resolutions by the General Assembly and the Security Council. As early as 4 July 1967, the General Assembly adopted resolution 2253 (ES-V), without objection by any Member State, declaring that it was “[d]eeply concerned at the situation prevailing in Jerusalem as a result of the measures taken by Israel to change the status of the City,” which it deemed “invalid”. The resolution called upon Israel “to rescind all measures already taken and to desist forthwith from taking any action which could alter the status of Jerusalem”<sup>187</sup>.

3.16. On 21 May 1968, the Security Council adopted resolution 252 which “[r]eaffirm[ed] that acquisition of territory by military conquest is inadmissible” and “[d]eplore[d] the failure of Israel to comply with the General Assembly resolutions” of July 1967. The Security Council's resolution declared that “all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status”, and urgently called upon Israel “to rescind all such measures already taken and to desist forthwith from taking any further action which tends to change the status of Jerusalem”<sup>188</sup>.

3.17. As detailed below, similar resolutions, and others condemning Israel's construction of settlements in East Jerusalem, were adopted by the General Assembly and/or the Security Council in 1968, 1969, 1971, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021 and 2022. Israel has adamantly refused to comply with all of them and continues to flout them, including by publicly declaring its intention to do so. Immediately following the adoption by the Security Council of resolution 2334 (2016), for example, a representative of the Israeli Government

<sup>187</sup> General Assembly, Resolution 2253 (ES-V), 4 July 1967, para. 2.

<sup>188</sup> Security Council, Resolution 252 (1968), 21 May 1968, paras. 2-3.

told the Security Council that the resolution was “a dark day for the Security Council” and that “the Council has wasted valuable time and efforts condemning ... Israel for building homes in the historic homeland of the Jewish people.”<sup>189</sup> He likened the resolution to an attempt to “ban the French from building in Paris” and made it clear that Israel had no intention of complying with the resolution, declaring that “we will overcome today’s evil decree.”<sup>190</sup>

3.18. As recalled in Chapter 2 at paragraph 2.22, the Friendly Relations Declaration stipulates that: “[t]he territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal.”<sup>191</sup> Yet, that is precisely what Israel has purported to accomplish by its annexation of the Holy City of Jerusalem, East and West, and, as shown in Part B of this Chapter, by its annexation of the rest of the West Bank.

3.19. As explained in Chapter 2, at paragraph 2.37, the ICRC’s authoritative commentary on Article 47 of the Fourth Geneva Convention stresses that occupation “is essentially a temporary, de facto situation, which deprives the occupied Power of neither its statehood nor its sovereignty”<sup>192</sup>.

3.20. Israel has repeatedly made clear that there is nothing “temporary” about its now 56-year occupation of, annexation of, and exercise of “sovereignty” over Jerusalem. The prevailing state of affairs is entirely inconsistent with the legal concept of occupation. It is, instead, a blatant attempt to colonize and acquire territory captured during wartime more than half a century ago, in violation of international law. In a 2018 Report, the United Nations Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 found that, instead of complying with Article 47 of the Fourth Geneva Convention or the resolutions of the General Assembly and the Security Council demanding that it rescind all measures purporting to annex Jerusalem, Israel did exactly the opposite:

<sup>189</sup> Security Council, 7853<sup>rd</sup> meeting, 23 December 2016, S/PV.7853, p. 15 (<https://undocs.org/S/PV.7853>).

<sup>190</sup> *Ibid.*

<sup>191</sup> General Assembly, Resolution 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, 24 October 1970, Annex. Additionally, the Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted by the General Assembly in 1960, affirms that: “Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations” (General Assembly, Resolution 1514 (XV), 14 December 1960, Annex).

<sup>192</sup> J. Pictet, *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, Geneva, ICRC, 1958, p. 275 (Article 47).

it “began to establish permanent demographic, structural and institutional facts on the ground to consolidate its sovereignty claim.”<sup>193</sup> In particular:

“As part of its continuing efforts to ensure that its de jure annexation of East Jerusalem is irreversible, Israel has over the past five decades extended its national laws and civil authority to the occupied section of the city; issued numerous declarations of permanent sovereignty; transformed the physical features and historic character of East Jerusalem; moved some of its national institutions, including the Ministry of Justice; and embarked upon an intensive programme of creating and expanding Israeli settlements.”<sup>194</sup>

3.21. In 2020, the Special Rapporteur further observed that “Israel has continued to intensify its annexation of East Jerusalem” and noted that the Prime Minister of Israel had “proclaim[ed] … that the Government had successfully accomplished its annexation of East Jerusalem in the face of great international opposition.”<sup>195</sup> In 2022, the Special Rapporteur concluded that:

“The occupation by Israel has been conducted in profound defiance of international law and hundreds of United Nations resolutions, with scant pushback from the international community. Its 55-year-old occupation burst through the restraints of temporariness long ago. Israel has progressively engaged in the de jure and de facto annexation of occupied territory.”<sup>196</sup>

3.22. One year later, at the filing of this Written Statement, Israel has continued to breach its legal obligations, and to violate the resolutions of the General Assembly and Security Council. Its unlawful annexation of the Holy City of Jerusalem remains as deeply entrenched, and as unlawful, as ever.

3.23. The remainder of this Part of this Chapter, which is divided into five Sections, sets out the facts demonstrating that Israel has annexed all of Jerusalem and its environs with the intention of incorporating the entire City permanently into the Israeli State.

<sup>193</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2018, A/73/447, para. 34 (<https://undocs.org/A/73/447>).

<sup>194</sup> *Ibid.*, para. 37 (footnote omitted).

<sup>195</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2020, A/75/532, para. 42 (footnote omitted) (<https://undocs.org/A/75/532>).

<sup>196</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 12 August 2022, A/HRC/49/87, para. 11 (footnote omitted) (<https://undocs.org/A/HRC/49/87>).

3.24. Section I describes the laws and administrative orders that Israel has enacted and issued declaring and exercising Israeli “sovereignty” over Jerusalem and its environs. Section II compiles official statements issued by Israeli leaders declaring Israel’s “sovereignty” over the whole of Jerusalem, and its determination to maintain the City forever as an inseparable part of the Israeli State. Section III details the establishment of 14 Israeli settlements, with more than 230,000 Israeli settlers, in East Jerusalem and adjacent areas, and the forcible displacement of thousands of Palestinians, for the purpose of creating a Jewish Israeli majority, permanently changing the character and status of Holy City, and cementing it as an integral part of Israel. Section IV describes other measures Israel has taken to further bind East Jerusalem to West Jerusalem and itself, and to sever the Holy City’s links with the rest of Palestine, including infrastructure projects to connect and fully integrate it with Israel itself, and extension of the Wall that was the subject of the Court’s 2004 Advisory Opinion, and which now, two decades later, encloses the entirety of Jerusalem and its environs on what Israel considers its side. Section V describes how Israel’s annexation of Jerusalem and the specific measures of governance it has adopted and implemented there have infringed upon its character and status in violation of international law.

3.25. All these facts, in all five Sections, are abundantly addressed by resolutions of the Security Council and the General Assembly and documented by reports from authoritative United Nations agencies, independent experts and other highly reliable sources, as well as reflected in statements against interest by the Israeli government and its senior officials.

## **I. Israel’s Laws, Regulations and Administrative Orders Annexing and Asserting “Sovereignty” over Jerusalem**

### **A. THE SPECIAL CHARACTER AND STATUS OF JERUSALEM**

3.26. The Holy City of Jerusalem enjoys a unique historical and religious character, as sacred for the three monotheistic religions: Islam, Christianity and Judaism. The United Nations has described it as “a city of unique cultural and religious depth and texture” which “throughout history ... has been at the crossroads of cultures and civilizations”<sup>197</sup>. Citing the “unique spiritual and religious interests located in the city”, the General Assembly, on

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<sup>197</sup> United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People, *The Status of Jerusalem*, New York, United Nations, 1997, p. 3 (<https://tinyurl.com/24nbftype>).

29 November 1947, recommended in resolution 181 (II) the creation of a “*corpus separatum*” placing Jerusalem under “a special international regime” which “shall be administered by the United Nations”<sup>198</sup>.

3.27. In the course of the *Nakba*, in 1947-1949, Israeli military forces seized West Jerusalem by force. At the cessation of hostilities, Palestinian and Arab forces maintained control over East Jerusalem, including the Old City.

3.28. On 11 December 1948, the General Assembly adopted resolution 194 (III) in which it:

“[r]esolve[d] that, in view of its association with three world religions, the Jerusalem area, including the present municipality of Jerusalem *plus* the surrounding villages and towns ... should be accorded special and separate treatment from the rest of Palestine and should be placed under effective United Nations control” and

“[i]nstruct[ed] the Conciliation Commission to present to ... the General Assembly detailed proposals for a permanent international regime for the Jerusalem area ... consistent with the special international status of the Jerusalem area”<sup>199</sup>.

3.29. The following year, on 9 December 1949, the General Assembly adopted resolution 303 (IV) entitled “Palestine: Question of an international regime for the Jerusalem area and the protection of the Holy Places”. The resolution reiterated the General Assembly’s intention that:

“Jerusalem should be placed under a permanent international regime, which should envisage appropriate guarantees for the protection of the Holy Places, both within and outside Jerusalem, and to confirm specifically the following provisions of General Assembly resolution 181 (II): (1) the City of Jerusalem shall be established as a *corpus separatum* under a special international regime and shall be administered by the United Nations ...”<sup>200</sup>.

3.30. In the more than seven decades since these resolutions were adopted, the General Assembly and Security Council have adopted numerous other resolutions which demanded an end to Israel’s violations of international law in and vis-à-vis

<sup>198</sup> General Assembly, Resolution 181 (II), 29 November 1947, Part III, section A and section C, para. 1, of the Plan of Partition with Economic Union.

<sup>199</sup> General Assembly, Resolution 194 (III), 11 December 1948, para. 8.

<sup>200</sup> General Assembly, Resolution 303 (IV), 9 December 1949, para. 1 (footnotes omitted).

Jerusalem and reaffirmed the need to protect the special character and status of the Holy City. In 1980, for example, the Security Council adopted resolution 476 which, amongst other things, emphasized “the specific status of Jerusalem and, in particular, the need to protect and preserve the unique spiritual and religious dimension of the Holy Places in the city” and stressed that Israel, then in control of the entire city, must not “chang[e] the physical character, demographic composition, institutional structure and the status of the Holy City”<sup>201</sup>. In subsequent resolutions, the Security Council and the General Assembly emphasized the obligations of States not to undertake any action that would condone or contribute to Israel’s efforts to alter the character and status of the City<sup>202</sup>.

## B. ISRAEL’S LAWS AND OTHER MEASURES ANNEXING WEST JERUSALEM

3.31. Following its establishment on 15 May 1948, Israel began to enact laws integrating West Jerusalem into its territory. On 2 August 1948, as the war raged on, Israel’s Defence Minister issued a proclamation that “the area of Jerusalem, including most of the city, part of its environment and western approaches, is held by the Defence Army of Israel which is under my authority,” and that “[t]he law of the State of Israel prevails in the administered area”<sup>203</sup>.

3.32. Six weeks later, on 16 September 1948 Israel promulgated the Area of Jurisdiction and Powers Ordinance No. 29 of 5708, which provided that: “Any law applying to the whole of the State of Israel shall be deemed to apply to the whole of the area including both the area of the State of Israel and any part of Palestine which the Minister of Defense has defined by proclamation as being held by the Defence Army of Israel.”<sup>204</sup> The Ordinance thus confirmed and enshrined the application of Israeli law to West Jerusalem<sup>205</sup>.

<sup>201</sup> Security Council, Resolution 476 (1980), 30 June 1980, preamble.

<sup>202</sup> See, e.g., Security Council, Resolution 478 (1980), 20 August 1980; General Assembly, Resolution ES-10/19, 21 December 2017.

<sup>203</sup> Government Proclamation, Jerusalem Declared Israel-Occupied City, *Official Gazette*, No. 12, 2 August 1948 (<https://tinyurl.com/4s4cukj9>).

<sup>204</sup> Area of Jurisdiction and Powers Ordinance No. 29 of 5708-1948, *Official Gazette*, No. 23, 22 September 1948. See *Laws of the State of Israel. Authorised Translation from the Hebrew*, Vol. I (Ordinances, 5708-1948) (<https://tinyurl.com/ycx3h2c4>), p. 64. The Ordinance stipulated in Article 3 that it applied “retroactively” from 15 May 1948.

<sup>205</sup> As Professor Ruth Lapidot of the Hebrew University of Jerusalem has explained: “The application of Israeli law to the western sector of Jerusalem was ensured by proclamations made by the Minister of Defence in 1948 and by the Areas of Jurisdiction and Powers Ordinance, 1948.” (R. Lapidot, “Jerusalem – The Legal and Political Background”, *Justice*, Autumn 1994, No. 3 (published online 30 June 1998) (<https://tinyurl.com/yax8cpj3>).

3.33. On 5 December 1949, the Prime Minister of Israel, David Ben-Gurion, declared that: “Jewish Jerusalem is an organic and integral part of the State of Israel”<sup>206</sup>. One week later, on 13 December 1949, he declared in the Knesset that “Israel has, and will have, only one capital, Eternal Jerusalem”<sup>207</sup>. The following month, on 23 January 1950, “the Israeli Knesset proclaimed Jerusalem as the capital of Israel and began moving Government offices into the City.”<sup>208</sup> From then until the 1967 war, Israel maintained its capital in West Jerusalem, asserted its “sovereignty” over that part of the Holy City, and regarded it as an integral and permanent part of the Israeli State, notwithstanding the numerous General Assembly and Security Council resolutions condemning and urging rescission of all Israeli actions intended to change the character or status of the Holy City.

### C. ISRAEL’S LAWS AND OTHER MEASURES ANNEXING EAST JERUSALEM

3.34. Following the Defence Minister’s announcement on 7 June 1967, once again in the midst of war, that Israeli military forces had “reunited” the City, “never to part from it again”<sup>209</sup>, Israel took prompt steps, through the enactment of legislation and the promulgation of administrative ordinances and orders to annex East Jerusalem, bind it with West Jerusalem and proclaim Israeli “sovereignty” over the entire Holy City.

3.35. On 27 June 1967, the Knesset amended the 1948 Law and Administration Ordinance<sup>210</sup> by introducing a new provision stating that:

“The law, jurisdiction and administration of the State shall extend to any area of Eretz Israel [the ‘*Land of Israel*’] designated by the Government by order.”<sup>211</sup>

<sup>206</sup> Quoted in “The Knesset’s Anniversary: Early Years”, at <https://main.knesset.gov.il/en/about/pages/birthday/birthday.aspx>.

<sup>207</sup> Quoted in “This Week in Haaretz 1949 Jerusalem Is Declared the Eternal Capital of Israel”, *Haaretz*, 16 December 2010 (<https://tinyurl.com/3c97pj6c>).

<sup>208</sup> United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People, *The Status of Jerusalem*, New York, United Nations, 1997, p. 11 (<https://tinyurl.com/24nbftype>).

<sup>209</sup> United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People, *The Status of Jerusalem*, New York, United Nations, 1997, p. 12 (footnote omitted) (<https://tinyurl.com/24nbftype>).

<sup>210</sup> Law and Administration Ordinance No. 1 of 5708-1948, *Official Gazette*, No. 2, 21 May 1948 (Vol. II, Annex 1).

<sup>211</sup> Law and Administration Ordinance (Amendment No. 11) Law, 5727-1967, Article 1 (<https://tinyurl.com/yf3fjy7n>) (See also Vol. II, Annex 4).

3.36. On the same day, the Knesset enacted further legislation which provided that the Minister of the Interior “may, at his discretion … enlarge, by proclamation, the area of a particular municipality by the inclusion of an area designated by order …”<sup>212</sup>.

3.37. One day later, on 28 June 1967, Israel’s Minister of the Interior exercised the powers conferred on him by the Knesset the previous day by promulgating official Orders which expressly applied the “law, jurisdiction and administration of the State” to East Jerusalem<sup>213</sup>, and which expanded the borders of Jerusalem to include adjacent territory seized by Israeli military forces<sup>214</sup>. On the same day, the Knesset enacted further legislation – the Municipalities Ordinance (Declaration on the Enlargement of Jerusalem’s City Limits) – providing statutory support for the Minister’s Orders. The new Municipalities Ordinance declared that the boundaries of the “Jerusalem Municipality” – encompassing East as well as West Jerusalem – within which the “law, jurisdiction and administration” of the State of Israel would apply, were officially extended to include the adjacent territory designated by the Minister<sup>215</sup>.

3.38. As a result of these legislative and administrative measures, East Jerusalem was not only placed under Israeli “law, jurisdiction and administration,” but at one stroke enlarged from an area of 6.5 square kilometres to more than 70 square kilometres – an elevenfold expansion deep into the West Bank, made possible by Israel’s military conquest earlier that month<sup>216</sup>. **Figure 3.2** at p. 63 below depicts East Jerusalem before and after its enlargement by Israel in June 1967.

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<sup>212</sup> Municipalities Ordinance (Amendment No. 6) Law, 5727-1967 (<https://tinyurl.com/yf3fjy7n>) (See also Vol. II, Annex 4).

<sup>213</sup> Government and Law Procedures Ordinance No. 1 of 5727-1967, *Israeli Collection of Regulations*, No. 2064, 28 June 1967, p. 2690 (Vol. II, Annex 5).

<sup>214</sup> Order by the Minister of the Interior, *Israeli Collection of Regulations* No. 2063, 28 June 1967, p. 2670.

<sup>215</sup> Municipalities Ordinance (Announcement of the Expansion of the Jerusalem Municipality Boundaries), *Israeli Collection of Regulations* No. 2065, 28 June 1967, p. 2694 (Vol. II, Annex 6).

<sup>216</sup> The Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2018, A/73/447, explains at para. 34 that “[s]everal weeks after the military occupation of East Jerusalem and the West Bank — among other territories — by Israel in the June 1967 war, Israel formally extended its law and administration to East Jerusalem and 28 surrounding Palestinian villages in the West Bank, creating a much-enlarged Jerusalem municipality. The 1967 annexation absorbed not only the 6,400 dunams of East Jerusalem — previously ruled by Jordan — but also 65,000 dunams in the West Bank, attaching them to the 38,000 dunams belonging to West Jerusalem.” (<https://undocs.org/A/73/447>).

3.39. The objective of these Israeli measures – namely, the assertion of Israeli “sovereignty” over East Jerusalem and its environs, and integration of the newly-conquered territory area with West Jerusalem – was unambiguous. In the Knesset, at the first reading of the 1967 amendment to the 1948 Law and Administration Ordinance, Israel’s Minister of Justice called the measure “a clear act of sovereignty” and sought its adoption on that basis:

“It is the Government’s opinion... that in addition to the control exercised by the I[sraeli].D[efense].F[orces], *a clear act of sovereignty exercised by the state is necessary for the application of the law of the state in such a territory* ... Consequently, the government decided to request that the Knesset pass the law that I am proposing, determining that the law, jurisdiction and administration of the state shall apply to any part of Eretz Israel designated by the government by order.”<sup>217</sup>

3.40. The purpose of the legislation has been confirmed repeatedly by Israel’s highest courts. As explained by the President of Israel’s Supreme Court:

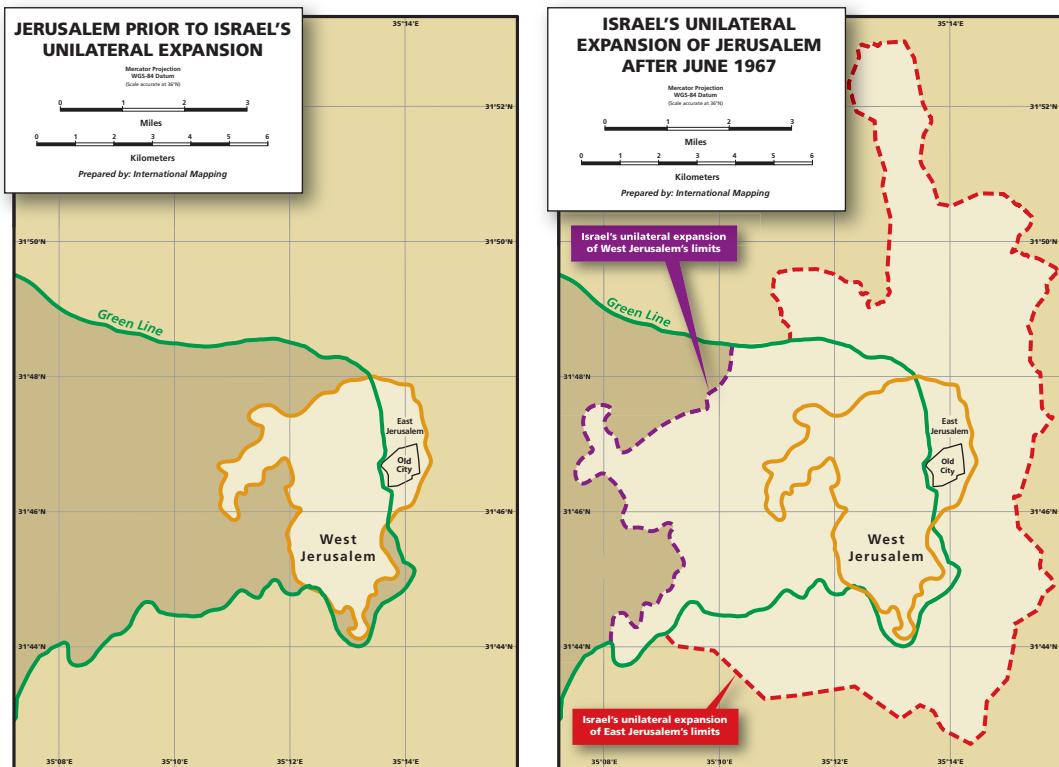
“The significance of this amendment to the law, together with the Order based upon it, is that, in addition to the military control of the Israel Defense Forces, in the words of the Minister of Justice in the Knesset session in which the draft of the amendment was brought for a first reading, ‘a clear act of sovereignty [was taken] by the Government, so that Israeli law would apply to this area’ ...”<sup>218</sup>.

3.41. Israel’s High Court of Justice has further explained, in regard to the 1967 amendment to the 1948 law, that: “the legislative *intention* was to authorize the government *to annex the territories of Palestine to the state of Israel*”, such that East Jerusalem and its environs “*was annexed to the State of Israel and constitutes part of its area*”<sup>219</sup>. As observed by the former Deputy Attorney General of Israel,

<sup>217</sup> Quoted by A. Maoz, “Application of Israeli Law to the Golan Heights Is Annexation”, *Brooklyn Journal of International Law*, Vol. 20, 1994, No. 2, pp. 355-396, at pp. 359-360.

<sup>218</sup> H.C.J. 223/67, *Ben-Dov v. Minister of Religious Affairs*, [22] 1 P.D. 440 (1968), pp. 441-442 (emphasis added); see *International Law Reports*, Vol. 47, 1974, pp. 472-476. This passage is quoted in the judgment of the High Court of Israel in H.C.J 4185/90, *Temple Mount Faithful Association v. Attorney General*, [47] 5 PD 221 (1993) H.C.J. 4185/90 *Temple Mount Faithful Association v. Attorney General* (1993), 47(5) PD 221, in *Catholic University Law Review*, Vol. 45, 1996, pp. 886-939.

<sup>219</sup> H.C.J. 283/69, *Ravidi v. Military Court, Hebron Zone*, [24] 2 P.D. 419 (1969), p. 424 (as quoted in A. Maoz, “Application of Israeli Law to the Golan Heights Is Annexation”, *Brooklyn Journal of International Law*, Vol. 20, 1994, No. 2, pp. 361-362) (emphasis added).



Source: Palestinian Academic Society for the Study of International Affairs, (PASSIA)  
<http://www.passia.org/maps/view/60>

Figure 3.2



Yoram Bar-Sela, Israel's highest courts have "stated more than once" that the 1967 Amendment and Administrative Order effectively carried out "*the annexation of East Jerusalem by the State of Israel*"<sup>220</sup>.

3.42. On 4 July 1967, less than a week after Israel's measures to annex East Jerusalem were taken, the General Assembly adopted a resolution declaring them "invalid," and calling upon Israel "to rescind all measures already taken and to desist forthwith from taking action which could alter the status of Jerusalem"<sup>221</sup>. Not a single Member State voted against this resolution<sup>222</sup>. Israel, nevertheless, refused to comply. This led the General Assembly to adopt a second resolution ten days later<sup>223</sup>. During the debate that preceded it, Israel's measures were condemned by numerous States as an unlawful "annexation" of East Jerusalem and its environs<sup>224</sup>. The United States, for example, observed that the resolution "accept[s], by its call for rescission of measures, that the administrative measures which were taken *constitute annexation of Jerusalem by Israel*"<sup>225</sup>. The resolution, adopted with no votes in opposition<sup>226</sup>, "[d]eplore[d] the failure of Israel" to comply with the previous resolution of 4 July 1967, reiterated the demand that Israel "rescind all measures already taken" and "desist forthwith from taking any action which would alter the status of Jerusalem"<sup>227</sup>.

3.43. Again, Israel refused to comply. The Secretary-General's report to the General Assembly, on 12 September 1967, stated that:

*"In the numerous conversations which the Personal Representative had with Israel leaders, including the Prime Minister and the Minister for Foreign Affairs, it was made clear beyond any doubt that Israel was taking every step to place under its sovereignty those parts of the city which were not controlled by Israel before June 1967. The statutory bases for this had already been created, and the administrative authorities had started to apply Israel laws and regulations in those parts of the city ... The Israeli*

<sup>220</sup> Bar-Sela, "Law Enforcement in the Eastern Sector of Jerusalem", in O. Ahimeir, *Jerusalem – Aspects of Law*, 2<sup>nd</sup> revised edition, Jerusalem: Jerusalem Institute for Legal Studies, Discussion Paper No. 3, 1983, p. xix (emphasis added).

<sup>221</sup> General Assembly Resolution 2253 (ES-V), 4 July 1967.

<sup>222</sup> A total of 99 States voted in favour of the Resolution, 20 States abstained and none voted against it.

<sup>223</sup> General Assembly, Resolution 2254 (ES-V), 14 July 1967.

<sup>224</sup> General Assembly, Official records: Fifth Emergency Special Session (1967), A/PV.1554.

<sup>225</sup> *Ibid.*, para. 102 (emphasis added).

<sup>226</sup> A total of 99 States voted in favour of the resolution, 18 States abstained and none voted against it.

<sup>227</sup> General Assembly, Resolution 2254 (ES-V), 14 July 1967, paras. 1-2.

*authorities stated unequivocally that the process of integration was irreversible and not negotiable.”<sup>228</sup>*

3.44. On 21 May 1968, the Security Council joined the General Assembly in condemning Israel’s unlawful annexation of Jerusalem. Resolution 252, adopted on that date, “[r]eaffirm[ed] that acquisition of territory by military conquest is inadmissible” and “[d]eplore[d] the failure of Israel to comply with the General Assembly resolutions” passed in July 1967. The Security Council echoed the General Assembly in declaring that “all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status”. Resolution 252 “[u]rgently call[ed] upon Israel to rescind all such measures already taken and to desist forthwith from taking any further action which tends to change the status of Jerusalem”<sup>229</sup>. Israel violated the Security Council’s resolution, just as it dismissed the resolutions adopted by the General Assembly the year before.

3.45. The Security Council remained seized of the matter, and it refused to accept Israel’s annexation of Jerusalem. On 3 July 1969, it adopted resolution 267, which “[d]eplore[d] the failure of Israel to show any regard to the resolutions of the General Assembly and the Security Council” and “[c]ensure[d] in the strongest terms all measures taken to change the status of the City of Jerusalem”. The resolution “[u]rgently call[ed] once more upon Israel to rescind forthwith all measures taken by it which may tend to change the status of the City of Jerusalem” and to refrain from any further such actions<sup>230</sup>.

3.46. Faced with Israel’s continued defiance, on 25 September 1971, the Security Council adopted resolution 298 which, once again, “[d]eplore[d]” Israel’s failure to respect the previous resolutions concerning measures which purported to affect the status of the Holy City of Jerusalem. The resolution “[c]onfirm[ed] in the clearest possible terms that all legislative and administrative actions taken by Israel to change the status of the City of Jerusalem, including expropriation of land and properties, transfer of populations and legislation aimed at the incorporation of the occupied section, are totally invalid and cannot change that status”. The Security Council once more “[u]rgently call[ed] upon Israel to rescind all previous measures

<sup>228</sup> Report of the Secretary-General under General Assembly Resolution 2254 (ES-V) Relating to Jerusalem, S/9146, 12 September 1967, paras. 33 and 35 (emphasis added) (<https://tinyurl.com/26ju55f6>).

<sup>229</sup> Security Council, Resolution 252 (1968), 21 May 1968, para. 3.

<sup>230</sup> Security Council, Resolution 267 (1969), 3 July 1969, para. 5.

and actions and to take no further steps in the occupied section of Jerusalem which may purport to change the status of the City ...”<sup>231</sup>. Once more, Israel ignored those calls and violated the resolution, as it did all the resolutions that preceded it.

3.47. During the years that followed, the General Assembly and Security Council adopted further resolutions which continued to make clear that Israel’s actions in East Jerusalem and its environs constituted an unlawful annexation. For example, on 29 November 1974, the General Assembly adopted resolution 3240, which stated:

“*The General Assembly,*

.....

3. *Expresses the gravest concern* at the continued and persistent disregard by Israel of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and other applicable international instruments, in particular the following violations:

- (a) The annexation of parts of the occupied territories;
  - (b) The establishment of Israeli settlements therein and the transfer of an alien population thereto;
  - (c) The destruction and demolition of Arab houses, villages and towns;
- .....

4. *Declares* that those policies of Israel constitute not only a direct contravention to, and violation of, the purposes and principles of the Charter of the United Nations, in particular the principles of sovereignty and territorial integrity, the principles and provisions of the applicable international law concerning occupation and the basic human rights of the people, but also an impediment to the establishment of a just and lasting peace;

.....

7. *Demands* that Israel desist forthwith from the annexation and colonization of the occupied Arab territories ...”<sup>232</sup>

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<sup>231</sup> Security Council, Resolution 298 (1971), 25 September 1971, para. 4.

<sup>232</sup> General Assembly, Resolution 3240 A (XXIX), 29 November 1974 (emphasis added).

3.48. In December 1975, the General Assembly adopted resolution 3414 which referred to the “principles of international law which prohibit the occupation or acquisition of territory by the use of force and which consider any military occupation, however temporary, or any forcible annexation of such territory, or part thereof, as an act of aggression”. The General Assembly “[c]ondemn[ed] Israel’s continued occupation of Arab territories in violation of the Charter of the United Nations, the principles of international law and repeated United Nations resolutions”<sup>233</sup>. Ten days later, the General Assembly adopted Resolution 3525 which “[c]ondemn[ed], in particular ... [t]he annexation of parts of the occupied territories” and “[d]emand[ed] that Israel desist forthwith from *the annexation and colonization of the occupied Arab territories ...*”<sup>234</sup>.

3.49. The General Assembly adopted further resolutions “[c]ondemn[ing] ... the annexation of parts of the occupied territories” and referring to Israel’s “pursuit of the policies of annexation and colonization” in the occupied territories each year between 1976 and 1979<sup>235</sup>.

3.50. On 22 March 1979, the Security Council adopted resolution 446, which, like prior resolutions, “[s]trongly deplore[d] the failure by Israel to abide with” the previous Security Council Resolutions and General Assembly Resolutions regarding the annexation of Jerusalem and other occupied Palestinian territories<sup>236</sup>. The resolution:

*“Call[ed] once more upon Israel, as the occupying Power, to abide scrupulously by the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, 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”*<sup>237</sup>.

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<sup>233</sup> General Assembly, Resolution 3414 (XXX), 5 December 1975, para. 2.

<sup>234</sup> General Assembly, Resolution 3525 A (XXX), 15 December 1975, paras. 5 and 9 (emphasis added).

<sup>235</sup> General Assembly, Resolutions 31/106 C, 16 December 1976; 32/91 C, 13 December 1977; 33/113 C, 18 December 1978; 34/90 A, 12 December 1979.

<sup>236</sup> Security Council, Resolution 446 (1979), 22 March 1979.

<sup>237</sup> *Ibid*, para. 3.

#### D. ISRAEL'S ENACTMENT OF LAWS DECLARING JERUSALEM TO BE ITS "COMPLETE AND UNITED" CAPITAL

3.51. Instead of complying with international law and United Nations resolutions, Israel took legislative steps to make permanent its annexation of Jerusalem. In 1980, it enacted legislation which formally declared that Jerusalem "complete and unified", that is, East and West, is the "capital of Israel", and which expressly embedded that status within Israel's quasi-constitutional law<sup>238</sup>.

3.52. Following the introduction of this legislation in the Knesset, on 30 June 1980 the Security Council adopted resolution 476, which "[d]eplor[ed] the persistence of Israel in changing the ... institutional structure and the status of the Holy City of Jerusalem". The Security Council declared that it was "[g]ravely concerned about the legislative steps initiated in the Israeli Knesset with the aim of changing the character and status of the Holy City of Jerusalem". It urgently called on Israel to abide by the Council's prior resolutions and immediately cease the legislative process leading to the adoption of measures affecting the status of Jerusalem<sup>239</sup>.

3.53. Despite the unequivocal demand of the Security Council, less than six weeks later, on 5 August 1980, the Knesset enacted the Basic Law: Jerusalem, Capital of Israel (1980) ("the 1980 Basic Law"). Article 1 of the 1980 Basic Law provided:

"The complete and united Jerusalem is the capital of Israel."<sup>240</sup>

3.54. The purpose of the 1980 Basic Law, according to the members of the Knesset who proposed and sponsored it, was to secure "both the status of Jerusalem as the capital of Israel and the unification and integrity of Greater Jerusalem"<sup>241</sup>. As explained by the Supreme Court of Israel:

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<sup>238</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2018, A/73/447, para. 35 (<https://undocs.org/A/73/447>).

<sup>239</sup> Security Council, Resolution 476 (1980), 30 June 1980.

<sup>240</sup> Basic Law: Jerusalem, Capital of Israel, *Israeli Collection of Regulations*, 5740-1980 (Vol. II, Annex 7).

<sup>241</sup> Quoted in B'Tselem, *The Israeli Information Center for Human Rights in the Occupied Territories, A Policy of Discrimination, Land Expropriation, Planning and Building in East Jerusalem*, Jerusalem, January 1997, p. 12, fn 10 (<https://tinyurl.com/2ekthfw9>).

“The legislation of the State of Israel and the rulings of this Court establish that Jerusalem, entire and undivided, is the capital of Israel … and the law, jurisdiction, and administration of the State of Israel apply to it.”<sup>242</sup>

3.55. According to the Supreme Court of Israel, these laws:

“have established the sovereignty of the State of Israel over whole and united Jerusalem, as the capital of Israel … ”<sup>243</sup>.

3.56. Israel’s enactment of the 1980 Basic Law triggered further rounds of international condemnation. On 20 August 1980, the Security Council adopted resolution 478, which “[c]ensure[d] in the strongest terms the enactment by Israel of the ‘basic law’ on Jerusalem and the refusal to comply with relevant Security Council resolutions”. The resolution affirmed that “the enactment of the ‘basic law’ by Israel constitutes a violation of international law” and determined that “all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem, and in particular the recent ‘basic law’ on Jerusalem, are null and void and must be rescinded forthwith”<sup>244</sup>.

3.57. On 10 December 1981, the General Assembly adopted resolution 36/120, which “demand[ed] that Israel should fully comply with all the resolutions of the United Nations relevant to the historic character of the Holy City of Jerusalem, in particular Security Council resolutions 476 (1980) of 30 June 1980 and 478 (1980) of 20 August 1980” and “reject[ed] the enactment of a ‘Basic Law’ by the Israel Knesset proclaiming Jerusalem as the capital of Israel”<sup>245</sup>. The resolution further demanded that Israel withdraw from all of the Palestinian territories it seized by military force in 1967, including East Jerusalem.

3.58. On 19 December 1983, the General Assembly adopted resolution 38/180 which “[d]eclare[d] all Israeli policies and practices of, or aimed at, *annexation* of the occupied Palestinian and other Arab territories, *including Jerusalem*, to be illegal and in violation of international law and of the relevant United Nations resolutions” and “[d]eclare[d] once more that Israel’s decision to impose its laws, jurisdiction and administration on the Holy City of Jerusalem is illegal and therefore

<sup>242</sup> H.C.J. 4185/90 (1993), 47(5) PD 221, in *Catholic University Law Review*, Vol. 45, 1996, p. 938 (emphasis added).

<sup>243</sup> *Ibid.*, p. 920.

<sup>244</sup> Security Council, Resolution 478 (1980), 20 August 1980, paras. 2-3.

<sup>245</sup> General Assembly, Resolution 36/120 D, 10 December 1981, para. 6.

null and void and has no validity whatsoever”<sup>246</sup>. The General Assembly also adopted resolutions which “[d]etermine[d] that *Israel’s decision to annex Jerusalem* and to declare it as its ‘capital’ as well as the measures to alter its physical character, demographic composition, institutional structure and status are null and void” and “demand[ed] that they be rescinded immediately” each year between 1984 and 1991<sup>247</sup>.

3.59. Each year between 1992 and 2000 the General Assembly adopted resolutions which stated that the General Assembly “[d]etermine[d] that the decision of Israel to impose its laws, jurisdiction and administration on the Holy City of Jerusalem is illegal and therefore null and void and has no validity whatsoever”<sup>248</sup>.

3.60. As before, Israel responded to the resolutions of the Security Council and General Assembly by doing precisely the opposite of what was demanded. Instead of repealing the 1980 Basic Law, it enacted new legislative measures aimed at further entrenching its annexation of East Jerusalem and assertion of “sovereignty” over the entire Holy City. In particular, on 27 November 2000, the Knesset passed legislation which amended the 1980 Basic Law (the “2000 Basic Law Amendment”) for this very purpose. As made clear in Amendment 1, the objective of this legislation was to make permanent the annexation of Jerusalem and prevent its return, or any part of it, to Palestine: it was expressly designed to “prohibit the transfer of any sort of governmental or municipal authority, relating to the territory of Jerusalem, to *any body, which does not act by force of a law of the State of Israel.*”<sup>249</sup>

3.61. The 2000 Amendment introduced a new Article 5 (headed “Area of the jurisdiction of Jerusalem”) into the 1980 Basic Law. This new provision provided:

“the limits of Jerusalem, for the purpose of this Basic Law, the whole area described in the addendum to the declaration of the expansion of the limits

<sup>246</sup> General Assembly, Resolution 38/180 A, 19 December 1983, para. 4 (emphasis added) and Resolution 38/180 C, 19 December 1983, para. 1.

<sup>247</sup> General Assembly, Resolutions 39/146, 14 December 1984; 39/146, 14 December 1984; 40/168, 16 December 1985; 41/162, 5 December 1986; 42/209, 11 December 1987; 43/54, 6 December 1988; 44/40, 4 December 1989; 45/83, 13 December 1990; 46/82, 16 December 1991 (emphasis added).

<sup>248</sup> General Assembly, Resolution 49/87, 16 December 1994. See also General Assembly, Resolutions 48/59, 14 December 1993; 50/22, 4 December 1995; 51/27, 4 December 1996; 52/53, 9 December 1997; 53/37, 2 December 1998; 54/37, 1 December 1999; 55/50, 1 December 2000.

<sup>249</sup> Basic Law: Jerusalem The Capital of Israel, Amendment No. 1 adopted on 7 December 2020 (emphasis added) (<https://tinyurl.com/3sxunx7j>).

of the Jerusalem municipality of 20 Sivan 5727 (June 28, 1967), that was issued under the Municipalities Ordinance.”<sup>250</sup>

3.62. Article 5 therefore established by law, that “Jerusalem” – which the 1980 Basic Law proclaimed to be the “complete and united” capital of Israel – consisted of the *entirety* of the territory which was incorporated into the Jerusalem Municipality by the 28 June 1967 Ordinance issued by the Minister of the Interior, *i.e.*, both West and East Jerusalem and environs.

3.63. On 3 December 2001, the General Assembly once again adopted a resolution which “[d]etermine[d] that the decision of Israel to impose its laws, jurisdiction and administration on the Holy City of Jerusalem is illegal and therefore null and void and has no validity whatsoever”<sup>251</sup>.

3.64. One year later, on 3 December 2002, the General Assembly reacted to Israel’s continued assertion of “sovereignty” over Jerusalem by adopting resolution 57/111. It began by recalling the General Assembly’s previous resolutions which “determined that all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purported to alter the character and status of the Holy City of Jerusalem, in particular the so-called ‘Basic Law’ on Jerusalem and the proclamation of Jerusalem as the capital of Israel, were null and void and must be rescinded forthwith”. The resolution went on to “[r]eiterate[] its determination that any actions taken by Israel to impose its laws, jurisdiction and administration on the Holy City of Jerusalem are illegal and therefore null and void and have no validity whatsoever”<sup>252</sup>. The General Assembly adopted further resolutions which repeated these affirmations and demands each year between 2003 and 2018<sup>253</sup>.

3.65. Nevertheless, in 2018, Israel enacted additional amendments aimed at obstructing the return of any part of Jerusalem to Palestine. In that year, Article 7 of the 1980 Basic Law was amended by providing that Article 6 (“no powers concerning the limits of the Jerusalem Municipality area … shall be transferred to

<sup>250</sup> Basic Law: Jerusalem The Capital of Israel, as amended, Article 5 (<https://tinyurl.com/3sxunx7j>). See also Vol. II, Annex 7.

<sup>251</sup> General Assembly, Resolution 56/31, 3 December 2001, para. 1.

<sup>252</sup> General Assembly, Resolution 57/111, 3 December 2002, para. 1.

<sup>253</sup> General Assembly, Resolutions 58/22, 3 December 2003; 59/32, 1 December 2004; 60/41, 1 December 2005; 61/26, 1 December 2006; 62/84, 10 December 2007; 63/30, 26 November 2008; 64/20, 2 December 2009; 65/17, 30 November 2010; 66/18, 30 November 2011; 67/25, 30 November 2012; 68/16, 26 November 2013; 69/24, 10 November 2014; 70/16, 24 November 2015; 71/25, 16 December 2016; 72/15, 7 December 2017; and 73/22, 4 December 2018.

a foreign political or governing power, or to another similar foreign authority, whether permanently or for a given period") could only be repealed by a Basic Law passed by a supermajority (80 votes) of the Knesset, rather than a simple majority (61 votes)<sup>254</sup>. Article 3 of the so-called Nation State Law further emphasized and embedded in Israeli law that: "[t]he complete and united Jerusalem is the capital of Israel."<sup>255</sup>

3.66. Following these 2018 amendments, the High Commissioner for Human Rights observed: "In qualifying 'the complete and undivided city of Jerusalem' as the capital of Israel, the Nation State Law adopted on 19 July 2018 reaffirms the illegal annexation of East Jerusalem, in violation of various Security Council resolutions." The High Commissioner continued:

"In stating that 'the State of Israel considers the development of Jewish settlement to be a national value and will act to further encourage and promote its establishment and consolidation', the law appears to justify the expansion of Israeli settlements in East Jerusalem, considered by Israel as part of its territory."<sup>256</sup>

3.67. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 similarly found that the 2018 Basic Law was one of several "[r]ecent legislative initiatives at the Israeli Knesset" which were "aimed at consolidating Israeli sovereignty over East Jerusalem and resetting the 'demographic balance' in the city" and which are intended "to ensure that its de jure annexation of East Jerusalem is irreversible"<sup>257</sup>.

3.68. On 1 December 2021, the General Assembly adopted resolution 76/12. After recalling many of its previous resolutions regarding Jerusalem, the General

<sup>254</sup> As the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 observed in 2018: "The Basic Law previously provided that such a transfer could occur with a simple majority vote of the Knesset. The amendment would make it more difficult to obtain Knesset support for any peace agreement that would recognize Palestinian sovereignty over East Jerusalem." (Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2018, A/73/447, para. 45 (<https://undocs.org/A/73/447>)).

<sup>255</sup> Basic Law: Israel – The Nation State of the Jewish People, 19 July 2018 (<https://tinyurl.com/yc2r5he3>).

<sup>256</sup> Report of the United Nations High Commissioner for Human Rights, "Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan", 30 January 2019, A/HRC/40/42, para. 13 (footnotes omitted) (<https://tinyurl.com/m93jkbn>).

<sup>257</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2018, A/73/447, paras. 44 (footnote omitted) and 37 respectively (<https://undocs.org/A/73/447>).

Assembly “[r]eiterate[d] its determination that any actions taken by Israel, the occupying Power, to impose its laws, jurisdiction and administration on the Holy City of Jerusalem are illegal and therefore null and void and have no validity whatsoever, and call[ed] upon Israel to immediately cease all such illegal and unilateral measures”<sup>258</sup>.

3.69. Despite extensive and repeated condemnation and demands for cessation of violations and respect for international law by the General Assembly and the Security Council, “Israel remains non-compliant with all United Nations resolutions on Jerusalem”<sup>259</sup>.

## **II. Declarations by Senior Israeli Government Officials Asserting Israel’s “Sovereignty” over Jerusalem**

3.70. Successive Israeli governments from 1967 to the present have asserted that the entirety of the Holy City of Jerusalem (i.e., both West and East Jerusalem) is under Israeli “sovereignty” as a result of Israel’s military conquest of West and East Jerusalem and the laws and ordinances described above. Following are some examples; many more can be supplied:

(a) 29 December 1969, Prime Minister Golda Meir:

“United Jerusalem will remain the capital of Israel ...”<sup>260</sup>

(b) 31 March 1976, Deputy Prime Minister and Foreign Minister Yigal Allon:

“Jerusalem, eternal capital of the Jewish people, is an inseparable part of the sovereign State of Israel, and will never again be divided. ... [U]nited Jerusalem, capital of the State of Israel under Israeli sovereignty – is a fact unassailable by any party.”<sup>261</sup>

(c) 14 October 1990, the Israeli Cabinet instructed the Deputy Prime Minister and Foreign Minister of Israel to inform the Secretary-General:

<sup>258</sup> General Assembly, Resolution 76/12, 1 December 2021, para. 1.

<sup>259</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 23 October 2017, A/72/556, para. 46 (<https://undocs.org/A/72/556>).

<sup>260</sup> Ministry of Foreign Affairs, “Statement to the Knesset by Prime Minister Golda Meir”, 29 December 1969 (<https://tinyurl.com/593wmkyv>).

<sup>261</sup> Ministry of Foreign Affairs, “Statement in the Knesset by Deputy Premier and Foreign Minister Allon on the US statement in the Security Council”, 31 March 1976 (<https://tinyurl.com/2s3eppu8>).

*“Jerusalem is not, in any part, ‘occupied territory’; it is the sovereign capital of the State of Israel. Therefore, there is no room for any involvement on the part of the United Nations in any matter relating to Jerusalem”<sup>262</sup>.*

- (d) July 1992, the Government of Israel, led by Prime Minister Yitzhak Rabin, published its official “Basic Policy Guidelines of the 25<sup>th</sup> Government”:

*“Jerusalem will remain united, wholly under Israeli sovereignty.*

.....

*United Jerusalem – the eternal capital of Israel – will remain *united and totally under Israel sovereignty.*”<sup>263</sup>*

- (e) 22 November 1995, the Government of Israel, led by Prime Minister Shimon Peres, published its “Basic Guidelines of the Israel Government”:

*“United Jerusalem, the eternal capital of Israel, will remain *united and totally under Israel sovereignty.*”<sup>264</sup>*

- (f) June 1996, the Government of Israel, led by Prime Minister Benjamin Netanyahu, published its “Guidelines of the Government of Israel”:

*“1. Jerusalem, the capital of Israel, is one city, whole and undivided, and will remain forever under Israel’s sovereignty.*

.....

*3. The Government will thwart any attempt to undermine the unity of Jerusalem, and will prevent any action which is counter to *Israel’s exclusive sovereignty over the city.*”<sup>265</sup>*

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<sup>262</sup> Statement adopted by the Israeli Cabinet on 14 October 1990, quoted in the Report Submitted to the Security Council by the Secretary-General in Accordance with Resolution 672 (1990), 31 October 1990, at p. 3 (emphasis added) (<https://tinyurl.com/2fzdebbz>).

<sup>263</sup> Basic Policy Guidelines of the 25<sup>th</sup> Government – July 1992, 13 July 1992, preamble and section 4 (emphasis added) (<https://tinyurl.com/2p89uhj5>).

<sup>264</sup> Basic Policy Guidelines of the Israel Government – November 1995, 22 November 1995, para. 3.1 (emphasis added) (<https://tinyurl.com/2y8czrez>).

<sup>265</sup> Guidelines of the Government of Israel – June 1996, 18 June 1996 (emphasis added) (<https://tinyurl.com/k6pfx9cr>).

(g) July 1999, the Government of Israel, led by Prime Minister Ehud Barak, published its “Guidelines for the Government of Israel”:

“Greater Jerusalem, the eternal capital of Israel, will remain *united and complete under the sovereignty of Israel.*”<sup>266</sup>

(h) February 2003, the Government of Israel, led by Prime Minister Ariel Sharon, published its “Guidelines for the Government of Israel”:

“To ensure the status of Jerusalem as the capital of Israel.”<sup>267</sup>

(i) May 2006, the Government of Israel, led by Prime Minister Ehud Olmert, published its “Guidelines for the Government of Israel”:

“It will ... act to transform Jerusalem into a political, cultural and business center, worthy of its status as the capital of Israel and the capital of the Jewish people.”<sup>268</sup>

(j) 19 July 2009, Prime Minister Benjamin Netanyahu:

“I would like to re-emphasize that the united Jerusalem is the capital of the Jewish people and of the State of Israel. Our sovereignty over it is [sic] cannot be challenged; this means – *inter alia* – that residents of Jerusalem may purchase apartments in all parts of the city. This has been the policy of all Israeli governments ...”<sup>269</sup>.

(k) 8 May 2022, Prime Minister Naftali Bennett:

“[A]ll decisions regarding ... Jerusalem will be made by the Government of Israel, which is sovereign in the city, without any extraneous considerations whatsoever. We certainly reject any foreign involvement in the decisions of the Government of Israel [regarding Jerusalem]. ... The united Jerusalem is the capital of only one country – the State of Israel.”<sup>270</sup>

<sup>266</sup> Guidelines of the Government of Israel – July 1999, 6 July 1999, para. 3.1 (emphasis added) (<https://tinyurl.com/bpavc4zw>).

<sup>267</sup> Basic Guidelines of the 30th Government of Israel, February 2003 (<https://tinyurl.com/2c8exx2b>).

<sup>268</sup> Basic Guidelines of the 31st Government of Israel (<https://tinyurl.com/spmcyds7>).

<sup>269</sup> Israel Prime Minister’s Office, “Statement by PM Netanyahu at the Weekly Cabinet Meeting”, 19 July 2009 (<https://tinyurl.com/y7fjcbd5>).

<sup>270</sup> Ministry of Foreign Affairs, “PM Bennett’s remarks at the start of the weekly Cabinet meeting”, 8 May 2022 (<https://tinyurl.com/4552f6z4>).

- (l) 31 December 2022, Prime Minister Benjamin Netanyahu, condemning the General Assembly's request for an Advisory Opinion from this Court as a "despicable decision":

"The Jewish people are not occupiers in their own land *nor occupiers in our eternal capital Jerusalem* and no U.N. resolution can distort that historical truth."<sup>271</sup>

3.71. These repeated statements by Israel's highest governmental authorities over the past five decades – and many others like them that could be added to this already long list – demonstrate that, in the view of the Israeli government itself, Israel has unlawfully annexed Jerusalem and its environs and declared itself "sovereign" over the entirety of the Holy City. Israel's conduct indisputably violates the fundamental rule of international law enshrined in the United Nations Charter that no State may acquire territory by military conquest or by belligerent occupation.

### **III. Israel's Construction of Settlements in, and Displacement of Palestinians from, East Jerusalem and its Environs**

3.72. In order to consolidate and permanently entrench its control over the Holy City of Jerusalem, Israel has engaged in an extensive programme of constructing Israeli settlements in occupied East Jerusalem, which it has populated with more than 230,000 Israeli settlers. It has also adopted an array of policies and practices whose purpose and effect is to drive Palestinians from their homes in East Jerusalem, thereby changing the demographic composition of the City.

#### **A. CONSTRUCTION OF SETTLEMENTS**

##### *1. Israel's Illegal Construction of Settlements in East Jerusalem*

3.73. As the Court explained in the *Wall* Opinion, Article 49, paragraph 6, of the Fourth Geneva Convention "prohibits ... any measures taken by an occupying Power in order to organize or encourage transfers of parts of its own population into the occupied territory."<sup>272</sup> This prohibition serves, amongst other things, to prevent the occupying Power from using the transportation and implantation of its own

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<sup>271</sup> "Netanyahu says Israel not bound by 'despicable' U.N. vote", *Reuters*, 31 December 2022 (emphasis added) (<https://tinyurl.com/3w3ec5a4>).

<sup>272</sup> *Wall* Opinion, p. 184, para. 120.

population as a means of gaining or consolidating permanent control over the occupied territory, as colonial powers had done<sup>273</sup>.

3.74. Despite that prohibition, since 1967, Israel has engaged in extensive colonization in and around East Jerusalem. There is no doubt as to the illegality of those settlements. In the *Wall* Opinion, the Court concluded that: “the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law.”<sup>274</sup>

3.75. Nor is there any doubt as to Israel’s purpose in constructing these settlements in East Jerusalem. As the Special Rapporteur has explained, this activity has been carried out in pursuit of “the objective of … the perpetuation by Israel of its annexation of East Jerusalem”<sup>275</sup>. In particular, “the consistent policy of Israel since 1967 has been to secure an overwhelming Israeli Jewish majority in Jerusalem, achieved through settler implantation …”<sup>276</sup>. In this regard:

“Early in the occupation, Israeli national and municipal leaders adopted two official policy objectives aimed at sustaining permanent Israeli annexation of East Jerusalem: to expand the size of the city, and thereby increase its absorptive capacity for Israeli Jewish settlement; and to establish a targeted ‘demographic balance’ of 70 per cent Jewish Israelis and 30 per cent Palestinians in the city.”<sup>277</sup>

3.76. Israel’s policy of changing the demographic composition in East Jerusalem is illustrated by its “Jerusalem Master Plan”, which created a target of maintaining a Jewish demographic majority of a 60:40 ratio, after having failed to

<sup>273</sup> As Awn Al-Khasawneh and Ribot Hatano explained in a 1993 study for the United Nations Economic and Social Council: “Population transfer has been conducted with the effect or purpose of altering the demographic composition of a territory in accordance with policy objectives or prevailing ideology, particularly when that ideology or policy asserts the dominance of a certain group over another. The objective of population transfer can involve the acquisition or control of territory, military conquest or exploitation of an indigenous population or its resources.” (United Nations Economic and Social Council, “The Realisation of Economic, Social and Cultural Rights: The Human Rights Dimensions of Population Transfer, including the Implantation of Settlers”, 6 July 1993, E/CN.4/Sub.2/1993/17, para. 17). See also J. Pictet, *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, Geneva, ICRC, 1958, p. 283 (Article 49 (6)).

<sup>274</sup> *Wall* Opinion, p. 183, para. 120.

<sup>275</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2018, A/73/447, para. 37 (<https://undocs.org/A/73/447>).

<sup>276</sup> *Ibid.*, para. 38.

<sup>277</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2018, A/73/447, para. 38 (footnotes omitted) (<https://undocs.org/A/73/447>).

maintain an earlier target of 70:30<sup>278</sup>. It reflects a long-planned policy composed of numerous unlawful measures adopted by Israel in and around Jerusalem since 1967 that have led, in aggregate, to a complete alteration of the boundaries and demographic composition of the city.

3.77. Pursuant to that policy, Israel has constructed a total of 14 official settlements in East Jerusalem<sup>279</sup>. More than 230,000 Israelis currently live in these settlements, and the numbers continues to grow. As a result of the settlement programme, as of 2021 the population of the whole of Jerusalem was approximately 951,000, some 61 % of which was Israeli and 39 % of which was Palestinian<sup>280</sup>.

3.78. The policy to establish new Israeli settlements for the purpose of consolidating Israel's purported "sovereignty" over the Holy City was developed and implemented shortly after East Jerusalem was occupied by Israeli military forces in 1967. As the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the OPT, including East Jerusalem ("the Independent International Fact-Finding Mission") explained in 2013: "The Jerusalem 1968 Master Plan, and subsequent plans provide[d] for the building of a belt of 12 Israeli 'neighbourhoods' [i.e., settlements] enveloping and bisecting the Palestinian neighbourhoods in the city."<sup>281</sup> The number of settlements was later expanded to 14<sup>282</sup>.

3.79. The locations of the 14 Israeli settlements and the areas under their control are shown in **Figure 3.3** at p. 81 below. The year of establishment and the most recent available data on approximate population of each of these settlements are provided in footnote, below<sup>283</sup>.

<sup>278</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 12 August 2022, A/HRC/49/87, para. 44 (<https://undocs.org/A/HRC/49/87>).

<sup>279</sup> Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 14 September 2022, A/77/328, para. 15 (<https://undocs.org/A/77/328>).

<sup>280</sup> Jerusalem Institute for Policy Research, *Jerusalem Facts and Trends* 2022, pp. 18-20 (<https://tinyurl.com/5h463scu>).

<sup>281</sup> Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, 7 February 2013, A/HRC/22/63, Annex I, p. 26 (footnote omitted) (<https://undocs.org/A/HRC/22/63>).

<sup>282</sup> See UNOCHA, *Occupied Palestinian Territory Humanitarian Atlas* 2019, p. 49 (<https://tinyurl.com/3zctxwky>).

<sup>283</sup> Giv'at Ha-Mivtar (1968), population data n/a; Giv'at Shapira (1968), population data n/a; Jewish Quarter (1968), population 2,960; Maalot Dafna East (1968), population 3,260; Ramat

3.80. Through its establishment of these settlements, Israel has dramatically altered the demographic composition of East Jerusalem. In 1967, there were no Israelis living in East Jerusalem<sup>284</sup>. By 1993, after the 14 new Israeli settlements were established<sup>285</sup>, more than 160,000 settlers were transferred to them<sup>286</sup>. Since then, the number of Israeli settlers in occupied East Jerusalem has grown rapidly, along with the expansion of the settlements themselves. In the ten-year period between 1992 and 2002, the number of settlers rose to approximately 176,000<sup>287</sup>.

3.81. By 1997, as shown in **Figure 3.4** at p. 83 below, a United Nations map, Israeli settlements not only filled most of East Jerusalem but effectively surrounded it, largely cutting it off from the rest of the West Bank.

3.82. In the last two decades, the rate of settlement construction in occupied East Jerusalem, and the number of Israeli settlers residing in those settlements, has increased rapidly. In 2009, the Special Rapporteur found that “tenders for new settlement building increased by 550 per cent from 2007” and that “[s]ettlement building around Jerusalem has increased by a factor of 38”<sup>288</sup>. By 2015, the settler population had increased to approximately 208,000<sup>289</sup>. In 2017, the Special

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Eshkol West (1968), population 1,985; Atarot Industrial Area (1970), population 0; Gillo (1971), population 30,820; Neve Ya’akov (1972), population 21,780; East Talpiyyot (1973), population 14,380; Ramot Allon (1973), population 44,980; Ramat Shlomo (1973), population 15,070; Pisgat Ze’ev (1985), population 41,210; Giv’at Ha-Matos (1991), population data n/a; Har Homa (1991), population 19,950. (See UNOCHA, *Occupied Palestinian Territory Humanitarian Atlas 2019*, p. 49 (<https://tinyurl.com/3zctxwky>).

<sup>284</sup> United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People, *The Status of Jerusalem*, New York, United Nations, 1997, p. 19 (<https://tinyurl.com/24nbftype>).

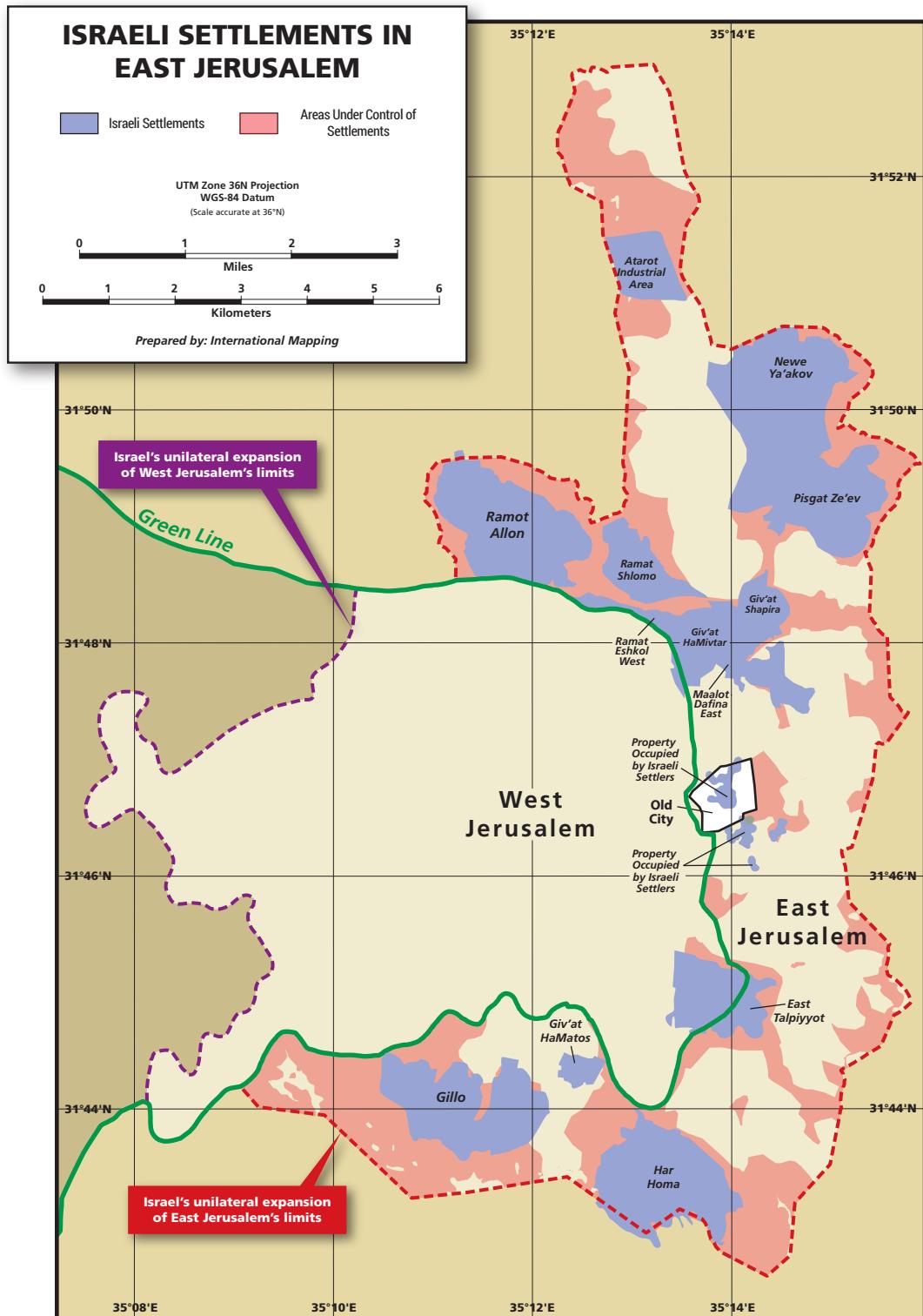
<sup>285</sup> All of the existing 14 settlements in East Jerusalem were established before 1993. See UNOCHA, *Occupied Palestinian Territory Humanitarian Atlas 2019*, p. 49 (<https://tinyurl.com/3zctxwky>).

<sup>286</sup> United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People, *The Status of Jerusalem*, New York, United Nations, 1997, p. 19 (<https://tinyurl.com/24nbftype>).

<sup>287</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied by Israel since 1967, 25 August 2009, A/64/328, para. 41 (<https://undocs.org/A/64/328>).

<sup>288</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied by Israel since 1967, 25 August 2009, A/64/328, para. 39 (footnote omitted) (<https://undocs.org/A/64/328>).

<sup>289</sup> Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, 13 April 2017, A/HRC/34/39, para. 11 (<https://undocs.org/A/HRC/34/39>).



Source: United Nations' Office for the Coordination of Humanitarian Affairs, (OCHA)  
<https://www.ochaopt.org/content/west-bank-access-restrictions-may-2023>

Figure 3.3



## "GREATER" JERUSALEM AREA

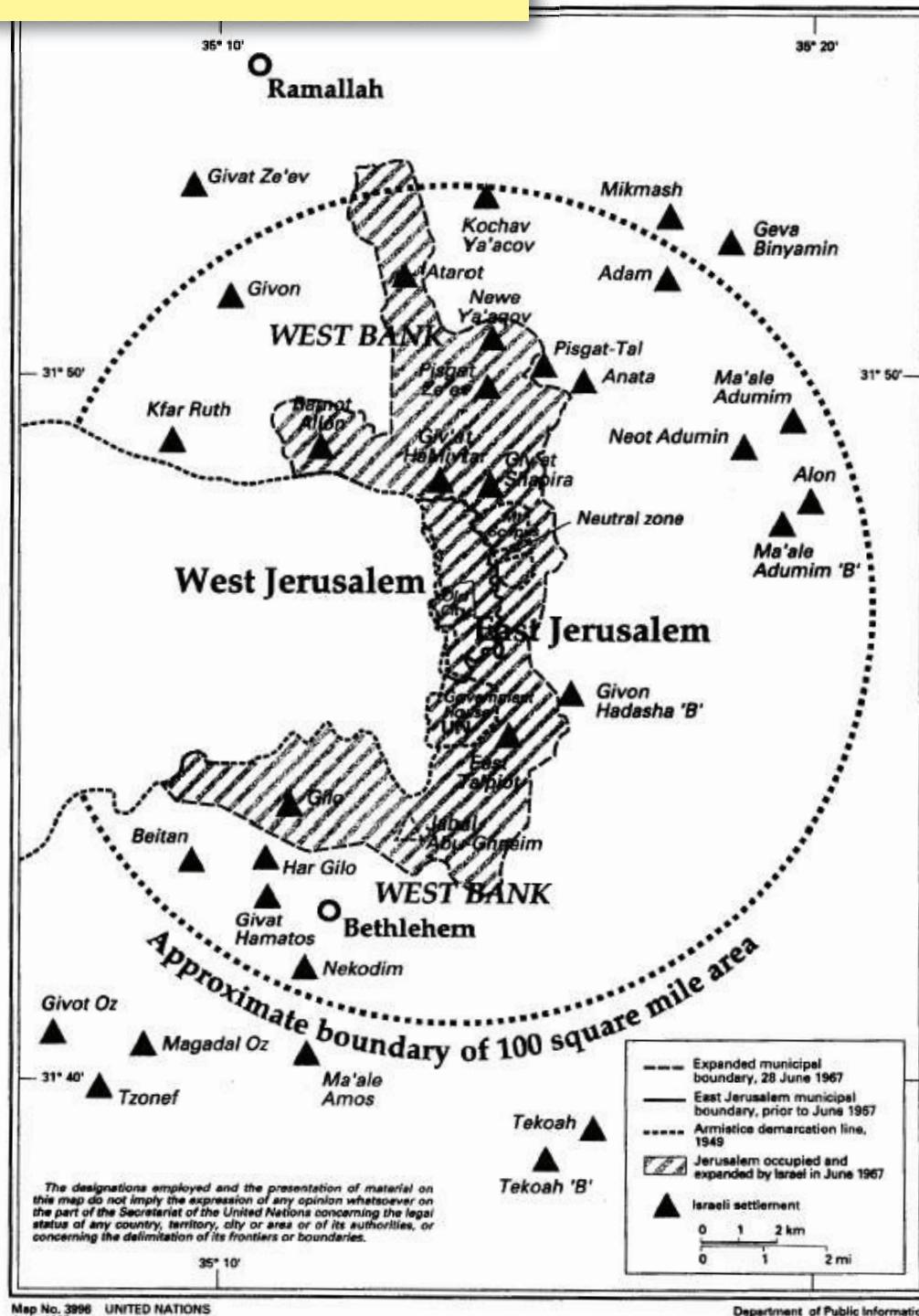


Figure 3.4



Rapporteur observed that “[e]very Israeli government since 1967 has left office with more settlers living in the occupied territory than when it assumed office.”<sup>290</sup>

3.83. In 2021, a report by the European Union concluded that there had been “[a] stark increase in the advancement of settlement plans … since 2017, with a continuous rise since 2019.” The report found that 2021 had seen “an even higher rate of settlement unit advancements in the West Bank and East Jerusalem … enforcing the trend of continuously increasing settlement expansion on occupied Palestinian territories.”<sup>291</sup> The following year the European Union reported that “[t]he number of settlement plans and tenders advanced in 2022 was higher than in the previous year … In 2022, 23,586 units were advanced in East Jerusalem …”<sup>292</sup>.

3.84. As of July 2022, there were more than 230,000 Israelis settlers residing in East Jerusalem<sup>293</sup>. And in early 2023, the number of Israeli settlers surpassed 233,000<sup>294</sup>.

3.85. These advisory proceedings before the Court have not diminished Israel’s appetite for constructing more settlements in East Jerusalem. On 22 March 2023, for example, Israel published tenders for 89 new housing units in East Jerusalem<sup>295</sup>. Less than two weeks later, on 3 April 2023, Israeli authorities advanced plans to construct a total of 6,500 additional housing units in existing settlements in East Jerusalem<sup>296</sup>.

3.86. In parallel with promoting a dramatic increase in the size of the settler population, Israel has restricted the growth of Palestinian neighbourhoods in occupied East Jerusalem, in order to limit the number of Palestinians living in the Holy City. The locations of the settlements in and around East Jerusalem have been

<sup>290</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 23 October 2017, A/72/556, para. 50 (<https://undocs.org/A/72/556>).

<sup>291</sup> European Union, Office of the European Union Representative (West Bank and Gaza Strip, UNRWA), *2021 Report on Israeli settlements in the occupied West Bank, including East Jerusalem*, 20 July 2022, pp. 1 and 6 (<https://tinyurl.com/4cx8tt6u>).

<sup>292</sup> European Union, Office of the European Union Representative (West Bank and Gaza Strip, UNRWA), *2022 Report on Israeli settlements in the occupied West Bank, including East Jerusalem*, 15 May 2023, p. 1 (footnote omitted) (<https://tinyurl.com/mwn34d2j>).

<sup>293</sup> European Union, Office of the European Union Representative (West Bank and Gaza Strip, UNRAW), 2021 Report on Israeli settlements in the occupied West Bank, including East Jerusalem, 20 July 2022, p. 2 (<https://tinyurl.com/5n6echjm>).

<sup>294</sup> Peace Now, *Settlements Map 2023*, 5 January 2023, p. 2 (<https://tinyurl.com/2p97bz6p>).

<sup>295</sup> Peace Now, *Tenders were published for 1,029 housing units: 940 in the West Bank, and 89 in East Jerusalem*, 24 March 2023 (<https://tinyurl.com/5n92ye7a>).

<sup>296</sup> “Israeli Authorities Advance Plans for some 6500 Housing Units in Settlements across East Jerusalem”, *Ir Amim*, 3 April 2023 (<https://tinyurl.com/yckuamu8>). See also Foundation for Middle East Peace, *Settlement & Annexation Report*, 7 April 2023 (<https://tinyurl.com/yxf43962>).

selected with the specific objective of blocking the expansion of Palestinian communities and fracturing the connections between them, as well as their connections with other Palestinian areas in the West Bank. As the Special Rapporteur has explained: “[t]he spatial placement of the Israeli settlements badly fragments Palestinian contiguity in East Jerusalem and the West Bank.” In particular, as shown above in **Figures 3.3 and 3.4**, Israeli settlements in East Jerusalem “are located primarily around the northern, eastern and southern perimeters of the city, blocking any Palestinian territorial continuity with the West Bank.”<sup>297</sup>

3.87. The Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel (“the Independent International Commission of Inquiry”) found that:

“[a]n outer layer of settlements, beyond the municipal boundaries of Jerusalem, has also contributed to severing the geographical contiguity between East Jerusalem and the rest of the occupied West Bank. This includes the plan for the E1 area in eastern Jerusalem (outside the municipal boundary), intended to reinforce the settlements in the Ma’ale Adumim area and connect them with Jerusalem, which would divide the West Bank into two separate entities.”<sup>298</sup>

3.88. **Figure 3.5** at p. 87 below, shows how Israel’s so-called E1 settlement “block” serves to create Israeli contiguity all across the West Bank, from East Jerusalem to the Jordan River and the Dead Sea, by connecting Jerusalem to the Ma’ale Adumim settlement “block”, whose eastern limit abuts the Jordan Valley, which Israel has declared off limits to Palestinians.

3.89. While some of the settlements were situated so as to encircle East Jerusalem, others were established in the midst of Palestinian neighbourhoods. In 1997, the United Nations reported on “the increasing movement of Jewish settlers into established Arab neighbourhoods”. This “was seen not only as an encroachment on the demographic integrity of the area but also as part of a broader

<sup>297</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 29 July 2021, A/HRC/47/57, para. 55 (<https://undocs.org/A/HRC/47/57>).

<sup>298</sup> Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 14 September 2022, A/77/328, para. 15 (footnote omitted) ([https://www.un.org/unispal/wp-content/uploads/2022/10/A.77.328\\_140922.pdf](https://www.un.org/unispal/wp-content/uploads/2022/10/A.77.328_140922.pdf)).



Source: United Nations' Office for the Coordination of Humanitarian Affairs, (OCHA)  
<https://reliefweb.int/map/occupied-palestinian-territory/occupied-palestinian-territory-settlement-jerusalem-area-december>

Figure 3.5



strategy of occupation”<sup>299</sup>. Since the publication of the United Nations report, Israeli settlement within established Palestinian neighbourhoods has continued to grow. In 2019, the Special Rapporteur observed that “[o]ccupied East Jerusalem is home to 3,500 Israelis living in settlements in the heart of Palestinian communities.”<sup>300</sup>

3.90. In addition to changing the demographic composition of East Jerusalem, the number and placement of Israeli settlements has had far-reaching adverse effects on the lives and livelihoods of the Palestinian population. In 2020, the Special Rapporteur found:

“The disfiguring human rights consequences of the settlements upon the Palestinians in East Jerusalem and the West Bank are pervasive. The United Nations High Commissioner for Human Rights has determined that the human rights violations emanating from the settlements include land confiscation and alienation, settler violence, discriminatory planning laws, the appropriation of natural resources, home demolitions, forcible population transfer, labour exploitation, forced evictions and displacement, physical confinement, discriminatory law enforcement and the imposition of a two-tiered system of unequal political, social and economic rights based on ethnicity.”<sup>301</sup>

3.91. “Above all,” the Special Rapporteur concluded:

“the settlements serve the broader goal of the Government of Israel of staking an impermissible sovereignty claim over parts of the occupied territory while simultaneously denying Palestinian self-determination ...”<sup>302</sup>

## *2. Israel’s Persistent Defiance of Demands to Cease the Illegal Construction of Settlements in East Jerusalem*

3.92. Israel’s establishment of settlements and implantation of Israeli citizens in East Jerusalem has been carried out in wilful defiance of repeated international

<sup>299</sup> United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People, *The Status of Jerusalem*, New York, United Nations, 1997, p. 18 (<https://tinyurl.com/24nbftype>).

<sup>300</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 30 May 2019, A/HRC/40/73, para. 19 (footnote omitted) (<https://undocs.org/A/HRC/40/73>).

<sup>301</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2020, A/75/532, para. 54.

<sup>302</sup> *Ibid.*

demands for it to cease this illegal activity. The Security Council has adopted resolutions explicitly demanding that Israel refrain from constructing settlements in East Jerusalem:

- (a) On 1 March 1980, the Security Council adopted resolution 465. The resolution “[d]eplor[ed] the decision of the Government of Israel officially to support Israeli settlements in the Palestinian and other Arab territories occupied since 1967” and stated that it was “[d]eeply concerned by the practices of the Israeli authorities in implementing that settlements policy in the occupied Arab territories, including Jerusalem, and its consequences for the local Arab and Palestinian population”. The Security Council “[d]etermin[ed] that all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof have no legal validity and that Israel’s policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Geneva Convention relative to the Protection of Civilian Persons in Time of War ...”. Further, the Security Council “[s]trongly deplore[d] the continuation and persistence of Israel in pursuing those policies and practices and call[ed] upon the Government and people of Israel to rescind those measures, to dismantle the existing settlements and in particular to cease, on an urgent basis, the establishment, construction and planning of settlements” in the occupied territory<sup>303</sup>.
- (b) Most recently, on 23 December 2016, the Security Council adopted resolution 2334 which referred to “the inadmissibility of the acquisition of territory by force” and “[c]ondemn[ed] all measures aimed at altering the demographic composition, character and status of the Palestinian Territory occupied since 1967, including East Jerusalem, including, *inter alia*, the construction and expansion of settlements, [and] transfer of Israeli settlers”. The resolution “[e]xpress[ed] grave concern that continuing Israeli settlement activities are dangerously imperilling the viability of the two-State solution based on the 1967 lines”. The resolution went on to state that the Security Council:
  - “1. *Reaffirms* that the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law and

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<sup>303</sup> Security Council, Resolution 465 (1980), 1 March 1980.

a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace;

2. *Reiterates its demand that Israel immediately and completely cease all settlement activities in the occupied Palestinian territory, including East Jerusalem, and that it fully respect all of its legal obligations in this regard*<sup>304</sup>.

3.93. In accordance with paragraph 12 of Resolution 2334, beginning in March 2017, the Secretary-General has reported to the Security Council on a quarterly basis on 26 occasions with respect to Israel’s compliance with the resolution, including the direction that Israel “immediately and completely” halt all of its settlement activities, and that “it fully respect all of its legal obligations in this regard.” On each of the 26 occasions, the Secretary-General has informed the Council that Israel has not complied with any of the directions as per the resolution. On 22 March 2023, for example, the Secretary General reported:

“Security Council resolution 2334 (2016) calls on Israel to ‘immediately and completely cease all settlement activities in the Occupied Palestinian Territory, including East Jerusalem and to ‘fully respect all of its legal obligations in this regard.’ Settlement activities have, nevertheless, continued during the reporting period.”<sup>305</sup>

3.94. Since 1971, the United Nations General Assembly has adopted no less than 164 resolutions relevant to the question of Palestine, with at least one resolution adopted in every annual session specifically condemning the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem. This is among the most frequently pronounced upon issues by the United Nations General Assembly, including in the context of its tenth emergency special session, which first convened in April 1997 with the express purpose of addressing illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory and in particular Israeli settlement activities in the City. These resolutions have designated the Israeli settlements as a flagrant violation of international law, they have called upon Israel to remove the existing settlements and to not build new ones, and they have deplored Israel’s repeated failure to comply with General Assembly and Security Council resolutions regarding the illegality of the

<sup>304</sup> Security Council, Resolution 2334 (2016), 23 December 2016.

<sup>305</sup> The Office of the United Nations Special Coordinator for the Middle East Peace Process, “Security Council Briefing on the Situation of the Middle East, Report of the Secretary-General on the Implementation of UN SCR 2334”, 22 March 2023 (<https://tinyurl.com/yckhcws3>).

settlements. Moreover, the resolutions of the tenth emergency special session of the General Assembly, beginning with resolution ES-10/3 of 15 July 1997, notably called on the High Contracting Parties to the Fourth Geneva Convention to “convene a conference on measures to enforce the Convention in the Occupied Palestinian Territory, including Jerusalem, and to ensure its respect, in accordance with common article 1”<sup>306</sup>.

3.95. In addition to the repeated condemnations by the Security Council and the General Assembly, in 2014 the Secretary-General published a report on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, describing them as unlawful:

“Ten years after the International Court of Justice issued its 2004 Advisory Opinion on the Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory, Israel continues to breach international human rights and humanitarian law by building and expanding the wall and the settlements in the West Bank, including East Jerusalem. Since 2004, several new settlements have been established, notably in East Jerusalem, and the settler population in the West Bank, including East Jerusalem, has increased from an estimated 415,000 settlers in 2004 to between 500,000 and 650,000 in 2012 (A/HRC/25/38, para. 8). This represents an increase of at least 85,000 settlers since the issuance by the International Court of Justice of its landmark opinion.”<sup>307</sup>

3.96. Contrary to international law, and the demands of the highest judicial and political organs of the United Nations, as well as the Human Rights Council and the Economic and Social Council, Israel has made clear that it will not cease building settlements or increasing the number of Israeli settlers in occupied East Jerusalem. In May 2021, for example, Prime Minister Netanyahu gave a televised address in which he stated:

“We firmly reject the pressure not to build in Jerusalem. To my regret, this pressure has been increasing of late ... Jerusalem is Israel’s capital and just as every nation builds in its capital and builds up its capital, we also have the right to build in Jerusalem and to build up Jerusalem. That is what we have done and that is what we will continue to do”<sup>308</sup>.

<sup>306</sup> General Assembly, Resolution ES-10/3, 15 July 1997, para. 10.

<sup>307</sup> Report of the Secretary-General, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan, 25 August 2014, A/69/348, para. 10 (footnotes omitted) (<https://undocs.org/A/69/348>).

<sup>308</sup> “Israel rejects pressure not to build in Jerusalem, as global concern mounts over planned evictions of Palestinians”, *ABC News*, 9 May 2021 (<https://tinyurl.com/mrxuh85z>).

3.97. In October 2022, the Secretary-General reported that, in the preceding year, “[s]ettlements advancements continued, further consolidating a ring of settlements around East Jerusalem.”<sup>309</sup> The Secretary-General’s report reflects the pace of that continued expansion, and its impact on Palestinians in East Jerusalem, describing for example how:

“[o]n 4 and 18 October and on 8 November, the Israeli Civil Administration held discussions on objections to two settlement housing plans for a total of nearly 3,500 units in the strategic E1 area immediately east of East Jerusalem. On 5 January, Israeli authorities published tenders for some 300 settlement housing units in the East Talpiot neighbourhood in East Jerusalem. On 10 and 24 January, the Jerusalem District Planning Committee advanced plans to build some 800 and 400 housing units, respectively, in the East Jerusalem settlement of Gillo. On 17 January, the same Committee advanced a plan for some 1,200 housing units next to Ramat Rachel – a significant number of which are intended for construction in East Jerusalem. These plans, if approved, would further isolate occupied East Jerusalem from the rest of the West Bank, sever the connection between the northern and southern West Bank and significantly undermine the possibility of a viable and contiguous Palestinian State.”<sup>310</sup>

3.98. Israel has given every indication that building and expanding its settlements and increasing the number of Israelis in occupied East Jerusalem, in the words of its Prime Minister, “is what we have done, and that is what we will continue to do.”<sup>311</sup> The settlements and the demographic engineering that they reflect – in an attempt to create an Israeli Jewish majority – serve the same purpose as Israel’s laws annexing Jerusalem and the public pronouncements of its Prime Ministers and other senior officials that it will never surrender “sovereignty” over the Holy City: to make permanent Israel’s acquisition of Jerusalem by military force, in 1948 and 1967.

## B. DISPLACEMENT OF PALESTINIANS

3.99. In tandem with the construction of settlements in occupied East Jerusalem to increase the number of Israelis living there, Israel has implemented a range of policies which have created a coercive and oppressive environment for

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<sup>309</sup> Report of the Secretary-General, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the Occupied Syrian Golan, 3 October 2022, A/77/493, para. 6.

<sup>310</sup> *Ibid.* (footnote omitted).

<sup>311</sup> “How a Jerusalem neighborhood reignited the Israeli-Palestinian conflict”, *The Washington Post*, 9 May 2021 (<https://tinyurl.com/4zahhyyx>).

Palestinian residents to bring about their displacement from the Holy City and its environs. As the Independent International Fact-Finding Mission found in 2013:

“In East Jerusalem, multiple factors, such as discriminatory building regulations, the large number of demolition orders, residence permit restrictions, the acute housing shortage and violence and intimidation from settlers, put enormous pressures on the city’s Palestinian population.”<sup>312</sup>

3.100. The Independent International Commission of Inquiry “emphasize[d] that the situation for Palestinians in occupied East Jerusalem continues to deteriorate as Israel expands its East Jerusalem settlements and applies measures and policies *intended to further reduce Palestinian space and coerce them to leave their homes.*”<sup>313</sup>

### *1. The Demolition of Palestinian Homes*

3.101. Since 1967 Israel has demolished a vast number of Palestinian properties in East Jerusalem. As data published by the United Nations Office for the Coordination of Humanitarian Affairs (“UNOCHA”) shows, these demolitions have resulted in the displacement of thousands of Palestinians from East Jerusalem and have directly affected the lives of many thousands more.<sup>314</sup>

3.102. To take the last three years as an example, UNOCHA reports<sup>315</sup> reveal that between 2020 and 2022, Israel demolished 508 Palestinian-owned properties in East Jerusalem, displacing 1,064 Palestinians (including 526 children), and directly affecting a further 3,028 individuals.

<sup>312</sup> Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, 7 February 2013, A/HRC/22/63, para. 68 (<https://undocs.org/A/HRC/22/63>).

<sup>313</sup> Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 14 September 2022, A/77/328, para. 81 (emphasis added) (<https://undocs.org/A/77/328>).

<sup>314</sup> UNOCHA, *Breakdown of data on demolition and displacement in the West Bank* (<https://tinyurl.com/y36ejsmj>). Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories similarly described how “[t]he constant and imminent threat of demolitions in East Jerusalem ... affect[s] some 100,000 Palestinians who are facing the possibility of demolitions and displacement.” (See Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, 20 September 2019, A/74/356, para. 27 (<https://undocs.org/A/74/356>)).

<sup>315</sup> See the figures contained in the UNOCHA, *West Bank Demolitions and Displacement: An Overview* reports published for each month in 2020, 2021 and 2022 (<https://tinyurl.com/35eu4b5>).

3.103. In 2020, the High Commissioner for Human Rights found that “increased settlement expansion … was mirrored by a sharp rise in demolitions in East Jerusalem”, which had seen a “record number of demolitions”<sup>316</sup>.

3.104. In 2021, the Special Committee to Investigate Israeli practices similarly reported that “[d]emolitions have increased … in comparison to 2019”, with “[e]ntire Palestinian communities … facing the risk of forcible transfer.”<sup>317</sup> In 2023, the High Commissioner for Human Rights explained that “[a]larming levels of demolition” of Palestinian-owned properties continued to take place in East Jerusalem<sup>318</sup>. The High Commissioner’s report described “the recent acceleration in the demolition of newly built Palestinian structures in East Jerusalem” and explained that “[t]he number of Palestinians in East Jerusalem who have been forced to self-demolish their properties is on the rise”<sup>319</sup>. The report explained that as of 31 October 2022 there were more than 4,200 “pending demolition and eviction orders against Palestinian structures, with the highest number of orders being in East Jerusalem”<sup>320</sup>.

## *2. The Forcible Displacement of Palestinians by Israeli Settlers*

3.105. Palestinians in East Jerusalem not only face demolition of their homes by Israeli authorities, but also forcible displacement by the Israeli courts at the behest of Israeli settlers. As the Special Rapporteur has explained:

“In addition to home demolitions, Palestinian residents of East Jerusalem are vulnerable to being forcibly evicted from their homes. … Israeli settler organizations seeking control of parts of East Jerusalem, particularly the Muslim and Christian areas of the old city, have launched eviction proceedings against Palestinian families.”<sup>321</sup>

<sup>316</sup> Report of the United Nations High Commissioner for Human Rights, “Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan”, 30 January 2020, A/HRC/43/67, para. 43 (<https://undocs.org/A/HRC/43/67>).

<sup>317</sup> Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, 29 September 2021, A/76/360, paras. 22-23 (<https://undocs.org/A/76/360>).

<sup>318</sup> Report of the United Nations High Commissioner for Human Rights, “Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan”, 15 March 2023, A/HRC/52/76, para. 26 (<https://undocs.org/A/HRC/52/76>).

<sup>319</sup> *Ibid.*, para. 32.

<sup>320</sup> *Ibid.*, para. 26 (footnote omitted).

<sup>321</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 13 April 2017, A/HRC/34/70, para. 15 (<https://undocs.org/A/HRC/34/70>).

3.106. In 2021, the Special Committee referred to “the worrying situation of Palestinians facing forced eviction in East Jerusalem.” It noted that the Jerusalem Magistrates Court had ordered the eviction of Palestinian families in the Batn al-Hawa area of Silwan in East Jerusalem, who would be replaced by settlers. The Special Committee observed:

“The majority of evictions in East Jerusalem have been initiated by ‘settler organizations’ and the claims are based on the Israeli Absentee Property Law and the Legal and Administrative Matters Law of 1970. The implementation of these laws in East Jerusalem would facilitate the transfer by Israel of its population into an occupied area. The situation of these families and the planned implementation of the eviction orders underlines Israeli aims to permanently change the Palestinian character of East Jerusalem and pave the way for further settlers to move in and displace more Palestinians.”<sup>322</sup>

3.107. In 2021, the Special Rapporteur observed that “Israeli settler organizations have particularly intensified their applications for evictions, significantly increasing the number of lawsuits facing the Palestinian families”, and that such evictions “amount to a violation by Israel, the occupying power, of the prohibition against the forcible transfer of the protected population under article 49 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War”<sup>323</sup>.

### *3. Denial of Building Permits for Palestinians*

3.108. The High Commissioner for Human Rights has found that “Israeli zoning and planning policies in ... East Jerusalem are discriminatory and considered incompatible with requirements under international law”<sup>324</sup>. In particular, “the Israeli zoning and planning policy in East Jerusalem is inherently

<sup>322</sup> Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, 29 September 2021, A/76/360, para. 24 (footnote omitted) (<https://undocs.org/A/76/360>).

<sup>323</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 29 July 2021, A/HRC/47/57, para. 18 (<https://undocs.org/A/HRC/47/57>).

<sup>324</sup> Report of the United Nations High Commissioner for Human Rights, “Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan”, 30 January 2020, A/HRC/43/67, para. 30 (<https://undocs.org/A/HRC/43/67>).

discriminatory and constitutes a key factor of a coercive environment ... forcing Palestinians to leave communities they have lived in for generations ..."<sup>325</sup>.

3.109. The effects of this discriminatory regime are stark. As the High Commissioner explained in 2020:

"Israeli authorities have zoned only 15 per cent of the area illegally annexed in 1967 for the housing needs of Palestinians, compared to 38 per cent allocated to settlement construction. Data provided by the Jerusalem Municipality show that while Palestinian residents account for 38 per cent of the overall population of Jerusalem, between 1991 and 2018 only 16.5 per cent of building permits were issued for construction in Palestinian neighbourhoods, mainly for small-scale private projects. By contrast, 37.8 per cent of permits were issued for settlement construction in East Jerusalem. Discriminatory planning, coupled with costly and complicated procedures, make it almost impossible for Palestinian residents to obtain building permits."<sup>326</sup>

3.110. At least a third of all Palestinian homes in East Jerusalem lack Israeli-issued building permits, which are virtually impossible to obtain, potentially placing over 100,000 Palestinian residents at risk of displacement<sup>327</sup>. The denial of building permits is a key element of Israel's policies for reducing the Palestinian population of East Jerusalem. Palestinians have no option but to build without a permit and thus face the prospect of either having their homes demolished or live under the constant threat of demolition. It has been recognized that Israel engages in the "denial of building permits even to long-term Palestinian residents as part of a continuing effort to change the demographics of the city in Israel's favour."<sup>328</sup>

#### *4. Revocation of Residency Status*

3.111. Alongside that discriminatory building regime sits an equally discriminatory system of residency rights and status. Palestinians in East Jerusalem have "a unique status under Israeli law, which may be revoked relatively easily,

<sup>325</sup> *Ibid.*, para. 41 (footnotes omitted).

<sup>326</sup> *Ibid.*, para. 42.

<sup>327</sup> UNOCHA, "West Bank/East Jerusalem: key humanitarian concerns" in *Humanitarian facts and figures*, 21 December 2017 (<https://tinyurl.com/3fhb6c3t>).

<sup>328</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied by Israel since 1967, 25 August 2009, A/64/328, para. 45 (<https://undocs.org/A/64/328>).

resulting in a perpetual threat of displacement.”<sup>329</sup> Israel regulates the Palestinians living in East Jerusalem, many since generations, as if they were foreign nationals, with no regard for their status as protected persons under international humanitarian law. Accordingly, Palestinian residents lose their permanent residency status if they reside elsewhere in the OPT or abroad for a period of seven years, or if they obtain permanent residency or citizenship in another country<sup>330</sup>.

3.112. Israel has revoked the residency of over 14,500 Palestinians since the start of its occupation of East Jerusalem in 1967<sup>331</sup>. The Special Rapporteur has found that:

“While under the laws of occupation the Palestinian Jerusalemites are ‘protected persons’, Israel does not recognize that status. Since 1967, Israel has revoked the residency status of more than 14,500 East Jerusalemite Palestinians; since 1995, Palestinian residents of East Jerusalem have to prove that their ‘centre of life’ is in the city in order to retain their permanent resident status or risk losing their status and thus their ability to return to their homes in East Jerusalem. Not having permanent resident status prevents Palestinians from other parts of the Occupied Palestinian Territory from legally residing or even visiting Jerusalem. In addition, Israeli laws severely restrict the right to family reunification by denying many Palestinian Jerusalemites the ability to extend permanent resident status to their spouses and children who do not have recognized residency in Jerusalem.”<sup>332</sup>

3.113. Further details regarding the discriminatory measures against Palestinians in East Jerusalem, which constitute a primary tool for changing the demographics of the City to achieve and maintain an Israeli Jewish majority and to seize maximum Palestinian land with minimum Palestinians, are provided in Chapter 4 below.

<sup>329</sup> Norwegian Refugee Council, *The Legal Status of East Jerusalem*, December 2013, p. 5 (<https://tinyurl.com/yazm8rea>).

<sup>330</sup> Secretary-General, “Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem”, 14 September 2012, A/67/372, para. 38 (<https://undocs.org/A/67/372>).

<sup>331</sup> UNOCHA, “West Bank/East Jerusalem: key humanitarian concerns” in *Humanitarian facts and figures*, 21 December 2017 (<https://tinyurl.com/3fhb6c3t>).

<sup>332</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2018, A/73/447, para. 41 (footnote omitted) (<https://undocs.org/A/73/447>).

### *5. Settler Violence Towards Palestinians*

3.114. Israeli settlers have frequently resorted to violence, under the protection and with the complicity of Israeli occupation forces, to compel Palestinians to leave their communities in or around East Jerusalem. The Secretary General has underscored that “East Jerusalem is … particularly affected by settler violence.”<sup>333</sup>

3.115. While Israel has a duty to protect the Palestinian civilian population under its occupation against such violence, the report of the Independent International Fact-Finding Mission in 2013 found that “the identities of settlers who are responsible for violence and intimidation are known to the Israeli authorities, yet these acts continue with impunity.” The report concluded that “the motivation behind this violence and the intimidation against the Palestinians and their properties is to drive the local populations away from their lands and allow the settlements to expand.”<sup>334</sup>

3.116. In 2023, the United Nations High Commissioner for Human Rights reported that during the most recent reporting period “settler violence further intensified, reaching the highest levels ever recorded by the United Nations.”<sup>335</sup>

3.117. Further details regarding the extent of settler violence against Palestinians in the OPT, and Israel’s toleration and support of this, are provided in Chapter 4 below.

## **IV. Israel’s Construction and Use of Infrastructure to Bind East and West Jerusalem Together**

3.118. Israel has built infrastructure in East Jerusalem and integrated it with that in West Jerusalem with the intent to place the City as a whole under Israeli “sovereignty” and make its annexation irreversible. This includes the construction

<sup>333</sup> Report of the Secretary-General, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan, 25 August 2014, A/69/348, para. 42 (<https://undocs.org/A/69/348>).

<sup>334</sup> Report of the independent international fact- finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, 7 February 2013, A/HRC/22/63, para. 107 (<https://undocs.org/A/HRC/22/63>).

<sup>335</sup> Report of the United Nations High Commissioner for Human Rights, “Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan”, 15 March 2023, A/HRC/52/76, para. 38 (footnote omitted) (<https://undocs.org/A/HRC/52/76>).

and extension of the Wall cutting off East Jerusalem from the rest of the West Bank, in defiance of the Court’s 2004 *Wall* Opinion.

#### A. USE OF INFRASTRUCTURE TO BIND EAST AND WEST JERUSALEM TOGETHER

3.119. This has been a signal feature of Israel’s policy since its occupation of East Jerusalem in 1967. In relation to water infrastructure, for example, Israel promptly merged the physical network of East Jerusalem with the physical network in West Jerusalem and transferred responsibility for its operation and management to West Jerusalem<sup>336</sup>.

3.120. Israel has also used transportation infrastructure to consolidate the integration of East Jerusalem with West Jerusalem. By way of example, the four blocks of settlements outside of “municipal Jerusalem” – which are commonly referred to as “Greater Jerusalem” – are connected to “municipal Jerusalem” through a series of roads, tunnels, bridges and rail links which create a “Jerusalem metropolis”<sup>337</sup>. This has effectively converted these settlements into parts of the city.

3.121. As part of the integration of transportation infrastructure, in 1999 the Government of Israel approved the construction of a light rail network for Jerusalem. This project had two objectives:

“The declared aim of this project was to link all neighborhoods around the city with each other, while the implicit aim was to link the Israeli suburban settlements (including Neve Ya’acov, Pisgat Ze’ev, French Hill, Ma’alot Dafna, and Ramot) with the western side of the city”<sup>338</sup>.

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<sup>336</sup> “Within days of the occupation of East Jerusalem and the areas subsequently annexed to Israel, the water department of the Israeli municipality of Jerusalem connected pipes between the two systems and repaired the pumps and pipelines damaged during the fighting. This was part of the ‘integration of services,’ the term Israel used in lieu of annexation. The integration of services included the transfer of the offices of the water department of the Jordanian municipality of Jerusalem, its archives and personnel, to West Jerusalem, as well as the dismantlement of its motors and pumps. ... The Israeli Jerusalem municipality, determined to be the sole supplier of water to all residents of Jerusalem, both east and west, promptly took over pipes and systems operated by independent Palestinian water contractors.” (M. T. Dumper, “Jerusalem’s Infrastructure: Is Annexation Irreversible?”, *Journal of Palestine Studies*, Vol. 22, 1993, No. 3, p. 81 (footnotes omitted)).

<sup>337</sup> B’Tselem, *Land Grab, Israel’s Settlement Policy in the West Bank*, May 2002, pp. 102-114 (<https://tinyurl.com/2p9ru8fy>).

<sup>338</sup> S. Thawaba and H. Al-Rimawi, “Spatial Transformation of Jerusalem: 1967 to Present”, *Journal of Planning History*, Vol. 12, 2012, No. 1, p. 6.

3.122. As the Special Rapporteur found in 2020, “Israel has continued to intensify its annexation of East Jerusalem” through both the construction of settlements and “by solidifying the political and infrastructural integration of East and West Jerusalem.”<sup>339</sup> To this end, in addition to the settlements themselves, “major settlement infrastructure has been built around Jerusalem and, to a lesser extent, Hebron, enveloping them and severing social and economic ties with the rest of Palestinian society, while linking the various settlements and the territory of the State of Israel.”<sup>340</sup>

3.123. The Israeli government has not hidden that its objective of integrating the settlements to Israel and to each other through infrastructure is to create irreversible “facts on the ground” which consolidate Israel’s hold over East Jerusalem.

3.124. Senior Israeli officials, at the highest level, have confirmed that Israel regards the permanent integration of East Jerusalem with West Jerusalem and the rest of Israel as a national policy imperative. In February 2020, for example, Prime Minister Benjamin Netanyahu announced plans to construct more than 5,000 new Israeli settlement units in East Jerusalem. In doing so, he made it clear that the purpose of this settlement activity was to consolidate the integration of East Jerusalem with West Jerusalem:

“We are connecting Jerusalem. We are connecting all parts of the united Jerusalem, the rebuilt Jerusalem ... We did it in the face of fierce international opposition.”<sup>341</sup>

## B. THE SEPARATION OF EAST JERUSALEM FROM THE REST OF THE WEST BANK

3.125. In its 2004 *Wall* Opinion, the Court determined that Israel’s construction of a wall in the OPT, including East Jerusalem, was unlawful, and that Israel was under a legal obligation to remove it<sup>342</sup>. Instead, Israel has not only

<sup>339</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2020, A/75/532, para. 42 (footnote omitted) (<https://undocs.org/A/75/532>).

<sup>340</sup> Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, 7 February 2013, A/HRC/22/63, para. 58 (<https://undocs.org/A/HRC/22/63>).

<sup>341</sup> “Israel leader vows thousands of new homes in east Jerusalem”, *The Boston Globe*, 20 February 2020 (emphasis added) (<https://tinyurl.com/4576u89h>).

<sup>342</sup> *Wall* Opinion, p. 201, para. 163.

maintained in place the 190 kilometres already constructed at the time of the Court's Opinion<sup>343</sup> but, as shown in **Figure 3.6** at p. 103 below, has significantly extended it.

3.126. The total planned length of the Wall is more than 700 km, approximately two-thirds of which (c. 465 km) has now been constructed<sup>344</sup>. The Special Rapporteur found that in constructing the Wall along its planned route Israel “deliberately placed a number of Palestinian neighbourhoods on the West Bank side of the wall”, cutting them off from Jerusalem. In particular, Israel “unilaterally plac[ed] several large Palestinian Jerusalem neighbourhoods, including Kufr Aqab and Shu’fat, outside of the wall”<sup>345</sup>. In all, “[a]bout 120,000–140,000 Palestinian Jerusalemites have been forced to live on the West Bank side of the separation wall, physically separated from access to the city and its services.”<sup>346</sup>

3.127. The reason why the Wall is built along that route is clear:

*“It is an *inescapable conclusion* that the route of the separation wall around Jerusalem — which includes all the Israeli settlements in East Jerusalem as well [as] several nearby West Bank Israeli settlements, while excluding approximately one third of the Palestinian Jerusalemites — *has been designed for demographic reasons to maximize the Israeli population in Jerusalem while seeking to substantially reduce the city’s Palestinian presence.*”*<sup>347</sup>

3.128. The Secretary General has also concluded that “[t]he Wall and related restrictions on Palestinian movement are decisively cutting off East Jerusalem from the rest of the Occupied Palestinian Territory.”<sup>348</sup>

<sup>343</sup> *Ibid.*, p. 169, para. 81.

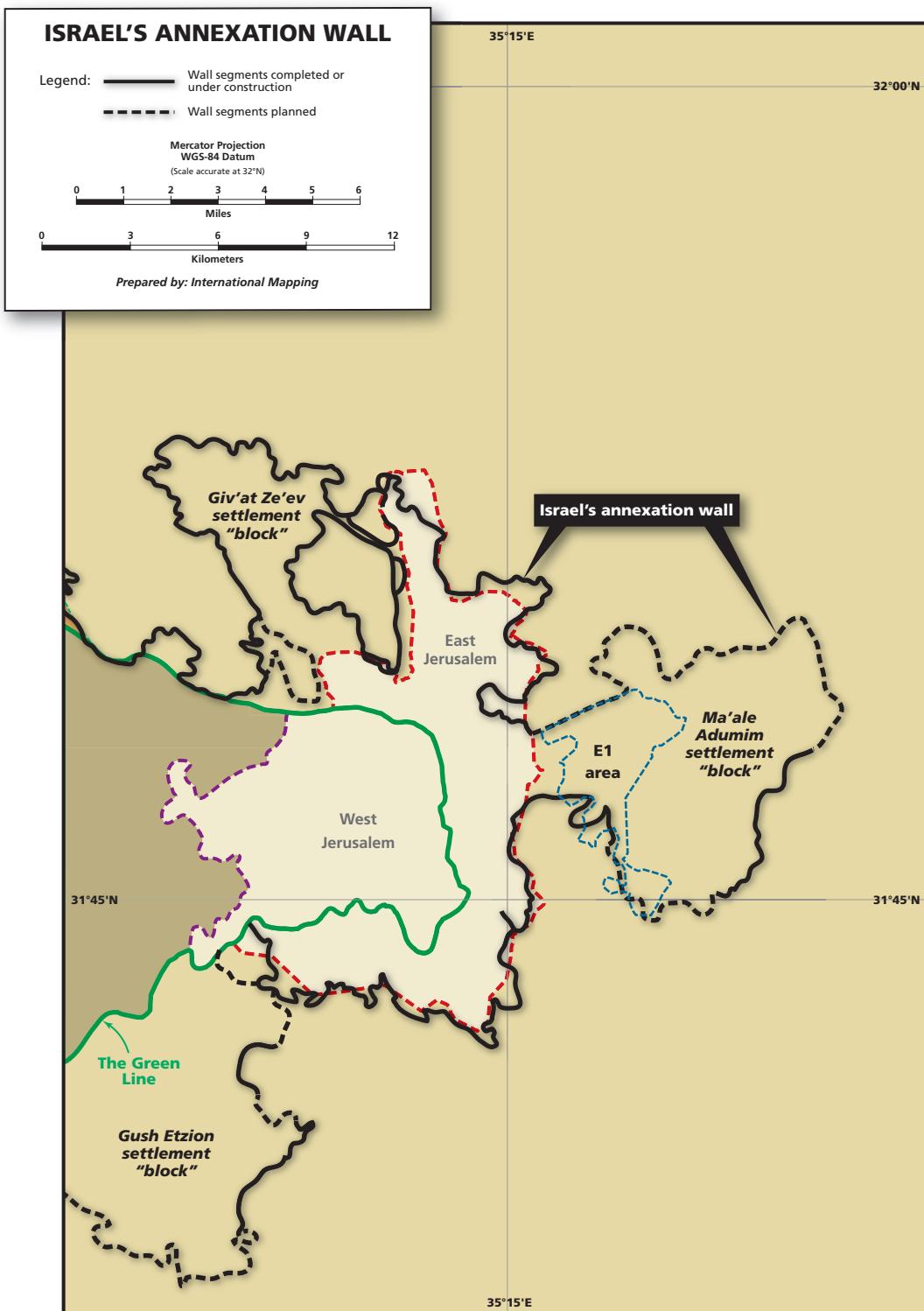
<sup>344</sup> United Nations, *The Question of Palestine – Israeli Occupation of Palestinian Territory*, 2021 (<https://tinyurl.com/23c3rrzk>).

<sup>345</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2018, A/73/447, para. 43 (<https://undocs.org/A/73/447>).

<sup>346</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 12 August 2022, A/HRC/49/87, para. 44 (footnote omitted) (<https://undocs.org/A/HRC/49/87>).

<sup>347</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2018, A/73/447, para. 43 (emphasis added; footnote omitted) (<https://undocs.org/A/73/447>).

<sup>348</sup> Secretary-General, “Human rights situation in the Occupied Palestinian Territory, including East Jerusalem”, 22 August 2013, A/HRC/24/30, para. 32 (<https://undocs.org/A/HRC/24/30>).



Source: United Nations' Office for the Coordination of Humanitarian Affairs, (OCHA)  
<https://reliefweb.int/map/occupied-palestinian-territory/occupied-palestinian-territory-settlement-jerusalem-area-december>

Figure 3.6



3.129. UNOCHA explains that the Wall “has transformed the geography, economy and social life of Palestinians living in East Jerusalem, as well as the lives of those residing in the wider metropolitan area. Neighbourhoods, suburbs and families have been divided from each other and separated from the urban centre, and rural communities have been separated from their land.”<sup>349</sup>

3.130. The Wall and its associated regime thus serve two purposes. First, they facilitate incorporation of Israeli settlements in and around East Jerusalem and connectivity between the settlements and Israel. Second, they reduce the Palestinian population of East Jerusalem by cutting off entire communities, including those in nearby districts or suburbs, from the City, and by separating those who reside inside the Wall from family, social and economic life beyond it, creating pressures for their displacement. The inevitable result has been a substantial increase in the number of Israeli settlers, a decrease in the Palestinian population and an overall demographic change that facilitates the achievement of Israel’s ultimate objective of permanent acquisition and “sovereignty” over the entire Holy City.

## **V. Israel’s Measures to Change the Religious and Historical Character of the Holy City of Jerusalem**

3.131. In addition to its changes to the demographic character of Jerusalem, Israel has made equally fundamental changes to the religious and historical character of the Holy City to serve its annexationist purposes. In particular, it has adopted policies and practices to promote Jerusalem’s Jewish Israeli character and undermine its Palestinian, Muslim and Christian character.

3.132. Israel has sought to accomplish these ends by means of its concerted efforts to change the unique character of Jerusalem, including the Old City, the historical heart of the City, which holds inestimable religious and spiritual importance for the followers of the three monotheistic religions.

3.133. The General Assembly and Security Council have long emphasised that freedom of access to the Holy Places in the City, and the unimpeded right to worship there, in line with the historic status quo, are fundamental to preserving Jerusalem’s unique character and status. As established earlier, Resolution 181 (II), which the General Assembly adopted in November 1947, contained specific provisions requiring the preservation of existing rights in respect of the Holy Places; the guarantee of the right to access to and worship at the Holy Places; and the

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<sup>349</sup> UNOCHA, *The humanitarian impact of 20 years of the Barrier*, 30 December 2022, para. 6 (<https://tinyurl.com/4xpjr3bd>).

preservation of the Holy Places and other religious buildings and sites<sup>350</sup>. Likewise, as early as 1948, the Security Council adopted Resolution 50 (1948) which recognized the freedom of worship and the right to access the Holy Places of the city and which urged all authorities concerned “to take every possible precaution for the protection of the Holy Places and of the City of Jerusalem, including access to all shrines and sanctuaries for the purpose of worship by those who have an established right to visit and worship at them”<sup>351</sup>.

3.134. Notwithstanding those resolutions, since 1967 Israel has caused or permitted innumerable intrusions and attacks targeting Al-Haram Al-Sharif – of immeasurable religious and cultural significance to the Palestinian people and Muslims around the world – which have resulted in damage to the sacred site and which have severely impeded the ability of Muslims to worship there. Since the Israeli annexation of Jerusalem, the site, which is heavily controlled by Israeli occupation forces, has been subject to many intrusions from Israeli military, Israeli officials and parliamentarians, and settlers and other extremists, who want to lay claim to it and hinder the rights of Muslim worshippers, in violation of the longstanding historic and legal status quo at the site<sup>352</sup>.

3.135. In 1969, only two years after Israel occupied East Jerusalem, attacks targeting the Holy Al-Aqsa Mosque by Israeli nationals triggered concern and condemnation by the Security Council. In resolution 271, the Security Council stated that it was “[g]rieved at the extensive damage caused by arson to the Holy Al Aqsa Mosque in Jerusalem … under the military occupation of Israel” and noted “the universal outrage caused by the act of sacrilege in one of the most venerated shrines of mankind”. The Security Council further

*“Determine[d] that the execrable act of desecration and profanation of the Holy Al Aqsa Mosque emphasizes the immediate necessity of Israel’s desisting from acting in violation of the aforesaid resolutions and rescinding forthwith all measures and actions taken by it designed to alter the status of Jerusalem;*

*Call[ed] upon Israel scrupulously to observe the provisions of the Geneva Conventions and international law governing military occupation and to*

<sup>350</sup> General Assembly, Resolution 181 (II), 29 November 1947.

<sup>351</sup> Security Council, Resolution 50 (1948), 29 May 1948, para. 5.

<sup>352</sup> The Hashemite Kingdom of Jordan and State of Palestine, *Status Report on The State of Conservation of the Old City of Jerusalem and Its Walls*, 16 March 2015, pp. 4-12 (<https://tinyurl.com/mr2rkytz>).

refrain from causing any hindrance to the discharge of the established functions of the Supreme Moslem Council of Jerusalem ...”<sup>353</sup>.

3.136. In addition to conducting, tolerating, failing to prevent violent attacks, the Israeli authorities have frequently barred Palestinians from entering the Mosque or closed it altogether for alleged “security reasons”, thereby denying Muslim worshippers their right to worship at one of Islam’s holiest places<sup>354</sup>. Christian worshippers are also subject to restrictions, as most recently documented during Easter observance, and worshippers and priests have been subjected to harassment and violence, and churches have been desecrated.

3.137. Israel has also conducted numerous excavations in the vicinity of holy Islamic and Christian sites in the Old City<sup>355</sup>. These excavations are carried out regardless of the risk of harm to existing Muslim and Christian Holy Places and Palestinian homes and in full disregard to the historic status quo and international humanitarian and human rights law. They ignore the demands from the General Assembly, the Security Council and UNESCO (which ascribes the Old City and its walls as a World Heritage site under threat) to refrain from excavating in close

<sup>353</sup> Security Council, Resolution 271 (1969), 15 September 1969, paras. 3-4.

<sup>354</sup> In 1997, for example, the United Nations described “the inability of residents of the West Bank and Gaza (whether Muslim or Christian) to enter Jerusalem to pray at their respective holy places, even during major holidays, because of the prolonged closures of East Jerusalem for security reasons” (see United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People, *The Status of Jerusalem*, New York, United Nations, 1997, p. 17 (footnote omitted) (<https://tinyurl.com/24nbftype>)). In July 2021, the Special Rapporteur reported that, “during the last days of Ramadan, Israeli Security Forces further restricted the access of Palestinian worshippers to the Aqsa Mosque compound and limited their movement, while using excessive force within the mosque itself” (see Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 29 July 2021, A/HRC/47/57, para. 7 (<https://undocs.org/A/HRC/47/57>)). In its report submitted in September 2022, the United Nations Committee on the Exercise of the Inalienable Rights of the Palestinian People called on Israel “to uphold its obligations under international humanitarian and human rights law, respect the status quo at the holy sites in Jerusalem, including the historic and legal status quo at the Aqsa Mosque compound, and ensure that Muslims are able to peacefully worship and practice their religion without fear of violence or retaliation.” (Report of the Committee on the Exercise of the Inalienable Rights of the Palestinian People, 31 August 2022, A/77/35, para. 91 (<https://undocs.org/A/77/35>)).

<sup>355</sup> Report of the Secretary-General, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan, 31 August 2015, A/70/351, paras. 33-36 (<https://undocs.org/A/70/351>). Also, between 2008 and 2017, Israel submitted yearly reports to the World Heritage Committee regarding its “conservation” activities in the Old City which included its archaeological excavations (<https://tinyurl.com/5bp62vd2>) (For 2017, see under the heading “Conservation issues presented to the World Heritage Committee in 2017”. The reports for other years can be accessed from the respective tabs in the same UNESCO website. The website also includes information collected by the World Heritage Committee in the years prior to 2017).

proximity to the sacred sites. In 1972, for example, UNESCO “[u]rgently call[ed] upon Israel”:

“to desist from any archaeological excavations, the transfer of cultural properties and any alteration of their features or their cultural and historical character, particularly with regard to Christian and Islamic religious sites”<sup>356</sup>.

3.138. UNESCO subsequently denounced Israel’s “persistence in altering the historical features of the City of Jerusalem … by undertaking excavations which constitute a danger to its monuments, subsequent to its illegal occupation of this city”<sup>357</sup>.

3.139. In 1981, the General Assembly adopted resolution 36/15 entitled “Recent developments in connexion with excavations in eastern Jerusalem” in which it:

“Determines that the excavations and transformations of the landscape and of the historical, cultural and religious sites of Jerusalem constitute a flagrant violation of the principles of international law and the relevant provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949; [and]

3. Demands that Israel desists forthwith from all excavations and transformations of the historical, cultural and religious sites of Jerusalem, particularly beneath and around the Moslem Holy Sanctuary of Al-Haram Al-Sharif (Al Masjid Al Aqsa and the Sacred Dome of the Rock), the structures of which are in danger of collapse”<sup>358</sup>.

3.140. The risks attendant to Israel’s excavations in the Old City have led UNESCO to condemn Israel for “having continued … to change and Judaize the historic and cultural configuration of Jerusalem”<sup>359</sup>.

3.141. The Independent International Fact-Finding Mission confirmed UNESCO’s findings. It concluded that Israel has impermissibly attempted to alter

<sup>356</sup> UNESCO General Conference, Resolution 3.422, November 1972, para. 2 (<https://tinyurl.com/k4zsn79z>).

<sup>357</sup> UNESCO General Conference, Resolution 3.427, November 1974, para. 2 (<https://tinyurl.com/3anj3mns>).

<sup>358</sup> General Assembly, Resolution 36/15, 28 October 1981, paras. 1-3.

<sup>359</sup> UNESCO General Conference, Resolution 4/7.6/13, 28 November 1978, 20C/RES/4/7.6/13, para. 3 (<https://tinyurl.com/2p9ctyz5>).

the character and status of the Holy City of Jerusalem “by erasing cultural heritage on the basis of religious affiliation … with pernicious effects.”<sup>360</sup>

3.142. Periodic reports issued by the Director-General of UNESCO show that Israel has continued to perform illegal excavations in the Old City until this day<sup>361</sup>. In particular, expansion of excavations adjacent to the outer and lower pillars of the Holy Al-Aqsa Mosque was reported in 2022 by Palestinian and Jordanian authorities<sup>362</sup>.

3.143. The Security Council<sup>363</sup> and the General Assembly<sup>364</sup> have repeatedly reaffirmed the need to uphold the historic status quo, without compliance by Israel.

## Conclusion

3.144. As the facts set out in this Part amply demonstrate, through its laws and the repeated public pronouncements of its leaders since 1967, Israel has made absolutely clear that it regards the entirety of the Holy City – both West and East Jerusalem – as its own “sovereign” territory, in breach of international law. Indeed, there can be no clearer evidence of an intent to annex a territory than the intent manifested in the laws enacted by Israel, and the statements made by its leaders, throughout decades. Those laws and pronouncements have been matched by an array of unlawful deeds, including especially the construction of vast Israeli settlements and the implantation of more than 230,000 Israeli citizens into occupied East Jerusalem and its environs converting a Palestinian urban environment into

<sup>360</sup> Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, 7 February 2012, A/HRC/22/63, para. 61 (<https://undocs.org/A/HRC/22/63>).

<sup>361</sup> On 18 May 2023, for example, the Executive Board of UNESCO adopted a decision which stated that UNESCO “[r]egrets the failure of the Israeli occupying authorities to cease the persistent excavations, tunnelling, works and projects in East Jerusalem, particularly in and around the Old City of Jerusalem which are illegal under international law” (<https://tinyurl.com/49cp8kt8>).

<sup>362</sup> See Letter from the Permanent Delegations of the Hashemite Kingdom of Jordan and the State of Palestine to UNESCO, 25 April 2022 (<https://tinyurl.com/5n8kbnjs>).

<sup>363</sup> The Security Council “call[ed] for upholding unchanged the historic status quo at the holy sites in Jerusalem in word and in practice” and emphasized the Hashemite Custodianship (Statement by the President of the Security Council S/PRST/2023/1, 20 February 2023); and “[t]he members of the Security Council called for the exercise of restraint, refraining from provocative actions and rhetoric and upholding unchanged the historic status quo at the Haram al-Sharif — in word and in practice” (Security Council Press Statement on Situation in Jerusalem, SC/12052-PAL/2196, 17 September 2015).

<sup>364</sup> The General Assembly “[c]all[ed] for respect for the historic status quo at the holy places of Jerusalem, in word and in practice” (General Assembly, Resolution 76/12, 6 December 2021, para. 4).

one that is majority-Israeli, and the simultaneous implementation of a series of unlawful, discriminatory and coercive measures designed to displace Palestinians from the Holy City or ensure they are confined to the smallest possible geographic space inside the City if they are to remain in it. Israel has also persisted in its assault against the Palestinian identity of the City. Not content with severing it geographically from its Palestinian environment, it has actively tried to deny its natural role as the historic, political, religious, cultural, economic and social centre of Palestinian life. And, in seeking to further entrench its annexation and render it irreversible, Israel has vitiated the historic status quo that has been a bedrock for the preservation of the City's unique spiritual and religious significance for all three monotheistic religions.

3.145. For all these reasons, the illegality of Israel's 56-year occupation and annexation of East Jerusalem, as well as its military capture and annexation of West Jerusalem in 1948, is undeniable. Israel's annexation of Jerusalem and its environs amounts to the acquisition of territory by military force in blatant violation of the United Nations Charter and peremptory norms of international law.

## Part B.

### ISRAEL'S ANNEXATION OF THE WEST BANK

3.146. Israel captured the rest of the West Bank by military force in June 1967, in the same armed conflict in which it captured East Jerusalem. Although Israel formally annexed East Jerusalem and parts of the West Bank shortly after its military conquest of the Holy City, as set out in Part A of this Chapter, it followed a more gradual route to annexation of the other areas of the West Bank, while resorting in large part to the same policies and practices to achieve that goal. Israel has adopted and implemented a multitude of laws, administrative orders and political measures over the course of its 56-year long occupation to establish and entrench its authority, including the extension and application of Israeli laws to Israeli settlers in the West Bank; the construction of hundreds of settlements and the implantation of nearly half a million Israeli citizens in the West Bank to ensure the expansion of the Israeli State and the irreversibility of Israeli rule; and the repeated public pronouncements of its highest political authorities that Israel's "sovereignty" over "Judea and Samaria" (its name for the West Bank) will last forever and will never be relinquished.

3.147. In its Advisory Opinion in the *Wall* case, the Court expressed concern lest "the construction of the wall and its associated régime create a 'fait accompli' on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to *de facto* annexation."<sup>365</sup> After more than five and a half decades, Israel's occupation of this territory has indeed become a fait accompli that Israel itself claims to be permanent. The regime it has established there constitutes nothing less than the "de facto annexation" that the Court foresaw 19 years ago.

3.148. This is the conclusion that has been reached by, among other United Nations agencies and independent experts, the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel. In its September 2022 report, the Independent Commission found that:

"Israel treats the occupation as permanent and has – for all intents and purposes – annexed parts of the West Bank, while seeking to hide behind a fiction of temporariness. Actions by Israel constituting *de facto* annexation include expropriating land and natural resources, establishing settlements

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<sup>365</sup> *Wall* Opinion, p. 184, para. 121.

and outposts, maintaining a restrictive and discriminatory planning and building regime for Palestinians and extending Israeli law extraterritorially to Israeli settlers in the West Bank. The International Court of Justice anticipated such a scenario in its 2004 advisory opinion, in which it stated that the wall was creating a fait accompli on the ground that could well become permanent and tantamount to de facto annexation. This has now become the reality.”<sup>366</sup>

3.149. As determined by the Independent Commission – and the numerous other United Nations bodies that have made authoritative findings or issued expert reports on the matter – Israel’s actions in the West Bank over more than half a century demonstrate that it is anything but a temporary occupier. To the contrary, these agencies have uniformly found that Israel has disregarded and violated the law of belligerent occupation – and the numerous demands of the General Assembly and the Security Council to respect that law, as well as the United Nations Charter – and asserted and applied its “sovereignty” over the West Bank by engaging in an extensive array of activities of a sovereign character, reflecting – and even declaring – a clear intention to maintain permanent dominion over the territory.

3.150. In particular, since 1967, Israel has established hundreds of settlements to which hundreds of thousands of Israeli citizens have been transferred and implanted with the express objective of creating permanent facts on the ground as a basis for claiming “sovereignty” over the West Bank or large parts thereof. There are more than 270 Israeli settlements and more than 465,000 Israeli settlers presently in the West Bank (in addition to those present in East Jerusalem), all of which Israeli leaders, including its current Prime Minister, have pledged never to locate them back to Israel. And the numbers continue to grow.

3.151. At the same time – and for the same purpose – Israel has implemented policies and practices designed to displace vast numbers of Palestinians from their homes to pressure them to relocate, and to enclose the remainder within increasingly smaller areas, effectively creating more space for the expansion of Israeli settlements and separating Palestinian areas from one another to destroy the territorial contiguity of the State of Palestine.

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<sup>366</sup> Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 14 September 2022, A/77/328, para. 76 (<https://undocs.org/A/77/328>).

3.152. Israel has also appropriated for itself the natural resources of the West Bank, especially water – the lifeblood of the territory – and seized control of the physical infrastructure to bind the entire area more tightly to itself and further render its presence permanent and irreversible. By these means, as well, the Special Rapporteur determined in 2017 that: “Israel is actively establishing the de facto annexation of parts of the occupied West Bank.”<sup>367</sup>

3.153. The pace of Israel’s annexation of the West Bank has been steadily increasing. In 2018, the Special Rapporteur concluded that “in practice, Israel has taken multiple steps consistent with establishing a sovereign claim over the West Bank since shortly after the occupation began in June 1967, and those steps have escalated significantly in recent years.”<sup>368</sup> The Special Rapporteur explained:

“throughout the years of occupation since the June 1967 war, Israel has continuously entrenched its de facto annexation of the West Bank by imposing intentionally irreversible changes to occupied territory that are proscribed by international humanitarian law: the establishment of 230 settlements [now more than 270], populated by more than 400,000 Israeli settlers [now more than 465,000]; the physical and political enclosure of the 2.6 million [now 2.7 million] West Bank Palestinians; the extension of Israeli laws to the West Bank and the creation of a discriminatory legal regime; the unequal access to natural resources, social services, property and land for Palestinians in the occupied West Bank; and the explicit statements by a wide circle of senior Israeli political leaders calling for the formal annexation of parts or all of the West Bank. Those annexation trends have only intensified over the past two years.”<sup>369</sup>

3.154. The Special Rapporteur found that “Israel has steadily entrenched its sovereign footprint *throughout* the West Bank”<sup>370</sup>, but this “footprint” has been deepest in the part of the territory designated as so-called “Area C,” which comprises 60 % of the West Bank and which Israel has expressly reserved for itself and its settlers. This part of the West Bank is depicted in orange in **Figure 3.7**, at p. 115 below.

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<sup>367</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 23 October 2017, A/72/556, para. 47 (<https://undocs.org/A/72/556>).

<sup>368</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2018, A/73/447, para. 48 (<https://undocs.org/A/73/447>).

<sup>369</sup> *Ibid.*, para. 25.

<sup>370</sup> *Ibid.*, para. 50 (emphasis added and footnote omitted).

3.155. Within this area, as shown in **Figure 3.8** at p. 117 below, Israel has designated 70 % of the land for Israeli settlements, and nearly 30 % for military bases and firing zones of its occupying forces, placing over 6,000 Palestinians living in 38 communities at risk of forcible transfer. It has further restricted the development or cultivation by Palestinians of what little land remains by designating 14 % of the area as “nature reserves”. *Less than 1 %* of so-called “Area C”, where 300,000 Palestinians live, is planned for Palestinian communities<sup>371</sup>.

3.156. The situation plainly justifies the observation by the Special Rapporteur that:

“What civil society organizations once called the ‘creeping Israeli annexation’ of the West Bank has now been relabelled ‘leaping annexation’ and ‘occup’annexation’.”<sup>372</sup>

3.157. The impacts in the Jordan Valley, which is the eastern border of the State of Palestine, and the water reservoir and food basket of the West Bank, are typical of those throughout the West Bank. As reported by UNOCHA:

- “• The Jordan Valley and Dead Sea area covers around 30% of the West Bank, and is home to nearly 60,000 Palestinians.
  - [Most of the area] is prohibited for Palestinian use, earmarked instead for the use of the Israeli military or under the jurisdiction of Israeli settlements.
- .....

- Around one quarter of Palestinians in the area reside in Area C, including some 7,900 Bedouin and herders. Some 3,400 people reside partially or fully in closed military zones and face a high risk of forced eviction.
  - There are 37 Israeli settlements, with a population of 9,500, established across the area, in contravention of international law.
- .....

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<sup>371</sup> UNOCHA, *West Bank Area C: Key Humanitarian Concerns* (<https://tinyurl.com/49czry56>).

<sup>372</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2018, A/73/447, para. 52 (footnotes omitted) (<https://undocs.org/A/73/447>).



Source: United Nations' Office for the Coordination of Humanitarian Affairs, (OCHA)  
<https://www.un.org/unispal/west-bank-area-c-ocha-map/>

Figure 3.7





Sources: United Nations' Office for the Coordination of Humanitarian Affairs, (OCHA)  
<https://www.ochaopt.org/content/west-bank-access-restrictions-may-2023>

Figure 3.8



- Water consumption dips to 20 litres/capita/day in most herding communities in the area, compared to the WHO recommendation of 100 l/c/d and the average settlement consumption of 300 l/c/d.
- .....

The restrictions on access to transportation routes, to agricultural land and to water resources have hampered the Palestinian agricultural sector. The denial of access to the Dead Sea coastline has also prevented the development of a potentially significant source for revenue and employment. Meanwhile, Israeli settlements have been able to develop highly profitable agricultural, mineral, touristic and other businesses.”<sup>373</sup>

3.158. In its September 2022 Report, the Independent International Commission of Inquiry, appointed by the Human Rights Council, found that “there are reasonable grounds to conclude that the Israeli occupation of Palestinian territory is now unlawful under international law owing to its permanence and to actions undertaken by Israel to annex parts of the land de facto and de jure.”<sup>374</sup> In particular: that “successive Governments of Israel, regardless of political composition, have promoted the expansion of settlements ...”<sup>375</sup> in the West Bank, and that “Israeli officials have publicly expressed their country’s intention to make the settlements irreversible and annex all or part of Area C.”<sup>376</sup>

3.159. A case in point is this 2019 declaration by Prime Minister Benjamin Netanyahu:

“I am guided by several principles when it comes to the West Bank. The first – this is our homeland. The second – we will continue to build and develop it. Third – not one resident or community will be uprooted in a political agreement. Fourth – the Israeli military and security forces will continue to rule the entire territory, up to the Jordan Valley. Fifth – I am working to get international ratification of these principles.”<sup>377</sup>

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<sup>373</sup> UNOCHA, *Humanitarian Fact Sheet on the Jordan Valley and Dead Sea*, February 2012 (<https://tinyurl.com/229su9e3>).

<sup>374</sup> Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 14 September 2022, A/77/328, para. 75 (<https://undocs.org/A/77/328>).

<sup>375</sup> *Ibid.*, para. 51.

<sup>376</sup> *Ibid.*, para. 52.

<sup>377</sup> “At West Bank Event, Netanyahu Promises No More Settlers, Arabs Will Be Evicted”, *Haaretz*, 10 July 2019 (<https://tinyurl.com/3zmj3xkt>).

3.160. In application of these “principles”, Israel’s Prime Minister pledged that his government would be “applying Israeli sovereignty over all of the communities” to which Israeli settlers have been transferred and implanted<sup>378</sup>.

3.161. Israel’s position on the West Bank was spelled out very clearly in the agreement reached in December 2022 by the political parties that form the current Israeli government. Article 118 of that agreement emphasized that “[t]he nation of Israel has a natural right to the Land of Israel”, including “Judea and Samaria”, and promised that the Prime Minister will promote Israel’s “sovereignty” in the West Bank:

“The prime minister will generate and promote a policy *for the application of sovereignty in the Area of Judea and Samaria*, while selecting the timing and taking into account all national and international interests of the state of Israel.”<sup>379</sup>

3.162. Israel’s objectives in respect of the West Bank have been further elaborated in the public statements of its Minister of Finance, Bezalel Smotrich, who also serves as a Minister, within the Ministry of Defence, for “Coordination of Government Activities in the Territories and the Civil Administration”. This makes him the senior Israeli government official responsible for administration of the Occupied Palestinian Territory. Minister Smotrich announced upon his appointment to this portfolio that he would exercise his “responsibility for the settlement in Judea and Samaria and for the civil Administration” in order “to make a real change on the ground.”<sup>380</sup> On 19 March 2023, while speaking at an official event in Paris, the Minister emphasized the point that Israel’s dominion over the West Bank is intended to be permanent by insisting that there is “no such thing as Palestinians because there’s no such thing as the Palestinian people”<sup>381</sup>.

3.163. The remainder of Part B is divided into four Sections. Section I demonstrates that Israel has enacted legislation and promulgated administrative

<sup>378</sup> Israel Prime Minister’s Office, “Cabinet Approves PM Netanyahu’s Proposal to Establish the Community of Mevo’ot Yeriho & PM’s Remarks at the Start of the Cabinet Meeting”, 15 September 2019 (<https://tinyurl.com/yc34cr7n>).

<sup>379</sup> Coalition Agreement between the Likud Party and the Religious Zionist Party for the Establishment of a National Government, presented to the Knesset on December 28, 2022, Article 118 (emphasis added) (Vol. II, Annex 12).

<sup>380</sup> “Smotrich after the dispute with Gallant: The time has come for the residents of Judea and Samaria to stop being second class citizens”, *Mivzak Live News*, 23 January 2023 (<https://tinyurl.com/ycy58r4x>).

<sup>381</sup> “Smotrich says there’s no Palestinian people, declares his family ‘real Palestinians’”, *The Times of Israel*, 20 March 2023 (<https://tinyurl.com/3k368zh7>).

regulations and orders asserting its “sovereignty” over the West Bank, explicitly as well as implicitly, including by extending its civil and criminal jurisdiction and authority throughout the territory and assimilating it to Israel itself. Section II presents numerous official statements made by senior Israeli government leaders declaring Israel’s “sovereignty” over the West Bank and its determination to retain the territory permanently. Section III describes the establishment of more than 270 Israeli settlements, housing more than 465,400 Israeli settlers – numbers that continue to grow each year – distributed throughout the West Bank, in execution of a deliberate government policy to create facts on the ground that would justify Israel’s permanent governance of the territory, a strategy that has been called “victory by settlement” by the Minister in charge of “Coordination of Government Activities in the Palestinian Territories”<sup>382</sup>. Section III also addresses Israel’s measures to facilitate the growth and expansion of its settlements by displacing the Palestinian population of the West Bank, encouraging emigration to third States, or forcing confinement to small and disconnected areas. Section IV describes Israel’s exercise of “sovereignty” over the West Bank by taking for itself the territory’s most valuable natural resources, especially its supply of fresh water, and by constructing and maintaining control of critical infrastructure to bind the territory to itself irrevocably. Section IV is followed by the Conclusions of this Part of Chapter 3.

## **I. Israel’s Extension of its Laws, Administrative Orders and Jurisdiction to the West Bank**

3.164. Immediately after Israel seized the West Bank, on 7 June 1967, the Military Commander of the IOF issued a Proclamation which established a military government to “take[] over control ‘in the interests of security and public order’” in the West Bank<sup>383</sup> and an Order which established military courts<sup>384</sup>. On the same date, the Military Commander issued another Proclamation which stated that:

“All authority of government, legislation, appointment and administration pertaining to the [West Bank] or its residents will now be exclusively in my

<sup>382</sup> “MK’s controversial plan nixes two-state solution, calls for annexation”, *The Jerusalem Post*, 11 September 2017 (<https://tinyurl.com/yp88a3uz>).

<sup>383</sup> Military Proclamation No. 1 concerning Assumption of Authority by the Israeli Military Forces, 7 June 1967 (see *Israeli Military Orders in the Occupied Palestinian West Bank 1967-1992*, Second edition, Jerusalem Media & Communications Centre, 1995, p. 1).

<sup>384</sup> Military Order No. 3 concerning Establishment of Military Courts (West Bank Area), 7 June 1967 (see *Israeli Military Orders in the Occupied Palestinian West Bank 1967-1992*, Second edition, Jerusalem Media & Communications Centre, 1995, p. 2).

hands and will be exercised only by me or by any person appointed therefore by me or acting on my behalf.”<sup>385</sup>

3.165. Since that date, by legislation and by military order, Israel has extended and applied its domestic law and jurisdiction to the West Bank. The Independent International Commission of Inquiry found that:

“Since the start of the occupation, Israel has extended its legal domain in the West Bank, which has resulted in far-reaching changes to the applicable law and, in practice, two sets of applicable law: military law and Israeli domestic law, which has been extended extra-territorially to apply only to Israeli settlers. This has been done through military orders, legislation and Supreme Court decisions and includes criminal law, national health insurance law, taxation laws and laws pertaining to elections.”<sup>386</sup>

3.166. Israel’s senior officials have not only acknowledged but also boasted that the government’s intention in applying Israeli law to its settlements and settlers in the West Bank is to manifest its “sovereignty” over the territory. In 2018, Minister of Tourism Yariv Levin explained, at a meeting of the Likud Central Committee: “We’re here to state the obvious: the entire Land of Israel is ours and we will apply sovereignty to all parts of the land”<sup>387</sup>.

#### A. LEGISLATION EXTENDING AND APPLYING ISRAELI LAW TO THE WEST BANK

3.167. Since 1967, Israel has steadily adopted legislation extending and applying Israeli domestic law to the Israeli settlers and settlements in the West Bank, assimilating them to Israel itself. As a result, a plethora of Israeli laws controlling virtually every aspect of daily life and activity, too numerous to catalogue in this Written Statement, now “regulate the West Bank as if it is a part of Israel.”<sup>388</sup> Israeli settlers are governed by Israeli law – not the law prevailing in

<sup>385</sup> Proclamation Regarding Regulation of Administration and Law (The West Bank Region) (No. 2), 1967, Article 3(a) (Vol. II, Annex 3).

<sup>386</sup> Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 14 September 2022, A/77/328, para. 46 (footnotes omitted) (<https://undocs.org/A/77/328>).

<sup>387</sup> “With Netanyahu Weakened by Investigations, Talk of Annexation Rumbles”, *Haaretz*, 1 January 2018 (<https://tinyurl.com/bdfnptj5>).

<sup>388</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 14 June 2018, A/HRC/37/75, paras 18 and 20 (<https://undocs.org/A/HRC/37/75>).

the OPT at the time of its military seizure in 1967 nor by the military orders that apply to the Palestinian people under occupation.

3.168. While Israeli legislation was initially applied extra-territorially to Israeli settlers and settlements, more recent legislation, especially as adopted since 2018, reflects Israel's assertion of "sovereignty" over them, and the rest of the territory it now officially refers to as "Judea and Samaria". Some examples include:

- (a) The legislation dissolving "the Council for Higher Education of Judea and Samaria" – Israel's nomenclature for the West Bank – which had operated under the Military Commander, and transferring the authority vested in that body to an organ of Israel's civilian government, the Council for Higher Education<sup>389</sup>. The member of the Knesset who introduced the legislation insisted that "[a]longside the academic importance of the law, there is *a clear element here of applying sovereignty*"<sup>390</sup>. As the Special Rapporteur observed:

"The Law, which was enacted in February 2018, is an illustration of the direct application of domestic Israeli law to the occupied territory, *which is both forbidden under international law and a clear step towards annexation.*"<sup>391</sup>

- (b) The law, adopted in July 2018, which established that the Administrative Affairs Court (the Jerusalem District Court) has jurisdiction over petitions concerning matters in the West Bank, including (i) planning and construction; (ii) entry to and exit from the territory; and (iii) removal and supervision orders<sup>392</sup>. The Secretary-General expressed concern that "in extending the competence of an Israeli administrative court to the West Bank", the law

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<sup>389</sup> The Council for Higher Education (Amendment no. 20) (Higher Education Institutions in the Area) Law 5778-2018 (Vol. II, Annex 11).

<sup>390</sup> "Israel's Creeping Annexation: Knesset Votes to Extend Israeli Law to Academic Institutions in the West Bank", *Haaretz*, 12 February 2018 (emphasis added) (<https://tinyurl.com/m4dad5h9>).

<sup>391</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2018, A/73/447, para. 55 (emphasis added) (<https://undocs.org/A/73/447>).

<sup>392</sup> The Courts for Administrative Affairs Law (Amendment no. 117) (Authorizing Administrative Affairs Courts to Adjudicate Administrative Decisions by Israeli Authorities Operating in the Area) 5778-2018 (Vol. II, Annex 10).

“constitute[s] an additional step towards blurring the distinction between Israel and the Occupied Palestinian Territory.”<sup>393</sup>

- (c) And especially, the “Jewish Nation State Law”, adopted in July 2018 as a Basic Law, that is, one with quasi-constitutional status. This law proclaims that “[t]he realization of the right to national self-determination in the State of Israel is exclusive to the Jewish people” and that, with respect to the OPT, “[t]he State views the development of Jewish settlement as a national value, and shall act to encourage and promote its establishment and consolidation.”<sup>394</sup> The High Commissioner for Human Rights reported in 2019 that the legislation recently enacted by the Knesset was “contributing to the de facto annexation of the West Bank.”<sup>395</sup>

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<sup>393</sup> Report of the Secretary-General, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan, 5 October 2018, A/73/410, para. 10 (footnote omitted) (<https://undocs.org/A/73/410>).

<sup>394</sup> Basic Law: Israel as the Nation-State of the Jewish People, 19 July 2018, Articles 1(c) and 7 (<https://tinyurl.com/fe5b4m7j>).

<sup>395</sup> Report of the United Nations High Commissioner for Human Rights, “Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan”, 30 January 2019, A/HRC/40/42, para. 12 (<https://undocs.org/A/HRC/40/42>). In addition to the primary legislation described in this text, Israeli Government Ministers have promulgated regulations, or secondary legislation, which extend Israeli laws to the West Bank in order to further assimilate the territory. As Professor E. Benvenisti explains, “[s]econdary legislation by government ministers” has been “very effective in equalizing economic conditions in the settlements with those in Israel” (*The International Law of Occupation*, 2<sup>nd</sup> edn. (Oxford University Press, 2012), p. 235). For example, in 1982 regulations were promulgated which extended state insurance to cover Israelis who lost investments in the West Bank as a result of drought and to cover loss of property in the West Bank incurred as a result of its “Israeli character” (see the Property Tax and Compensation Fund (Payment of Compensation for Damages) (Israeli External Property) Regulations, 5742-1982). Similarly, in 1987 Israel’s Minister of Labor and Social Affairs promulgated regulations which extended Israel’s National Insurance Law to Jews who work in the West Bank and Jews who volunteer in Israeli settlements (See the National Insurance Regulations (Application on Special Categories of Insured), 5747-1987 and the National Insurance Regulations (Categories of Volunteers Outside Israel), 5747-1987). Israeli authorities have also promulgated measures to extend into the West Bank the administrative and law enforcement powers of various Israeli state bodies and officials. For example, as noted by Professor Benvenisti: “The Israeli police force’s powers are extended to offences committed by Israelis in the territories; Israeli tax collectors are empowered to act in the territories with regard to taxes and duties due to the Israeli Treasury as if they were operating in Israel.” (E. Benvenisti, *Legal Dualism. The Absorption of the Occupied Territories into Israel* (Westview Press, 1990), p. 22 (footnotes omitted)).

## B. ORDERS PROMULGATED BY THE MILITARY COMMANDER

3.169. The Israeli military authorities have promulgated “more than 1,800 military orders ... covering such issues as security, taxation, transportation, land planning and zoning, natural resources, travel and the administration of justice.”<sup>396</sup>

3.170. The multitude of orders which have expressly extended the application of Israeli laws to the West Bank “confer special status on Jewish settlements ... by applying to these territorial units certain aspects of Israeli law in various spheres” and “granting them the privileges enjoyed by localities within Israel.”<sup>397</sup>

3.171. As the Special Rapporteur determined in 2022:

“Politically and legally, Jewish Israeli settlers enjoy the same fulsome citizenship rights and protections as Israeli Jews living inside the country’s borders of 1949. The 475,000 Israeli settlers in the West Bank, all of whom live in Jewish only settlements, have the full panoply of laws and benefits of the citizenship of Israel extended to them personally and extraterritorially. Like Israelis in Tel Aviv or Eilat, the West Bank settlers have the same access to health insurance, national insurance, social services, education, regular municipal services and the right of entry into and out of Israel and around much of the West Bank. They also receive[] targeted benefits and incentives from the Government of Israel to live and work in the settlements ... These settlers have the right to vote in Israeli elections, even though Israeli laws formally restrict the ability of Israeli citizens who live outside the country’s territory to vote.”<sup>398</sup>

## C. ASSUMPTION OF DIRECT ADMINISTRATIVE POWER OVER THE WEST BANK BY ISRAEL’S GOVERNMENT

3.172. Israel has recently taken steps to assume for its governmental authorities the administrative powers of the Military Commander of the OPT, including in the West Bank. The agreement of the political parties that formed the new government which took office on 29 December 2022 provided for the transfer of significant powers of control and governance of the West Bank from the Israeli

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<sup>396</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 12 August 2022, A/HRC/49/87, para. 41 (<https://undocs.org/A/HRC/49/87>).

<sup>397</sup> A. Gross, *The Writing on the Wall: Rethinking the International Law of Occupation* (Cambridge University Press, 2017), p. 174.

<sup>398</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 12 August 2022, A/HRC/49/87, para. 39 (footnote omitted) (<https://undocs.org/A/HRC/49/87>).

military to a new civilian Minister within the Ministry of Defense<sup>399</sup>. The significance of this change was highlighted in the Coalition Agreement between the political parties that formed Israel's government:

“The splitting of the Defense Ministry and the appointment of a Defense Minister who is detached from military considerations and is only committed to advancing Israel’s political interests according to the new organizing normative framework, is a dramatic organizational change. It effectively shifts civilian responsibilities from the military commander entrusted with them under the law of occupation to the civilian government of Israel.”<sup>400</sup>

3.173. To give effect to this Agreement, the Knesset enacted legislation amending the Basic Law on The Government; under this amendment a new ministerial position was established within the Ministry of Defence for “the Coordination of Government Activities in Territories and the Civil Administration therein”<sup>401</sup>. As indicated above, Mr. Bezalel Smotrich, the head of the Religious Zionism Party, was appointed to that post, as well as the post of Minister of Finance.

3.174. Upon his appointment, the Minister underscored his commitment to civilian administration of the West Bank and the full application of Israeli laws to the territory<sup>402</sup>. To facilitate this, the Government, *inter alia*, transferred authority for providing legal advice in respect of the Civil Administration from the Israeli military to the Ministry of Defence, such that the Legal Adviser in the West Bank would answer directly to the Minister rather than the Military Commander<sup>403</sup>.

3.175. On 23 February 2023, the transfer of powers and responsibilities for the Civil Administration in the West Bank formally took effect. In a public statement, Minister Smotrich, who assumed these responsibilities, declared that “legislation

<sup>399</sup> Coalition Agreement between the Likud Party and the Religious Zionist Party for the Establishment of a national government, 28 December 2022, Appendix C, section 21 (Vol. II, Annex 12).

<sup>400</sup> R. Levine-Schnur *et al.*, “A Theory of Annexation”, 2003, p. 37 (<https://tinyurl.com/mred48e6>).

<sup>401</sup> “Days before coalition is to take power, law clears path for ministers Deri, Smotrich”, *The Times of Israel*, 27 December 2022 (<https://tinyurl.com/3yrf2uux>).

<sup>402</sup> “Smotrich after the Dispute with Gallant: ‘The time has come for the residents of Judea and Samaria to stop being second class citizens’”, Mivzak Live, 23 January 2023 (<https://tinyurl.com/ycy58r4x>).

<sup>403</sup> Coalition Agreement between the Likud Party and the Religious Zionist Party for the Establishment of a national government, 28 December 2022, Appendix C, section 21 (Vol. II, Annex 12).

on all (settlement) civilian matters will be brought in line with Israeli law.” Under this regime:

“Spatial planning in the West Bank will come under the authority of the Minister [Smotrich], including authority over the High Planning Council, responsible for establishing and expanding settlements as well as considering Palestinian spatial plans and permit applications in Area C … All matters related to the regularization of ‘informal’ settlement outposts and satellite neighborhoods will come under the sole authority of the Minister … The Enforcement Unit, responsible for the destruction of Palestinian-owned structures built in Area C, as well as the seizure and destruction of donor-funded humanitarian relief, will come under the sole authority of the Minister … The Minister will have the authority to declare new ‘natural reserves’ … All matters related to housing, land, and property rights, including land ownership settlement, surveying, and registration, will come under the sole authority of the Minister. … The planning and implementation of infrastructure across the West Bank … will come under the exclusive authority of the Minister, including surface roads, water and sanitation, energy and renewable energy, telecommunications, and waste management.”<sup>404</sup>

3.176. The Israeli NGOs Yesh Din, Association of Civil Rights in Israel and Breaking the Silence have characterized the transfer of such far-reaching powers over the West Bank from the military administration to the Israeli government as “legal, de jure annexation”<sup>405</sup>.

3.177. Whether Israel’s annexation of the West Bank is *de jure* or *de facto*, or both, what is abundantly clear is that Israel’s policy is to exercise “sovereignty” over this territory.

3.178. The Minister appointed by the Prime Minister as head of the Civil Administration has publicly promoted a plan for the West Bank in which “there is

<sup>404</sup> See Foundation for Middle East Peace, *Settlement & Annexation Report: February 24, 2023* (<https://tinyurl.com/5awbpa64>).

<sup>405</sup> “Smotrich handed sweeping powers over West Bank, control over settlement planning”, *The Times of Israel*, 23 February 2023 (<https://tinyurl.com/sn6wvn9h>). The Israeli newspaper *Haaretz* has likewise stated that: “In legal terms, the assignment of governmental powers in the West Bank to its new civilian governor, particularly alongside the plan to expand the dual justice system, so that Israeli law will apply fully and directly to settlers in the West Bank and civilian Israeli authorities will wield direct governmental powers in the settlements – provisions that are also part of the Gallant-Smotrich agreement – constitutes de jure annexation of the West Bank.” (See “Israel’s Cabinet Just Advanced Full-fledged Apartheid in the West Bank”, *Haaretz*, 26 February 2023 (<https://tinyurl.com/4nutrere>).)

room for only one expression of national self-determination west of the Jordan River: that of the Jewish nation. Subsequently, an Arab State actualizing Arab national aspirations cannot emerge within the same territory.”<sup>406</sup> This objective, he has written, will be achieved “especially with deeds”, in particular:

“It requires the application of full Israeli sovereignty to the heartland regions of Judea and Samaria, and end of conflict by settlement in the form of establishing new cities and settlements deep inside the territory and bringing hundreds of thousands of additional settlers to live therein. This process will make it clear to all that the reality in Judea and Samaria is irreversible, and that the State of Israel is here to stay, and that the Arab dream of a state in Judea and Samaria is no longer viable.”<sup>407</sup>

## **II. Declarations by Senior Israeli Government Officials Asserting Israel’s “Sovereignty” over the West Bank**

3.179. The Israeli Minister currently in charge of administering the West Bank has been particularly direct in identifying Israel’s goal of maintaining Israeli “sovereignty” over the entire territory, to the exclusion of the independence of the State of Palestine. But his statements are no different in substance than those made repeatedly by senior Israeli government officials before him, including a succession of Prime Ministers.

3.180. Prime Minister Benjamin Netanyahu has long been a prominent and outspoken advocate of annexation. In 2010, he made the following commitment at the “Gush Etzion” settlement to a group of Israeli settlers in the West Bank:

“Our message is clear: We are planting here, we will stay here, we will build here, this place will be an inseparable part of the State of Israel for eternity ...”<sup>408</sup>.

3.181. On 31 December 2017, the 1,000-member central committee of the ruling Likud party unanimously adopted a resolution supporting Israeli “sovereignty” over the West Bank. The resolution “call[ed] on Likud’s elected

<sup>406</sup> B. Smotrich, “Israel’s Decisive Plan”, *Hashiloach*, 7 September 2017 (<https://hashiloach.org.il/israels-decisive-plan/>).

<sup>407</sup> *Ibid.*

<sup>408</sup> “Netanyahu Says Some Settlements to Stay in Israel”, *New York Times*, 24 January 2010 (<https://tinyurl.com/2meyxrn3>).

officials to act to allow free construction and to apply the laws of Israel and its sovereignty to all liberated areas of Jewish settlement in Judea and Samaria.”<sup>409</sup>

3.182. In March 2018, Israel’s Deputy Defense Minister, Rabbi Eli Ben-Dahan, publicly declared that:

“We have to focus on the main issue. We are in Judea and Samaria because this is our land, and we are here so that we will never leave it. Sovereignty must be applied in Judea and Samaria as soon as possible.”<sup>410</sup>

3.183. Based on statements such as these from Israel’s highest authorities, as well as the continued growth and expansion of Israeli settlements and the enactment of recent legislation, the Special Rapporteur concluded in his 2018 Report:

“Those statements of political intent, together with the colonizing facts on the ground of Israel, its legislative activity and its refusal to adhere to its solemn obligations under international law or to follow the direction of the international community with respect to its 51-year-old occupation, have established the probative evidence that *Israel has effectively annexed a significant part of the West Bank and is treating that territory as its own.*”<sup>411</sup>

3.184. On 6 April 2019, Prime Minister Netanyahu declared:

“From my perspective, any point of settlement is Israeli, and we have responsibility, as the Israeli government. I will not uproot anyone, and I will not transfer sovereignty to the Palestinians.”<sup>412</sup>

3.185. On 8 August 2019, Prime Minister Netanyahu declared that:

“I want American recognition for *our sovereignty over the Jordan Valley.* This is important. ... The time has come to *apply Israeli sovereignty over*

<sup>409</sup> “Netanyahu’s Party Votes to Annex West Bank, Increase Settlements”, *Haaretz*, 1 January 2018 (<https://tinyurl.com/mr2f488c>).

<sup>410</sup> “Sovereignty is not the granting of an immediate right to vote”, *Israel National News*, 27 March 2018 (<https://tinyurl.com/3xdtdncr>).

<sup>411</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2018, A/73/447, para. 59 (emphasis added) (<https://undocs.org/A/73/447>).

<sup>412</sup> “Israel’s Netanyahu vows to annex West Bank settlements if re-elected”, *Euronews*, 7 April 2019 (<https://tinyurl.com/yuxj2d7e>).

*the Jordan Valley and to also arrange the status of all Jewish communities in Judea and Samaria... They will be part of the State of Israel.”<sup>413</sup>*

3.186. Less than a month after that, the Prime Minister visited the Israeli settlement of Elkana in the occupied West Bank and declared that “[t]his is the old, original home of the Jewish people and we will build more in Elkana. ... [W]e will apply Jewish sovereignty over all communities as part of the land of Israel and the State of Israel.”<sup>414</sup>

3.187. On 8 January 2020, the Defence Minister, Naftali Bennett, informed a think tank in Jerusalem that “[o]ur objective is that within a short amount of time ..., we will apply Israeli sovereignty to all of Area C, not just the settlements, not just this bloc or another”. He added: “I solemnly declare that Area C belongs to Israel ... About a month ago, I held a meeting and explained the ways that the State of Israel will do everything possible to ensure that these areas [Area C] will be part of the State of Israel.”<sup>415</sup>

3.188. On 17 May 2022, Prime Minister Naftali Bennett gave a speech to settlers in the West Bank settlement of Elkana in which he emphasized that the settlement was, and always would be, part of Israel:

*“With the help of God, we will also be here at the celebrations of Elkana’s fiftieth and seventy-fifth, 100<sup>th</sup>, 200<sup>th</sup> and 2,000<sup>th</sup> birthdays, within a united and sovereign Jewish State in the Land of Israel.”<sup>416</sup>*

3.189. On 1 November 2022, a new government led by Prime Minister Netanyahu was elected. The party platform on which the Prime Minister and his coalition partners campaigned included a pledge to establish Israel’s “de facto sovereignty” over the West Bank: “*De facto* sovereignty: Shutting down the Civil

<sup>413</sup> Israel Prime Minister’s Office, “Excerpts from PM Netanyahu’s Remarks to the Makor Rishon Economic, Society and Innovation Conference in Jerusalem”, 8 December 2019 (emphasis added) (<https://tinyurl.com/2p8tc8z8>).

<sup>414</sup> Israel Prime Minister’s Office, “PM Netanyahu Attends Ceremony Marking the Start of the 2019-2020 School Year and Gives a First Grade Lesson, together with Education Minister Rafi Peretz, at the Kramim State Religious School in Elkana”, 1 September 2019 (emphasis added) (<https://tinyurl.com/vnj49ann>).

<sup>415</sup> “Bennett: Israel is working to apply sovereignty to all of Area C”, *Middle East Monitor*, 9 January 2020 (emphasis added) (<https://tinyurl.com/2p88djvm>).

<sup>416</sup> See the Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 14 September 2022, A/77/328, para. 53 (<https://undocs.org/A/77/328>).

Administration and the transfer of responsibility over the settlements in Judea and Samaria to government ministries.”<sup>417</sup>

3.190. The new government was officially sworn in on 29 December 2022<sup>418</sup>. The first of its “Guiding Principles” stated that:

“The Jewish people have an exclusive and indisputable right to all parts of the Land of Israel. The Government will promote and develop settlement in all parts of the Land of Israel – the Galilee, the Negev, the Golan and Judea and Samaria.”<sup>419</sup>

3.191. The Coalition Agreement between the governing parties, Likud and Religious Zionism, expressly spelled out the Government’s commitment to formally apply “sovereignty” over the West Bank:

“[T]he Prime Minister will lead to the formulation and promotion of policy in which *sovereignty will be applied in Judea and Samaria*, while choosing the timing and weighing all the national and international interests of the State of Israel.”<sup>420</sup>

3.192. To execute this policy, the Prime Minister transferred responsibility for Civil Administration of the Occupied Palestinian Territory to a new Minister in the Ministry of Defence, who boldly asserted on 18 May 2023 that the “core mission” of the Israeli government is to increase the number of settlements in the West Bank by another 500,000 within two years<sup>421</sup>. Prior to his appointment as Minister, he had written that Israel’s “national ambition” for the territory between the Jordan

<sup>417</sup> See ‘Peace Now group: Smotrich’s demand could lead to ‘de facto annexation’ of West Bank’, *The Times of Israel*, 24 November 2022 (<https://tinyurl.com/366xsmxs>).

<sup>418</sup> “37th Government of the State of Israel is Sworn In”, *Knesset News*, 29 December 2022 (<https://tinyurl.com/2sj7dt3n>).

<sup>419</sup> Yesh Din, OFEK, Breaking the silence, ACRI, “Policy paper: What Israel’s 37th government’s guiding principles and coalition agreements mean for the West Bank”, January 2023, p. 1 (<https://tinyurl.com/rwsr44vp>). See Coalition Agreement between the Likud Party and the Religious Zionist Party for the Establishment of a national government, 28 December 2022, Appendix A (Vol. II, Annex 12).

<sup>420</sup> Coalition Agreement between the Likud Party and the Religious Zionist Party for the Establishment of a national government, 28 December 2022, point 118 (emphasis added) (Vol. II, Annex 12). See also *ibid.*, Appendix A.

<sup>421</sup> “Far-right Israeli Minister Lays Groundwork for Doubling West Bank Settler Population”, *Haaretz*, 18 May 2023 (<https://tinyurl.com/ym6pe63c>).

River and the Mediterranean Sea consists of “imposing sovereignty on all Judea and Samaria” and thus creating “a clear and irreversible reality on the ground”<sup>422</sup>:

“At this stage we will establish the most important basic fact: We are here to stay. We will make it clear that our national ambition for a Jewish State from the river to the sea is an accomplished fact, a fact not open to discussion or negotiation.

This stage will be realized via a political-legal act of imposing sovereignty on all Judea and Samaria, with the concurrent acts of settlement: the establishment of cities and towns, the laying down of infrastructure as is customary in ‘little’ Israel and the encouragement of tens and hundreds of thousands of residents to come live in Judea and Samaria. In this way we will create a clear and irreversible reality on the ground.”<sup>423</sup>

3.193. As detailed in the following Section, the establishment of an “irreversible reality on the ground”, through the encouragement and effective transfer of tens and hundreds of thousands of Israelis to live in the OPT, including East Jerusalem, has been Israel’s aim since 1967. In flagrant violation of its legal obligations under the Fourth Geneva Convention, and in defiance of repeated condemnation and demands by the competent organs of the United Nations, Israel has strenuously pursued that objective through the creation of a vast number of strategically located settlements in the West Bank and through the adoption of an oppressive and discriminatory regime, including the demolition of many thousands of Palestinian homes and other properties, designed to forcibly displace Palestinians from the West Bank.

### **III. Israel’s Establishment of Hundreds of Israeli Settlements in the West Bank and its Displacement of Palestinians**

#### **A. ISRAEL’S CONSTRUCTION OF SETTLEMENTS AND IMPLANTATION OF HUNDREDS OF THOUSANDS OF ISRAELI SETTLERS IN THE WEST BANK**

3.194. Israel’s intended “irreversible reality on the ground” is that there are now more than 270 Israeli settlements in the West Bank, with more than 465,000 Israeli settlers<sup>424</sup>, in addition to the 14 settlements and more than 233,000 settlers

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<sup>422</sup> B. Smotrich, “Israel’s Decisive Plan”, *Hashiloach*, 7 September 2017 (<https://tinyurl.com/2s3k69sn>).

<sup>423</sup> *Ibid.*

<sup>424</sup> Peace Now, *Israel’s Settlements 2023* (<https://tinyurl.com/2nh4t2s8>).

in East Jerusalem. These settlements have purposely been established in strategic locations so as to fundamentally disrupt the territorial contiguity of the OPT in a manner designed to frustrate the independence of the State of Palestine. Since the first settlements were established in the wake of the 1967 military conquest and occupation of the West Bank, including East Jerusalem, successive Israeli governments have supported and facilitated their proliferation, growth, expansion and entrenchment. **Figure 3.9** below, is based on official Israeli government statistics. It shows how the number of Israeli settlers has steadily expanded year-by-year, starting from under 5,000 in 1970; then to 12,500 in 1980; 81,900 in 1990; 198,300 in 2000; 311,000 in 2010; and 465,400 in 2021<sup>425</sup>.

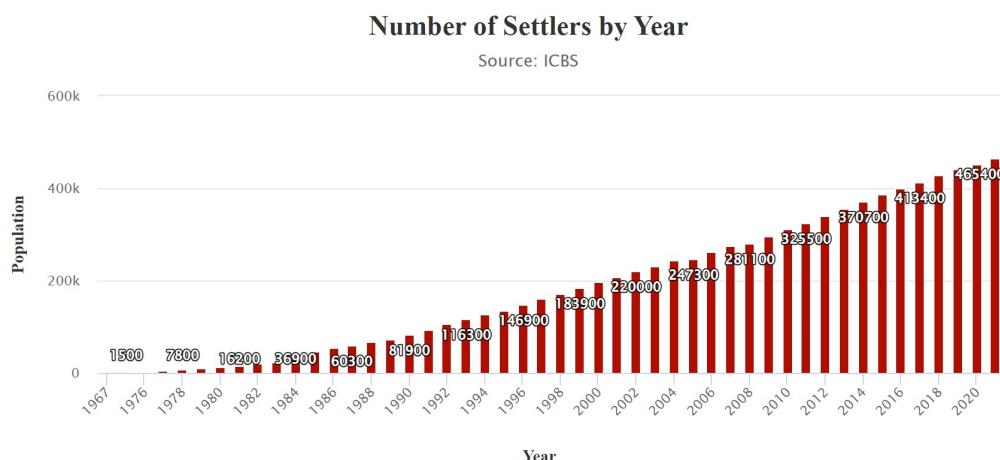


Figure 3.9. Number of Settlers by Year (published by Peace Now)<sup>426</sup>

3.195. The same pattern is reflected in the official reports of United Nations bodies<sup>427</sup>. In a 2018 Report, for example, the Special Rapporteur advised the

<sup>425</sup> See the chart published by Peace Now at: <https://tinyurl.com/ycy5f5hr>.

<sup>426</sup> *Ibid.*

<sup>427</sup> Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, 7 February 2013, A/HRC/22/63, paras. 24-28 (<https://undocs.org/A/HRC/22/63>); Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2018, A/73/447, paras. 49-50 (<https://undocs.org/A/73/447>); Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 29 July 2021, A/HRC/47/57, para. 62 (<https://undocs.org/A/HRC/47/57>); Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 9 May 2022, A/HRC/50/21, para. 34 (<https://undocs.org/A/HRC/50/21>).

General Assembly that “[t]he first Israeli settlements in the West Bank, initially camouflaged as military camps, were established in the summer of 1967. Since then, Israel has built and incentivized approximately 230 settlements throughout the West Bank, inhabited by more than 400,000 settlers.”<sup>428</sup> In its 2022 Report, the Independent International Commission of Inquiry found that there were more than 490,000 Israeli settlers in the West Bank<sup>429</sup>.

3.196. The scale of the settlement enterprise, and the amount of land in the West Bank which has been seized in order to enable it, is vast. In 60 % of the West Bank, Israel has unilaterally set aside almost all of the land for its settlements and their related infrastructure and military and security networks<sup>430</sup>, leaving just 1 % for Palestinian places of residence for the 300,000 Palestinians who have been living there and virtually preventing any more Palestinians from moving to the area.

3.197. Since 1967, Israel has expropriated vast tracts of land throughout the West Bank not only for settlement construction, but also industrial zones, farming and grazing land, and roads for the exclusive enjoyment of its settlers<sup>431</sup>.

3.198. Based on these facts, and taking account of the repeated declarations by Israel’s Prime Ministers and other official government spokespersons that Israel would never dismantle its settlements or remove its settlers from the OPT, Israel’s “settlement enterprise” has been described as “the political and demographic engine that has transformed the Israeli occupation into an annexation.”<sup>432</sup> Likewise, the Independent International Commission of Inquiry has found that Israel’s establishment of settlements in, and transfer of population to, the West Bank are “[a]ctions by Israel that are intended to create irreversible facts on the ground and expand its control over territory … as well as drivers of its permanent occupation”,

<sup>428</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2018, A/73/447, para. 49 (footnote omitted) (<https://undocs.org/A/73/447>).

<sup>429</sup> Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 9 May 2022, A/HRC/50/21, para. 34 (<https://undocs.org/A/HRC/50/21>).

<sup>430</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 19 October 2016, A/71/554, para. 52 (<https://undocs.org/A/71/554>); World Bank, *West Bank and Gaza: Area C and the Future of the Palestinian Economy*, 2 October 2013, para. 9 (<https://tinyurl.com/54p6rc4t>).

<sup>431</sup> Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 14 September 2022, A/77/328, para. 39 (<https://undocs.org/A/77/328>).

<sup>432</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2018, A/73/447, para. 60 (footnote omitted) (<https://undocs.org/A/73/447>).

and that “[t]he settlement enterprise is the principal means by which those results are achieved.”<sup>433</sup>

3.199. Israel has pursued its “settlement enterprise” and expanded it in defiance of numerous resolutions by the Security Council and General Assembly condemning the acquisition of territory by military force as contrary to international law and demanding the removal of Israeli forces, the dismantlement of the settlements and the withdrawal of the settlers. Beginning in November 1967, the Security Council, in resolution 242 “[e]mphasiz[ed] the inadmissibility of the acquisition of territory by war” and called for “withdrawal of Israel armed forces from territories occupied in the recent conflict”<sup>434</sup>. In 1971, Security Council resolution 298 “[r]eaffirm[ed] the principle that acquisition of territory by military conquest is inadmissible”<sup>435</sup>. In 1972, the General Assembly, in resolution 3005 (XXVII), called upon Israel “to rescind forthwith, and desist from, all such policies and practices” including “(a) [t]he annexation of any part of the occupied territories; [and] (b) [t]he establishment of Israeli settlements in those territories and the transfer of parts of an alien population into the occupied territories”<sup>436</sup>.

3.200. In March 1979, the Security Council adopted resolution 446, which directly addressed Israel’s establishment of settlements in Palestinian territory:

*“Affirming once more that the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, is applicable to the Arab territories occupied by Israel since 1967, including Jerusalem, [the Security Council] [d]etermines that the policy and practices of Israel in establishing settlements in the Palestinian and other Arab territories occupied since 1967 have no legal validity and constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East”*<sup>437</sup>.

On this basis, the Security Council:

*“Call[ed] 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*

<sup>433</sup> Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 14 September 2022, A/77/328, para. 75 (emphasis added) (<https://undocs.org/A/77/328>).

<sup>434</sup> Security Council, Resolution 242 (1967), 22 November 1967, preamble and para. 1.

<sup>435</sup> Security Council, Resolution 298 (1971), 25 September 1971, preamble.

<sup>436</sup> General Assembly, Resolution 3005 (XXVII), 15 December 1972, para. 2.

<sup>437</sup> Security Council, Resolution 446 (1979), 22 March 1979, preamble and para. 1 (emphasis added).

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.*<sup>438</sup>

3.201. Resolution 446 also established a Commission consisting of three members of the Security Council “to examine the situation relating to settlements” and “to submit its report to the Security Council”. At the time of this resolution, in 1979, there were approximately 10,000 Israeli settlers in the West Bank<sup>439</sup>.

3.202. The Security Council Commission issued its report in July 1979. It found that:

“Supported by the strong influence of various private groupings, *the settlement policy is an official government programme* which is implemented by a number of organizations and committees representing both the Government and the private sector inside and outside Israel.”<sup>440</sup>

Further:

“The Commission found evidence that the Israeli Government is engaged in a wilful, systematic and large-scale process of establishing settlements in the occupied territories for which it should bear full responsibility.”<sup>441</sup>

3.203. Based on these findings, the Commission recommended that “the Security Council, bearing in mind the inalienable right of the Palestinians to return to their homeland, launch a pressing appeal to the Government and people of Israel, drawing again their attention to the disastrous consequences which the settlement policy is bound to have on any attempt to reach a peaceful solution in the Middle East.”<sup>442</sup> In this regard, “as a first step, Israel should be called upon to cease on an urgent basis the establishment, construction and planning of settlements in the occupied territories.”<sup>443</sup>

3.204. Upon receipt of the Commission’s report, the Security Council adopted resolution 452 which stated that “the policy of Israel in establishing settlements in

<sup>438</sup> *Ibid.*, para. 3 (emphasis added).

<sup>439</sup> See the chart published by Peace Now at: <https://tinyurl.com/ycy5f5hr>.

<sup>440</sup> Report of the United Nations Security Council Commission established under resolution 446 (1979), 12 July 1979, S/13450, para. 226 (emphasis added) (<https://undocs.org/S/13450>).

<sup>441</sup> *Ibid.*, para. 228.

<sup>442</sup> *Ibid.*, para. 238.

<sup>443</sup> *Ibid.*, para. 239.

the occupied Arab territories has no legal validity and constitutes a violation of the [Fourth Geneva Convention]” and that the Security Council therefore “[a]cccepts the recommendations contained in the report of the Commission”. The resolution “[c]alls upon the Government and people of Israel to cease, on an urgent basis, the establishment, construction and planning of settlements in the Arab territories occupied since 1967, including Jerusalem”<sup>444</sup>.

3.205. Despite this, Israel continued – and accelerated – its program for “the establishment, construction and planning of settlements” in the West Bank, including and particularly in and around Jerusalem. Israel’s defiance of the Security Council’s resolutions led the Council to adopt resolution 465 in March 1980. In this resolution, the Security Council:

*“Deplore[ed] the decision of the Government of Israel officially to support Israeli settlements in the Palestinian and other Arab territories occupied since 1967,*

.....

*“Determine[d] that all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian or other Arab territories occupied since 1967, including Jerusalem, or any part thereof have no legal validity and that Israel’s policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the [Fourth Geneva Convention] and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East”<sup>445</sup>.*

3.206. Resolution 465 then:

*“Strongly deplore[d] the continuation and persistence of Israel in pursuing those policies and practices and call[ed] upon the Government and people of Israel to rescind those measures, to dismantle the existing settlements and in particular to cease, on an urgent basis, the establishment, construction and planning of settlements in the Arab territories occupied since 1967, including Jerusalem”<sup>446</sup>.*

3.207. Again, Israel chose to defy the Security Council and continue to violate its legal obligations under the Fourth Geneva Convention by pursuing – and

<sup>444</sup> Security Council, Resolution 452 (1979), 20 July 1979, para. 3.

<sup>445</sup> Security Council, Resolution 465 (1980), 1 March 1980, preamble and para. 5.

<sup>446</sup> *Ibid.*, para. 6.

dramatically expanding – its establishment of settlements in Palestinian territory. By 1983, as shown below in **Figure 3.10** at p. 139, a United Nations map, Israeli settlements dotted the landscape of the entire West Bank.

3.208. The Court addressed the illegality of Israel's settlements in Palestinian territory in its 2004 Advisory Opinion, at paragraph 120. After recalling Article 49, paragraph 6 of the Fourth Geneva Convention, the Court observed that, “the information provided to the Court shows that … Israel has conducted a policy and developed practices involving the establishment of settlements in the Occupied Palestinian Territory, contrary to the terms of Article 49, paragraph 6”. The Court noted that the Security Council had declared that such policies and practices “have no legal validity” and that “Israel’s policy and practices of settling parts of its population and new immigrants in [the occupied] territories” constitute a “flagrant violation” of the Fourth Geneva Convention. Accordingly:

“The Court concludes that the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law.”<sup>447</sup>

3.209. In December 2016, the Security Council, faced with Israel’s flagrant and ongoing violation of its prior resolutions and the Court’s *Wall* Opinion, adopted resolution 2334. The resolution began by reaffirming the “inadmissibility of the acquisition of territory by force,” and the “obligation of Israel, the occupying Power, to abide scrupulously by its legal obligations and responsibilities under the Fourth Geneva Convention.” Recalling the *Wall* Opinion rendered on 9 July 2004, resolution 2334 (2016):

“Reaffirm[ed] that the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace; [and]

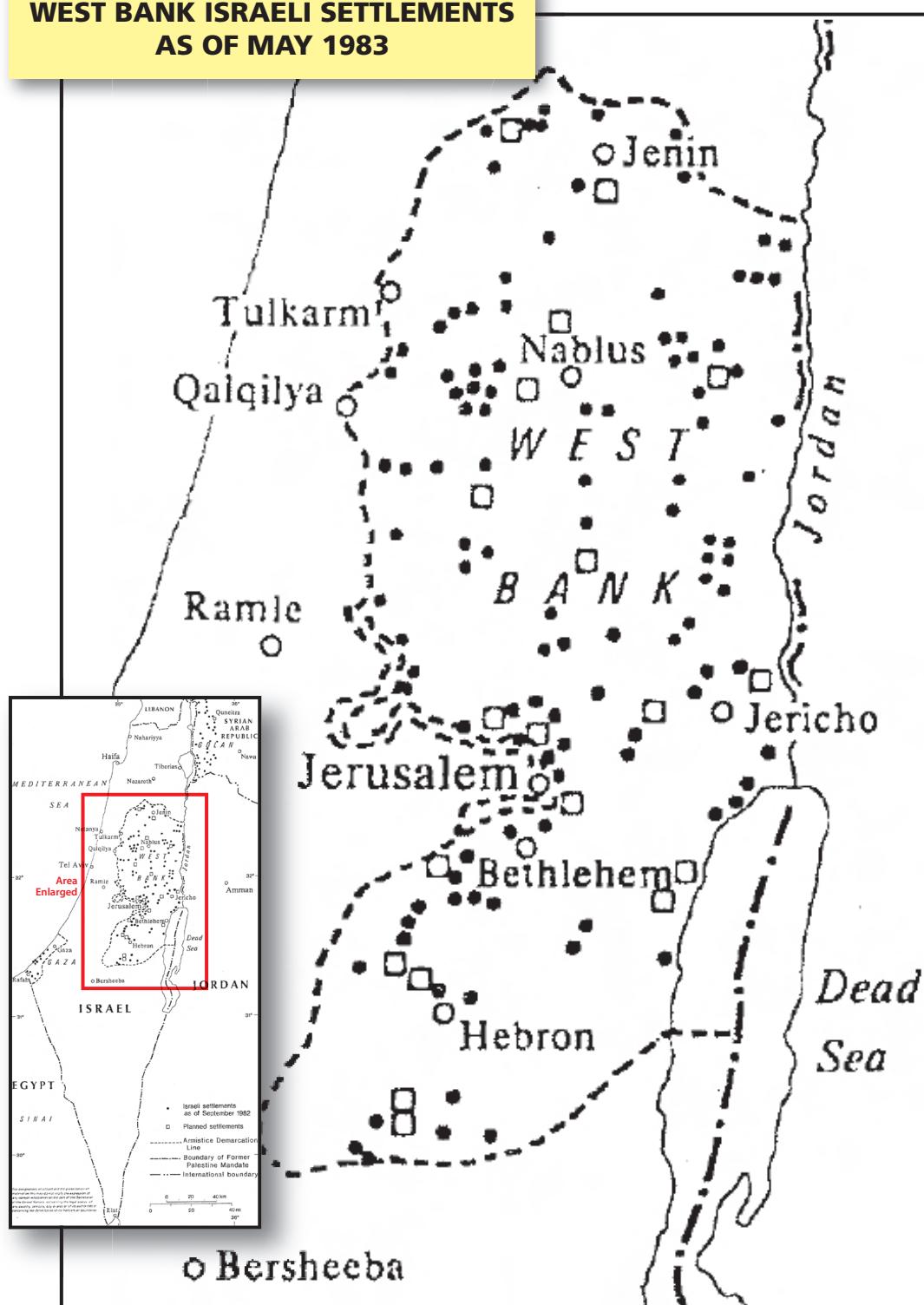
“Reiterate[d] its demand that Israel immediately and completely cease all settlement activities in the occupied Palestinian territory, including East Jerusalem, and that it fully respect all of its legal obligations in this regard”<sup>448</sup>.

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<sup>447</sup> *Wall* Opinion, p. 184, para. 120.

<sup>448</sup> Security Council, Resolution 2334 (2016), 23 December 2016, paras. 1 and 2.

**WEST BANK ISRAELI SETTLEMENTS  
AS OF MAY 1983**



Source: Map No. 3243 United Nations, May 1983.

Figure 3.10



3.210. Israel continued to flout the Security Council's resolutions, including resolution 2334, and its obligations under international law<sup>449</sup>. In 2018, Israel enshrined its commitment to settlement expansion in the West Bank in its Basic Law, which openly declares: "The State views the development of Jewish settlement as a national value, and shall act to encourage and promote its establishment and consolidation."<sup>450</sup>

3.211. That is precisely what Israel has done and has publicly pledged to continue doing. Between the adoption of Security Council resolution 2334 in 2016 and the enactment of the Basic Law "Israel-The Nation State of the Jewish People" two years later, the number of Israeli settlers in the West Bank grew from 399,300 to 427,800. Between the adoption of this Basic Law and the end of 2021, the number increased to 465,400<sup>451</sup>.

3.212. In December 2022, the General Assembly, in resolution 77/126:

*"Condemn[ed] settlement activities by Israel, the occupying Power, in the Occupied Palestinian Territory, including East Jerusalem, as violations of international humanitarian law, relevant United Nations resolutions, ... and as actions in defiance of the calls by the international community to cease all settlement activities; [and]*

*Reiterat[ed] its demand for the immediate and complete cessation of all Israeli settlement activities in all of the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, and calls in this regard for the full implementation of all the relevant resolutions of the Security Council, including, inter alia, resolutions 446 (1979), 452 (1979)*

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<sup>449</sup> In explaining why the United States had chosen not to vote against this resolution, Secretary of State John Kerry stated publicly that: "we have to be clear about what is happening in the west bank. ... [P]olicies of this government, which the prime minister himself just described, as more committed to settlements than any in Israel's history are leading ... towards one-state. ... Israel has increasingly consolidated control over much of the west bank for its own purposes. ... I don't think most people in Israel and certainly in the world, have any idea how broad and systematic the process has become, but the facts speak for themselves. ... [J]ust recently, the government approved a significant new settlement well east of the barrier, closer to Jordan than Israel. What does that say to Palestinians in particular, but also to the United States and the world about Israel's intentions?" ("Read John Kerry's Full Speech on Israeli Settlements and a Two-State Solution", *Time*, 28 December 2016 (<https://time.com/4619064/john-kerrys-speech-israel-transcript/>)).

<sup>450</sup> Basic Law: Israel as the Nation-State of the Jewish People, 19 July 2018, Article 7 (<https://tinyurl.com/fe5b4m7j>).

<sup>451</sup> Peace Now, *Israel's Settlements 2023* (<https://tinyurl.com/2nh4t2s8>).

of 20 July 1979, 465 (1980), 476 (1980), 478 (1980), 1515 (2003) of 19 November 2003 and 2334 (2016)”<sup>452</sup>.

3.213. The Agreement of the parties that have constituted Israel’s government since 29 December 2022 ignored these Security Council and General Assembly resolutions, and, to the contrary, provided for the expansion of Israeli settlements in Palestinian territory by a variety of administrative and structural measures<sup>453</sup>.

3.214. Under this Agreement, Israel’s expansion of settlements in the OPT has accelerated. In February 2023, Israel authorized the construction of 7,349 new housing units for Israeli settlers in the West Bank. This led the Security Council, through its President, to issue a statement on 20 February 2023 that:

“expresse[d] deep concern and dismay with Israel’s announcement on February 12, 2023, announcing further construction and expansion of settlements and the ‘legalization’ of settlement outposts.

.....

The Security Council strongly underscores the need for all parties to meet their international obligations and commitments; strongly opposes all unilateral measures that impede peace, including, *inter alia*, Israeli construction and expansion of settlements, confiscation of Palestinians’ land, and the ‘legalization’ of settlement outposts, demolition of Palestinians’ homes and displacement of Palestinian civilians.”<sup>454</sup>

3.215. Nevertheless, on 22 March 2023, Israel published tenders for 940 more new housing units in the West Bank<sup>455</sup>. Then, on 18 June 2023, the Cabinet conferred almost complete control over granting planning approval to the construction of settlements in the West Bank to Israel’s Minister for the Coordination of Government Activities in Territories and the Civil Administration and granted retroactive approval to the construction of several “outposts” in the

<sup>452</sup> General Assembly, Resolution 77/126, 12 December 2022, preamble and para. 3.

<sup>453</sup> Yesh Din, OFEK, Breaking the silence, ACRI, “Policy paper: What Israel’s 37th government’s guiding principles and coalition agreements mean for the West Bank”, January 2023, pp. 4-5 (<https://tinyurl.com/rwsr44vp>).

<sup>454</sup> Security Council, Statement by the President of the Security Council, 20 February 2023, S/PRST/2023/1, p. 1 (<https://undocs.org/S/PRST/2023/1>).

<sup>455</sup> Peace Now, *Tenders were published for 1,029 housing units: 940 in the West Bank, and 89 in East Jerusalem*, 24 March 2023 (<https://tinyurl.com/9t98wedd>).

West Bank<sup>456</sup>. Later the same day, the Minister, Bezalel Smotrich, published a statement on Twitter expressing the intention to construct “thousands more settlement units” in the West Bank:

“The construction boom in Judea and Samaria and all over our country continues. As we promised, today we are advancing the construction of thousands more units in Yosh [an Israeli settlement in the West Bank]. I thank the Prime Minister and the Minister of Defense for the cooperation and the Settlement Administration and Planning Office for their hard and precise work. *We will continue to develop the settlement and strengthen the Israeli hold on the territory.*”<sup>457</sup>

3.216. The flagrant illegality of such a colonial and annexationist policy is indisputable, as has repeatedly been highlighted by numerous United Nations bodies. In direct response to Israel’s actions, on 19 June 2023 the spokesperson for the Secretary-General published a statement on his behalf:

“The Secretary-General is deeply troubled by yesterday’s decision by the Israeli Government to amend settlement planning procedures. The changes can be expected to expedite the advancement of Israeli settlement plans in the occupied West Bank, including East Jerusalem. He is also deeply alarmed by the anticipated advancement next week of over 4,000 settlement housing units by Israeli planning authorities.

The Secretary-General reiterates that settlements are a flagrant violation of international law. They are a major obstacle to the realization of a viable two-State solution and a just, lasting and comprehensive peace. The expansion of these illegal settlements is a significant driver of tensions and violence and deepens humanitarian needs. It further entrenches Israel’s occupation of Palestinian territory, encroaches on Palestinian land and natural resources, hampers the free movement of the Palestinian population and undermines the legitimate rights of the Palestinian people to self-determination and sovereignty.

The Secretary-General urges the Government of Israel to halt and reverse such decisions and to immediately and completely cease all settlement

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<sup>456</sup> “Netanyahu hands Smotrich full authority to expand settlements”, *The Times of Israel*, 18 June 2023 (<https://tinyurl.com/y3a5tktx>).

<sup>457</sup> B. Smotrich, Tweet, 18 June 2023 (Vol. II, Annex 13).

activities in the Occupied Palestinian Territory and to fully respect its legal obligations in that regard.”<sup>458</sup>

3.217. Israel’s response was not long in coming. On 25 June 2023, the Cabinet approved the construction of another 5,700 new housing units for Israeli settlers in the West Bank. This decision brought to 13,082 the number of new units authorized by Israel in the first six months of the year, over 900 more than in all of 2020, the year that previously saw the most new units<sup>459</sup>. According to the Israeli NGO, Peace Now, the latest approvals:

“make it clear that the government is rushing headlong towards an annexation coup, turning Israel into an apartheid state.”<sup>460</sup>

3.218. The situation has also been described as one of “annexation” by the Independent International Commission of Inquiry:

“Israel treats the occupation as a permanent fixture and has – for all intents and purposes – annexed parts of the West Bank, while seeking to hide behind a fiction of temporariness. … The International Court of Justice anticipated such a scenario in its 2004 advisory opinion, in which it stated that the wall was creating a fait accompli on the ground that could well become permanent and tantamount to de facto annexation. This has now become the reality.”<sup>461</sup>

3.219. There is no evidence that Israel has any intention of changing course in regard to this “reality”, whether by ceasing its unlawful settlement activity, reversing its measures annexing Palestinian territory, or dismantling its existing settlements and withdrawing any of the nearly half million Israeli settlers in the West Bank, as international law requires. To the contrary, its most senior government officials have confirmed, repeatedly, that Israel intends to maintain its presence in and dominion over the OPT permanently, and its most recent actions demonstrate this.

<sup>458</sup> Statement by the Spokesperson for United Nations Secretary-General António Guterres, “Alarmed by New Decision on Settlements, Secretary-General Urges Israeli Government to Cease Such Activities in Occupied Palestinian Territory”, 19 June 2023 (<https://tinyurl.com/3zt8tjzv>).

<sup>459</sup> “Israel advances plans for 5,700 settlement homes, breaking annual record in 6 months”, *The Times of Israel*, 26 June 2023 (<https://tinyurl.com/ymkd9cy4>).

<sup>460</sup> Peace Now, “Record-breaking year: more than 13,000 settlement housing units promoted in the West Bank in 6 months”, 26 June 2023 (<https://tinyurl.com/2f3unvk2>).

<sup>461</sup> Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 14 September 2022, A/77/328, para. 76 (<https://undocs.org/A/77/328>).

## B. DISPLACEMENT AND CONFINEMENT OF PALESTINIANS IN THE WEST BANK

3.220. As noted above, Israel’s construction of settlements in the West Bank, including East Jerusalem, has purposefully fragmented the territory and its indigenous Palestinian population. In 2021, the Special Rapporteur concluded that to ensure a “land base for the settlements and the utmost freedom of movement for the settlers, the Government of Israel has confined the 2.7 million Palestinians in the West Bank within a fragmented archipelago of 165 disparate patches of land (areas A and B), completely surrounded by an area under full Israeli control (area C) and hemmed in by hundreds of roadblocks, walls, checkpoints and forbidden zones.”<sup>462</sup>

3.221. Israeli officials have long been outspoken in expressing their concern that demography constitutes a challenge to Israel’s ability to exercise and retain “sovereignty” over the West Bank. In 1969, the Minister of Labour (and later Deputy Prime Minister), Yigal Allon, declared: “Here, we create a Greater Eretz Israel from a strategic point of view, and establish a Jewish state from a demographic point of view.”<sup>463</sup>

3.222. Since then, Israel has unlawfully pursued efforts to change the demography of the West Bank in its favour, mainly by expanding its settlements to increase the number of Israeli settlers in the territory, and by encouraging or forcing the displacement and confinement of Palestinians. According to an article written by the current Minister responsible for Israel’s Civil Administration in the OPT, “improving our demographic reality” requires both establishing new Israeli settlements and largescale “emigration” by Palestinians<sup>464</sup>.

3.223. This is reflected in Israel’s practices and policies. According to the Secretary-General, for example, Israel has been:

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<sup>462</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 29 July 2021, A/HRC/47/57, para. 63 (<https://undocs.org/A/HRC/47/57>).

<sup>463</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 12 August 2022, A/HRC/49/87, para. 47 (<https://undocs.org/A/HRC/49/87>).

<sup>464</sup> B. Smotrich, “Israel’s Decisive Plan”, *Hashiloach*, 7 September 2017 (<https://tinyurl.com/2s3k69sn>).

“increasing pressure on Palestinians to move out of their areas of residence through practices and policies that contribute to the creation of a coercive environment in areas under full Israeli control.”<sup>465</sup>

3.224. These “practices and policies” include:

“... *demolitions* in the context of the unlawful and discriminatory zoning and planning regime, and the *threat of demolitions* (A/HRC/34/39, para. 47; A/74/357, para. 28; A/HRC/40/42, paras. 17–20, A/68/513 para. 32), *Israeli plans to relocate entire Palestinian communities* (coupled with history of past evictions of entire communities by Israeli authorities) (A/HRC/34/39, paras. 44–45; A/HRC/40/42, para. 17; A/72/564, paras. 36–57), *exposure to military training* in and around Israeli-defined firing zones (A/HRC/34/39, para. 52), *intimidation and harassment* from Israeli security forces and government officials (*ibid.*, para. 50), and *settler violence committed with impunity* (*ibid.*, para. 24; A/74/357, para. 38). It has also been noted that one factor alone can be sufficient to create a coercive environment (A/HRC/34/39, para. 42) and to trigger concerns of forcible transfer.”<sup>466</sup>

3.225. In 2016, a report of the United Nations Secretary-General described how Israel had “creat[ed] a coercive environment that effectively drives communities off the land they have inhabited for decades”, noting that this regime “could amount to individual and mass forcible transfer and forced evictions, contrary to the obligations of Israel under international humanitarian and human rights law”<sup>467</sup>. Five years later, the High Commissioner for Human Rights reported that “[p]olicies and acts contributing to a coercive environment, including demolition of Palestinian property and resulting displacement, reached the highest levels” in years – developments which “took place against a backdrop of intensified political rhetoric of annexation.”<sup>468</sup>

<sup>465</sup> Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, 13 April 2017, A/HRC/34/39, para. 41 (<https://undocs.org/A/HRC/34/39>).

<sup>466</sup> Report of the United Nations High Commissioner for Human Rights, “Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan”, 30 January 2020, A/HRC/43/67, para. 55 (emphasis added) (<https://undocs.org/A/HRC/43/67>).

<sup>467</sup> Report of the Secretary-General, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the Occupied Syrian Golan, 20 January 2016, A/HRC/31/43, paras. 46 and 68 (<https://undocs.org/A/HRC/31/43>).

<sup>468</sup> Report of the United Nations High Commissioner for Human Rights, “Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan”, 15 February 2021, A/HRC/46/65, paras. 3 and 4 (<https://undocs.org/A/HRC/46/65>).

### *1. Demolition of Palestinian homes*

3.226. Demolitions of Palestinian homes and the threat of demolitions are a key component of this “coercive environment”. The Secretary-General has reported that “[d]emolitions have been identified as a key coercive factor, in particular for Area C communities targeted for relocation, communities in closed military zones and communities located near Israeli settlements.”<sup>469</sup>

3.227. The scale of Israel’s demolition of Palestinian property in the West Bank is vast. UNOCHA has reported that in just the period between 2009 and the end of 2022 the number of Palestinian-owned structures in the West Bank which had been demolished by Israel stood at more than 7,500 and the number of Palestinians displaced from their homes as a result exceeded 10,100<sup>470</sup>.

3.228. In addition to the Palestinians who have been directly displaced by the destruction of their homes and other essential structures, tens of thousands more live under a constant threat of eviction, seizure and demolition. UNOCHA has also expressed its “[s]erious concerns … for the tens of thousands of Palestinians who endure fear and insecurity due to outstanding demolition orders that can be executed at any time.”<sup>471</sup>

3.229. The impacts of Israel’s home demolition policy on Palestinian communities and individuals can be devastating in human terms. It is difficult to choose from the many examples that could be provided, but the one at Ein Samiya – in which 178 Palestinians, including 78 children, were forced to leave in May 2022, as reported by the Acting Coordinator for Humanitarian Affairs in the OPT – is illustrative:

“These families are not leaving by choice; the Israeli authorities have repeatedly demolished homes and other structures they own and have threatened to destroy their only school. At the same time, land available for the grazing of livestock has decreased due to settlement expansion and both children and adults have been subjected to settler violence …

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<sup>469</sup> Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, 13 April 2017, A/HRC/34/39, para. 47 (footnotes omitted) (<https://undocs.org/A/HRC/34/39>).

<sup>470</sup> See UNOCHA, *Data on demolition and displacement in the West Bank* (<https://tinyurl.com/4w5fysk6>).

<sup>471</sup> UNOCHA, *West Bank Demolitions and Displacement: An Overview*, July-August 2022 (<https://tinyurl.com/2ccsfcs5>).

We are witnessing the tragic consequences of longstanding Israeli practices and settler violence. ...

Repeated demolitions, settlement expansion, loss of access to grazing land, and settler violence continue to cause concern about the coercive environment, which together with loss of homes and access to lands, generate more humanitarian need.”<sup>472</sup>

3.230. Israel has created this “coercive environment” to displace the Palestinian people by its demolitions compelling Palestinians to relocate internally or abroad. As the Special Rapporteur found in 2017, “[d]emolitions, threats of demolition and lack of protection from demolition all contribute to the creation of a coercive environment, in which people might feel that they have no choice but to leave their land and their homes”<sup>473</sup>. The Secretary-General has described how Palestinians in the West Bank “know that within the current system there is no long-term protection from demolition and destruction of their property, creating a coercive environment that effectively drives communities off the land they have inhabited for decades.”<sup>474</sup>

3.231. Israel’s long-standing practice of demolishing Palestinian homes and other properties has been repeatedly condemned by the Security Council and the General Assembly. In 2004, for example, the Security Council adopted resolution 1544, which expressly called on Israel “to respect its obligations under international humanitarian law, and insist[ed], in particular, on its obligation not to undertake demolition of homes contrary to that law.”<sup>475</sup> In 2016, Security Council resolution 2334 condemned “all measures aimed at altering the demographic composition, character and status of the Palestinian Territory occupied since 1967, including East Jerusalem, including, *inter alia*, the construction and expansion of settlements, transfer of Israeli settlers, confiscation of land, demolition of homes and displacement of Palestinian civilians, in violation of international humanitarian law and relevant resolutions”<sup>476</sup>.

<sup>472</sup> UNOCHA, *Statement by Yvonne Helle, Acting Humanitarian Coordinator for the Occupied Palestinian Territory*, 25 May 2023 (<https://tinyurl.com/yky7s2cb>).

<sup>473</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 13 April 2017, A/HRC/34/70, para. 10 (<https://undocs.org/A/HRC/34/70>).

<sup>474</sup> Report of the Secretary-General, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the Occupied Syrian Golan, 20 January 2016, A/HRC/31/43, para. 46 (<https://undocs.org/A/HRC/31/43>).

<sup>475</sup> Security Council, Resolution 1544 (2004), 19 May 2004, para. 1.

<sup>476</sup> Security Council, Resolution 2334 (2016), 23 December 2016, preamble.

3.232. The General Assembly has adopted resolutions in materially identical terms, every year, including most recently demanding

“that Israel, the occupying Power, cease all measures contrary to international law, as well as discriminatory legislation, policies and actions in the Occupied Palestinian Territory that violate the human rights of the Palestinian people, including ... the forced displacement of civilians, including attempts at forced transfers of Bedouin communities, ... the destruction and confiscation of civilian property, including home demolitions, including if carried out as collective punishment in violation of international humanitarian law, ... and that it fully respect human rights law and comply with its legal obligations in this regard, including in accordance with relevant United Nations resolutions”<sup>477</sup>.

3.233. In 2021, the High Commissioner for Human Rights concluded that “[d]emolitions of private property in the Palestinian Occupied Territory ... are unlawful and amount to forced evictions.” In particular:

“Demolitions and forced evictions violate the rights to adequate housing and to privacy, and other human rights; they are a key element of a coercive environment that may lead to forcible transfer, which is a grave breach of the Fourth Geneva Convention.”<sup>478</sup>

3.234. In October 2022, the Secretary-General issued a report which concluded that:

“Systematic demolitions of Palestinian homes, based on discriminatory laws and policies, are ongoing and result in forced evictions: a gross violation of human rights. Forced evictions resulting from demolitions in the Occupied Palestinian Territory are a key factor in the creation of a coercive environment.”<sup>479</sup>

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<sup>477</sup> General Assembly, Resolution 77/247, 30 December 2022, para. 2.

<sup>478</sup> Report of the United Nations High Commissioner for Human Rights, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, 15 February 2021, A/HRC/46/65, paras. 52-53 (footnotes omitted) (<https://undocs.org/A/HRC/46/65>).

<sup>479</sup> Report of the Secretary-General, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the Occupied Syrian Golan, 3 October 2022, A/77/493, para. 75 (footnote omitted) (<https://undocs.org/A/77/493>).

3.235. On 1 December 2022, the Human Rights Council adopted a resolution which:

*“[c]ondemns the continuing settlement and related activities by Israel, including the transfer of its nationals into the occupied territory, the construction and expansion of settlements, the expropriation and de facto annexation of land, the demolition of homes and community infrastructure, disruptions to the livelihood of protected persons, the confiscation and destruction of property, including humanitarian relief consignments, the forcible transfer of Palestinian civilians or the threat thereof, including of entire communities”<sup>480</sup>.*

3.236. Israel has not only flouted the demands of these United Nations entities to cease its demolition of Palestinian homes and other properties; it has steadily increased the scale and rate of its destruction. In 2019, the Special Rapporteur found that “the rate of home demolitions and seizures of Palestinian-owned structures has increased markedly … in comparison with previous years.”<sup>481</sup> In 2021, the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories reported that “[d]emolitions have increased” and “evictions of Palestinians and demolitions of their homes and health facilities … spiked in 2020.”<sup>482</sup> The High Commissioner for Human Rights similarly reported that “[p]olicies and acts contributing to a coercive environment, including demolition of Palestinian property and resulting displacement, reached the highest levels since 2016 despite the coronavirus disease (COVID-19) pandemic”<sup>483</sup>. The High Commissioner considered it significant that “[t]hese developments took place against a backdrop of intensified political rhetoric of annexation.”<sup>484</sup>

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<sup>480</sup> Human Rights Council, Resolution 49/29 “Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan”, 1 April 2022, A/HRC/RES/49/29, para. 5 (emphasis added) (<https://undocs.org/A/HRC/RES/49/29>).

<sup>481</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 21 October 2019, A/74/507, para. 16 (<https://undocs.org/A/74/507>).

<sup>482</sup> Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, 29 September 2021, A/76/360, paras. 22 and 31 (<https://undocs.org/A/76/360>).

<sup>483</sup> Report of the United Nations High Commissioner for Human Rights, “Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan”, 15 February 2021, A/HRC/46/65, para. 3 (<https://undocs.org/A/HRC/46/65>).

<sup>484</sup> *Ibid.*, para. 4 (footnote omitted).

## 2. Violence against Palestinians

3.237. According to competent United Nations authorities, the demolition of Palestinian homes is not the only measure directed by Israel against Palestinians in the West Bank, intended to force them to leave or be confined in small areas disconnected from one another. Another of these measures is the declaration of certain areas as military zones, from which Palestinians are excluded – or forcibly removed – for so-called “security” reasons. An example, reported in a UNOCHA Fact Sheet in June 2022, is the case of Massafer Yatta:

“On 4 May 2022, the HCJ [Israeli High Court of Justice] ruled that there were no legal barriers to the planned expulsion of Palestinian residents from Masafer Yatta to make way for military training, effectively placing them at imminent risk of forced evictions, arbitrary displacement, and forcible transfer.

Since the 4 May 2022 court ruling, Israeli authorities have increasingly intensified a coercive environment for Palestinians in Masafer Yatta:

- 18 May: Israeli forces issued a military seizure order for the construction of a two-lane patrol road in the ‘Firing Zone’.
- 11 May and 1 June 2022: Dozens of Palestinians had their homes demolished in Khirbet Al Fakhiet and Mirkez. For some of them, the 1 June demolition was the third time to lose their homes in less than a year.
- 7 June: Israeli authorities issued demolition orders for all seven homes and most livelihood structures in Khirbet at Tabban.
- 10 June: Israeli forces went house to house in most communities to photograph residents’ faces and identification documents, raising fear among residents of increased restrictions on movement.
- 16 June: a day after it was announced that a military training exercise would take place in the area, additional demolition orders were issued for 20 structures in Khallet Athaba’.”<sup>485</sup>

3.238. Chapter 4, below, describes other Israeli measures targeting Palestinians in the West Bank as part of Israel’s “coercive environment” forcing them from their homes and villages, especially Israel’s systematic racial discrimination against Palestinians in relation to residency requirements, planning

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<sup>485</sup> UNOCHA, *Fact Sheet: Masafer Yata Community At Risk Of Forcible Transfer – June 2022*, 6 July 2022 (footnote omitted) (<https://tinyurl.com/29tdpaju>).

and building, freedom of movement, and subjection to widespread (and often lethal) violence directed against them by members of the Israeli occupation forces and by Israeli settlers with the complicity of those forces. Authoritative United Nations bodies have concluded that, both individually and cumulatively, these aspects of the regime which Israel has created in the West Bank place significant pressure on Palestinians to leave, and serve its objective of shrinking the presence of Palestinians in the territory, altering the demographic composition in its favour and thus entrenching its “sovereign footprint”.

#### **IV. Israel’s Construction and Control of Infrastructure and its Exploitation of Natural Resources in the West Bank**

3.239. In 2023, Israel is investing 3.5 billion shekels (nearly one billion U.S. dollars) in physical infrastructure to support its settlements throughout the West Bank, to help them grow and expand, and to connect them directly to each other and to Israel<sup>486</sup>. This includes funds for the construction and maintenance of roads; the establishment of education and healthcare facilities; the provision of fresh water for drinking, agriculture and sanitation; and the development of telecommunications and electrical systems<sup>487</sup>. The transportation infrastructure alone is estimated to have cost ten billion shekels<sup>488</sup>.

3.240. Israel’s investments in infrastructure in the West Bank – and its severe restrictions on infrastructure development by Palestinians – not only serve the interests of the Israeli settlers. They also further Israel’s objectives in binding the West Bank more tightly to itself, in an attempt to make its presence there more permanent. According to the Special Rapporteur:

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<sup>486</sup> For example, Israel’s most recent state budget, passed on 24 May 2023, provides for 3.5 billion shekels to be invested in developing West Bank settlements and transportation infrastructure, including by constructing new roads and upgrading existing ones, and by allocating funds for projects in official settlements and unofficial “outposts” in the West Bank. See “Budget dedicates billions for West Bank roads, settlements and illegal outposts”, *The Times of Israel*, 25 May 2023 (<https://tinyurl.com/bdzc42e8>).

<sup>487</sup> “Over the years, the occupying Power has spent billions of dollars in building modern infrastructure to encourage the expansion of settlements, including road, water and sewage systems, communications and power systems, security systems and educational and healthcare facilities.” (Report on UNCTAD assistance to the Palestinian people: Developments in the economy of the Occupied Palestinian Territory, 20 September 2021, TD/B/EX(71)/2, para. 40 ([https://undocs.org/TD/B/EX\(71\)/2](https://undocs.org/TD/B/EX(71)/2)).

<sup>488</sup> B’Tselem, *Forbidden Roads – Israel’s Discriminatory Road Regime in the West Bank*, August 2004, p. 5 (<https://tinyurl.com/4wm3mvjj>).

“The infrastructure of the territory — the sewage connections, the communication systems and the electrical network — has been completely integrated into the domestic system of Israel.”<sup>489</sup>

In particular:

“The West Bank water system, with its plentiful mountain aquifers, have been owned since 1982 by Mekorot, the national water company, with the benefits flowing primarily to Israel. The highway network, which before 1967 had been primarily a north-south system, has been reconfigured as an east-west system to connect the settlements with each other and with Israeli cities ....”<sup>490</sup>

3.241. These facts led the Special Rapporteur to ask:

“What country would invest so heavily over so many years to establish so many immutable facts on the ground in an occupied territory if it did not intend to remain permanently?”<sup>491</sup>

#### A. CONSTRUCTION AND CONTROL OF HIGHWAYS AND ROADS

3.242. In 2004, the Court observed that it “cannot remain indifferent to certain fears expressed to it” including “the fear that Israel may integrate the settlements and their *means of access*”<sup>492</sup>. The fear was well-founded. By its construction of a network of highways and roads connecting its West Bank settlements to each other and to Israel, the occupying Power has in fact fully “integrate[d] the settlements and their means of access.”<sup>493</sup>

3.243. The UNOCHA reported in 2007 that:

“There are at least 20 major and regional roads primarily for Israeli use that specifically link West Bank settlements to each other and to Israel. There is no distinction in name or number between the sections of these regional roads, whether located in Israel or in the West Bank. Israeli traffic moves

<sup>489</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2018, A/73/447, para. 50 (<https://undocs.org/A/73/447>).

<sup>490</sup> *Ibid.*, para. 50 (footnote omitted).

<sup>491</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 23 October 2017, A/72/556, para. 47 (<https://undocs.org/A/72/556>).

<sup>492</sup> *Wall Opinion*, p. 184, para. 121 (emphasis added).

<sup>493</sup> *Ibid.*

easily from one side of the Green Line to the other, passing through checkpoints with minimal delay.”<sup>494</sup>

3.244. The Special Rapporteur found that this network was largely built on confiscated Palestinian lands for the benefit of the Israeli settlements:

“In order to provide efficient transportation between the settlements and to Israeli urban areas, and to encourage new settlers and settlement expansion, the Government of Israel has invested heavily in building a dense network of highways through the West Bank and East Jerusalem, which is built on confiscated Palestinian lands and services only the settler population.”<sup>495</sup>

3.245. Israeli road construction in the West Bank began in the early 1970s. The establishment of new settlements in that period brought with it the construction of access roads to link them to the existing main roads.<sup>496</sup> The highway network was then reconfigured to connect the settlements with each other and with Jerusalem as well as cities in Israel, especially Tel Aviv. To do so, Israel invested primarily in building roads that run from east to west, in contrast to the pre-1967 roads that mainly ran from north to south, connecting major Palestinian cities and towns.<sup>497</sup> In the north-south corridor, Israel built new roads to by-pass the Palestinian cities and towns. These have come to be known as “bypass” roads, from which Palestinians are excluded. By the late 1990s, bypass roads to circumvent every Palestinian city in the West Bank had been completed<sup>498</sup>.

3.246. Senior Israeli government officials have not been reticent about linking the construction of an elaborate road network in the West Bank to facilitation of settlement expansion and the enhancement of Israel’s claim of “sovereignty” over the territory. Some of their public statements to this effect are listed below:

- (a) in 2019, the Minister of Transportation described the infrastructure plan for expanding the road connecting Jerusalem to the Gush Etzion settlement,

<sup>494</sup> UNOCHA, *The Humanitarian Impact on Palestinians of Israeli Settlements and Other Infrastructure in the West Bank*, July 2007, p. 60 (<https://tinyurl.com/3cnz996b>).

<sup>495</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 29 July 2021, A/HRC/47/57, para. 55 (footnote omitted) (<https://undocs.org/A/HRC/47/57>).

<sup>496</sup> B’Tselem, *Forbidden Roads – Israel’s Discriminatory Road Regime in the West Bank*, August 2004, p. 5 (<https://tinyurl.com/4wm3mvjj>).

<sup>497</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2018, A/73/447, para. 50 (<https://undocs.org/A/73/447>).

<sup>498</sup> Breaking the Silence, *Highway to Annexation*, December 2020, p. 5 (<https://tinyurl.com/4txwk7p7>).

located to the south of the City between Bethlehem and Hebron, at a cost of about NIS 1 billion (\$283 million), as “*sovereignty through transportation*”<sup>499</sup>;

- (b) in 2020, Israel’s Defence Minister Naftali Bennett said of the road that Israel was building to prevent Palestinian vehicles from passing inside the Ma’aleh Adumim settlement “block”: “*We’re applying sovereignty in deeds, not in words*”<sup>500</sup>;
- (c) commenting on the “West Bank Road and Transportation Master Plan for 2045,” the head of the Settlements Council explained: “This plan connects the settlements to the rest of the country *and acts as de facto sovereignty*”<sup>501</sup>.

3.247. The same physical roads and highways that connect Israeli settlements separate Palestinian communities from one another. UNOCHA found as early as 2007 that:

“The road system has fragmented the West Bank into a series of Palestinian enclaves. Each Palestinian enclave is geographically separated from the other by some form of Israeli infrastructure including settlements, outposts, military areas, nature reserves and the Barrier. However, the Israeli road network is the key delineator in marking the boundaries of the enclaves. The road network functions to provide corridors for travel from Israel and between settlements in the West Bank, and barriers for Palestinian movement. Palestinian communities on one side of a road can no longer travel by vehicle across the road to a neighbouring community on the other side because they cannot cross the Israeli road network. Instead, they are forced into longer, more circuitous roads to go distances that once took a few minutes.”<sup>502</sup>

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<sup>499</sup> “Israeli ministry pushing ‘sovereignty through transportation’ policy”, *Jewish News Syndicate*, 4 November 2019 (emphasis added) (<https://tinyurl.com/ybyy752m>).

<sup>500</sup> “Bennett orders paving of ‘sovereignty road’ allowing uninhibited E1 construction”, *The Times of Israel*, 9 March 2020 (emphasis added) (<https://tinyurl.com/4d6be3mm>).

<sup>501</sup> “Gov’t launches initiative to expand public transportation in West Bank”, *The Jerusalem Post*, 10 November 2020 (emphasis added) (<https://tinyurl.com/y3nb5cy8>).

<sup>502</sup> UNOCHA, *The Humanitarian Impact on Palestinians of Israeli Settlements and Other Infrastructure in the West Bank*, July 2007, p. 70 (<https://tinyurl.com/3cnz996b>). More recently, the Israeli NGO Breaking the Silence has published a report which describes how “West Bank road and transportation development creates facts on the ground that constitute a significant entrenchment of the *de facto* annexation already taking place in the West Bank and will enable massive settlement growth in the years to come. By strengthening Israel’s hold on West Bank territory, aiding settlement growth, and fragmenting Palestinian land, this infrastructure growth poses a significant barrier to ending the occupation and achieving an equitable and peaceful solution to the Israeli-Palestinian conflict.” (Breaking the Silence, *Highway to Annexation – Israeli Road and Transportation*

3.248. Israel's transportation infrastructure has thus fulfilled the complementary objectives of facilitating expansion of Israeli settlements and the displacement and confinement of Palestinians in the West Bank as the principal means of asserting and maintaining "sovereignty" over the territory.

## B. EXPLOITATION OF WATER AND OTHER NATURAL RESOURCES

3.249. An occupying power is only permitted to act "as administrator and usufructuary" of the natural resources in the territory it occupies and it "must safeguard the capital" of those resources and "administer them in accordance with the rules of usufruct"<sup>503</sup>. Despite these legal obligations, Israel has systematically exploited and denuded the natural resources of the West Bank (and the rest of the OPT) for its own purposes. As a 2019 report by the United Nations Conference on Trade and Development explains:

"Since the start of the occupation, Palestinians in the Occupied Palestinian Territory have progressively lost control over their land and natural resources and, particularly, their supply of water."<sup>504</sup>

3.250. Israel's conduct has not been that of an occupier of the territory, but that of a colonial power. As the Special Rapporteur concluded in 2019:

"The approach of Israel towards the natural resources of the Occupied Palestinian Territory has been to use them as a sovereign country would use its own assets."<sup>505</sup>

3.251. The Independent International Commission of Inquiry reached the same conclusion in its 2022 report, finding that "the occupation and de facto annexation policies of Israel" in the West Bank "include ... the expropriation, looting, plundering and exploitation of land and vital natural resources"<sup>506</sup>. Israel's

*Infrastructure Development in the West Bank*, December 2020, p. 15 (<https://tinyurl.com/4txwk7p7>).

<sup>503</sup> Regulations concerning the Laws and Customs of War on Land, enclosed to the fourth Hague Convention of 1907, Article 55.

<sup>504</sup> UNCTAD, *The Economic Costs of the Israeli Occupation for the Palestinian People: The Unrealized Oil and Natural Gas Potential* (UNCTAD/GDS/APP/2019/1), Geneva, United Nations, 2019, p. 8 (<https://tinyurl.com/yxs7p4jx>).

<sup>505</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 30 May 2019, A/HRC/40/73, para. 56 (<https://undocs.org/A/HRC/40/73>).

<sup>506</sup> Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 14 September 2022, A/77/328, para. 77 (<https://undocs.org/A/77/328>).

“sequestration of natural resources” in the occupied territory is so extensive that it is “virtually indistinguishable from annexation”<sup>507</sup>.

3.252. The consequences for Palestinians living in the occupied territory have been dire:

“For the almost five million Palestinians living under occupation, the degradation and alienation of their water supply, the exploitation of their natural resources and the defacing of their environment is symptomatic of the lack of any meaningful control they have over their daily lives as Israel, the occupying power, exercises its military administrative powers in a sovereign-like fashion, with vastly discriminatory consequences.”<sup>508</sup>

In a 2019 report, UNCTAD likewise determined that:

“[s]ince the start of the occupation, Palestinians in the Occupied Palestinian Territory have progressively lost control over their land and natural resources and particularly their supply of water.”<sup>509</sup>

3.253. United Nations organs have repeatedly condemned Israel’s unlawful exploitation of the natural resources in the West Bank. More than 40 years ago, in 1980, the Security Council adopted a resolution which referred to “the reported serious depletion of natural resources” in the West Bank and stressed the importance of “ensuring protection of those important natural resources of the territories under occupation”<sup>510</sup>. For decades, the General Assembly has annually adopted resolutions which “[e]xpress[ed] its concern about the exploitation by Israel, the occupying Power, of the natural resources of the Occupied Palestinian Territory” and “[d]emand[ed] that Israel, the occupying Power, cease the exploitation, damage, cause of loss or depletion, or endangerment of the natural resources in the Occupied Palestinian Territory ...”<sup>511</sup>.

<sup>507</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 30 May 2019, A/HRC/40/73, para. 27 (<https://undocs.org/A/HRC/40/73>).

<sup>508</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 30 May 2019, A/HRC/40/73, para. 27 (<https://undocs.org/A/HRC/40/73>).

<sup>509</sup> UNCTAD, *The Economic Costs of the Israeli Occupation for the Palestinian People: The Unrealized Oil and Natural Gas Potential*, 2019, UNCTAD/GDS/APP/2019/1, p. 8 (<https://tinyurl.com/yxs7p4jx>).

<sup>510</sup> Security Council, Resolution 465 (1980), 1 March 1980, para. 8.

<sup>511</sup> See General Assembly, Resolutions 64/185, 21 December 2009; 65/179, 20 December 2010; 66/225, 22 December 2011; 67/229, 21 December 2012; 68/235,

3.254. Other United Nations bodies have also called attention to Israel's unlawful exploitation of the natural resources in the West Bank. The United Nations Economic and Social Council has repeatedly “*call[ed] upon* Israel ... to end immediately its exploitation of natural resources, including ... mining resources ... in the Occupied Palestinian Territory ...”<sup>512</sup>. The Human Rights Council adopted a resolution which stated that “the conditions of harvesting and production of products made in settlements involve, *inter alia*, the exploitation of the natural resources of the Occupied Palestinian Territory”<sup>513</sup>. The Council called upon Israel “[t]o cease the exploitation, damage, cause of loss or depletion and endangerment of the natural resources of the Occupied Palestinian Territory ...”<sup>514</sup>.

3.255. Israel's exploitation of the natural resources of the West Bank is far-reaching and has had serious consequences for the Palestinian economy. As the Special Rapporteur has explained:

“Area C is vital to the well-being of the Palestinian economy, as it is endowed with minerals and stone quarrying, productive farmland, the potential for tourism, telecommunications and new housing, and the contiguous territory required for freedom of mobility within the West Bank. ... Despite clear prohibitions in international humanitarian law against pillage by the Occupying Power, Israel has been exploiting the natural resources in Area C for its own benefit, including quarries, Dead Sea minerals and water.”<sup>515</sup>

3.256. Notwithstanding the persistent demands of the international community to refrain from exploiting the natural resources of the West Bank, Israel has continued to do so. Its consistent pattern of conduct led the Special Rapporteur to conclude in a 2017 report to the General Assembly that “[o]n the probative evidence, Israel, the occupying power, has ruled the Palestinian Territory *as an*

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20 December 2013; 69/241, 19 December 2014; 70/225, 22 December 2015; 71/247, 21 December 2016; 72/240, 20 December 2017; 73/255, 20 December 2018; 74/243, 19 December 2019; 75/236, 21 December 2020; 76/225, 17 December 2021; 77/187, 14 December 2022.

<sup>512</sup> See Economic and Social Council, Resolutions, 2009/34, 31 July 2009; 2010/31, 23 July 2010; 2013/8, 19 July 2013; 2016/14, 18 August 2016; 2018/20; 24 July 2018; 2021/4, 14 September 2020.

<sup>513</sup> Human Rights Council, Resolution 40/24, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, 22 March 2019, preamble (<https://undocs.org/A/HRC/RES/40/24>).

<sup>514</sup> *Ibid.*, para. 8 (h).

<sup>515</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 19 October 2016, A/71/554, para. 51 (footnote omitted) (<https://undocs.org/A/71/554>).

*internal colony, deeply committed to exploiting its land and resources for Israel's own benefit*<sup>516</sup>.

## Conclusion

3.257. Israel's own leaders have spelled out the common objective of all these illegal measures: the application, exercise and permanent application of Israeli "sovereignty" over East Jerusalem and the rest of the West Bank.

3.258. As the evidence presented in this Part demonstrates, Israel neither regards itself, nor behaves, as a temporary occupant of the West Bank. On the contrary, in words, in laws and in deeds, Israel has evinced precisely the opposite intention and experience – one which treats the West Bank as Israel's own "sovereign" territory, which Israel claims it is entitled to control, to exploit and to rule forever. Through the express extension and application of Israeli laws, Israel has purported to govern the West Bank as though it were a part of Israel. Through the construction of hundreds of settlements and the transfer of hundreds of thousands of Israeli settlers, Israel has created numerous facts on the ground, which it promises never to remove, in support of its colonialist and annexationist enterprise. By constructing roads, and hundreds of kilometres of walls and other barriers, Israel has sought to bind those settlements to each other and to Israel itself, creating a unified and entrenched network of "faits accomplis" throughout the West Bank. By demolishing Palestinian homes and engaging in an array of other systemic practices designed to displace the Palestinian population of the West Bank, Israel has sought to augment its domination of the West Bank by attempting to radically and permanently altering the character, status and demographic composition of the territory. And by extensively seizing and exploiting the West Bank's natural resources, Israel has done what only a sovereign – and not an occupying Power – could lawfully do, and what colonial powers have unlawfully done throughout history.

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<sup>516</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 23 October 2017, A/72/556, para. 58 (emphasis added) (<https://undocs.org/A/72/556>).



## **Chapter 4.**

### **ISRAEL'S VIOLATION OF THE PROHIBITION OF RACIAL DISCRIMINATION AND APARTHEID**

4.1. In its Request for an Advisory Opinion, the General Assembly has *inter alia* asked the Court to determine what are the legal consequences arising from the adoption by Israel of “discriminatory legislation and measures”.

4.2. This Chapter will first address the discriminatory legislation and measures which Israel has enacted and imposed in order to establish a far-reaching and deeply entrenched system of racial discrimination against Palestinians throughout the OPT, which subjugates them to Israeli domination and denies them their fundamental rights as human beings (Section I). It will demonstrate that this regime finds its origins in the *Nakba* and in the policies adopted by Israel vis-à-vis the Palestinians who remained in historic Palestine, and who continue to be subjected to racial discrimination deeply affecting the enjoyment of their fundamental rights (Section II). It will then demonstrate that this institutionalized system of racial discrimination against the Palestinian people amounts to apartheid (Section III).

4.3. As shown in this Chapter, through a combination of racially discriminatory laws and racially discriminatory civil and military policies and practices that openly distinguish between Jewish Israelis and Palestinians – whether Muslim, Christian or Samaritan – Israel has created a system of entrenched racial discrimination which penetrates every single aspect of the daily life of Palestinians living on either side of the Green Line.

4.4. The cumulative result of this multi-faceted and systematic discrimination is the segregation and subjugation, on racial grounds, of the entire Palestinian people, including those who have been forced into refugee status and are prohibited, on racial grounds, from returning to their native land. It reflects Israel's publicly-expressed commitment to establish and maintain a Jewish State between the Mediterranean Sea and the Jordan River where the aspiration of only Jewish Israelis is given expression. This is expressly affirmed by Israeli law, including the 2018 “Nation State Law”, where “the right to national self-determination” in Israel, defined to include “Judea and Samaria”, is made “exclusive to the Jewish people”<sup>517</sup>

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<sup>517</sup> Basic Law: Israel – The Nation State of the Jewish People, 5778-2018, Article 1 (c) (Vol. II, Annex 9).

thus relegating the Palestinian people to inferior status in their ancestral land. The primary objective has been and remains appropriation and control of the land for the sole benefit of Israeli Jews.

4.5. Israel's racial discrimination against the Palestinian people is no less pervasive in its reach, and no less pernicious in its aims and consequences, than the institutionalized racial discrimination and segregation which existed in South Africa during the last century. As was the case in South Africa, the regime which Israel has instituted against Palestinians is premised upon a stark racial hierarchy, with Jewish Israelis at the top and Palestinians at the bottom. That hierarchy is expressly enshrined in Israel's laws, including its quasi-constitutional "Basic Laws", and is reflected in the words and deeds of its leaders, occupation forces and its settlers over many decades.

4.6. The perpetuation of this state of affairs is an affront to the international rule of law and to human dignity, and it violates peremptory norms of international law, as well as long-established human rights and humanitarian norms.

### **I. Racial Discrimination against the Palestinian People in the Occupied Palestinian Territory and Denial of their Fundamental Rights**

4.7. Ever since its military forces occupied the West Bank, including East Jerusalem, and the Gaza Strip in 1967, Israel has imposed a far-reaching and deeply entrenched system of racial discrimination against the Palestinian people throughout the OPT. This regime distinguishes – deliberately, comprehensively and systematically – along ethnic and religious lines between the Palestinian population and the hundreds of thousands of Jewish Israeli settlers that have been transferred to the OPT in violation of international humanitarian law, including Article 49, paragraph 6, of the Fourth Geneva Convention. It also severely deprives, contrary to international law, Palestinians of their fundamental rights by reason of their identity.

4.8. The intent and direct effect of the discriminatory policies is clear: it creates a fertile environment for the transfer of Jewish Israeli settlers and the building and expansion of settlements. Concurrently, it creates an inviable environment for Palestinians, forcing their uprooting and confinement, enabling and entrenching annexation.

4.9. The overall discriminatory nature of the system applied by Israel to the OPT has been documented and condemned by numerous United Nations bodies. In 2013, the Independent International Commission of Inquiry found:

“The legal regime of segregation operating in the Occupied Palestinian Territory has enabled the establishment and the consolidation of the settlements through the creation of a privileged legal space for settlements and settlers. It results in daily violations of a multitude of the human rights of the Palestinians in the Occupied Palestinian Territory, including, incontrovertibly, violating their rights to non-discrimination, equality before the law and equal protection of the law.”<sup>518</sup>

4.10. In 2020, the CERD Committee’s Concluding Observations on Israel underlined:

“As regards the specific situation in the Occupied Palestinian Territory, the Committee remains concerned ... at the consequences of policies and practices that amount to segregation, such as the existence in the Occupied Palestinian Territory of two entirely separate legal systems and sets of institutions for Jewish communities in illegal settlements on the one hand and Palestinian populations living in Palestinian towns and villages on the other hand. The Committee is appalled at the hermetic character of the separation of the two groups, who live on the same territory but do not enjoy either equal use of roads and infrastructure or equal access to basic services, lands and water resources. Such separation is materialized by the implementation of a complex combination of movement restrictions consisting of the Wall, the settlements, roadblocks, military checkpoints, the obligation to use separate roads and a permit regime that impacts the Palestinian population negatively.”<sup>519</sup>

4.11. In an August 2022 Report, the United Nations Special Rapporteur on human rights in the OPT addressed the racially discriminatory character of Israeli practices in the West Bank, including East Jerusalem:

“At the heart of the settler colonial project of Israel is a comprehensive dual legal and political system that provides comprehensive rights and living conditions for the Jewish Israeli settlers in the West Bank, including East Jerusalem, while imposing upon the Palestinians military rule and control without any of the basic protections of international humanitarian and

<sup>518</sup> Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, 7 February 2013, A/HRC/22/63, para. 49 (<https://undocs.org/A/HRC/22/63>).

<sup>519</sup> Committee on the Elimination of Racial Discrimination, Concluding observations on the combined seventeenth to nineteenth reports of Israel, 27 January 2020, CERD/C/ISR/CO/17-19, para. 22 (<https://undocs.org/CERD/C/ISR/CO/17-19>).

human rights law ... *Israel assigns, or withholds, these rights and conditions on the basis of ethnic and national identity.* Politically and legally, Jewish Israeli settlers enjoy the same fulsome citizenship rights and protections as Israeli Jews living inside the country's borders of 1949. The 475,000 Israeli settlers in the West Bank, all of whom live in Jewish-only settlements, have the full panoply of laws and benefits of the citizenship of Israel extended to them personally and extraterritorially. ... In sharp contrast, *the 2.7 million Palestinians living in the West Bank enjoy none of the rights, protections and privileges possessed by the Israeli Jewish settlers living among them.* ... Israel has imposed a military legal system in the West Bank that applies to Palestinians but not the Jewish settlers.”<sup>520</sup>

4.12. The Special Rapporteur concluded that:

“an institutionalized regime of systematic racial oppression and discrimination has been established. Israeli Jews and Palestinian Arabs in East Jerusalem and the West Bank live their lives under a single regime that differentiates its distribution of rights and benefits on the basis of national and ethnic identity, and that ensures the supremacy of one group over, and to the detriment of, the other.

.....

[T]he imposition of *this system of institutionalized discrimination with the intent of permanent domination* has been built upon the regular practice of inhumane and inhuman acts. Arbitrary and extrajudicial killings. Torture. The violent deaths of children. The denial of fundamental human rights. A fundamentally flawed military court system and the lack of criminal due process. Arbitrary detention. Collective punishment. The repetition of these acts over long periods of time, and their endorsement by the Knesset and the Israeli judicial system, indicate that they are not the result of random and isolated acts but integral to the system of rule by Israel.”<sup>521</sup>

4.13. The General Assembly has repeatedly demanded that Israel cease its discrimination against the Palestinian people. Most recently, on 30 December 2022, it adopted resolution 77/247 which:

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<sup>520</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 12 August 2022, A/HRC/49/87, paras. 38-41 (emphasis added and footnote omitted) (<https://undocs.org/A/HRC/49/87>).

<sup>521</sup> *Ibid.*, paras. 53 and 55 (emphasis added).

“[d]emand[ed] that Israel, the occupying Power, cease all measures contrary to international law, as well as discriminatory legislation, policies and actions in the Occupied Palestinian Territory that violate the human rights of the Palestinian people, including the killing and injury of civilians, the arbitrary detention and imprisonment of civilians, the forced displacement of civilians, including attempts at forced transfers of Bedouin communities, the transfer of its own population into the Occupied Palestinian Territory, including East Jerusalem, the destruction and confiscation of civilian property, including home demolitions, including if carried out as collective punishment in violation of international humanitarian law, and any obstruction of humanitarian assistance, and that it fully respect human rights law and comply with its legal obligations in this regard, including in accordance with relevant United Nations resolutions.”<sup>522</sup>

4.14. Israel has refused to comply with these demands, as it has all prior demands, and stubbornly maintains its racially discriminatory policies and practices. In March 2023, the United Nations High Commissioner for Human Rights published a report which “document[ed] patterns of *systematic discrimination in law, policy and practice, encompassing almost every sphere of life*” of Palestinians in the OPT<sup>523</sup>.

4.15. Israel’s grave violations of the fundamental rights of the Palestinian people, including those discussed below, are “a longstanding structural component of the prolonged disfranchisement of the Palestinians under occupation.”<sup>524</sup> That is, they are not incidental by-products of the occupation; they are core elements of it, which Israel carries out for the purpose of maintaining its dominion over the OPT, forcing Palestinians to leave or accept its control, including through persecution of the Palestinians who live there. Systematic racial discrimination is thus an essential component of the Israeli occupation, and an integral part of the foundation upon which it rests.

4.16. Among the most notorious features of Israel’s systematic racial discrimination against the Palestinian people – in violation of the rules of

<sup>522</sup> General Assembly, Resolution 77/247, 30 December 2022, para. 2 (<https://undocs.org/A/RES/77/247>).

<sup>523</sup> Report of the United Nations High Commissioner for Human Rights, “Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan”, 15 March 2023, A/HRC/52/76, para. 2 (emphasis added) (<https://undocs.org/A/HRC/52/76>).

<sup>524</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 21 September 2022, A/77/356, para. 8 (<https://undocs.org/A/77/356>).

international law prohibiting such discrimination – are the following policies and practices, which are discussed in separate subsections below, and which include persecution of Palestinians, i.e., the denial of their fundamental rights because of their identity:

- Israel's discriminatory dual legal system, including Israel's violation of the principle of equal treatment before tribunals and its discriminatory treatment of Palestinian children (A);
- Israel's arbitrary arrest and detention of Palestinians, including children (B);
- Israel's torture and other cruel, degrading and inhuman treatment of Palestinian detainees (C);
- Israel's discriminatory use of lethal force against Palestinian civilians (D);
- Israel's discrimination against Palestinians in respect of freedom of movement, including its discrimination in respect of freedom to leave and return (E);
- Israel's discrimination against Palestinians in respect of the right to marriage and choice of spouse (F);
- Israel's discrimination against Palestinians in respect of the freedom of religion (G);
- Israel's discriminatory land distribution and planning regime in the OPT (H);
- Israel's discrimination against Palestinians in respect of the right to natural resources, in particular fresh water (I);
- Israel's discrimination against Palestinians in respect of social and economic rights (J); and
- Israel's infliction of collective punishment on the Palestinian people (K).

#### A. ISRAEL'S DISCRIMINATORY DUAL LEGAL SYSTEM

4.17. Israel applies different systems of law to Palestinians and Israeli settlers in the West Bank. This differential application of laws and legal systems is based solely on ethnicity and therefore constitutes blatant racial discrimination. As the United Nations High Commissioner for Human Rights explained in 2017:

“Israel applies a substantial part of its domestic laws to Israeli settlers living in the occupied territories, while Palestinians living in the West Bank are subject to Israeli military rule. *The extraterritorial application of Israeli domestic law to settlers creates two different legal systems in the same territory, on the sole basis of nationality or origin. Such differentiated application is discriminatory and violates the principle of equality before the law*, which is central to the right to a fair trial.”<sup>525</sup>

4.18. In 2020 the High Commissioner for Human Rights reiterated that:

“[t]he application of two different legal systems in the same territory, on the sole basis of nationality or origin, is inherently discriminatory.”<sup>526</sup>

4.19. The Independent Commission of Inquiry similarly described in its September 2022 report how Israel had established a “dual legal system” which “provides greater enjoyment of human rights for Israelis than for Palestinians and is therefore discriminatory”. The Commission added that “[t]here are stark differences between the two legal systems, in particular with regard to criminal law, with significant implications for the rights of Palestinians.”<sup>527</sup>

4.20. As set out in Article 5 (a) of CERD, the prohibition of racial discrimination encompasses the right to equal treatment before tribunals and all other organs administering justice. It guarantees the right for “everyone who seeks justice before a competent organ not to be discriminated against because of racist motivations.”<sup>528</sup> The CERD Committee has stressed the importance of an impartial justice system<sup>529</sup>. Notably, a legal system free from discrimination is central for a number of other related fundamental human rights, i.e., equality before the law, and

<sup>525</sup> Report of the United Nations High Commissioner for Human Rights, “Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan”, 13 April 2017, A/HRC/34/39, para. 9 (emphasis added) (footnotes omitted) (<https://undocs.org/A/HRC/34/39>).

<sup>526</sup> Report of the United Nations High Commissioner for Human Rights, “Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan”, 30 January 2020, A/HRC/43/67, para. 29 (emphasis added) (<https://undocs.org/A/HRC/43/67>).

<sup>527</sup> Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 14 September 2022, A/77/328, para. 47 (<https://undocs.org/A/77/328>).

<sup>528</sup> N. Lerner, *The UN Convention on the Elimination of all Forms of Racial Discrimination*, Reprint revised edition, Leiden Boston, Brill Nijhoff, 2014, p. 59.

<sup>529</sup> United Nations, Committee on the Elimination of Racial Discrimination, General recommendation No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system, Sixty-fifth session (2005), p. 1 (<https://tinyurl.com/mr2dfwme>).

the right to an independent and impartial trial<sup>530</sup>. Racial discrimination in the justice system enables all other forms of racial discrimination to proliferate unchecked.

### *1. The Discriminatory Israeli Military Court System*

4.21. Israel arrests, interrogates, prosecutes, sentences, and detains Palestinians, including children, in the OPT, often without charge or trial. They are then dealt with by a special military court regime applied to the Palestinian people alone in the OPT. The Special Rapporteur, in June 2023, noted that “Israel’s all-encompassing criminalization shows that the military legislation, rather than safeguarding security, renders every single Palestinian potentially subject to imprisonment for ordinary acts of life”<sup>531</sup>. In contrast, Jewish Israeli settlers living in the OPT are not subjected to this military court system; instead, they are subjected to Israel’s civilian courts and criminal justice system, the same system as Israelis living in Israel<sup>532</sup>.

4.22. Accordingly, while Jewish Israeli settlers living in the OPT who are suspected of committing crimes are prosecuted, tried and sentenced in civil courts in Israel applying Israeli law, Palestinians living in the OPT are prosecuted, tried and sentenced in military courts applying military law<sup>533</sup>. Jewish Israeli settlers and Palestinians living in the OPT are thus treated differently based purely on their respective ethnicities<sup>534</sup>. As observed by the Special Rapporteur:

“In a structure of institutionalized discrimination, military courts enforce military laws against Palestinians while Israeli courts apply domestic civil law to Israelis, including settlers, who thus become vectors of annexation.

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<sup>530</sup> See, e.g., Article 2 CRC, Article 5 CRPD, Article 7 CMW, Article 2 ICESCR, and Articles 14, 26 ICCPR.

<sup>531</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 9 June 2023, A/HRC/53/59 (Advance Unedited Version), para. 36 (footnote omitted) (<https://tinyurl.com/ynuxb5kv>).

<sup>532</sup> Association for Civil Rights in Israel (“ACRI”), *One Rule, Two Legal Systems: Israel’s Regime of Laws in the West Bank*, October 2014, pp. 19-20 (<https://tinyurl.com/masa37p3>). See also Chapter 3, paras. 3.164-3.168.

<sup>533</sup> As ACRI puts it: “criminal law is an area in which the discrepancies between the two legal systems in the West Bank are highly apparent, and their implications on basic rights, and the right to liberty in particular, are the most significant. The national identity of the suspect or defendant determines which law will apply to them and who will have legal authority over them. In every stage of the procedure – starting with the initial arrest, through the indictment and ending with the sentence – Palestinians are discriminated against compared to Israelis. This holds true for both adults and minors.” See *ibid.*, p. 75.

<sup>534</sup> See O. Ben-Naftali, A. M. Gross, and K. Michaeli, “Illegal Occupation: Framing the Occupied Palestinian Territory”, *Berkeley Journal of International Law*, Vol. 23, 2005, No. 3, p. 584.

The Israeli military law enforcement system, based on this inherent racial dualism, constitutes the pillar of Israel's settler-colonial apartheid regime, targeting Palestinian people only, depriving them of fundamental rights, including equality before the law.”<sup>535</sup>

4.23. This rigid, ethnically-based dichotomy establishes a regime of racial discrimination in the OPT which severely prejudices the rights of the thousands of Palestinians who are arrested and incarcerated by Israel each year. This was underlined in a 2022 United Nations report:

“[T]he military courts incarcerate thousands of Palestinians on security charges through a judicial system that offers few of the international protections regarding due process or the prevention of arbitrary arrest and detention.”<sup>536</sup>

4.24. The discriminatory treatment of Palestinians is enshrined in Israeli legislation. Jewish Israeli settlers – but not Palestinians – have been expressly exempted from the jurisdiction of the military courts of the West Bank by the Extension of the Emergency Regulations Law (“Judea and Samaria and Gaza – Adjudication of Offenses and Legal Aid”) of 1977<sup>537</sup>. The Israeli Knesset has most recently, on 25 January 2023, extended this law<sup>538</sup>. This discriminatory policy has been approved by Israel’s High Court of Justice<sup>539</sup>.

4.25. Even Jews from abroad present in the West Bank who are *not* Israeli citizens, but who are entitled to immigrate to Israel in accordance with the 1950 Israeli “Law of Return”, are exempted from trial before Israeli military courts<sup>540</sup>. The discriminatory, solely race-based nature of this differentiation is further exacerbated by the fact that Palestinians carrying Israeli identification

<sup>535</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 9 June 2023, A/HRC/53/59 (Advance Unedited Version), para. 31 (footnote omitted) (<https://tinyurl.com/ynuxb5kv>).

<sup>536</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 12 August 2022, A/HRC/49/87, para. 50 (a) (footnote omitted) (<https://undocs.org/A/HRC/49/87>).

<sup>537</sup> Replacing an earlier law to the same effect of 1967.

<sup>538</sup> The Knesset, “Knesset extends Judea and Samaria emergency regulations by five years”, 25 January 2023 (<https://tinyurl.com/bddj6hau>).

<sup>539</sup> *David v. State of Israel*, HCJ 163/82 37 PD 622 (1983).

<sup>540</sup> *Emergency Regulations (Judea and Samaria – Adjudication of Offenses and Legal Assistance)*, 5727-1967, Regulation 6B, Collection of Regulations 5727, p. 2741; Book of Laws 5728, p. 20; 5772, p. 476. See also ACRI, *One Rule, Two Legal Systems: Israel’s Regime of Laws in the West Bank*, October 2014, p. 16 (<https://tinyurl.com/masa37p3>).

documents (notably those from East Jerusalem) who are accused by Israel of committing offenses in the OPT are nevertheless tried by Israeli military courts. Attempts by such persons to be tried before Israeli civil courts have failed<sup>541</sup>.

## 2. *The Discriminatory Israeli Military Court System Is Not Permitted Under International Humanitarian Law*

4.26. Israel cannot rely on international humanitarian law to justify the continued operation of its military court system in the OPT. First, the situation in the OPT, after more than 56 years of occupation, renders unlawful the continued existence of military courts. As explained in Chapter 2 above, as a matter of law, occupation “is considered as being a temporary state of affairs”<sup>542</sup>. Israel’s prolonged occupation of the OPT, which has lasted for well over half a century, cannot conceivably be characterised as “temporary”. Accordingly, any attempt to justify the continued existence and operation of a military court system in the OPT by Israel, as the occupying power, is manifestly untenable.

4.27. Second, international humanitarian law could never justify the *discriminatory* treatment of Palestinians before military courts in comparison to Jewish Israelis accused of committing the same crime in the same occupied territory<sup>543</sup>. International humanitarian law does not permit the discriminatory treatment of the indigenous population in the occupied territory vis-à-vis the occupying power’s own citizens unlawfully transferred to and living in the same occupied territory. Accordingly, distinctions in the judicial system based on race, as defined in Article 1 of CERD, violate the obligation to prevent unequal treatment on the basis of race or ethnicity – an obligation that cannot be overridden on the basis of *lex specialis* under international humanitarian law.

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<sup>541</sup> Supreme Court of Israel, *Zrari v. Israeli Police*, HCJ 6743/97, unpublished 1997 (reported by S. Weill, “The Judicial Arm of the Occupation: The Israeli Military Courts in the Occupied Territories”, *International Review of the Red Cross*, Vol. 89, 2007, No. 866, pp. 395-419); *The Israeli Police v. Nabulsi*, 7SJMC (1990) pp. 189 ff. (398).

<sup>542</sup> V. Koutroulis, “The application of international humanitarian law and international human rights law in situations of prolonged occupation: only a matter of time?”, *International Review of the Red Cross*, Vol. 94, 2012, No. 885, p. 166 (footnote omitted).

<sup>543</sup> For the differences in the due process rights which are afforded to Palestinians facing prosecution in the military courts compared with Israelis facing prosecution for the same offences in the same territory see ACRI, *One Rule, Two Legal Systems: Israel’s Regime of Laws in the West Bank*, October 2014, pp. 53-60 (<https://tinyurl.com/masa37p3>).

### 3. In Any Case, the Preconditions of Article 66 of the Fourth Geneva Convention Are Not Met

4.28. Article 66 of the Fourth Geneva Convention provides that “the Occupying Power may hand over the accused to its properly constituted, *non-political military courts*”<sup>544</sup>. According to the ICRC’s authoritative commentary on Article 66, “[t]his clause forbids certain practices resorted to during the Second World War when the judicial machinery was sometimes used as an instrument of political or racial persecution”<sup>545</sup>. This means that military tribunals “must respect the same requirements of independence and impartiality as civilian tribunals.”<sup>546</sup> Israel’s military court system established in the OPT however fails to comply with those requirements of the Fourth Geneva Convention and is an integral part of the military regime designed to persecute Palestinians so as to subjugate the people and annex their land.

4.29. The clearest indicator of the Israeli military courts’ bias against Palestinians is their conviction rate. The conviction rate for Palestinians – which is almost 100 % – is only possible by the combination of two factors. The first one is the elimination of virtually all of the safeguards that guarantee a fair trial. As observed in an August 2022 United Nations report:

“Palestinians arrested for security offences can be detained without charge for a much longer period of time than Israeli settlers. The military legal system is presided over by Israeli military judges and trials are conducted in Hebrew (which many Palestinian detainees do not speak). The system offers few of the procedural and substantive protections of a purposive criminal legal system, while the prisoners’ lawyers are significantly restricted in their access to evidence and the conviction rate is over 99 per cent.”<sup>547</sup>

4.30. The second is criminalizing lawful actions by Palestinians. Indeed, when dealing with Palestinians, the Israeli military court system has proven to be an

<sup>544</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, Article 66 (emphasis added).

<sup>545</sup> J. Pictet, *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, Geneva, ICRC, 1958, p. 340.

<sup>546</sup> J.-M. Henckaerts, L. Doswald-Beck, *Customary International Humanitarian Law, Vol. I (Rules)*, International Committee of the Red Cross, Cambridge University Press, 2005, p. 356 (footnote omitted).

<sup>547</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 12 August 2022, A/HRC/49/87, para. 41 (footnote omitted) (<https://undocs.org/A/HRC/49/87>).

instrument of sustaining the occupation rather than achieving justice. It is used as a legal façade to quash any form of opposition to the occupation. Palestinian detainees are generally considered “security prisoners” and are held in the security sections of prisons or detention centres in Israel.

4.31. Amnesty International has described how “more than 1,800 Israeli military orders continue to control and restrict all aspects of the lives of Palestinians in the West Bank: their livelihoods, status, movement, political activism, detention and prosecution, and access to natural resources.” Israeli military legislation in the West Bank “is enforced by the military justice system. Since 1967, the Israeli authorities have arrested over 800,000 Palestinian men, women and children in the West Bank, including East Jerusalem, and Gaza Strip, bringing many of them before military courts that systematically fail to meet international standards of fair trial, and where the vast majority of cases end in conviction.”<sup>548</sup>

#### B. ARBITRARY ARREST AND DETENTION OF PALESTINIANS, INCLUDING CHILDREN

4.32. Under its dual system of “justice” – one for Jewish Israelis and another for Palestinians – Israel violates the rules of international law relating to arbitrary arrest and detention.<sup>549</sup> This is the conclusion consistently reached by the different United Nations bodies that have investigated these practices. The Independent International Commission of Inquiry found in 2013:

“Palestinians are routinely subject to arbitrary arrest and detention, including administrative detention, mass arrests and incarceration. It is estimated that more than 700,000 Palestinians, including children, have been held in Israeli military detention since the beginning of the occupation, many in prisons located within Israel. In 2012, approximately 4,100 Palestinians were in Israeli military detention, of whom 143 were aged between 16 and 18 years, and 21 were below 16 years old. It is well documented that the military court system does not ensure Palestinians basic fair trial guarantees, including minimum standards of independence, clear evidentiary or procedural rules, the presumption of innocence or the duty to hear witnesses or examine all material evidence.”<sup>550</sup>

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<sup>548</sup> Amnesty International, *Israel’s Apartheid against Palestinians: A Cruel System of Domination and a Crime Against Humanity*, February 2022, pp. 17-18 (<https://tinyurl.com/mt7a7c24>).

<sup>549</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, articles 5, 71-73; ICPR, Articles 9 and 10; CRC, Article 37.

<sup>550</sup> Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian

4.33. Israel's conduct was no less arbitrary and discriminatory in 2023, when the United Nations Special Rapporteur noted:

"Under Israeli occupation, generations of Palestinians have endured widespread and systematic arbitrary deprivation of liberty, often for the simplest acts of life. Since 1967, over 800,000 Palestinians, including children, have been detained based on an array of authoritarian rules enacted, enforced and adjudicated by the Israeli military. Palestinians are often presumed guilty without evidence, arrested without warrants, and detained without charge or trial. Physical and psychological abuse are distressingly common ... most criminal convictions of Palestinians have been the result of a litany of violations of international law, including due process violations, that taint the legitimacy of the ammonisation of justice by the occupying power. Many such convictions concern the legitimate expressions of civil and political rights, and the right to resist an illegal foreign occupier."<sup>551</sup>

4.34. Likewise, the Human Rights Committee stated in its concluding observations:

"The Committee is concerned about the widespread practice of arbitrary arrest and detention, including in facilities located in Israel, of Palestinians, including journalists, human rights defenders and children, in violation of international humanitarian law and the Covenant.

.....

The Committee is concerned that Counter Terrorism Law 5776-2016 contains vague and overbroad definitions of 'terrorist organization' and 'terrorist act' and may be used to oppress and criminalize legitimate political or humanitarian acts, as illustrated by the designation, in October 2021, of six Palestinian civil society organizations as terrorist organizations based on secret information. It is further concerned about the use of secret evidence in counter-terrorism proceedings, which is inaccessible to defendants and their lawyers, thereby violating their right to a fair trial."<sup>552</sup>

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people throughout the Occupied Palestinian Territory, including East Jerusalem, 7 February 2013, A/HRC/22/63, para. 47 (footnotes omitted) (<https://undocs.org/A/HRC/22/63>).

<sup>551</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 9 June 2023, A/HRC/53/59 (Advance Unedited Version), para. 94 (footnote omitted) (<https://tinyurl.com/ynuxb5kv>).

<sup>552</sup> Human Rights Committee, Concluding observations on the fifth periodic report of Israel, 5 May 2022, CCPR/C ISR/CO/5, para. 34 and para. 18 (<https://undocs.org/CCPR/C/ISR/CO/5>).

4.35. Israel also resorts to a particularly egregious form of arbitrary detention through the extensive use of “administrative detention”, whereby the occupying forces detain Palestinians for periods of up to six months based on secret information without being charged or given a trial. This six-month period can be renewed indefinitely<sup>553</sup>. In March 2023, the United Nations High Commissioner for Human Rights described Israel’s administrative detention of Palestinians as a practice “in which people are arbitrarily detained for often lengthy periods without charge or trial”<sup>554</sup>. This has led the United Nations Special Rapporteur to conclude that:

“the violations associated with Israeli forces’ widespread use of administrative detention may amount to a grave breach of the Fourth Geneva Convention and the war crimes of unlawful confinement of a protected person and wilful deprivation of their right to a fair trial.”<sup>555</sup>

4.36. Similarly, the Human Rights Committee expressed concern about:

“the continuing practice of administrative detention of Palestinians, including children, without charge or trial and without the guarantee of fundamental legal safeguards”

and:

“the use of secret evidence in administrative detention proceedings and routine approvals and renewals by military courts of administrative detention orders, even in cases involving detainees with serious health issues”<sup>556</sup>.

4.37. The discriminatory nature of Israel’s administrative detention system, as applied against Palestinians, led the CERD Committee in its 2012 Concluding Observations to urge Israel “to end its current practice of administrative detention,

<sup>553</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 12 August 2022, A/HRC/49/87, para. 41 (<https://undocs.org/A/HRC/49/87>).

<sup>554</sup> High Commissioner for Human Rights, “Statement by High Commissioner on report on the Occupied Palestinian Territory”, 3 March 2023 (<https://tinyurl.com/yssvhx3>).

<sup>555</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 9 June 2023, A/HRC/53/59 (Advance Unedited Version), para. 43 (footnote omitted) (<https://tinyurl.com/ynuxb5kv>).

<sup>556</sup> Human Rights Committee, Concluding observations on the fifth periodic report of Israel, 5 May 2022, CCPR/C/ISR/CO/5, para. 34 (<https://undocs.org/CCPR/C/ISR/CO/5>).

which is *discriminatory* and constitutes arbitrary detention under international law”<sup>557</sup>.

4.38. The General Assembly also expressed grave concern regarding “the extensive use of administrative detention of excessive duration without charge and denial of due process”<sup>558</sup>. The Human Rights Council expressed similar concern “at the conditions of the Palestinian prisoners and detainees, including minors, in Israeli jails and detention centres, and at the continued use of administrative detention”<sup>559</sup>.

4.39. United Nations experts have reported that Israel currently holds approximately 4,900 Palestinians in its prisons, including 1,016 administrative detainees who are held for an indefinite period without trial or charge, based on secret information. The number of administrative detainees in Israeli detention facilities is at its highest since 2008, despite repeated condemnation from international human rights bodies and recommendations for Israel to immediately end the practice. The United Nations experts therefore concluded: “The systematic practice of administrative detention, is tantamount to a war crime of wilfully depriving protected persons of the rights of fair and regular trial.”<sup>560</sup>

4.40. Among other hardships, Palestinian prisoners are imprisoned in Israel – in blatant disregard of Article 76 of the Fourth Geneva Convention – which impacts their rights and their families and lawyers, who require permits from the Israeli occupation authorities to enter Israel to visit their relatives or clients. Israel simply refuses to comply with its international obligation as an occupying power to maintain Palestinian detainees within the occupied territory, and regularly transfers Palestinian detainees to jails in Israel<sup>561</sup>.

<sup>557</sup> Committee on the Elimination of Racial Discrimination, Consideration of reports submitted by States parties under article 9 of the Convention. Concluding Observations (Israel), CERD/C ISR/CO/14-16, 3 April 2012, para. 27 (emphasis added) (<https://undocs.org/CERD/C/ISR/CO/14-16>).

<sup>558</sup> General Assembly, Resolution 77/247, 30 December 2022, preamble (<https://undocs.org/A/RES/77/247>).

<sup>559</sup> Human Rights Committee, Resolution 52/3, “Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, and the obligation to ensure accountability and justice”, 13 April 2023, A/HRC/RES/52/3, para. 23 (<https://undocs.org/A/HRC/RES/52/3>).

<sup>560</sup> “Israel: UN experts demand accountability for death of Khader Adnan and mass arbitrary detention of Palestinians”, United Nations Press release, 3 May 2023 (<https://tinyurl.com/4skwhz4s>).

<sup>561</sup> See M. Sfard, “Devil’s Island: The Transfer of Palestinian Detainees into Prisons within Israel”, in A. Baker and A. Matar (eds.), *Threat: Palestinian Prisoners in Israel*, London, Pluto Press, 2011.

4.41. Even Palestinian children are subjected to military courts established in the OPT, and suffer from arbitrary arrest, including administrative detention. In contrast, Jewish Israeli minors living in the OPT as settlers are tried before Israeli civilian courts. This differential treatment is inherently discriminatory. In practice, the discriminatory effects are compounded by the different definitions of who constitutes a minor; differences in the protections that apply to minors in respect of procedures for arrest, detention and interrogation; and differences in the sentencing of minors.

4.42. The Israeli military authorities in the OPT have promulgated a military order which limits the definition of “children” in the OPT to minors under the age of 16, in contravention of the first article of the Convention on the Rights of the Child<sup>562</sup>.

4.43. As a result, Palestinian children aged 16 and 17 years old are generally treated as adults in military courts and prisons. In contrast, under the Israeli civilian law applying to Jewish Israeli settlers in the OPT, any person under the age of 18 is prosecuted by a civil *juvenile* court and *not* treated as an adult<sup>563</sup>. This means *inter alia* that the restrictions on imprisonment which apply to Israeli offenders do *not* apply to young Palestinian alleged offenders between the age of 16 and 18<sup>564</sup>.

4.44. In his July 2021 report, the Special Rapporteur explained that “[a]ccording to military orders 1711 and 1726, Palestinian children may be held in military courts, where their detention could be extended for up to 10 days before they are referred to other courts”<sup>565</sup>. The Special Rapporteur was therefore “alarmed by the number of children in detention and also the conditions of their arrest” and called on Israel “to immediately stop this practice, which is in clear contravention of international law and should be used only as a last resort”<sup>566</sup>.

4.45. Palestinian children are also seriously discriminated against when it comes to sentencing. Data from the Israeli police, for example, show that approximately 60 % of Israeli minors who were guilty of an offence were “adjudicated without a conviction”; only 20.6 % served a prison term and 20 %

<sup>562</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 29 July 2021, A/HRC/47/57, para. 23 (<https://undocs.org/A/HRC/47/57>).

<sup>563</sup> *Ibid.*

<sup>564</sup> Military Order 1651 (2009), Article 168 (B) and (C) (<https://tinyurl.com/48bd5c59>).

<sup>565</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 29 July 2021, A/HRC/47/57, para. 23 (<https://undocs.org/A/HRC/47/57>).

<sup>566</sup> *Ibid.*

were sentenced to other punishments<sup>567</sup>. In contrast, the conviction rate for Palestinian children is nearly 100 %<sup>568</sup>.

4.46. Still another troubling form of detention, as explained by the Special Rapporteur, is:

“the deprivation of liberty [that] haunts Palestinians beyond their life. Israeli forces often withhold the bodies of Palestinians deceased in custody or killed for alleged ‘security reasons’. This practice, which the Israeli High Court of Justice has condoned, applies to the bodies of adults and children alike. By May 2023, Israeli forces reportedly withheld 125 Palestinian bodies, including 13 deceased detainees … For decades, the bodies of Palestinians who were not returned to their families were buried in graves near military zones known as ‘cemeteries of numbers’ (as each body was assigned a number).”<sup>569</sup>

4.47. The General Assembly has also repeatedly,

“[d]eplor[ed] the practice of withholding bodies of those killed, calling for the release of the bodies that have not been returned to their relatives, in line with international humanitarian law and human rights law, in order to ensure dignified closure in accordance with their religious beliefs and traditions.”<sup>570</sup>

4.48. These Israeli practices must be seen in the broader context of its colonial agenda. Indeed as noted by United Nations experts:

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<sup>567</sup> ACRI, *One Rule, Two Legal Systems: Israel’s Regime of Laws in the West Bank*, 2014, p. 73 (<https://tinyurl.com/masa37p3>).

<sup>568</sup> B’Tselem, *No minor matter – Violation of the Rights of Palestinian Minors Arrested by Israel on Suspicion of Stone Throwing*, 2011, p. 16 (<https://tinyurl.com/33nx9vaf>); ACRI, *One Rule, Two Legal Systems: Israel’s Regime of Laws in the West Bank*, October 2014, p. 74 (<https://tinyurl.com/masa37p3>).

<sup>569</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 9 June 2023, A/HRC/53/59 (Advance Unedited Version), paras. 75 and 76 (footnotes omitted) (<https://tinyurl.com/ynuxb5kv>).

<sup>570</sup> General Assembly, Resolution 77/247, 30 December 2022, preamble (<https://undocs.org/A/RES/77/247>); General Assembly, Resolution 77/25, 6 December 2022, preamble (<https://undocs.org/A/RES/77/25>).

“We cannot separate Israel’s carceral policies from the colonial nature of its occupation, intended to control and subjugate all Palestinians in the territory Israel wants to control.”<sup>571</sup>

4.49. The Special Rapporteur further stressed in this regard that:

“[c]arcerality conceived as a large-scale system of deprivation of liberty that forces into a condition of captivity entire populations, who are also disposed of their lands, is an essential feature of settler-colonialism”, and that

“[t]he reality captured is of an entire occupied population framed as a security threat, often presumed guilty, and punished with incarceration even when trying to exercise fundamental freedoms … [t]his system presents features of persecution.”<sup>572</sup>

4.50. These practices have continued despite the General Assembly repeatedly demanding that “Israel, the occupying Power, cease all measures contrary to international law, as well as discriminatory legislation, policies and actions in the Occupied Palestinian Territory that violate the human rights of the Palestinian people, including … the arbitrary detention and imprisonment of civilians …”<sup>573</sup>.

### C. ISRAEL’S TORTURE AND OTHER CRUEL, DEGRADING AND INHUMAN TREATMENT OF PALESTINIAN DETAINEES

4.51. Israel’s ill-treatment of Palestinian detainees begins with their arrest. The manner in which Israeli occupation forces routinely carry out these arrests is especially intimidating. According to the most recent report of the United Nations Special Rapporteur, published in June 2023:

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<sup>571</sup> “Israel: UN experts demand accountability for death of Khader Adnan and mass arbitrary detention of Palestinians”, United Nations Press release, 3 May 2023 (<https://tinyurl.com/4skwhz4s>).

<sup>572</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 9 June 2023, A/HRC/53/59 (Advance Unedited Version), para. 79 and 4 (footnote omitted) (<https://tinyurl.com/ynuxb5kv>).

<sup>573</sup> See, e.g., General Assembly, Resolution 77/247, 30 December 2022, para. 2 (<https://undocs.org/A/RES/77/247>).

“Dozens of armed soldiers raid villages, enter homes breaking doors, ransack, seize property and arrest individuals, including children, without a warrant.”<sup>574</sup>

4.52. Children are frequently the targets of these arrests. The Committee on the Rights of the Child has long expressed its concern about Israel’s treatment of them. In 2013, for example, the Committee found that they are:

“[r]outinely arrested in the middle of the night by soldiers shouting instructions at the family and taken hand-tied and blindfolded to unknown destination without having the possibility to say goodbye to their parents who rarely know where their children are taken”<sup>575</sup>.

4.53. The Independent International Fact-Finding Mission found that, after arrest, Palestinian children are subjected to especially harsh treatment while they are detained:

“Most children are arrested at friction points, such as villages near settlements or on roads used by the army or settlers and that run by a Palestinian village. From point of arrest, they face multiple violations of their rights to liberty and security and fair trial through interrogation, arbitrary detention and abuse, trial and sentencing. Approximately 90 per cent of children plead guilty and are given custodial sentences.”<sup>576</sup>

4.54. Each year an average of 500 to 700 Palestinian children are brought into the Israeli detention system.<sup>577</sup> Israel’s treatment of them is reflected in the 2022 report of the United Nations High Commissioner for Human Rights:

“There was an increase in the number of children arrested and detained by the Israeli security forces. Children as young as 8 years of age continued to

<sup>574</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 9 June 2023, A/HRC/53/59 (Advance Unedited Version), para. 47 (footnote omitted) (<https://tinyurl.com/ynuxb5kv>).

<sup>575</sup> Committee on the Rights of the Child, Concluding Observations on the second to fourth periodic reports of Israel, 4 July 2013, CRC/C/ISR/CO/2-4, para. 35 (<https://undocs.org/CRC/C/ISR/CO/2-4>).

<sup>576</sup> Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, 7 February 2013, A/HRC/22/63, para. 48 (<https://undocs.org/A/HRC/22/63>).

<sup>577</sup> See Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 9 June 2023, A/HRC/53/59 (Advance Unedited Version), para. 65 (<https://tinyurl.com/ynuxb5kv>).

report ill-treatment and a lack of fair trial guarantees, including freedom from self-incrimination, the right to prompt legal assistance and the due involvement of parents or guardians in legal proceedings. Some documented cases may amount to torture or other ill-treatment. On 1 May, the Israeli security forces arrested and beat a 13-year old boy in the Old City of Jerusalem. Police officers dragged him to premises above Damascus Gate and kicked him in the face and head as he was lying on the floor with his hands tied behind his back. They hit him with a helmet in his genitals and burnt his chest with a cigarette. The police initially refused to call an ambulance and did so only upon the intervention of a lawyer. The police interrogated the boy without a lawyer or parent present on charges of assaulting a police officer and asked him to sign papers in Hebrew, a language that he did not understand. The Israeli security forces released him on condition of a 5-day house arrest and 12-day movement restriction.”<sup>578</sup>

4.55. The General Assembly and the Human Rights Council have repeatedly raised the ill-treatment of Palestinian prisoners and detainees:

*“Expressing grave concern that thousands of Palestinians, including many children and women, continue to be held in Israeli prisons or detention centres under harsh conditions, including, inter alia, unhygienic conditions, solitary confinement, the extensive use of administrative detention of excessive duration without charge and denial of due process, lack of proper medical care and widespread medical neglect, including for prisoners who are ill, with the risk of fatal consequences, and denial of family visits, that impair their well-being ....”*<sup>579</sup>

4.56. They also mentioned in particular their grave concern “about the ill-treatment and harassment and all reports of torture of any Palestinian prisoners”<sup>580</sup>.

4.57. The prohibition on torture is a *jus cogens* norm of international law and if torture is committed as part of a widespread and systematic attack against a civilian population, it is a crime against humanity<sup>581</sup>. It is prohibited by the

<sup>578</sup> Report of the United Nations High Commissioner for Human Rights, “Implementation of Human Rights Council Resolution S-9/1 and S-12/1”, 28 April 2022, A/HRC/49/83, para. 49 (footnotes omitted) (<https://undocs.org/A/HRC/49/83>).

<sup>579</sup> General Assembly, Resolution 69/93, 5 December 2014, preamble (<https://undocs.org/A/RES/69/93>).

<sup>580</sup> *Ibid.*

<sup>581</sup> See Article 7(1)(f) of the Statute of the International Criminal Court. See also ICTY, *Prosecutor v. Anto Furundzija*, Case no. IT-95-17/1-T10, Trial Chamber, Judgment, 10 December 1998.

International Covenant on Civil and Political Rights<sup>582</sup>, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“the Torture Convention”)<sup>583</sup>, the Convention on the Rights of the Child<sup>584</sup>, and the Fourth Geneva Convention<sup>585</sup>. In egregious violation of these obligations, Israel regularly tortures Palestinian detainees, including children.

4.58. According to the Committee on the Rights of the Child, Palestinian children are:

“[s]ystematically subject to physical and verbal violence, humiliation, painful restraints, hooding of the head and face in a sack, threatened with death, physical violence, and sexual assault against themselves or members of their family, restricted access to toilet, food and water.”<sup>586</sup>

4.59. An array of United Nations investigative commissions, United Nations treaty monitoring bodies and NGOs have confirmed that torture is a weapon routinely employed by Israeli interrogators against Palestinian detainees. In 2009, a United Nations Fact Finding Mission examined the treatment of Palestinians detained from Gaza and concluded that they were “subjected to beatings and other physical abuse that amounts to torture”<sup>587</sup>. It found that this treatment violated the Convention against Torture and constituted a war crime<sup>588</sup>. In 2015, a United Nations Independent Commission of Inquiry investigated the treatment of children in the West Bank, including East Jerusalem, and found that their accounts of being subjected to “multiple forms of cruel, inhuman or degrading treatment involving soldiers, interrogators, or prison guards during the various stages of arrest, transfer, interrogation and/or detention” were “consistent with findings of UN bodies and NGOs in recent years.”<sup>589</sup>

<sup>582</sup> United Nations International Covenant on Civil and Political Rights, Article 7.

<sup>583</sup> United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

<sup>584</sup> United Nations Convention on the Rights of the Child, Articles 37, 39.

<sup>585</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, Article 32.

<sup>586</sup> Committee on Rights of the Child, Concluding Observations on the second to fourth periodic reports of Israel, 4 July 2013, CRC/C/ISR/CO/2-4, para. 35 (<https://undocs.org/CRC/C/ISR/CO/2-4>).

<sup>587</sup> Report of the United Nations Fact-Finding Mission on the Gaza Conflict, “Human Rights in Palestine and other Occupied Arab Territories”, 25 September 2009, A/HRC/12/48, para. 1164 (<https://undocs.org/A/HRC/12/48>).

<sup>588</sup> *Ibid.*, paras. 1129-1138, 1164, 1174-1175.

<sup>589</sup> Human Rights Council, Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council Resolution S-21/1, A/HRC/29/CRP.4, 24 June 2015, paras. 517-518 (footnote omitted) (<https://undocs.org/A/HRC/29/CRP.4>).

4.60. The Human Rights Committee, the Committee against Torture, and the Committee on the Rights of the Child have expressed deep concern about the continued use of physical and psychological torture in the interrogation and treatment of Palestinian detainees by Israeli Prison Service guards and Israeli occupation forces. In particular, these United Nations bodies have called upon Israel to recognize that the prohibition on torture is absolute, to abandon the use of the necessity defence, to allow independent monitoring of interrogation facilities, to investigate acts of torture and to punish those responsible<sup>590</sup>.

4.61. The Human Rights Committee in turn was:

“deeply concerned about reports of the widespread and systematic practice of torture and ill-treatment by Israel Prison Service guards and the Israeli security forces against Palestinians, including children, at the time of arrest and in detention. It is particularly concerned about the use of physical and psychological violence, sleep deprivation, stress positions and prolonged solitary confinement, including against children and detainees with intellectual or psychosocial disabilities. It also notes with concern a very low rate of criminal investigations, prosecutions and convictions concerning allegations of torture and ill-treatment (arts. 7, 9, 10 and 24).”<sup>591</sup>

4.62. The Committee Against Torture was:

“concerned at allegations of many instances in which Palestinian minors were exposed to torture or ill-treatment, including to obtain confessions; were given confessions to sign in Hebrew, a language they do not understand; and were interrogated in the absence of a lawyer or a family member.”<sup>592</sup>

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<sup>590</sup> Committee on Rights of the Child, Concluding Observations on the second to fourth periodic reports of Israel, 4 July 2013, CRC/C ISR/CO/2-4, paras. 35-36 (<https://undocs.org/CRC/C/ISR/CO/2-4>); Committee against Torture, Concluding Observations on the fifth periodic report of Israel, 3 June 2016, CAT/C/ISR/CO/5, paras 14, 18, 19, 30, 31 (<https://undocs.org/CAT/C/ISR/CO/5>); Human Rights Committee, Concluding observations on the fifth periodic report of Israel, 5 May 2022, CCPR/C/ISR/CO/5, paras. 28-31 (<https://undocs.org/CCPR/C/ISR/CO/5>).

<sup>591</sup> Human Rights Committee, Concluding observations on the fifth periodic report of Israel, 5 May 2022, CCPR/C/ISR/CO/5, para. 30 (<https://undocs.org/CCPR/C/ISR/CO/5>).

<sup>592</sup> Committee against Torture, Concluding observations on the fifth periodic report of Israel, 3 June 2016, CAT/C/ISR/CO/5, para. 28 (<https://undocs.org/CAT/C/ISR/CO/5>).

4.63. The Committee on the Rights of the Child:

“expresse[d] its deepest concern about the reported practice of torture and ill-treatment of Palestinian children arrested, prosecuted and detained by the military and the police, and about the State party’s failure to end these practices in spite of repeated concerns expressed by treaty bodies, special procedures mandate holders and United Nations agencies in this respect. The Committee notes with deep concern that children living in the OPT continue to be:

- (a) Routinely arrested in the middle of the night by soldiers shouting instructions at the family and taken hand-tied and blindfolded to unknown destination without having the possibility to say goodbye to their parents who rarely know where their children are taken;
- (b) Systematically subject to physical and verbal violence, humiliation, painful restraints, hooding of the head and face in a sack, threatened with death, physical violence, and sexual assault against themselves or members of their family, restricted access to toilet, food and water. These crimes are perpetrated from the time of arrest, during transfer and interrogation, to obtain a confession but also on an arbitrary basis as testified by several Israeli soldiers as well as during pretrial detention;
- (c) Held in solitary confinement, sometimes for months.”<sup>593</sup>

4.64. In 2018, after a ruling of Israel’s Supreme Court exempting security agents from criminal investigation despite their undisputed use of coercive “pressure techniques” against a Palestinian detainee, the United Nations Special Rapporteur on torture expressed his utmost concern stating that:

“By exempting alleged perpetrators from criminal investigation and prosecution, the Supreme Court has essentially provided them with a judicially sanctioned ‘license to torture’.”<sup>594</sup>

4.65. In 2022, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 expressed similar concerns about Israel’s discriminatory and inhumane treatment of Palestinian detainees:

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<sup>593</sup> Committee on the Rights of the Child, Concluding observations on the second to fourth periodic reports of Israel, 4 July 2013, CRC/C ISR/CO/2-4, para. 35 (<https://undocs.org/CRC/C ISR/CO/2-4>).

<sup>594</sup> “UN expert alarmed at Israeli Supreme Court’s ‘license to torture’ ruling”, United Nations Press release, 20 February 2018 (<https://tinyurl.com/3x3v9exm>).

“Although strictly prohibited under international law, torture continues to be used in practice by Israel against Palestinians in detention. Methods of torture include sleep deprivation, beating and slapping, humiliation, unhygienic conditions and extended shackling in contorted positions. Challenges to the Israeli Supreme Court against its use have been unsuccessful. Beatings by Israeli soldiers of Palestinians during arrests are regularly reported, with little accountability.”<sup>595</sup>

#### D. ISRAEL’S UNLAWFUL USE OF FORCE AGAINST PALESTINIAN CIVILIANS

4.66. The Human Rights Committee’s General Comment No. 36 on the Right to Life contained in Article 6 of the International Covenant on Civil and Political Rights is of special relevance to Israel’s actions in the OPT. It stresses that States “must respect and protect the lives of individuals located in places that are under their effective control, such as occupied territories” and warns that:

“the targeting of civilians, civilian objects and objects indispensable to the survival of the civilian population, indiscriminate attacks, failure to apply the principles of precaution and proportionality, and the use of human shields would also violate article 6 of the Covenant.”<sup>596</sup>

4.67. As set out below, Israel has systematically breached its obligations under Article 6 of the Covenant. It has done so for the purpose of maintaining its dominion over the OPT and control over the Palestinian people. The Special Rapporteur underscored “the growing amount of violence required to maintain the occupation”. That violence, and the ongoing violation of Palestinians’ fundamental rights, is “based entirely on nationality and ethnicity” and represents a state of affairs which “should be unthinkable in the twenty-first century”<sup>597</sup>.

4.68. In the course of its occupation of the OPT, Israel has been responsible for the killing of thousands of Palestinians, through military incursions, raids and assaults, and extra-judicial killings. The systematic use of lethal force by Israeli occupation forces in the OPT made 2022 the deadliest year for Palestinians in the

<sup>595</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 12 August 2022, A/HRC/49/87, para. 50 (e) (footnotes omitted) (<https://undocs.org/A/HRC/49/87>).

<sup>596</sup> Human Rights Committee, General Comment No 36 (Article 6: right to life), CCPR/C/GC/36, 3 September 2019, paras. 63-64 (footnote omitted) (<https://undocs.org/CCPR/C/GC/36>).

<sup>597</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2021, A/76/433, para. 27 (<https://undocs.org/A/76/433>).

West Bank since the United Nations started systematically documenting fatalities in 2005<sup>598</sup>.

4.69. As a United Nations Commission of Inquiry found as early as 2001:

“[T]here is considerable evidence of indiscriminate firing at civilians in the proximity of demonstrations and elsewhere. In addition, the IDF [Israeli Defence Force] is subject to the principle of proportionality which requires that injury to non-combatants or damage to civilian objects may not be disproportionate to the military advantages derived from an operation. The use of lethal weapons against demonstrators and the widespread destruction of homes and property along settlement roads cannot, in the opinion of the Commission, be seen as proportionate in the circumstances.”<sup>599</sup>

4.70. In 2022, the Human Rights Committee expressed its deep concern over:

“continuing and consistent reports of the excessive use of lethal force by the Israeli security forces against Palestinian civilians, including children, and the lack of accountability for these acts, resulting in a general climate of impunity.”<sup>600</sup>

4.71. Of particular concern is Israel’s long-standing policy of extrajudicial killing of Palestinians. The General Assembly has deplored Israel’s “extrajudicial killing … underlining that they are a violation of international law and international humanitarian law”<sup>601</sup>. Similarly, the Human Rights Committee repeatedly called on Israel “to end its practice of extrajudicial executions of individuals”<sup>602</sup>. The United Nations Special Coordinator for Middle East Peace Process condemned Israel’s

<sup>598</sup> See “Israel: UN experts condemn record year of Israeli violence in the occupied West Bank”, United Nations Press release, 15 December 2022 (<https://tinyurl.com/ypxvacrz>).

<sup>599</sup> Report of the human rights inquiry commission established pursuant to Commission resolution S-5/1 of 19 October 2000, “Question of the Violation of Human Rights in the Occupied Arab Territories, Including Palestine”, E/CN.4/2001/121, 16 March 2001, para. 43 (<https://undocs.org/E/CN.4/2001/121>).

<sup>600</sup> Human Rights Committee, Concluding Observations on the fifth periodic report of Israel, CCPR/C ISR/CO/5, 5 May 2022, para. 26 (<https://undocs.org/CCPR/C/ISR/CO/5>).

<sup>601</sup> General Assembly, Resolution ES-10/12, 25 September 2003, preamble (<https://undocs.org/A/RES/ES-10/12>).

<sup>602</sup> Human Rights Committee, Concluding observations: Israel, 3 September 2010, CCPR/C ISR/CO/3, para. 10 (<https://undocs.org/CCPR/C/ISR/CO/3>).

extrajudicial killings and “reiterated the world body’s consistent opposition to such assassination … no country can resort to such extrajudicial measures”<sup>603</sup>.

4.72. Yet, Israel persisted in this practice, leading the United Nations Secretary-General to condemn Israel and remind it that “extrajudicial killings are against international law”. The Secretary-General called on “the Government of Israel to immediately end its practice”<sup>604</sup>.

4.73. According to the UNOCHA, in just the years since 2008 at least 6,269 Palestinians, including 1,409 children, have been killed in the context of the occupation, while 146,618 have been injured<sup>605</sup>. This means that, on average, more than one Palestinian has been killed, and more than 25 Palestinians have been injured, every day for the last 15 years. Children, in particular, have been the target of the Israeli military’s violence. In August 2022, the High Commissioner for Human Rights expressed concern for the number of children killed by Israeli occupation soldiers and called for accountability<sup>606</sup>.

4.74. In December 2022, the Special Rapporteur of human rights in the OPT, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on Freedom of Peaceful Assembly and Association expressed dismay that 2022 had already been the deadliest year in the West Bank since 2005, with over 152 Palestinians killed by Israeli forces. Lamenting that “[i]mpunity continues to prevail”, they underscored that:

“[u]se of lethal force as a first rather than a last resort by Israeli forces, against Palestinians who do not present an imminent threat to life or of serious injury, may amount to extrajudicial execution – a violation of the right to life – and wilful killing prohibited under the Fourth Geneva Convention and Rome Statute.”<sup>607</sup>

<sup>603</sup> United Nations Office of the Special Coordinator for the Middle East Peace Process, “UN envoy condemns Israel’s extra-judicial assassinations”, 25 August 2003 (<https://tinyurl.com/4ux27ve9>).

<sup>604</sup> United Nations Office of the Spokesperson for the United Nations Secretary-General, “Secretary-General strongly condemns Israel’s assassination of Hamas leader, which resulted in death of eight others”, 22 March 2004 (<https://tinyurl.com/47ukrvmk>).

<sup>605</sup> UNOCHA, *Data on Casualties* (<https://www.ochaopt.org/data/casualties>).

<sup>606</sup> “Bachelet alarmed by the number of Palestinian children killed in latest escalation, urges accountability”, United Nations Press Release, 11 August 2022 (<https://tinyurl.com/bddpx8n5>).

<sup>607</sup> “Israel: UN experts condemn record year of Israeli violence in the occupied West Bank”, United Nations Press release, 15 December 2022 (<https://tinyurl.com/ypxvacrz>). See prior Special Rapporteur reports showing concern about the Israeli practice of extrajudicial executions of Palestinians: Report of the Special Rapporteur on the situation of human rights in the Palestinian

4.75. Aid workers and journalists have not been spared, either. As the Special Rapporteur has described, “[h]umanitarians and journalists are regularly among the victims of the widespread recourse by Israel to lethal force. Lack of accountability remains pervasive.”<sup>608</sup> Since 2001 the Committee to Protect Journalists has documented at least 20 journalists killed by the IOF<sup>609</sup>. In May 2022, *Al Jazeera* journalist Shireen Abu Akleh was shot dead by an Israeli soldier while documenting an Israeli raid on the Jenin refugee camp. Despite “numerous investigations concluding that the journalist was hit by Israeli soldiers’ fire”<sup>610</sup>, and repeated calls for accountability, Israel continued ensuring full impunity for its occupation forces.

4.76. This has led the General Assembly in 2022 to once again express “grave concern about the continuing systematic violation of the human rights of the Palestinian people by Israel, the occupying Power, including that arising from the excessive use of force and military operations causing death and injury to Palestinian civilians, including children, women and non-violent, peaceful demonstrators, as well as journalists, medical personnel and humanitarian personnel”<sup>611</sup>.

4.77. This pattern of indiscriminately killing and injuring Palestinians has continued in 2023. By the middle of 2023, Israel had already conducted several deadly incursions into Palestinian towns and refugee camps, leading three United Nations experts, including the Special Rapporteur on extrajudicial, summary or arbitrary executions, to issue a joint statement noting that:

“[o]n the morning of 26 January, Israeli forces conducted a raid in the Jenin Refugee Camp in the north of the occupied West Bank. They fired live ammunition, killing at least nine Palestinians, including one elderly woman and two children. Over 20 people were reportedly injured and four of them remain in critical condition … The international community cannot and should

territories occupied since 1967, A/77/356, 21 September 2022, paras. 56-57 (<https://undocs.org/A/77/356>); Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, A/HRC/49/87, 12 August 2021, para. 50 (<https://undocs.org/A/HRC/49/87>).

<sup>608</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 21 September 2022, A/77/356, para. 58 (<https://undocs.org/A/HRC/77/356>).

<sup>609</sup> Committee to Protect Journalists, *Deadly Pattern. 20 Journalists died by Israeli military fire in 22 years. No one has been held accountable*, 9 May 2023 (<https://tinyurl.com/4chy349z>).

<sup>610</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 21 September 2022, A/77/356, para. 58 (<https://undocs.org/A/HRC/77/356>).

<sup>611</sup> General Assembly, Resolution 77/247, 30 December 2022, preamble (<https://undocs.org/A/RES/77/247>).

not tolerate what appears to reflect Israel's deliberate policy and practice of using lethal force without regard for limits set by international law ...”<sup>612</sup>

The United Nations experts observed that this was the highest number of Palestinians killed in a single military incursion in the occupied West Bank since 2005. They concluded that “[n]one of this violence would occur if Israel were to end its illegal, half-century old occupation immediately and unconditionally as required by international law”<sup>613</sup>. Less than a month later, Israel conducted another military incursion in Nablus, killing 11 Palestinians, including a boy and three older men, and wounding more than one hundred with live ammunition<sup>614</sup>. In July 2023, Israel conducted still another deadly incursion in the Jenin refugee camp, killing at least 12 Palestinians, including five children, and injuring more than 100 Palestinians. This led United Nations experts to state that:

“The attacks forced thousands of Palestinians to flee and damaged infrastructure, houses and apartment buildings ... These attacks were the fiercest in the West Bank since the destruction of the Jenin camp in 2002 ... Israeli air strikes and ground operations in the occupied West Bank targeting the Jenin Refugee Camp and killing at least 12 Palestinians may prime facie constitute a war crime.”<sup>615</sup>

4.78. Israel's unlawful use of force against Palestinian civilians has been particularly egregious in the Gaza Strip. Since 2005, IOF have carried out repeated assaults on Gaza<sup>616</sup>, of which “Operation Cast Lead” (2008-2009), “Operation Protective Edge” (2014), the assault on the Great March of Return (2018), “Operation Guardian of the Walls” (2021) and “Operation Shield and Arrow” (May 2023) have caused the most civilian casualties.

<sup>612</sup> “Israel/Palestine: UN experts condemn renewed violence and Israeli killings of Palestinians in the occupied West Bank”, United Nations Press Release, 27 January 2023 (<https://tinyurl.com/562ps68h>)

<sup>613</sup> *Ibid.*

<sup>614</sup> “Israel and the Occupied Palestinian Territory: UN Human Rights Chief concerned by escalating violence”, United Nations Press Release, 23 February 2023 (<https://tinyurl.com/5n7je6ds>).

<sup>615</sup> “Israeli airstrikes and ground operations in Jenin may constitute war crime: UN experts”, United Nations Press Release, 5 July 2023 (<https://tinyurl.com/2kz25f8t>).

<sup>616</sup> “Operation Summer Rains”, June 2006; “Operation Autumn Clouds”, November 2006; “Operation Hot Winter”, February 2008; “Operation Cast Lead”, December 2008-January 2009; “Operation Pillar of Defence”, November 2012; “Operation Protective Edge”, July-August 2014; Great March of Return, March-May 2018; “Operation Guardian of the Walls”, May 2021; “Operation Shield and Arrow”, May 2023.

4.79. In 2008/2009, over 1,400 Palestinians were killed (among them 300 children and 110 women)<sup>617</sup>. In 2014, 2,251 Palestinians were killed (among them 551 children and 299 women)<sup>618</sup>. In 2018, 183 Palestinians were killed (among them 35 children)<sup>619</sup>. In 2021, 260 Palestinians were killed (66 of them children)<sup>620</sup>. As of 15 May 2023, 34 Palestinians were killed (including six children and two women)<sup>621</sup>.

4.80. In the course of these aggressions, IOF knowingly attacked civilian areas, firing missiles and bombs from both the air and ground at residential buildings, causing them to collapse and, in several instances, killing entire families, including many women and children.

4.81. The first three military assaults were the subject of full investigative reports by independent commissions of inquiry established by the Human Rights Council. All three reports found that the Israeli military had engaged in the indiscriminate, excessive and disproportionate use of force against Palestinian civilians. Attacks were found to have been directed at the Palestinian population in Gaza as a whole<sup>622</sup>.

4.82. The United Nations Fact Finding Mission on “Operation Cast Lead”<sup>623</sup> (2008-2009) found, for example, that the Israeli armed forces had caused excessive

<sup>617</sup> Report of the United Nations Fact-Finding Mission on the Gaza Conflict, “Human Rights in Palestine and other Occupied Arab Territories”, 25 September 2009, A/HRC/12/48, paras. 352-365 (<https://undocs.org/A/HRC/12/48>).

<sup>618</sup> Human Rights Council, Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council Resolution S-21/1, 24 June 2015, A/HRC/29/CRP.4, para. 574 (<https://undocs.org/A/HRC/29/CRP.4>).

<sup>619</sup> Human Rights Council, Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory, 18 March 2019, A/HRC/40/CRP.2 (<https://undocs.org/A/HRC/40/CRP.2>).

<sup>620</sup> Report of the United Nations High Commissioner for Human Rights, “Implementation of Human Rights Council Resolution S-9/1 and S-12/1”, 28 April 2022, A/HRC/49/83, para. 7 (<https://undocs.org/A/HRC/49/83>).

<sup>621</sup> UNOCHA, *Humanitarian situation in Gaza, Flash Update #5*, 15 May 2023 (<https://tinyurl.com/2p9yzs7p>).

<sup>622</sup> Report of the United Nations Fact-Finding Mission on the Gaza Conflict, “Human Rights in Palestine and other Occupied Arab Territories”, 25 September 2009, A/HRC/12/48, para. 1186 (<https://undocs.org/A/HRC/12/48>); Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, A/HRC/28/78, 22 January 2015, para. 21 (<https://undocs.org/A/HRC/28/78>); Security Council, Letter dated 27 April 2015 from the Secretary-General addressed to the President of the Security Council, S/2015/286, 27 April 2015 (<https://undocs.org/S/2015/286>).

<sup>623</sup> Report of the United Nations Fact Finding Mission on the Gaza Conflict, “Human Rights in Palestine and other Occupied Arab Territories”, 25 September 2009, A/HRC/12/48 (<https://undocs.org/A/HRC/12/48>).

loss of civilian life<sup>624</sup> and had failed to take precautionary measures to minimize harm to civilians.<sup>625</sup>

“The Mission found numerous instances of deliberate attacks on civilians and civilian objects (individuals, whole families, houses, mosques) in violation of the fundamental international humanitarian law principle of distinction, resulting in deaths and serious injuries. In these cases the Mission found that the protected status of civilians was not respected and the attacks were intentional, in clear violation of customary law reflected in article 51 (2) and 75 of Additional Protocol I, article 27 of the Fourth Geneva Convention and articles 6 and 7 of the [ICCPR]. In some cases the Mission additionally concluded that the attack was also launched with the intention of spreading terror among the civilian population. Moreover, in several of the incidents investigated, the Israeli armed forces not only did not use their best efforts to permit humanitarian organizations access to the wounded and medical relief, as required by customary international law reflected in article 10 (2) of Additional Protocol I, but they arbitrarily withheld such access.”<sup>626</sup>

4.83. Among the victims were members of al-Samouni family. On 4 January 2009, Israeli soldiers ordered over 100 members of the extended family into one house. A day later, the residence was hit by Israeli artillery shells and live ammunition. Twenty-seven family members were killed, including 11 children and six women, and 35 others were injured<sup>627</sup>. In total, 48 members of al-Samouni family were killed on that day<sup>628</sup>.

4.84. The Report on “Operation Protective Edge” (2014)<sup>629</sup> concluded that the high death toll among Palestinians – 2,251 deaths – “speaks volumes”<sup>630</sup>. In addition to those deaths, it found that 11,231 Palestinians were wounded, including 3,540 women and 3,436 children<sup>631</sup>. The Commission’s examination of numerous

<sup>624</sup> *Ibid.*, paras. 1919, 1923.

<sup>625</sup> *Ibid.*, paras. 595, 1919.

<sup>626</sup> Report of the United Nations Fact Finding Mission on the Gaza Conflict, “Human Rights in Palestine and other Occupied Arab Territories”, 25 September 2009, A/HRC/12/48 (<https://undocs.org/A/HRC/12/48>), para. 1921.

<sup>627</sup> UNOCHA, 50 stories of Palestinian life under occupation (<https://tinyurl.com/4x9n8c9x>).

<sup>628</sup> “Amid dust and death, a family’s story speaks for the terror of war”, *The Guardian*, January 2009 (<https://tinyurl.com/2wfk7fea>)

<sup>629</sup> Human Rights Council, Report of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1, 24 June 2015, A/HRC/29/52 (<https://undocs.org/A/HRC/29/52>).

<sup>630</sup> *Ibid.*, para. 20.

<sup>631</sup> *Ibid.*

incidents in the operation showed that the IOF had failed to observe the principle of distinction in its attacks<sup>632</sup>, had failed to display “constant care” for civilians<sup>633</sup> and had failed to take all feasible precautionary measures to avoid or at least minimize incidental loss of civilian life and injury to civilians<sup>634</sup>. It concluded that Israel had used force indiscriminately<sup>635</sup> and disproportionately<sup>636</sup>, and warned that many of its actions could constitute war crimes<sup>637</sup>.

4.85. According to UNOCHA, at least 142 Palestinian families had three or more members killed in the destruction of residential building by Israeli airstrikes leaving 742 dead.<sup>638</sup> This included, in the span of two weeks, in July 2014, the killing of 18 members of the al-Batsh family, among them six children<sup>639</sup>; 26 members of the Abu Jama family, including 19 children, and five women, three of whom were pregnant<sup>640</sup>; 19 members of Al-Najjar family, including 11 children, the youngest victim was an eight-months baby<sup>641</sup>; in Abu Jabr house, 19 people were killed, including six children and six women, one of whom was pregnant<sup>642</sup>; and 37 members of the Abu Amr, Breikeh, al-Najjar and Mu’ammars families, among them 18 children<sup>643</sup>.

4.86. The report of the Independent Commission of Inquiry in respect of the “Great March of Return” dealt with the mass protest held by Palestinians at the fence built by Israel in the Gaza Strip<sup>644</sup>. 183 fatalities and over 700 injuries were caused by IOF snipers firing at demonstrators in Gaza itself. The shooting of Palestinian demonstrators with high velocity weaponry resulted in “killings and long-term, life-changing injuries, including paralysis and amputations”<sup>645</sup>.

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<sup>632</sup> *Ibid.*, paras. 51-52, 58.

<sup>633</sup> *Ibid.*, para. 48.

<sup>634</sup> *Ibid.*, paras. 41-43, 48.

<sup>635</sup> *Ibid.*, para. 50.

<sup>636</sup> *Ibid.*, paras. 40, 48 and 58.

<sup>637</sup> *Ibid.*, para. 40, 50-53.

<sup>638</sup> Report of the Detailed Findings of the Independent Commission of Inquiry on the 2014 Gaza Conflict, 24 June 2015, A/HRC/29/CRP.4, para. 111 (<https://undocs.org/A/HRC/29/CRP.4> <https://tinyurl.com/3mbwu4hd>).

<sup>639</sup> *Ibid.*, para. 158.

<sup>640</sup> *Ibid.*, para. 161.

<sup>641</sup> *Ibid.*, para. 126.

<sup>642</sup> *Ibid.*, para. 132.

<sup>643</sup> *Ibid.*, para. 153.

<sup>644</sup> Report of the independent international commission of Inquiry on the protests in the Occupied Palestinian Territory, 6 March 2019, A/HRC/40/74 (<https://undocs.org/A/HRC/40/74>).

<sup>645</sup> *Ibid.*, para. 99.

4.87. The Commission found that the victims, who were hundreds of meters away from the IOF and were clearly identifiable as civilians, including paramedics and journalists, visibly engaged in civilian activities, “were intentionally shot”<sup>646</sup>. The Commission found that in all but one of the cases it had investigated “the use of live ammunition by Israeli forces against demonstrators was unlawful”<sup>647</sup> because they had killed and maimed Palestinian demonstrators who did not pose an imminent threat in circumstances in which the use of lethal force was “neither necessary nor proportionate”<sup>648</sup>. Victims had therefore been killed in violation of the principle of distinction in international humanitarian law and “in violation of their right to life”<sup>649</sup>. The Commission also found that Israel had failed to conduct investigations into the allegations of unlawful acts by its armed forces and that a spirit of impunity prevailed in respect of Israel’s actions<sup>650</sup>.

4.88. The Commission further noted:

“The Israeli security forces killed and maimed Palestinian demonstrators who did not pose an imminent threat of death or serious injury to others when they were shot, nor were they directly participating in hostilities. Less lethal alternatives remained available and substantial defences were in place, rendering the use of lethal force neither necessary nor proportionate, and therefore impermissible.”<sup>651</sup>

“The commission found that responsibility for unlawful deaths and injuries lay primarily on two fronts. First, those who employed lethal force, assisted with or authorized it to be deployed in specific instances, in the absence of an imminent threat to life or where the victim was not directly participating in hostilities; this includes snipers, spotters and/or commanders on site. Second, those who drafted and approved the rules of engagement.”<sup>652</sup>

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<sup>646</sup> Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory, 18 March 2019, A/HRC/40/CRP.2, para. 692 (<https://undocs.org/A/HRC/40/CRP.2>).

<sup>647</sup> *Ibid.*, para. 693.

<sup>648</sup> *Ibid.*, para. 694.

<sup>649</sup> *Ibid.* (footnote omitted).

<sup>650</sup> *Ibid.*, paras. 700 and 726.

<sup>651</sup> Report of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory, 6 March 2019, A/HRC/40/74, para. 96 (<https://undocs.org/A/HRC/40/74>).

<sup>652</sup> Report of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory, 6 March 2019, A/HRC/40/74, para. 107 (<https://undocs.org/A/HRC/40/74>).

4.89. In relation to the same events, the General Assembly “[e]xpress[ed] ... its deep alarm at the loss of civilian lives and the high number of casualties among Palestinian civilians, particularly in the Gaza Strip, including casualties among children, caused by the Israeli forces”, “[c]ondemn[ed] all acts of violence against civilians”; “[r]eaffirm[ed] the right to peaceful assembly and protest, and freedom of expression and of association”; and “[d]eplore[d] the use of any excessive, disproportionate and indiscriminate force by the Israeli forces against Palestinian civilians in the Occupied Palestinian Territory, including East Jerusalem, and particularly in the Gaza Strip, including the use of live ammunition against civilian protesters, including children, as well as medical personnel and journalists, and expresses its grave concern at the loss of innocent lives.”<sup>653</sup>

4.90. In its May 2022 Report the Human Rights Committee reported that:

“[i]t is particularly concerned about excessive force used in policing demonstrations, including the Great March of Return between March 2018 and December 2019, during which 183 people, including children, paramedics, journalists and persons with disabilities, were shot dead. It is also concerned that no perpetrator has been brought to justice for excessive force used against 260 Palestinians, including children, during the escalation of hostilities in Gaza in May 2021”<sup>654</sup>.

4.91. The incessant assaults on Gaza have led the General Assembly as recently as December 2022 to deplore “the continuing and negative consequences of the conflicts in and around the Gaza Strip and the high number of casualties among Palestinian civilians in the recent period, including among children, and any violations of international law, and calling for full respect for international humanitarian and human rights law and for the principles of legality, distinction, precaution and proportionality.”<sup>655</sup>

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<sup>653</sup> General Assembly, Resolution ES-10/20, 18 June 2018, preamble and para. 2 (<https://undocs.org/A/RES/ES-10/20>).

<sup>654</sup> Human Rights Committee, Concluding observations on the fifth periodic report of Israel, 5 May 2022, CCPR/C ISR/CO/5, para. 26 (emphasis added) (<https://undocs.org/CCPR/C/ISR/CO/5>). Israel continued its attacks against civilians in Gaza during its military assault in May 2021, including a missile strike on the home of al-Qolaq family in Gaza City, killing 22 members of the family, UN Women, “Zainab Al-Qolaq, a Survivor of an Israeli Airstrike on Gaza in May 2021 Tells her Story”, 26 May 2022 (<https://tinyurl.com/5jn53wef>).

<sup>655</sup> General Assembly, Resolution 77/247, 30 December 2022, preamble (<https://undocs.org/A/RES/77/247>).

### E. ISRAEL'S DISCRIMINATION AGAINST PALESTINIANS BY DENIAL OF FREEDOM OF MOVEMENT

4.92. Israel discriminates on racial grounds between Jewish Israeli settlers and Palestinians in the OPT by denying Palestinians the right of freedom of movement. Whether they live in the West Bank, East Jerusalem or the Gaza Strip, Palestinians are subject to severe restrictions on their movement within the OPT and to and from it, while Jewish Israeli settlers are not, and are, moreover, provided with a network and other support, including military accompaniment, to facilitate their movement throughout the OPT and to and from it. In the West Bank, these restrictions have physically separated Palestinian communities from one another, and opened space between them that has been filled by new or expanded Israeli settlements. By this policy, as the Special Rapporteur found in 2021 “the Government of Israel has confined the 2.7 million Palestinians in the West Bank within a fragmented archipelago of 165 disparate patches of land ..., hemmed in by hundreds of roadblocks, walls, checkpoints and forbidden zones” and created a “land base for the settlements and the utmost freedom of movement for the settlers”<sup>656</sup>.

4.93. As explained in Chapter 3, Israel has invested heavily in the construction of highways and roads connecting settlements in the West Bank to each other, to Jerusalem, and to Israel itself<sup>657</sup>. The new and expanded transportation infrastructure, which Jewish Israeli settlers are free to use but Palestinians are not, permits the settlers to commute to Israel for employment, as around 60 % of them do so daily<sup>658</sup>. The unrestricted and efficient access to work in Israel, and the easy movement among settlements themselves, have facilitated the creation of large and expanding settlement “blocs”, which function as suburbs of Jerusalem and Tel Aviv<sup>659</sup>. This tightens Israel’s connection to the OPT, expands and deepens its presence, and serves its purpose of annexation and maintaining permanent control.

4.94. The same purpose is served by subjecting Palestinians to “a complex system of administrative, bureaucratic and physical constraints that affects virtually every aspect of daily life”, including burdensome restrictions on their ability to move from place to place<sup>660</sup>. In particular, Israel imposes differing levels of

<sup>656</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 29 July 2021, A/HRC/47/57, para. 63 (<https://undocs.org/A/HRC/47/57>).

<sup>657</sup> See paras. 3.242-3.248 above.

<sup>658</sup> Breaking the Silence, *Highway to Annexation*, December 2020, p. 4 (<https://tinyurl.com/4txwk7p7>).

<sup>659</sup> *Ibid.*, pp. 4-12 (<https://tinyurl.com/4txwk7p7>).

<sup>660</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 23 October 2017, A/72/556, para. 62 (<https://undocs.org/A/72/556>).

restrictions on Palestinians' use of West Bank roads, including complete prohibition on using certain roads constructed for the exclusive use of settlers<sup>661</sup>. The restrictions are enforced through a range of complementary measures, including a permit regime for roads on which they may occasionally travel, hundreds of permanent and temporary checkpoints, and physical obstacles such as gates, earth mounds, roadblocks and trenches<sup>662</sup>, as shown in **Figure 4.1** at p. 197.

4.95. These barriers to movement for Palestinians in the West Bank, which do not apply to Israeli Jewish settlers, severely impair their ability to access their jobs, farms, family members in other Palestinian communities, or medical, education, or other services they need elsewhere in the OPT. This is part of the “coercive environment” Israel has created in the West Bank, including East Jerusalem to encourage Palestinians to leave, or to confine them in small enclaves where they will be less of an obstacle to the extension of Israeli “sovereignty” to the West Bank.

4.96. In 2022, the Independent International Commission of Inquiry found that Israel’s transportation infrastructure in the OPT was designed to serve only the Jewish Israeli settler population, and that, in contrast, the movement of Palestinians continued to be restricted, adversely affecting their access to employment and services:

“While Israel has implemented extensive infrastructure projects to facilitate the movement of settlers, including networks of bypass roads, the movement of Palestinians in the West Bank continues to be restricted, severely infringing upon their freedom of movement and access to services and livelihoods.”<sup>663</sup>

4.97. The movement of Palestinians in the West Bank and East Jerusalem has also been seriously restricted by the Wall and its associated regime<sup>664</sup>. As shown in **Figure 3.6** at p. 103 above, the Wall extends deep into the OPT, far beyond the boundaries of East Jerusalem, even as unilaterally expanded by Israel, and cuts deep

<sup>661</sup> ACRI, *One Rule, Two Legal Systems: Israel’s Regime of Laws in the West Bank*, October 2014, pp. 105-107 (<https://tinyurl.com/masa37p3>).

<sup>662</sup> UNCTAD, Report on UNCTAD assistance to the Palestinian people: Developments in the economy of the Occupied Palestinian Territory, 8 August 2022, TD/B/EX(72)/2, para. 21 ([https://undocs.org/TD/B/EX\(72\)/2](https://undocs.org/TD/B/EX(72)/2)).

<sup>663</sup> Human Rights Council, Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 9 May 2022, A/HRC/50/21, para. 49 (footnote omitted) (<https://undocs.org/A/HRC/50/21>).

<sup>664</sup> See HaMoked: Center for Defence of the Individual, *The Permit Regime. Human Rights Violations in the West Bank Area Known as the “Seam Zone”*, March 2013 (<https://tinyurl.com/jhzmtf55>). See also paras. 3.125-3.130 above.

into the rest of the West Bank. It is a physical complex, which now extends for more than 450 km, consisting of concrete walls, fences, ditches, razor wire, sand paths, an electronic monitoring system, patrol roads, a buffer zone and several military checkpoints – all of which severely restrict the movement and access to land of Palestinians who reside within its confines as well as access to the Holy City by Palestinians from the rest of the West Bank<sup>665</sup>. In contrast, no restrictions are placed on the movement of Jewish Israelis within, into or out of this zone and no permits are required for their movement within the so-called “seam zone”<sup>666</sup> either<sup>667</sup>.

4.98. The Wall and its associated regime operate to cut off East Jerusalem from the rest of the OPT. Palestinians from the rest of the West Bank and the Gaza Strip, unlike Israeli settlers living in the West Bank or Israelis living in Israel, “require special permits from the Israeli military” to enter East Jerusalem, and may only do so through four of the 14 checkpoints<sup>668</sup>. Israel has made it extremely difficult for Palestinians to acquire such permits, by constantly adding increasingly cumbersome application requirements<sup>669</sup>. The high rejection rates of permit applications, complex application procedures, and limited gate openings have had their inevitable effect: the number of permits requested by landowners and agricultural workers dropped by 77 % between 2014 and 2021<sup>670</sup>. Even when such permits are obtained, they “are cancelled every time the military imposes a

<sup>665</sup> UNOCHA, *Fact Sheet: The humanitarian impact of 20 years of the Barrier*, 30 December 2022 (<https://tinyurl.com/ybhm7d7v>).

<sup>666</sup> The area of the OPT between the Green Line and the annexation Wall is referred to as the “Seam Zone”.

<sup>667</sup> See ACRI, *One Rule, Two Legal Systems: Israel’s Regime of Laws in the West Bank* October 2014, pp. 109-114 (<https://tinyurl.com/masa37p3>).

<sup>668</sup> UNOCHA, *Fact Sheet: The humanitarian impact of 20 years of the Barrier*, 30 December 2022 (<https://tinyurl.com/ybhm7d7v>); Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 12 August 2022, A/HRC/49/87, para. 42 (<https://undocs.org/A/HRC/49/87>).

<sup>669</sup> The number of such requirements quadrupled between 2003 and 2022. Initially, Palestinians were only required to provide their name and ID number to access their lands. They are now required to provide their name; ID number; land registration; ownership certificate; copies of ID cards; inheritance certificates; owners documents (for workers); and landlord declaration of responsibility for workers, *inter alia*. Spouses and children of landowners often have to apply as agricultural workers. Permit applications are regularly rejected on grounds that farmers failed to prove their “connection to the land” to the satisfaction of the Israeli authorities, or for unspecified “security concerns”. Between 2014 and 2021, the rejection rate of permit applications fluctuated between 31 % and 67 %. See UNOCHA, *Fact Sheet: The humanitarian impact of 20 years of the Barrier*, 30 December 2022 (<https://tinyurl.com/42v82t92>).

<sup>670</sup> *Ibid.*



Source: United Nations' Office for the Coordination of Humanitarian Affairs, (OCHA)  
<https://www.ochaopt.org/content/west-bank-access-restrictions-may-2023>

Figure 4.1



‘complete closure’ on the OPT, such as on Jewish holidays”<sup>671</sup>. The requirement to obtain a permit has stark practical consequences. For example, between 2019 and 2021 the Israeli authorities denied some 24,000 applications by Palestinians in the West Bank seeking permission to enter East Jerusalem for the purpose of receiving medical care in Palestinian hospitals<sup>672</sup>. Permits are even more difficult to obtain for Palestinians from the Gaza Strip who are living under a 17-year blockade<sup>673</sup>. As described by UNOCHA, “[a]bout 2.1 million Palestinians in Gaza are ‘locked in’, the vast majority unable to access the remainder of the oPt and the outside world, limiting access to medical treatment unavailable in Gaza, to higher education, to family and social life, and to employment and economic opportunities.”<sup>674</sup>

4.99. In the West Bank, this overtly discriminatory system, imposed by Israel, seriously interferes with the lives of some 10,000 Palestinians living in the “seam zone” and several thousand more who are dependent on farmlands within it. As the High Commissioner for Human Rights found in March 2023:

“The Separation Wall divides thousands of Palestinians from each other and their lands. It constitutes a major obstacle to their freedom of movement – including impairing access to health-care, schools and employment – and it imposes a suffocating straitjacket on their lives.”<sup>675</sup>

4.100. The impact of these discriminatory restrictions is immense and far-reaching. They violate a number of fundamental human rights – including the right to freedom of movement – and severely impair access to livelihoods, housing, schools and universities, healthcare facilities, cultural and religious institutions and social gatherings at the personal and national level, among other essential components of a normal life.<sup>676</sup> A 2021 United Nations report found that:

“[r]estrictions were imposed on the movement of Palestinians between the West Bank, including East Jerusalem, the Gaza Strip and with regard to

<sup>671</sup> B’Tselem, *Restrictions on Movement*, 11 November 2017 (<https://tinyurl.com/bde74zyc>).

<sup>672</sup> WHO, *Right to Health: Barriers to health and attacks on health care in the occupied Palestinian territory, 2019 to 2021*, Report 2022, 2023, p. 9 (<https://tinyurl.com/3nh6fmnn>).

<sup>673</sup> See below, paras. 4.104-4.105 and 4.192-4.202.

<sup>674</sup> UNOCHA, “Gaza Strip, the humanitarian impact of 15 years of the blockade”, June 2022 (<https://tinyurl.com/d58awzrz>).

<sup>675</sup> United Nations Office of the High Commissioner for Human Rights, *Statement by High Commissioner on report on the Occupied Palestinian Territory*, 3 March 2023 (<https://tinyurl.com/yssvhx3>).

<sup>676</sup> UNCTAD, Report on UNCTAD assistance to the Palestinian people: Developments in the economy of the Occupied Palestinian Territory, 8 August 2022, TD/B/EX(72)/2, paras. 21 ff. ([https://undocs.org/TD/B/EX\(72\)/2](https://undocs.org/TD/B/EX(72)/2)).

travelling abroad. Some 593 Israeli checkpoints and roadblocks continue to effectively obstruct Palestinians' access to rights and services, including health, education and work. In addition, Palestinians in the West Bank are barred from using roads built for Israeli settlers. Those who attempt to cross checkpoints are routinely harassed and obstructed, severely hindering their freedom of movement.”<sup>677</sup>

4.101. The 2022 Concluding Observations of the Human Rights Committee reiterated:

“its deep concern about the continuing restrictions on freedom of movement imposed by the State party throughout the Occupied Palestinian Territory, including East Jerusalem, through its *discriminatory permit regime* and the designation of access-restricted areas. It is further concerned that, in enforcing movement and access restrictions, the Israeli security forces often use lethal force, such as live ammunition, leading to deaths and serious injuries of, *inter alia*, Palestinian commuters from the West Bank ..., Gazan farmers whose lands were designated as an access-restricted area, and Gazan fishermen fishing along the coast of Gaza, where the authorized fishing zones are often reduced or entirely closed (arts. 2, 12 and 26).”<sup>678</sup>

4.102. In December 2022, the General Assembly, in resolution 77/247, also expressed its “*deep concern*”

“about the Israeli policy of closures and the imposition of severe restrictions, including through hundreds of obstacles to movement, checkpoints and a permit regime, all of which obstruct the freedom of movement of persons and goods, including medical and humanitarian goods, and the follow-up and access to donor-funded projects of development cooperation and humanitarian assistance, throughout the Occupied Palestinian Territory, including East Jerusalem, and impair the Territory’s contiguity, consequently violating the human rights of the Palestinian people and negatively impacting their socioeconomic and humanitarian situation, which remains dire in the Gaza Strip, and the efforts

<sup>677</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2021, A/76/433, para. 13 (footnote omitted) (<https://undocs.org/A/76/433>).

<sup>678</sup> Human Rights Committee, Concluding observations on the fifth periodic report of Israel, 5 May 2022, CCPR/C ISR/CO/5, para. 36 (emphasis added) (<https://undocs.org/CCPR/C ISR/CO/5>).

aimed at rehabilitating and developing the Palestinian economy, and calling for the full lifting of restrictions”<sup>679</sup>.

4.103. These effects on the livelihoods of the Palestinians in the West Bank have been severe. As reported by UNCTAD in 2021:

“The stricter closures and restrictions imposed by Israel on the West Bank in the aftermath of the second intifada have arrested development, exerted a long-lasting toll and aggravated the economy’s deep-seated structural weaknesses and vulnerability. These are manifested by volatile economic growth, chronic fiscal and external deficits and persistently high unemployment and poverty rates. The measures imposed by the occupying Power have had a long-lasting impact that continues to constrain the regional economy of the West Bank to this day … The cumulative economic cost of the stricter Israeli restrictions, in the period 2000–2019, is estimated at \$58 billion (constant 2015 dollars), equivalent to 4.5 times the size of the West Bank regional economy or 3.5 times the size of the entire economy of the Occupied Palestinian Territory in 2019.”<sup>680</sup>

4.104. The effects have been even worse for those in Gaza. As UNCTAD found in 2020:

“The 2 million Palestinians in Gaza have been under a complete land, sea and air closure and restrictions since June 2007 and, after December 2008, endured three major rounds of hostilities in the span of six years. This study attempts to quantify the economic costs of occupation related to the closure and restrictions and the military operations in the period 2007–2018. From a macroeconomic perspective, the foregone economic growth could have resulted in GDP per capita of between 50 and 100 per cent greater than the current level. It is estimated that the cumulative loss of potential GDP, or part of the economic costs of occupation, in the period 2007–2018 is \$16.7 billion (real 2015 dollars), equivalent to six times the GDP of Gaza or 107 per cent of the GDP of the Occupied Palestinian Territory in 2018. Total GDP in this period could have increased by nearly 40 per cent. This

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<sup>679</sup> General Assembly, Resolution 77/247, 30 December 2022, preamble.

<sup>680</sup> UNCTAD, Report on UNCTAD assistance to the Palestinian people: Developments in the economy of the Occupied Palestinian Territory, 8 August 2022, TD/B/EX(72)/2, p. 32 ([https://undocs.org/TD/B/EX\(72\)/2](https://undocs.org/TD/B/EX(72)/2)).

could have reduced the poverty rate in 2017 from 56 to 15 per cent and contracted the poverty gap from 20 to 4 per cent.”<sup>681</sup>

4.105. The inevitable result of these restrictions is a coercive environment that leads to the forcible displacement of Palestinians to other parts of the OPT, if they can obtain permission from the Israeli authorities to do so, or out of Palestine altogether, leaving their homes, lands and family behind.

4.106. But Israel has also placed severe restrictions on the ability of Palestinians to leave and return to the OPT – notwithstanding Article 12 of the ICCPR and customary international law, which establish the right of individuals to leave and enter their own country<sup>682</sup>. A 2021 United Nations report found that:

“Restrictions were imposed on the movement of Palestinians between the West Bank, including East Jerusalem, the Gaza Strip and with regard to travelling abroad.”<sup>683</sup>

4.107. Palestinians who hail from East Jerusalem can only live in their city if they obtain and maintain a “permanent residency”, which is granted by a decision of the Israeli authorities<sup>684</sup>. Since 1995 the West Bank and Gaza Strip have been treated by Israel as “foreign countries” for the purpose of permanent residence in Jerusalem<sup>685</sup>. As such, “permanent residency” status is only held by Palestinians native of Jerusalem. Moreover, even Palestinians who qualify for “permanent residency” in Jerusalem may be stripped of that status if the Israeli Minister of the Interior determines that their “centre of life” has moved from Jerusalem<sup>686</sup>. Thus, Palestinians from Jerusalem who travel abroad for a few years for their studies, work or family life may find that the authorities declared that their “centre of life” has changed – and thus may lose their “permanent residency” status and be

<sup>681</sup> UNCTAD, *The Economic Costs of the Israeli Occupation for the Palestinian People: The Impoverishment of Gaza under Blockade*, Geneva, United Nations, 2020, p. 34 (<https://tinyurl.com/pef2598f>).

<sup>682</sup> Norwegian Refugee Council, *Fractured Lives. Restrictions on Residency Rights and Family Reunification in Occupied Palestine*, December 2015 (<https://tinyurl.com/3rv4w5rp>).

<sup>683</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2021, A/76/433, para. 13 (<https://undocs.org/A/76/433>).

<sup>684</sup> See Article 11 lit. c and 11 A Entry into Israel Law and regulations issued thereunder, 5734-1974; *Israeli Collection of Regulations* No. 3201, 18 July 1974, p. 1517.

<sup>685</sup> By means of an amendment to Article 11 lit. c Entry into Israel Law.

<sup>686</sup> See Article 11 lit. c and 11 A Entry into Israel Law and regulations issued thereunder, 5734-1974; *Israeli Collection of Regulations* No. 3201 (18 July 1974), p. 1517.

prevented from returning. This leaves them then without any official identification papers, impairing their ability to live anywhere in the OPT.

4.108. The Special Rapporteur found it discriminatory that “this residency status can be cancelled if they leave Jerusalem for a period of time, a threat that Jewish Israelis do not face”.<sup>687</sup> The CERD Committee described the law on which these practices are based – the Entry into Israel Law (Law No. 5712-1952) – as “discriminatory”:

“The Committee is also concerned about the adoption of Amendment No. 30 of 2018 to the already discriminatory Entry into Israel Law (Law No. 5712-1952), which grants the Israeli Minister of Interior broad discretion to revoke the permanent residency permit of Palestinians living in East Jerusalem”<sup>688</sup>.

4.109. The discriminatory state of affairs in Jerusalem was summarized by the Special Rapporteur:

“the legal status of almost all Palestinian Jerusalemites under Israeli law is as a ‘permanent resident’ which is the same legal status given to foreign nationals in Israel. Palestinian permanent residents pay taxes … but, unlike citizens, they possess no secure right to remain in Jerusalem. While under the laws of occupation the Palestinian Jerusalemites are ‘protected persons’, Israel does not recognize that status. … Not having permanent resident status prevents Palestinians from other parts of the Occupied Palestinian Territory from legally residing or even visiting Jerusalem.”<sup>689</sup>

#### F. ISRAEL’S DISCRIMINATION AGAINST PALESTINIANS IN RESPECT OF THE RIGHT TO MARRIAGE AND CHOICE OF SPOUSE

4.110. Israeli laws and policies severely curtail Palestinians’ right to marry and freely choose a spouse. The Citizenship and Entry into Israel Law (Temporary Order), as extended, has entrenched a freeze by Israel’s Ministry of the Interior on

<sup>687</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 12 August 2022, A/HRC/49/87, para. 44 (<https://undocs.org/A/HRC/49/87>).

<sup>688</sup> CERD Committee, Concluding observations on the combined seventeenth to nineteenth reports of Israel, 27 January 2020, CERD/C ISR/CO/17-19, para. 15 (<https://undocs.org/CERD/C ISR/CO/17-19>).

<sup>689</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2018, A/73/447, para. 41 (<https://undocs.org/A/73/447>).

family unification applications involving Palestinian spouses from the OPT<sup>690</sup>. The law was reauthorized in March 2022<sup>691</sup> and extended most recently in March 2023<sup>692</sup>.

4.111. The law removes the possibility, with certain rare exceptions, of family reunification between an Israeli citizen and a person residing anywhere in the OPT, thus greatly impairing family ties and restricting the right to marriage and choice of spouse<sup>693</sup>. It particularly targets Palestinian couples in which one partner is a citizen of Israel or a resident of occupied East Jerusalem, and the other resides in the West Bank or in the Gaza Strip<sup>694</sup>.

4.112. This policy is entirely discriminatory in its operation, with no such restrictions placed on Jewish Israeli couples, regardless of whether they are residents of Israel or reside illegally as settlers in the OPT, including East Jerusalem, and regardless of whether they are citizens of Israel or non-citizens entitled by Israel to claim citizenship by virtue of their Jewish ancestry.

4.113. Palestinians who live in the OPT and wish to form a family with a spouse who is *not* a resident of the OPT must apply for a residence permit for their spouse. Such a permit is rarely, if ever, granted<sup>695</sup>. Palestinians from the West Bank who marry a Palestinian spouse from the Gaza Strip also require an Israeli permit to be able to live with their spouses. In contrast, Jewish Israeli settlers can freely choose not only to live in the OPT, in breach of international law, but their respective spouses can also freely join them there, and additionally receive a financial stipend on arrival<sup>696</sup>.

4.114. Palestinians from East Jerusalem who marry a Palestinian spouse from elsewhere in the OPT, and who wish to live with their spouses in East Jerusalem, have to apply to the Israeli Ministry of Interior for family unification<sup>697</sup>. In

<sup>690</sup> Nationality and Entry into Israel Law (Temporary Order) – 5763-2003.

<sup>691</sup> “Knesset Plenum passes Citizenship and Entry into Israel Bill into law”, Knesset News, 10 March 2022 (<https://tinyurl.com/72znymaf>).

<sup>692</sup> “Knesset extends law banning Palestinian family unification for another year”, *Times of Israel*, 6 March 2023 (<https://tinyurl.com/42ce52a5>).

<sup>693</sup> Committee on the Elimination of Racial Discrimination, Consideration of reports submitted by States parties under article 9 of the Convention. Concluding Observations (Israel), CERD/C ISR/CO/14-16, 3 April 2012, para. 18 (<https://undocs.org/CERD/C ISR/CO/14-16>).

<sup>694</sup> *Ibid.*

<sup>695</sup> Al-Haq, *Engineering Community: Family Unification, Entry Restrictions and other Israeli Policies of Fragmenting Palestinians*, February 2019, pp. 9-11 (<https://tinyurl.com/2h9dwyk2>).

<sup>696</sup> *Ibid.*, p. 6.

<sup>697</sup> Norwegian Refugee Council, *Fractured Lives. Restrictions on Residency Rights and Family Reunification in Occupied Palestine*, December 2015, p. 41(<https://tinyurl.com/3rv4w5rp>).

May 2002, the Israeli Government's Ministry of the Interior issued Decision No. 1813, which froze the processing of all family unification applications by citizens of Israel and residents of East Jerusalem involving Palestinian spouses from the OPT<sup>698</sup>. Statements by government officials made it clear that the freeze was due to the Government's fear that Palestinians were achieving a "creeping right of return" through the family unification process<sup>699</sup>.

4.115. This policy led the CERD Committee to express its concern:

"about Israel's Temporary Suspension Order of May 2002, enacted into law as the Nationality and Entry into Israel Law (Temporary Order) on 31 July 2003, which suspends, for a renewable one-year period, the possibility of family reunification, subject to limited and discretionary exceptions, in cases of marriage between an Israeli citizen and a person residing in the West Bank or Gaza ... The ... Law ... raises *serious issues* under the International Convention on the Elimination of All Forms of Racial Discrimination. The State party should revoke this law and reconsider its policy with a view to facilitating family unification on a *non-discriminatory basis*."<sup>700</sup>

4.116. In 2007, the CERD Committee found that "[s]uch restriction *targeting a particular national or ethnic group in general* is not compatible with the Convention, in particular the obligation of the State party to guarantee to everyone equality before the law."<sup>701</sup> It thus recommended that Israel "revoke the Citizenship and Entry into Israel Law (Temporary Order), and reconsider its policy with a view to facilitating family reunification on a *non-discriminatory basis*"<sup>702</sup>.

4.117. In its 2012 review of Israel, the CERD Committee again expressed its concern over "the maintenance of discriminatory laws" in this area. Notably it urged Israel: "to revoke the Citizenship and Entry into Israel Law (Temporary provision)

<sup>698</sup> B'Tselem and HaMoked, *Forbidden Families: Family Unification and Child Registration in East Jerusalem*, January 2004, p. 11 (<https://tinyurl.com/4e48s88u>).

<sup>699</sup> Al-Haq, *Engineering Community: Family Unification, Entry Restrictions and other Israeli Policies of Fragmenting Palestinians*, February 2019, p. 18 (<https://tinyurl.com/2h9dwyk2>).

<sup>700</sup> Decisions adopted by the Committee at its sixty-third session, Decision 2 (63): Israel, 1599<sup>th</sup> meeting (14 August 2003) (emphasis added).

<sup>701</sup> Committee on the Elimination of Racial Discrimination, Consideration of reports submitted by States parties under article 9 of the Convention. Concluding Observations (Israel), 14 June 2007, CERD/C ISR/CO/13, para. 20 (emphasis added) (<https://undocs.org/CERD/C/ISR/CO/13>).

<sup>702</sup> *Ibid.* (emphasis added).

and to facilitate family reunification of all citizens *irrespective of their ethnicity or national or other origin.*<sup>703</sup>

4.118. In its 2020 Concluding Observations, the CERD Committee once again called on Israel to:

“review its legislation in order to ensure the respect of the principles of equality, *non-discrimination* and proportionality, and further facilitate family reunification of all citizens and permanent residents of the State party.”<sup>704</sup>

4.119. In the same vein, the Committee on Economic, Social and Cultural Rights urged in its 2019 Concluding Observations that:

“the State party review the Citizenship and Entry into Israel Law (Temporary Order) with a view ... to facilitating the exercise of family reunification for all citizens and permanent residents *irrespective of their status or background.*”<sup>705</sup>

4.120. In the face of these repeated criticisms and emphatic calls for Israel to revoke the discriminatory regime preventing family unification, Israel did exactly the opposite. In 2022, it introduced a new section into the Citizenship and Entry into Israel Law which explicitly states that the purpose of the law is to ensure a Jewish demographic majority:

“The purpose of this law is to establish restrictions on citizenship and residence in Israel by citizens or residents of hostile countries or from the region, alongside irregular arrangements for residence licenses or permits to stay in Israel – all while taking into consideration the fact that Israel is a Jewish and democratic state, and in a manner that will ensure safeguarding of vital interests for the state’s national security.”<sup>706</sup>

<sup>703</sup> Committee on the Elimination of Racial Discrimination, Consideration of reports submitted by States parties under article 9 of the Convention. Concluding Observations (Israel), 3 April 2012, CERD/C ISR/CO/14-16, para. 18 (emphasis added) (<https://undocs.org/CERD/C/ISR/CO/14-16>).

<sup>704</sup> Committee on the Elimination of Racial Discrimination, Concluding observations on the combined seventeenth to nineteenth reports of Israel, 27 January 2020, CERD/C ISR/CO/17-19, para. 25 (emphasis added) (<https://undocs.org/CERD/C/ISR/CO/17-19>).

<sup>705</sup> Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of Israel, 12 November 2019, E/C.12 ISR/CO/4, para. 41 (emphasis added) (<https://undocs.org/E.C.12 ISR/CO/4>).

<sup>706</sup> English translation of the section of the law from Adalah, *Israel Reinstates Ban on Palestinian Family Unification*, 10 March 2022 (<https://tinyurl.com/4c53rtvr>). See also “Family

4.121. In its May 2022 report, the Independent International Commission of Inquiry “note[d] the renewal on 10 March 2022 … of the Citizenship and Entry into Israel Law (Temporary Order)”. Given its discriminatory impact on Palestinians, the Commission observed that “[t]his Law comes in stark contrast to the Law of Return (1950), which provided for the right of ‘every Jew’ to settle in Israel”<sup>707</sup>.

4.122. A similar finding was made by the Human Rights Committee in its May 2022 report:

“The Committee is concerned that the Citizenship and Entry into Israel Law (Temporary Order) continues to prohibit family reunification of Israeli citizens with their Palestinian spouses living in the West Bank or Gaza Strip, or with spouses living in States classified as ‘enemy States’. It is further concerned that, under the Law, East Jerusalem residents are required to either surrender their residency and live in the West Bank or apply for an annual permit for the non-resident spouse.”<sup>708</sup>

#### G. ISRAEL’S DISCRIMINATION AGAINST PALESTINIANS IN RESPECT OF FREEDOM OF RELIGION

4.123. Customary international law, as reflected in Article 5 of CERD, provides for protection from racial discrimination in the exercise of one’s right to freedom of thought, conscience and religion. However, as indicated in Chapter 3 above<sup>709</sup>, access to places of worship for Palestinian Christians and Muslims in the OPT is severely restricted by the Israeli authorities, while Israeli settlers living in the OPT and other Israeli citizens, can freely travel to, and pray at holy sites throughout the OPT, including East Jerusalem.

4.124. Hundreds of thousands of Palestinians – Muslims and Christians – have regularly been impeded from worshipping at sites that are among the most significant to their faiths in the world, particularly in East Jerusalem. Palestinians residing in the West Bank and the Gaza Strip need a permit each time they want to enter East Jerusalem to pray either at the Al-Aqsa Mosque/Al-Haram Al-Sharif or

Unification Bill Meant to Stop Palestinian 'Creeping Right of Return,' Israel's Shaked Says", *Haaretz*, 9 February 2022 (<https://tinyurl.com/y5uemref>).

<sup>707</sup> Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 9 May 2022, A/HRC/50/21, para. 46 (footnote omitted) (<https://undocs.org/A/HRC/50/21>).

<sup>708</sup> Human Rights Committee, Concluding observations on the fifth periodic report of Israel, 5 May 2022, CCPR/C/ISR/CO/5, para. 44 (<https://undocs.org/CCPR/C/ISR/CO/5>).

<sup>709</sup> See para. 3.133 above.

the Church of the Holy Sepulchre<sup>710</sup>. Israel also routinely imposes age restrictions on Palestinians' access to the Al-Haram Al-Sharif in East Jerusalem, and Israeli authorities sometimes prohibit the entry of Muslim worshippers for several days at a time<sup>711</sup>.

4.125. The inability of Palestinians living in the Gaza Strip to exercise their right to worship is particularly severe. Generally, only particular categories of Palestinian Christians from Gaza have been allowed to apply for a permit to travel to Jerusalem and/or Bethlehem to pray, and those applications are often denied or given selectively and randomly to some members of a family but not others<sup>712</sup>.

4.126. The starkly discriminatory nature of Israel's restrictions on the ability of Palestinians to access holy Christian and Muslim sites in the OPT is thrown into especially sharp relief when compared with Israel's active promotion and protection of the exercise of religious rights for Jewish Israeli settlers in the OPT<sup>713</sup>.

4.127. The Committee on Economic, Social and Cultural Rights has criticized Israel's discriminatory restrictions on Palestinians' right of freedom of religion. In 2019, for example, the Committee stated that it was:

“concerned that Palestinians living in the Gaza Strip are impeded from visiting religious sites in the West Bank, including East Jerusalem, due to the closure policy of the State party and that Palestinians living in the West Bank too are restricted from visiting religious sites in East Jerusalem.”<sup>714</sup>

The Committee therefore:

“recommend[ed] that the State party [Israel] ensure that Palestinians living in the Occupied Palestinian Territory exercise their right to take part in

<sup>710</sup> See paras. 4.92-4.109 above. See also UNOCHA, “Some 320,000 West Bank ID holders permitted into East Jerusalem for Ramadan Friday prayers”, in *The Monthly Humanitarian Bulletin*, June 2019 (<https://tinyurl.com/48suwp79>).

<sup>711</sup> See “Violence in Middle East Increased Despite Major Religious Observances, Special Coordinator Tells Security Council, Urging Two-State Solution”, Security Council Meetings Coverage, 9309th Meeting, SC/15264, 25 April 2023, sp. briefing by Tor Wennesland, Special Coordinator for the Middle East Peace Process; see also Ir Amim, *Collective Restrictions on the Entry of Muslim Worshippers to the Temple Mount/Haram al-Sharif*, November 2015 (<https://tinyurl.com/ydc4uwyc>).

<sup>712</sup> M. Luft, “Living in a Legal Vacuum: The Case of Israel's Legal Position and Policy towards Gaza Residents”, *Israel Law Review*, Vol. 51, 2018, No. 2, pp. 207-210.

<sup>713</sup> ACRI, *One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank*, October 2014, pp. 104-106 (<https://tinyurl.com/masa37p3>).

<sup>714</sup> Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of Israel, 12 November 2019, E/C.12/ISR/CO/4, para. 70 (<https://undocs.org/E/C.12/ISR/CO/4>).

cultural and religious life without restrictions other than those that are strictly proportionate to security considerations and are not *discriminatory in their application ...*<sup>715</sup>.

#### H. ISRAEL'S DISCRIMINATORY LAND DISTRIBUTION AND PLANNING REGIME IN THE OPT

4.128. At the outset of its occupation in 1967, Israel immediately confined Palestinians in the West Bank, including East Jerusalem, to the areas already built-up at the time, in furtherance of its objective of seizing maximum Palestinian land with minimum Palestinians. These areas represented less than 15 % of East Jerusalem and about 40 % of the rest of the West Bank.

4.129. 60 % of the West Bank was thus kept largely off-limits for Palestinians since the onset of the occupation in 1967 (as depicted in **Figure 3.7** at p. 115 above), Israel has declared the vast majority of land located in this area of the Occupied Territory to be so-called "state land"<sup>716</sup>. Over 99.7 % of that "state land" has been allocated to Israeli settlers in more than 270 illegal settlements, the Israeli army or other organs of the Israeli State; less than 1 % has been allocated to Palestinians<sup>717</sup>. As a result, Palestinians are automatically prevented from making any use of almost two thirds of the West Bank. At the same time, Israeli settlements have been provided with vast tracts of such "state land" for planning, building and expansion purposes. Israeli settlements have even been set up on privately-owned Palestinian land<sup>718</sup>.

4.130. The discriminatory nature and effects of Israel's land seizure and distribution in the OPT is underscored in the 2020 Concluding Observations by the CERD Committee:

"the Israeli settlements in the Occupied Palestinian Territory, in particular the West Bank, including East Jerusalem, are not only illegal under

<sup>715</sup> *Ibid.*, para. 71 (emphasis added).

<sup>716</sup> Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 14 September 2022, A/77/328, paras. 33-34 (<https://undocs.org/A/77/328>).

<sup>717</sup> *Ibid.* See also Al-Haq, *Settling Area C: The Jordan Valley Exposed*, 2018, p. 18 (<https://tinyurl.com/34j4kfam>); Peace Now, *State Land Allocation in the West Bank – For Israelis Only*, 17 July 2018 (<https://tinyurl.com/3v5za7f4>).

<sup>718</sup> See for example P. Beaumont, "Israel Votes to Authorise Illegal Settler Homes in Palestine", *The Guardian*, 5 December 2016 (<https://tinyurl.com/yb57ar75>).

international law but are an obstacle to the enjoyment of human rights by the whole population, *without distinction as to national or ethnic origin.*”<sup>719</sup>

4.131. In addition to excluding Palestinians from most of the West Bank and East Jerusalem, Israel has sought to minimize their ability to construct housing and live in parts of the OPT from which they have not been formally excluded. The major vehicle for accomplishing this is a planning policy which promotes construction of Israeli settlements for Jewish Israelis, while at the same time freezing construction in Palestinian communities. The discriminatory nature of this regime has been widely recognized. The High Commissioner for Human Rights stated that “Israeli zoning and planning policies in Area C and East Jerusalem *are discriminatory* and considered incompatible with requirements under international law”<sup>720</sup>. The September 2022 report of the Independent Commission of Inquiry likewise found that: “the planning and zoning regime applied by Israel reflects *a clearly discriminatory approach*, as it is a highly restrictive one targeted at Palestinian construction, while a much more permissive regime is applied to planning and zoning in settlements.”<sup>721</sup>

4.132. The vast majority of Israeli settlements in the OPT have detailed and modern development plans, readily approved by the Israeli planning authorities, further stimulating their growth and expansion. In contrast, the development of most Palestinian villages is severely limited by Israeli policy and law<sup>722</sup>. For example, in respect of East Jerusalem, it has been found that:

“the laws and national authority of Israel apply throughout East Jerusalem, although in a manner that *systemically discriminates against the Palestinian community* in the city. One prime example is the planning laws. Since 1967,

<sup>719</sup> Committee on the Elimination of Racial Discrimination, Concluding observations on the combined seventeenth to nineteenth reports of Israel, 27 January 2020, CERD/C/ISR/CO/17-19, para. 4 (emphasis added) (<https://undocs.org/CERD/C/ISR/CO/17-19>).

<sup>720</sup> United Nations High Commissioner for Human Rights, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, Report of the United Nations High Commissioner for Human Rights, 30 January 2020, A/HRC/43/67, para. 30 (emphasis added) (<https://undocs.org/A/HRC/43/67>). The report added at para. 41 that “[t]he Israeli zoning and planning policy in East Jerusalem is inherently discriminatory and constitutes a key factor of a coercive environment … forcing Palestinians to leave communities they have lived in for generations …”.

<sup>721</sup> Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 14 September 2022, A/77/328, para. 45 (emphasis added) (<https://undocs.org/A/77/328>).

<sup>722</sup> ACRI, *One Rule, Two Legal Systems: Israel’s Regime of Laws in the West Bank*, October 2014, p. 99 (<https://tinyurl.com/masa37p3>); B’Tselem, *Planning Policy in the West Bank*, 11 November 2017 (last updated 6 February 2019) (<https://tinyurl.com/3uhbet7m>).

Israel has expropriated over 38 per cent of the land base of East Jerusalem *exclusively for Israeli settlements* and has zoned only 15 per cent (amounting to 8.5 per cent of Jerusalem as a whole) for the residential needs of Palestinian Jerusalemites.”<sup>723</sup>

4.133. The situation is equivalent in the West Bank. In 60 % of the West Bank, the land for which master plans have been approved for construction by Palestinians amounts to less than 1 % of the entire area<sup>724</sup>. Even in the 1 per cent of Area C that remains for the approximately 180,000-300,000 Palestinian habitants, the Israeli Civil Administration has imposed a highly restrictive planning regime that makes permit application approval for Palestinian residential and commercial construction virtually impossible<sup>725</sup>. The result is that:

“Palestinians in Area C ... are faced with ... a steady rejection of almost all of their submitted master plans, all of which amounts ... to a coercive environment that is forcing Palestinians to leave.”<sup>726</sup>

4.134. In 2022, the United Nations Commission of Inquiry described Israel’s dual planning regimes – one for Israeli settlers and another for Palestinians – as:

“patterns of violation of the right to land and housing in the West Bank, including systemic violations resulting from *discriminatory planning and zoning laws and policies* ...”<sup>727</sup>.

Thus:

“[W]hile settlements expand rapidly and Israeli settlers are able to construct structures on occupied land, it is almost impossible for Palestinians to get

<sup>723</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2018, A/73/447, para. 40 (emphasis added) (footnotes omitted) (<https://undocs.org/A/73/447>).

<sup>724</sup> Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of Israel, 12 November 2019, E/C.12/ISR/CO/4, para. 50 (<https://undocs.org/E/C.12/ISR/CO/4>).

<sup>725</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2018, A/73/447, para. 51 (<https://undocs.org/A/HRC/73/447>).

<sup>726</sup> *Ibid.* (footnotes omitted).

<sup>727</sup> Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 9 May 2022, A/HRC/50/21, para. 51 (emphasis added) (<https://undocs.org/A/HRC/50/21>).

building permits in Area C due to *discriminatory zoning and planning regimes.*<sup>728</sup>

4.135. The separate and unequal planning and zoning regimes lead to stark contrasts in the number of approved building permits for Palestinians on the one hand and Israeli settlers on the other<sup>729</sup>. In 2021, UN-Habitat explained:

“The vast majority of Palestinian applications for Israeli building permits in Area C are rejected by the Israeli authorities on the grounds that the relevant area has not been zoned for construction. This is the case even when the land for which the permit is requested is undisputedly owned by the Palestinian applicant.”<sup>730</sup>

4.136. The statistics on approved building permits show that it is almost impossible for Palestinians to obtain a building permit: between 2009 and 2018 only two per cent of all requests submitted by Palestinians to Israeli occupation authorities for building permits in so-called “Area C” were granted (98 out of 4,422)<sup>731</sup>. UNOCHA has repeatedly described how official Israeli building permits are “almost impossible”<sup>732</sup>, “nearly impossible”<sup>733</sup>, and “virtually impossible”<sup>734</sup> for Palestinians in the West Bank to obtain. This has led to a surge of so-called “administrative” demolitions and forced evictions by the Israeli occupying forces against Palestinians who have been compelled to build without a permit<sup>735</sup>.

<sup>728</sup> *Ibid.*, para. 49 (emphasis added).

<sup>729</sup> Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of Israel, 12 November 2019, E/C.12/ISR/CO/4, para. 50 (<https://undocs.org/E/C.12/ISR/CO/4>).

<sup>730</sup> UNOCHA, *UN-Habitat - Special Human Settlements Programme for the Palestinian People*, “Most Palestinian plans to build in Area C not approved”, in *The Humanitarian Bulletin*, January-May 2021 (<https://tinyurl.com/ydnbyypp>).

<sup>731</sup> Peace Now, *(Dis)Approvals for Palestinians in Area C – 2009-2020*, 31 January 2021 (<https://tinyurl.com/2yp3num>).

<sup>732</sup> See, for example, UNOCHA, *West Bank Demolitions and Displacement: An Overview*, November 2018 (<https://tinyurl.com/3z7vkm8j>).

<sup>733</sup> See, for example, UNOCHA, *West Bank Demolitions and Displacement*, January 2018 (<https://tinyurl.com/yhp9k666>).

<sup>734</sup> UNOCHA, *West Bank Demolitions and Displacement: An Overview*, March 2019 (<https://tinyurl.com/4fkprd9c>).

<sup>735</sup> See paras. 3.108-3.110 and 3.226-3.236 above. See also UNOCHA, *UN-Habitat - Special Human Settlements Programme for the Palestinian People*, “Most Palestinian plans to build in Area C not approved”, in *The Humanitarian Bulletin*, January-May 2021 (<https://tinyurl.com/ydnbyypp>). See T. Wennesland, United Nations Special Coordinator for the Middle East Peace Process, *Security Council Briefing on the Situation in the Middle East: Report of the Secretary-general on the implementation of UNSCR 2334 (2016)*, 22 March 2023, p. 2 (<https://tinyurl.com/5fv5t8hy>).

4.137. The discriminatory outcome of the permit application process is virtually guaranteed by the procedures Israel has put in place to review applications from Palestinians. In the West Bank, the Israeli military commander has appointed local and regional councils which consist of elected representatives of the Jewish Israeli settlers as “special local planning committees”<sup>736</sup>; and these special committees have been granted the authority otherwise afforded to local and regional planning committees<sup>737</sup>. They are therefore empowered to formulate plans and issue building permits, including to their own communities. Palestinians in the West Bank have no such authority. The result is that Israeli settlers, illegally present in the occupied territory – but not the indigenous Palestinians – enjoy representation of their interests in the relevant planning committees and are full partners in the planning process as it pertains to their settlements, including the issuing of building permits and the supervision of construction, compounding the unlawfulness of these actions<sup>738</sup>.

4.138. The planning procedure for Palestinian villages is completely different. Notably, Palestinian village councils cannot act as local planning committees. Rather, by virtue of Military Order 418, the planning committees responsible for Palestinian villages and cities are comprised only of representatives of Israel<sup>739</sup>. As the Special Rapporteur explained in 2022: “Unlike Jewish settlers, Palestinians have no representation or voice in decision-making over zoning and property use throughout most of the West Bank.”<sup>740</sup>

4.139. In 2014, the United Nations Secretary-General provided a detailed account of the various ways in which Israeli planning policy is “discriminatory against Palestinians as compared with Israeli settlers”:

“In Area C of the West Bank, Palestinians are not allowed to build on approximately 70 per cent of the land mass and are subject to severe restrictions regarding construction in the remaining 30 per cent. Less than 1 per cent of Area C has been planned for Palestinian urban development. Palestinians are not represented in the planning process, unlike Israeli

<sup>736</sup> See as to further details on this question: Norwegian Refugee Council, *A Guide to Housing, Land and Property Law in Area C of the West Bank*, February 2012, pp. 57-58. (<https://tinyurl.com/y8rxf5at>).

<sup>737</sup> Article 2a City Planning Order. See also Amendment No. 2 (Military Order 604).

<sup>738</sup> ACRI, *One Rule, Two Legal Systems: Israel’s Regime of Laws in the West Bank*, October 2014, pp. 93-97 (<https://tinyurl.com/masa37p3>).

<sup>739</sup> *Ibid.*, p. 95.

<sup>740</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 12 August 2022, A/HRC/49/87, para. 43 (<https://undocs.org/A/HRC/49/87>).

settlers. The combination of these factors makes it virtually impossible for Palestinians to obtain a permit to construct homes or infrastructure in Area C. Many Palestinians therefore build without building permits, putting them at risk of eviction, demolition of their homes and displacement. ...

In contrast, Israeli authorities have provided settlements with detailed planning and established preferential policies, including granting incentives and benefits to settlers, allocating settlements land for expansion and connecting them to public services and infrastructure. In addition, the strict application of planning laws to Palestinian communities, which causes a large number of evictions and demolitions of Palestinian structures, contrasts with the flexibility shown by the planning authorities towards Israeli settlements. ...

Israeli planning policy is thus discriminatory against Palestinians as compared with Israeli settlers.”<sup>741</sup>

4.140. In 2019, the Committee on Economic, Social and Cultural Rights voiced similar concern about:

“the *discriminatory* effect of planning and zoning laws and policies on Palestinians and Bedouin communities in the West Bank, as illustrated by the fact that less than 1 per cent of the land in Area C and 13 per cent of the land in East Jerusalem is allocated for the construction of infrastructure for Palestinians.”<sup>742</sup>

4.141. The CERD Committee in its 2020 Concluding Observations on Israel likewise stated that it was “particularly concerned”:

- “(a) About the *discriminatory* effect of planning and zoning laws and policies on Palestinians and Bedouin communities in the West Bank, the continued demolitions of buildings and structures, including water wells, and as a consequence, further displacement of Palestinians;
- “(b) That the process of applying for building permits is prolonged, complicated and expensive and that few such applications are approved, while a *preferential treatment* continues for the expansion of Israeli

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<sup>741</sup> Report of the Secretary-General, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, 12 February 2014, A/HRC/25/38, paras. 12-14 (footnotes omitted) (<https://undocs.org/A/HRC/25/38>).

<sup>742</sup> Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of Israel, 12 November 2019, E/C.12/ISR/CO/4, para. 50 (emphasis added) (<https://undocs.org/E.C.12/ISR/CO/4>).

settlements, including through the use of ‘State land’ allocated for settlements ...”<sup>743</sup>.

4.142. In 2022, the Human Rights Committee found that the different planning regimes applicable to Israeli settlements and Palestinian communities in the West Bank contravene the prohibition of discrimination contained in Article 26 ICCPR. The Committee, “[w]hile noting the State party’s claim that demolitions are limited to illegal constructions”, regretted “that Palestinians have been systematically deprived of their land and housing rights for decades, and the restrictive zoning and planning regime in the West Bank makes it almost impossible for Palestinians to obtain construction permits, leaving them with no choice but to build illegally and risk demolition and eviction. In this respect, the Committee expresses its deep concern that the systematic practice of demolitions and forced evictions based on discriminatory policies ... amounts to racial segregation (arts. 2, 7, 12, 14, 17, 26 and 27).”<sup>744</sup>

4.143. The Committee strongly reiterated its previous recommendations:

“that the State party [Israel] refrain from implementing evictions and demolition orders based on discriminatory planning policies, laws and practices affecting Palestinians, and also Bedouin, in the West Bank, including East Jerusalem. The State party should review and reform its planning and zoning regime and construction permit system in order to prevent forced evictions and demolitions resulting from the fact that it is impossible for Palestinians to obtain construction permits and ensure that affected populations are allowed to participate in the planning process. It

<sup>743</sup> Committee on the Elimination of Racial Discrimination, Concluding observations on the combined seventeenth to nineteenth reports of Israel, 27 January 2020, CERD/C/ISR/CO/17-19, para. 42 (emphasis added) (<https://undocs.org/CERD/C/ISR/CO/17-19>). On the discriminatory nature of Israel’s land distribution and planning regime see also Human Rights Council, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik. Addendum. Mission to Israel and the Occupied Palestinian Territory, 24 December 2012, A/HRC/22/46/Add.1, paras. 50-51 (<https://undocs.org/A/HRC/22/46/Add.1>); Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 23 October 2017, A/72/556, para. 54 (<https://undocs.org/A/72/556>); Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 12 August 2022, A/HRC/49/87, paras. 7 and 38-44 (<https://undocs.org/A/HRC/49/87>); Human Rights Council, Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 9 May 2022, A/HRC/50/21, para. 51 (<https://undocs.org/A/HRC/50/21>).

<sup>744</sup> Human Rights Committee, Concluding observations on the fifth periodic report of Israel, 5 May 2022, CCPR/C/ISR/CO/5, para. 42 (<https://undocs.org/CCPR/C/ISR/CO/5>).

should also ensure that procedural safeguards and due process guarantees are provided against forced evictions and demolitions.”<sup>745</sup>

4.144. Israel, nevertheless, persists with such discriminatory planning policies, laws and practices in the OPT, in breach of international law and in violation of the rights of the Palestinian people.

#### I. DISCRIMINATORY ACCESS TO, AND RESTRICTIONS ON USE OF NATURAL RESOURCES IN THE OPT

4.145. Since the beginning of its occupation of the Palestinian territory, Israel has systematically appropriated the natural resources, including freshwater resources, of the territory for itself, and for the benefit of its illegal settlements, to the exclusion of the Palestinian people who, under international law, enjoy permanent sovereignty over these resources. This is both a violation of international law<sup>746</sup> and a means of entrenching its illegal colonization and annexation of the West Bank, including East Jerusalem<sup>747</sup>.

4.146. Israel’s racially discriminatory appropriation of natural resources is particularly pronounced in regard to access to water, the most vital resource in the OPT. The Independent International Commission of Inquiry has described how “Israel has taken control of all water resources in the West Bank and has been using much of the water for its own purposes.”<sup>748</sup>

4.147. There are two main sources of water in the West Bank: the Jordan River and the mountain aquifer. In respect of the former, “Israel has prohibited the Palestinians from drawing any of its waters since the occupation began in 1967 by declaring its riverbanks a closed military zone and by destroying Palestinian pumps and irrigation ditches.”<sup>749</sup> In respect of the latter, the disparity in extraction and usage is vast. In 2014, for example, it was estimated that the distribution of the aquifer’s waters was 87 per cent for Israel and just 13 per cent for the

<sup>745</sup> *Ibid.*, para. 43.

<sup>746</sup> See Regulations concerning the Laws and Customs of War on Land, enclosed to the fourth Hague Convention of 1907, Article 55.

<sup>747</sup> See paras. 3.249-3.256 above.

<sup>748</sup> Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 14 September 2022, A/77/328, para. 35 (<https://undocs.org/A/77/328>).

<sup>749</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 30 May 2019, A/HRC/40/73, para. 44 (footnote omitted) (<https://undocs.org/A/HRC/40/73>).

Palestinians<sup>750</sup>. The High Commissioner for Human Rights has described this as an “extremely inequitable distribution of water”<sup>751</sup>.

4.148. Israel’s expropriation and discriminatory allocation of water resources in the West Bank has been achieved through a combination of laws, administrative measures and construction and control of physical water infrastructure. Shortly after its seizure of the West Bank, the Israeli Military Commander issued an order on 15 August 1967, which transferred authority over all water resources in the West Bank to the Israeli military<sup>752</sup>. The Israeli military directly managed the water system in the West Bank until 1982. In that year, the Ministry of Defense transferred control of the West Bank water supply system to Mekorot, an Israeli company that is 50 % owned by the Government of Israel, which has controlled the water supply system ever since<sup>753</sup>. The High Commissioner for Human Rights has described how Mekorot operate[s] dozens of wells, trunk lines and reservoirs that abstract water inside Palestinian territory and provides service instead to the Israeli settlements in the West Bank<sup>754</sup>.

4.149. Numerous other independent reports have also highlighted Israel’s discriminatory allocation of water resources in the OPT. In 2018, the Special Rapporteur found that “[a]ccess to safe and sufficient drinking water in the Occupied Palestinian Territory is severely compromised by the discriminatory access to sources of water in the West Bank ...”<sup>755</sup>. In 2019, the International Committee of Jurists reported that “Israeli water policies and practices in the West Bank discriminate against the Palestinian population and in favour of the settler population. Indeed, the Palestinian water system in the West Bank has been

<sup>750</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 30 May 2019, A/HRC/40/73, para. 48 (<https://undocs.org/A/HRC/40/73>).

<sup>751</sup> Report of the United Nations High Commissioner for Human Rights, Allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem, 15 October 2021, A/HRC/48/43, para. 27 (<https://undocs.org/A/HRC/48/43>).

<sup>752</sup> Military Order 92: “Order Concerning Jurisdiction over Water Regulations”.

<sup>753</sup> As the Special Rapporteur has observed: “The West Bank water system, with its plentiful mountain aquifers, have been owned since 1982 by Mekorot, the national water company, with the benefits flowing primarily to Israel.” (Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2018, A/73/447, para. 50 (footnote omitted) (<https://undocs.org/A/73/447>)).

<sup>754</sup> Report of the United Nations High Commissioner for Human Rights, Allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem, 15 October 2021, A/HRC/48/43, para. 18 (<https://undocs.org/A/HRC/48/43>).

<sup>755</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 14 July 2018, A/HRC/37/75, para. 27 (<https://undocs.org/A/HRC/37/75>).

integrated into Israel's”<sup>756</sup>. In 2022, the Independent International Commission of Inquiry found that:

“[t]he complete control exerted by Israel over water resources is a key factor preventing Palestinians from accessing affordable and adequate water. This control, coupled with prohibitions on the construction of new water installations or carrying out maintenance on existing installations without a military permit, has put Palestinians at a heightened risk of water scarcity.”<sup>757</sup>

4.150. As a result of Israel's actions, “some 180 Palestinian communities in rural areas in the occupied West Bank have no access to running water”, while “[e]ven in towns and villages which are connected to the water network, the taps often run dry.” In contrast, “Israeli settlers in the West Bank – in some cases just a few hundred meters away – face no such restrictions and water shortages, and can enjoy and capitalize on well-irrigated farmlands and swimming pools.”<sup>758</sup>

4.151. In 2013, the Special Rapporteur urged Israel to:

“immediately end its discriminatory policies and practices that serve to deny Palestinians their rightful share of water resources in the West Bank and the Gaza Strip.”<sup>759</sup>

4.152. Likewise, the CERD Committee:

“urge[d] the State party [Israel] to reconsider the entire policy in order to guarantee Palestinian … access to natural resources (especially water resources).”<sup>760</sup>

<sup>756</sup> International Commission of Jurists, *The Road to Annexation – Israel's Maneuvers to Change the Status of the Occupied Palestinian Territories: A Briefing Paper*, November 2019, p. 14 (<https://tinyurl.com/5n82b9xk>).

<sup>757</sup> Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 14 September 2022, A/77/328, para. 70 (<https://undocs.org/A/77/328>).

<sup>758</sup> Amnesty International, *The Occupation of Water*, 29 November 2017 (<https://tinyurl.com/3pnxac4c>).

<sup>759</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 10 September 2013, A/68/376, para. 76 (<https://undocs.org/A/68/376>).

<sup>760</sup> Committee on the Elimination of Racial Discrimination, Consideration of reports submitted by States parties under article 9 of the Convention. Concluding Observations (Israel), CERD/C ISR/CO/14-16, 3 April 2012, para. 25 (<https://undocs.org/CERD/C ISR/CO/14-16>). See also on the discriminatory nature of Israel's water and natural resource policy in the West Bank: Report of the Special Rapporteur on the situation of human rights in the Palestinian territories

4.153. The extent of Israel's discrimination against Palestinians in regard to access to water, and the consequences suffered as a result, were highlighted by the United Nations High Commissioner of Human Rights in a September 2021 report on the "Allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem"<sup>761</sup>:

"Israeli authorities treat the nearly 450,000 Israeli settlers and 2.7 million Palestinians residing in the West Bank (excluding East Jerusalem) *under two distinct bodies of law, resulting in unequal treatment on a range of issues, including access to water.*"<sup>762</sup>

"The prioritization by Israel/Mekorot of permanent water supply for Israeli settlements, to the detriment of the Palestinian population, *severely affects the enjoyment of human rights of Palestinians, including the rights to water and sanitation. Palestinians face continuing discriminatory practices, which result in them being prevented from enjoying their rights to water and sanitation.*"<sup>763</sup>

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occupied since 1967, A/72/556, 23 October 2017, para. 54 (<https://undocs.org/A/72/556>); Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, A/HRC/47/57, 29 July 2021, para. 58 (<https://undocs.org/A/HRC/47/57>); Human Rights Council, Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 9 May 2022, A/HRC/50/21, para. 52 (<https://undocs.org/A/HRC/50/21>); Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 14 September 2022, A/77/328, para. 35 (<https://undocs.org/A/77/328>).

<sup>761</sup> Report of the United Nations High Commissioner for Human Rights, Allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem, 15 October 2021, A/HRC/48/43 (<https://undocs.org/A/HRC/48/43>).

<sup>762</sup> *Ibid.*, para. 31 (emphasis added) (footnote omitted).

<sup>763</sup> *Ibid.*, para. 66 (emphasis added). The Special Rapporteur has similarly described how "the Israeli settlements have played a significant role in perpetuating the discriminatory extraction and use of water in the West Bank. All Israeli settlements are linked to the Mekorot national water system and receive developed-world levels of water for drinking, sanitation and commercial use. By way of contrast, approximately 180 Palestinian communities in Area C have no connection to a water network, leaving them to either rely on shallow wells or to purchase water from tankers at a considerable price. The disparities are most acute in the Jordan Valley: figures from 2013 reveal that the 10,000 Israeli settlers in the Valley were provided with the lion's share of the 32 million m<sup>3</sup> of water drilled that year from the mountain aquifer by Mekorot for their domestic and agricultural use. In comparison, the entire 2.7 million Palestinians across the West Bank were allocated only 103 million m<sup>3</sup> from the Western Aquifer." (Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 30 May 2019, A/HRC/40/73, para. 52 (footnotes omitted) (<https://undocs.org/A/HRC/40/73>)).

## J. ISRAEL'S RACIAL DISCRIMINATION AS TO SOCIAL AND ECONOMIC RIGHTS: LABOUR, EDUCATION AND HEALTH

4.154. Israel's discriminatory practices based on racial grounds also encompass discrimination against Palestinians in respect of an array of economic and social rights.

### *1. Labour Rights*

4.155. Through the imposition of hundreds of checkpoints and other closures and restrictions, and the construction of the Wall and its associated regime, including related restrictions on movement in the “seam zone”, there have been severe infringements of the rights of Palestinians in the OPT to freely choose and exercise their employment and to access their workplace.

4.156. Palestinian farmers, in particular, are systematically denied favourable conditions of work, with access to their farmland blocked, especially, but not only, in the “seam zone” between the Wall and the Green Line. UNOCHA has found that more than half of the communities surveyed in the West Bank do not have direct, regular access to their own land:

“Restrictive gate openings and permit allocations are already having a negative impact on agricultural practices and on rural livelihoods. Many farmers cultivate their land infrequently or not at all, or have changed to lower maintenance and lower yield crops. The longer term consequences for these communities [are] uncertain, as they lose contact with the land on which they depend both for their present livelihood and for their future survival.”<sup>764</sup>

4.157. The stark disparity in freedom of movement, described above, and the impact on Palestinians' labour rights, led the CERD Committee to find that:

“the severe restrictions on the freedom of movement in the Occupied Palestinian Territories, targeting a particular national or ethnic group, especially through the wall, checkpoints, restricted roads and permit system, have created hardship and have had a highly detrimental impact on the

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<sup>764</sup> UNOCHA, *Three Years Later: The Humanitarian Impact of the Wall since the International Court of Justice Opinion*, 9 July 2007 (<https://tinyurl.com/4wbvhn4e>).

enjoyment of human rights by Palestinians, in particular their rights to ... work ..."<sup>765</sup>.

4.158. Within the OPT, the Palestinian workers who are most affected by Israel's discriminatory policies are those who work in East Jerusalem, but live elsewhere in the West Bank. East Jerusalem is an integral part of the West Bank and was for decades its economic centre. With the tightening of restrictions on access to East Jerusalem, and notably the construction of the Wall and its associated regime, Palestinians living in other parts of the West Bank need permits from Israel to work in East Jerusalem, which in practice are very difficult to obtain<sup>766</sup>.

4.159. Some sectors have been impacted by these restrictions more severely than others: many teachers in Palestinian schools in Jerusalem can no longer teach, and many doctors and nurses working in hospitals in Jerusalem have been forced to leave their positions, because of difficulties entering the City<sup>767</sup>. According to United Nations estimates, 95 % of Palestinians from elsewhere in the West Bank and 77 % of Palestinians from East Jerusalem itself have had difficulties reaching their workplaces.<sup>768</sup> By 2011, more than half of East Jerusalem households with West Bank IDs reported that the main earner had been forced to change their place of work due to the Wall<sup>769</sup>. This stands in sharp contrast to Israeli settlers living in the OPT, who can freely commute on a daily basis to work in Jerusalem, along with other citizens of Israel, or anywhere else in the OPT without any restrictions or limitations.

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<sup>765</sup> Committee on the Elimination of Racial Discrimination, Consideration of reports submitted by States parties under article 9 of the Convention. Concluding Observations (Israel), 14 June 2007, CERD/C/ISR/CO/13, para. 34 (emphasis added) (<https://undocs.org/CERD/C/ISR/CO/13>). See also Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 12 August 2022, A/HRC/49/87, para. 50 (b) (<https://undocs.org/A/HRC/49/87>).

<sup>766</sup> S. Bashi and E. Diamond, *Separating Land, Separating People: Legal Analysis of Access Restrictions between Gaza and the West Bank*, Gisha, 2015, p. 4 (<https://tinyurl.com/umshw5dw>). See also B'Tselem, Restrictions on Movement, 11 November 2017 (<https://tinyurl.com/57kxw4tt>).

<sup>767</sup> UNCTAD, *The Palestinian economy in East Jerusalem: Enduring annexation, isolation and disintegration*, Geneva, United Nations, 2013, p. 27 (<https://tinyurl.com/5n7untvu>); Civic Coalition for Palestinian Rights in Jerusalem, *Parallel Report to the Committee on the Elimination of Racial Discrimination on Israel's Seventeenth to Nineteenth Periodic Reports*, 1 November 2019, p. 12, para. 35 (<https://tinyurl.com/makd8992>).

<sup>768</sup> UNISPAL, *The Separation Wall in Jerusalem: Economic Consequences*, 28 February 2007 (<https://tinyurl.com/2vshb2s9>).

<sup>769</sup> UNOCHA, *Barrier Update*, July 2011, p. 15 (<https://tinyurl.com/y92hmb4k>).

## 2. Access to Education

4.160. Restrictions on movement which only apply to the Palestinian population but not to Israeli settlers living illegally in the OPT also have a major impact on education throughout the OPT. Palestinian students living in East Jerusalem or elsewhere in the West Bank, especially those living in the vicinity of settlements, suffer on an almost daily basis from delays at checkpoints. Invasive, coercive and humiliating body and bag searches are frequent and both, school children and teachers, are often subjected to harassment by Israeli settlers, notably in the “H2” area of Hebron and areas adjacent to Israeli settlements.<sup>770</sup>

4.161. In 2019 the Committee on Economic, Social and Cultural Rights expressed its concern

“about the restricted access of students to education in the Occupied Palestinian Territory, in particular:

- (a) The shortage of school facilities due to the frequent demolition of school buildings and the confiscation of school premises or educational materials by Israeli authorities, as well as difficulties in obtaining construction permits and securing construction materials, most of which are banned under the dual-use item regime;
- (b) The precarious learning environment in which Palestinian students are being educated due to the armed or non-armed searches of Palestinian schools carried out by Israeli security forces;
- (c) The frequent incidence of harassment of or threats against students and teachers by security forces or Israeli settlers at checkpoints or along roads, which particularly impedes female students from going [to] school ...”<sup>771</sup>.

4.162. Even when Palestinian students can access their schools, they may find that they have been demolished by Israeli authorities. The Human Rights Committee expressed concern in its 2022 Concluding Observations “about the State party’s [i.e., Israel’s] increased and intensified practice of the demolition of ...

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<sup>770</sup> Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of Israel, 12 November 2019, E/C.12 ISR/CO/4, para. 64 (<https://undocs.org/E/C.12/ISR/CO/4>); see also UNOCHA, *The Humanitarian Situation in the H2 Area of Hebron City: Findings of Needs Assessment*, April 2019, pp. 7, 10 (<https://tinyurl.com/24czapu4>).

<sup>771</sup> Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of Israel, 12 November 2019, E/C.12 ISR/CO/4, para. 64 (<https://undocs.org/E/C.12/ISR/CO/4>).

infrastructure – such as schools ... – in the West Bank, including in Sheikh Jarrah ..."<sup>772</sup>.

4.163. Israel also discriminates against Palestinians in the OPT when it comes to access to higher education. Palestinians in the Gaza Strip have been subjected to particularly onerous restrictions on accessing higher education. In 2019, the Committee on Economic, Social and Cultural Rights stated that it was “concerned about the blanket ban on education in the West Bank imposed since 2014 on students from the Gaza Strip, which has limited their access to higher education in particular”<sup>773</sup>.

4.164. Israeli military forces have also interfered with Palestinians’ access to education by arresting, intimidating and harassing university students and academic staff. A 2021 United Nations report highlighted the intensified “[p]atterns of arrest and harassment of Palestinian university students and professors”, especially at Birzeit University in Ramallah where “more than 74 arrests of students” by Israeli occupation forces were reported between September 2019 and January 2020 alone<sup>774</sup>. The Special Rapporteur has stressed that “it is the responsibility of the occupying power to ensure the right to education is respected”<sup>775</sup>.

4.165. In contrast, Israeli settlers in the OPT endure none of these restrictions or harassments. They have free access to education in institutions located in the settlements, in Jerusalem, or in Israel itself<sup>776</sup>.

<sup>772</sup> Human Rights Committee, Concluding observations on the fifth periodic report of Israel, 5 May 2022, CCPR/C/ISR/CO/5, para. 42 (<https://undocs.org/CCPR/C/ISR/CO/5>).

<sup>773</sup> Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of Israel, 12 November 2019, E/C.12/ISR/CO/4, para. 66 (<https://undocs.org/E.C.12/ISR/CO/4>).

<sup>774</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 29 July 2021, A/HRC/47/57, para. 20 (<https://undocs.org/A/HRC/47/57>).

<sup>775</sup> *Ibid.*

<sup>776</sup> Report of the Secretary-General to the United Nations Human Rights Council, *Freedom of Movement: Human Rights Situation in the Occupied Palestinian Territory, including East Jerusalem*, February 2016, pp. 5-6 (<https://tinyurl.com/2um8tc6w>); ACRI, *One Rule, Two Legal Systems: Israel’s Regime of Laws in the West Bank*, October 2014, pp. 104-114. (<https://tinyurl.com/masa37p3>).

### 3. Access to Health

4.166. Israel is obliged under both international humanitarian and human rights law to ensure that the right to health is protected<sup>777</sup>. Serious constraints are, however, placed on the delivery of health services to Palestinians in the OPT which are not imposed on Israeli settlers living in the same area. These restraints violate both substantive principles of humanitarian law and human rights law and the prohibition of racial discrimination.

4.167. In its 2022 report on the OPT, the WHO described the situation as follows:

“From 2019 to 2021, considerable barriers to the right to health for Palestinians continued in the West Bank, including east Jerusalem, and the Gaza Strip. Palestinians’ health is impacted by *structural determinants of health inequities that include ongoing occupation, political divisions, fragmentation of territory, blockade of the Gaza Strip, physical obstacles to movement, and implementation of a permit regime*. These factors influence health service availability including through financing limitations; health access including to outside medical referrals; and health attacks.”<sup>778</sup>

4.168. According to the WHO, serious inequities include:

- arbitrary delays and denial of permits for Palestinian patients referred to hospitals in East Jerusalem or Israel;
- arbitrary delays and denial of ambulances and health care staff at checkpoints;
- bureaucratic obstacles placed in the supply of medicines which was “starkly apparent in the differential access for Palestinians to COVID-19 vaccines”<sup>779</sup>; and
- discriminatory planning policies in rural areas comprising 60 per cent of the West Bank that prevent the development of permanent health care facilities<sup>780</sup>.

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<sup>777</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, Articles 55 and 56.

<sup>778</sup> WHO, *Right to Health: Barriers to health and attacks on health care in the occupied Palestinian territory, 2019 to 2021*, Report 2022, 2023, p. 7 (emphasis added) (<https://tinyurl.com/3nh6fmnn>).

<sup>779</sup> *Ibid.*, p. 21.

<sup>780</sup> *Ibid.*, pp. 12-13.

4.169. These findings are corroborated by data, which shows a stark disparity in the respective life expectancies of Palestinians and Israeli settlers in the West Bank: Israeli settlers have life expectancies of 85.2 years (for women) and 81.6 years (for men); Palestinians' life expectancies are just 75.6 years (for women) and 73.3 years (for men)<sup>781</sup>. Additionally, from 2019 to 2021 the WHO reported 563 attacks against health care facilities for Palestinians in the OPT, involving physical violence, obstruction, arrest of patients, their companions or health care workers<sup>782</sup>.

4.170. Access to healthcare for Palestinians in the Gaza Strip is even more restricted as a result of Israel's blockade and regular military assaults on the territory. In 2019, the CESCR Committee described:

“the very limited availability of health-care services and the deteriorating quality of such services in the Gaza Strip due to restrictions on dual-use items, including essential medical equipment and supplies, and the escalation of hostilities, which have forced residents to seek medical treatment in the West Bank or in Israel.”<sup>783</sup>

4.171. The Committee also expressed its concern:

“about the lengthy and complicated exit-permit system, which has impeded the ability of residents of the Gaza Strip to access medically recommended treatment that is not available in Gaza in the West Bank, including East Jerusalem, in Israel and abroad. Furthermore, it is concerned that in recent years there has been a significant increase in the number of requests for permits that have been refused or delayed, with devastating consequences, including the death of patients waiting for permits and the carrying out of critical medical procedures on children without their parents at their side”<sup>784</sup>.

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<sup>781</sup> WHO, *Right to Health: Barriers to health and attacks on health care in the occupied Palestinian territory, 2019 to 2021*, Report 2022, 2023, p. 20 (<https://tinyurl.com/3nh6fmnn>).

<sup>782</sup> *Ibid.*, pp. 57, 59. The report explains at p. 57 that: “WHO defines an attack on health care as ‘any act of verbal or physical violence or obstruction or threat of violence that interferes with the availability, access and delivery of curative and/or preventive health services during emergencies’.” (footnote omitted).

<sup>783</sup> Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of Israel, 12 November 2019, E/C.12/ISR/CO/4, para. 58 (<https://undocs.org/E/C.12/ISR/CO/4>).

<sup>784</sup> *Ibid.*

## K. ISRAEL'S DISCRIMINATORY INFILCTION OF COLLECTIVE PUNISHMENT ON PALESTINIANS

4.172. Collective punishment is prohibited by the Fourth Geneva Convention. Article 33 provides:

“No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. Pillage is prohibited. Reprisals against protected persons and their property are prohibited.”

4.173. This provision has its origin in the Hague Regulations<sup>785</sup> and is confirmed by Additional Protocol I<sup>786</sup>. Its content also forms part of customary international law<sup>787</sup>.

4.174. Israel engages in various practices in the OPT which flagrantly violate the prohibition on collective punishment and, as a consequence, also violate innumerable human rights. These measures serve two related purposes: the subjugation of the people to stifle opposition to the occupation and quell their ambition of political independence. In furtherance of these objectives, Israel has imposed numerous forms of collective punishment on the Palestinian people in the OPT. As the Special Rapporteur concluded in 2020:

“Collective punishment is an inflamed scar that runs across the entire 53-year-old Israeli occupation of the Palestinian territory. In this time, two million Palestinians in Gaza have endured a comprehensive air, sea and land blockade since 2007, several thousand Palestinian homes have been punitively demolished, extended curfews have paralysed entire towns and regions, the bodies of dead Palestinians have been withheld from their families, and critical civilian supplies – including food, water and utilities – have been denied at various times. Notwithstanding numerous resolutions, reports and reminders critical of its use, Israel continues to rely upon collective punishment as a prominent instrument in its coercive toolbox of population control.”<sup>788</sup>

<sup>785</sup> Article 50.

<sup>786</sup> Article 75 (2) (d).

<sup>787</sup> See J.-M. Henckaerts, L. Doswald-Beck, *Customary International Humanitarian Law, Vol. I (Rules)*, International Committee of the Red Cross, Cambridge University Press, 2005, p. 374 (rule 103).

<sup>788</sup> Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, 22 December 2020, A/HRC/44/60, para. 24 (<https://undocs.org/A/HRC/44/60>).

### *1. Demolitions of Palestinian Homes and Other Properties*

4.175. One of the most glaring examples of Israel's infliction of collective punishment on Palestinians is its practice of punitive home demolitions. In particular, Israel regularly demolishes houses belonging to the family of a person it accuses of having committed an offence against an Israeli military order. The demolished homes included "houses where he or she lived with his or her immediate family or other relatives and/or where the family home concerned was rented from a landlord."<sup>789</sup> Such demolitions, which have "a shattering impact upon the families" living in those homes, take place "even though the families or owners were not proved to have played a role in the alleged offence, having never been charged, let alone convicted" by Israel's military courts<sup>790</sup>.

4.176. In contrast to the widespread punitive demolitions of Palestinian homes, "[p]unitive demolitions have never been used against the homes of Israeli Jewish civilians" who have allegedly committed similar offences<sup>791</sup>. Since the start of the occupation, Israel has punitively demolished or sealed thousands of Palestinian homes in the occupied territories, affecting tens of thousands of Palestinians, including children.<sup>792</sup>

4.177. In addition to demolitions on overtly punitive grounds, Israel also engages in the widespread demolitions of homes, schools and other Palestinian properties in East Jerusalem and the rest of the West Bank for so-called "administrative" reasons<sup>793</sup>. These demolitions also have a collective punitive character, since they result in entire families being made homeless in circumstances where they cannot reasonably be considered at fault. The link between such demolitions and Israel's implantation of settlers in the OPT is unambiguous; the demolitions are typically carried out in areas designated for settlement expansion or construction of related infrastructure, or in areas where settler organizations have chosen to expand into Palestinian communities, such as Sheikh Jarrah, Silwan and other neighbourhoods in East Jerusalem. As such, home demolitions are part and parcel of the overarching attempts to displace Palestinians and replace them with Israeli settlers. According to UNOCHA, in just the period since 2009, Israel has

<sup>789</sup> *Ibid.*, para. 38.

<sup>790</sup> *Ibid.*, paras. 38-39.

<sup>791</sup> *Ibid.*, para. 51.

<sup>792</sup> Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, 22 December 2020, A/HRC/44/60, para. 38 (footnote omitted) (<https://undocs.org/A/HRC/44/60>). See also UNOCHA database on home demolitions, online: <https://www.ochaopt.org/data/demolition>.

<sup>793</sup> See paras. 3.101-3.104 and 3.226-3.236 above.

demolished over 2,800 Palestinian structures in East Jerusalem and over, 9,500 in the rest of the West Bank, displacing around 14,000 Palestinians and affecting over 184,000 people<sup>794</sup>.

4.178. The destruction of homes and other private property by an occupying Power is prohibited by Article 53 of the Fourth Geneva Convention “except where such destruction is rendered absolutely necessary by military operations.”<sup>795</sup> This prohibition is a rule of customary international law<sup>796</sup>; violating it constitutes a grave breach of the Fourth Geneva Convention<sup>797</sup> and a war crime under the Rome Statute<sup>798</sup>. Nevertheless, Israel has conducted largescale, wanton destruction of Palestinian property throughout the OPT. Some of the worst destruction, however, has been caused by the Israeli military in their assaults on the Gaza Strip.

4.179. In Israel’s 2008-2009 assault on the Gaza Strip over 3,000 homes were destroyed and more than 11,000 damaged; 215 factories and 700 private businesses were seriously damaged or destroyed; 15 hospitals and 43 primary health care centres were destroyed or damaged; 28 government buildings were destroyed; 30 mosques were destroyed and 28 damaged; 10 schools were destroyed and 168 damaged; three universities/colleges were destroyed and 14 damaged<sup>799</sup>. The United Nations Fact-Finding Mission on the Gaza Conflict concluded that “the Israeli armed forces carried out widespread destruction of private residential houses, water wells and water tanks unlawfully, and wantonly”<sup>800</sup>, which violated both international humanitarian law and Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights<sup>801</sup>.

4.180. In Israel’s 2014 military assault on Gaza, approximately 18,000 housing units were destroyed or severely damaged and some 80,000 homes and

<sup>794</sup> UNOCHA, *Data on demolition and displacement in the West Bank* (<https://tinyurl.com/4w5fysk6>).

<sup>795</sup> See also, Article 23(g) of Hague Regulations.

<sup>796</sup> Rule 50 of the ICRC study on customary international humanitarian law prohibits “[t]he destruction or seizure of the property of an adversary ... unless required by imperative military necessity” (J.-M. Henckaerts, L. Doswald-Beck, *Customary International Humanitarian Law, Vol. I (Rules)*, International Committee of the Red Cross, Cambridge University Press, 2005, p. 175).

<sup>797</sup> Article 147.

<sup>798</sup> Articles 8(2)(iv) and 8(2)(b)(xiii).

<sup>799</sup> Independent Fact Finding Committee on Gaza to the League of Arab States, *No Safe Place*, Report presented to the League of Arab States, 30 April 2009, p. 3 (<https://tinyurl.com/5fsksjrd>).

<sup>800</sup> Report of the United Nations Fact-Finding Mission on the Gaza Conflict, “Human Rights in Palestine and other Occupied Arab Territories”, 25 September 2009, A/HRC/12/48, para. 1929 (<https://undocs.org/A/HRC/12/48>).

<sup>801</sup> *Ibid.*, para. 1930.

properties required rehabilitation<sup>802</sup>. Both the 2008-2009 and the 2014 assaults evidenced a clear intent to punish the Palestinian population, including through the infliction of extensive and painful human and material losses. This was repeated in May 2021, when in just 11 days, Israel carried out “intense violence with heavy civilian causalities and property destruction in Gaza.”<sup>803</sup> During the course of this military assault, 1,384 housing units were destroyed and almost 58,000 damaged. Other civilian infrastructure was widely damaged, including 331 education, 33 healthcare and 290 water, sanitation and hygiene facilities<sup>804</sup>. Air strikes destroyed four high-rise buildings in Gaza City in the densely populated Al-Rimal neighbourhood. These buildings were used for industrial, trade and service facilities and their destruction resulted in massive displacement and job losses. One of the buildings housed the offices of international media organizations. Israel claimed that the buildings were used for military purposes but provided no evidence to support this claim and an investigation by Human Rights Watch found no such evidence<sup>805</sup>. Likewise, in May 2023, Israel’s most recent (to date) assault on Gaza caused damage to 2,943 housing units and destroyed 103 other properties. Twenty-six schools were damaged as well as four health care centres<sup>806</sup>.

4.181. There is thus a longstanding pattern and practice of Israeli destruction of Palestinian property during its military assaults on Gaza and in the West Bank, including East Jerusalem, in clear violation of international law, committing grave breaches of the Fourth Geneva Convention and egregious human rights violations. In 2009, a United Nations Fact-Finding Mission made the following observations on the strategy and tactics employed by Israel during its 2008-2009 assault on Gaza:

“The Mission recalls in this regard its analysis of the Israeli objectives and strategies during the military operations in chapter XVI. There the Mission referred to statements made by Deputy Prime Minister Eli Yishai on 6 January 2009: ‘It [should be] possible to destroy Gaza, so they will understand not to mess with us’. He added that ‘it is a great opportunity to

<sup>802</sup> Human Rights Council, Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council Resolution S-21/1, 24 June 2015, A/HRC/29/CRP.4, para. 576 (<https://undocs.org/A/HRC/29/CRP.4>).

<sup>803</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2021, A/76/433, para. 38 (<https://undocs.org/A/76/433>).

<sup>804</sup> Report of the United Nations High Commissioner for Human Rights, “Implementation of Human Rights Council Resolution S-9/1 and S-12/1”, 28 April 2022, A/HRC/49/83, para. 49 (<https://undocs.org/A/HRC/49/83>).

<sup>805</sup> Human Rights Watch, *Gaza: Israel’s May Airstrikes on High Rises*, 23 August 2021 (<https://tinyurl.com/2p9nsrea>).

<sup>806</sup> UNOCHA, *Humanitarian Situation in Gaza, Flash Update #5*, 15 May 2023 (<https://tinyurl.com/2p9yzs7p>).

demolish thousands of houses of all the terrorists, so they will think twice before they launch rockets'. The Mission also referred to the so-called Dahiya doctrine, which calls for widespread destruction as a means of deterrence and seems to have been put into practice."<sup>807</sup>

"The tactics used by the Israeli armed forces in the Gaza offensive are consistent with previous practices, most recently during the Lebanon war in 2006. A concept known as the Dahiya doctrine emerged then, involving the application of disproportionate force and the causing of great damage and destruction to civilian property and infrastructure, and suffering to civilian populations. The Mission concludes from a review of the facts on the ground that it witnessed for itself that what was prescribed as the best strategy appears to have been precisely what was put into practice."<sup>808</sup>

4.182. In June 2023, the Secretary-General presented a report to the Security Council which stated that he "remain[ed] deeply concerned by the continued demolitions and seizures of Palestinian-owned structures", adding that:

"Demolitions and evictions, including internationally funded humanitarian projects as well as structures related to income-generation and the provision of essential services, entail numerous human rights violations and raise concerns about the risk of the forcible transfer. I again call upon the Government of Israel to immediately end the demolition of Palestinian-owned property and prevent the possible displacement and forced eviction of Palestinians, in line with its international obligations"<sup>809</sup>.

4.183. The General Assembly has also condemned Israel's ongoing demolition of Palestinian homes in the OPT<sup>810</sup>, especially "if carried out as an act of collective punishment"<sup>811</sup>. Specifically, it expressed "grave concern" about

"the ongoing demolition by Israel, the occupying Power, of Palestinian homes, as well as of structures, including schools, provided as international humanitarian aid, in particular in and around Occupied East Jerusalem, including if carried out as an act of collective punishment in violation of

<sup>807</sup> Report of the United Nations Fact-Finding Mission on the Gaza Conflict, "Human Rights in Palestine and other Occupied Arab Territories", 25 September 2009, A/HRC/12/48, para. 1304 (<https://undocs.org/A/HRC/12/48>).

<sup>808</sup> *Ibid.*, para. 62.

<sup>809</sup> Report of the Secretary-General on the implementation of Security Council resolution 2334 (2016), 21 June 2023, S/2023/458, para. 64 (<https://undocs.org/S/2023/458>).

<sup>810</sup> General Assembly, Resolution 77/126, 12 December 2022.

<sup>811</sup> General Assembly, Resolution 77/247, 30 December 2022.

international humanitarian law, which has escalated at unprecedented rates”<sup>812</sup>.

## *2. Settler Violence against the Palestinian Population*

4.184. Israeli settlers also engage in the destruction of Palestinian homes, vehicles, trees, crops and livestock in East Jerusalem and the rest of the West Bank. These acts of destruction are recurrent elements of an ongoing campaign by Israeli settlers to harass, intimidate, provoke and terrorize Palestinian civilians and part of the broader coercive environment created and pursued by Israel to forcibly displace the Palestinian people from their native land.

4.185. Settler attacks against Palestinians and their property in the OPT is tolerated, actively encouraged, and supported by the Israeli authorities, including by providing military protection to the settlers and failing to hold them accountable. The violence serves a calculated purpose from the perspective of the settlers who inflict it, and the Israeli authorities who acquiesce in its commission or contribute to it: to intimidate and subjugate the local Palestinian population, to encourage or force their displacement, and to thereby facilitate the expansion of the settlements. As the Independent Commission of Inquiry found in 2013, “the motivation behind this violence and the intimidation against the Palestinians and their properties is to drive the local populations away from their lands and allow the settlements to expand.”<sup>813</sup> In the years that followed this report, some of the most harrowing examples of settler terrorism took place. These include the abduction, burning and killing of Mohammed Abu Khdeir<sup>814</sup>, a 16-year-old Palestinian boy, in Jerusalem, on 2 July 2014, and the attack and arson of the Dawabsheh family home in Duma village, Nablus, burning and killing 18-month-old Ali Dawabsheh<sup>815</sup> and his

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<sup>812</sup> *Ibid.*, preamble.

<sup>813</sup> Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, 7 February 2013, A/HRC/22/63, para. 107 (<https://undocs.org/A/HRC/22/63>).

<sup>814</sup> Security Council Press Statement on Killing of Palestinian Teenager, 2 July 2014, SC/11462 (<https://tinyurl.com/2hwjz7b9>).

<sup>815</sup> UNOCHA, Protection of Civilians, Reporting period: 28 July–3 August 2015 (<https://tinyurl.com/mry9mmpu>).

parents<sup>816</sup>, and critically injuring his four-year-old sibling<sup>817</sup>, on 31 July 2015. Following this attack, the Secretary-General stated that “(c)ontinued failures to effectively address impunity for repeated acts of settler violence have led to another horrific incident involving the death of an innocent life. This must end”<sup>818</sup>.

4.186. The Special Rapporteur confirmed in 2021 that settler violence “is predominantly ideologically motivated and designed to deny access of Palestinians to their land and to terrorize them”<sup>819</sup>. This violence “has an inescapable impact on Palestinians’ lives, … creating a lingering sense of terror and intimidation.”<sup>820</sup>

4.187. All United Nations bodies that have examined the issue concur that Israel is responsible for the destruction of Palestinian homes and other properties caused by its settlers in the OPT and that there is a persistent failure to hold Israeli settlers accountable for their crimes. In its Concluding Observations in 2012, the CERD Committee cited evidence that 90 % of Israeli police investigations into settler-related violence between 2005 and 2010 were closed without prosecution<sup>821</sup>. In 2013, the Independent International Commission of Inquiry created to investigate Israeli settlements in the OPT likewise determined that: “the identities of settlers who are responsible for violence and intimidation are known to the Israeli authorities, yet these acts continue with impunity”<sup>822</sup>. The Commission of Inquiry explained:

“There was consistency in testimonies with regard to the following facts: attacks and intimidation regularly take place during daylight hours; the identity of perpetrators are well known, or perpetrators could easily be identified; the frequent presence of police and army at the scene; the involvement and presence of settlement security officers; the frequent

<sup>816</sup> The parents died several days later of the wounds they sustained during the attack. See UNOCHA, Protection of Civilians, Reporting period: 4–10 August 2015 (<https://tinyurl.com/r78udru3>); Protection of Civilians, Reporting period: 1–7 September 2015 (<https://tinyurl.com/53ccsmfn>).

<sup>817</sup> UNOCHA, Protection of Civilians, Reporting period: 28 July–3 August 2015 (<https://tinyurl.com/mry9mmpu>).

<sup>818</sup> *Ibid.*

<sup>819</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2021, A/76/433, para. 16 (<https://undocs.org/A/76/433>).

<sup>820</sup> *Ibid.*, para. 19.

<sup>821</sup> Committee on the Elimination of Racial Discrimination, Consideration of reports submitted by States parties under article 9 of the Convention. Concluding Observations (Israel), 3 April 2012, CERD/C ISR/CO/14-16, para. 28 (<https://undocs.org/CERD/C ISR/CO/14-16>).

<sup>822</sup> Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, 7 February 2013, A/HRC/22/63, para. 107 (<https://undocs.org/A/HRC/22/63>).

existence of video and photographic footage of the incidents; and the lack of accountability for the violence.”<sup>823</sup>

4.188. The High Commissioner for Human Rights made similar findings in 2020, observing that: “Daily acts of violence and harassment of Palestinians by settlers, most often carried out with impunity … compound a coercive environment”<sup>824</sup>. The High Commissioner’s report found that:

“[i]ncidents of settler violence continued at a high rate and the severity of attacks and injuries to Palestinians increased, without any decisive action by Israeli authorities to protect the Palestinian population in accordance with their obligations as the occupying Power … Settler violence continued to adversely affect Palestinian society, violating a range of rights.”<sup>825</sup>

4.189. In 2022, another Independent Commission of Inquiry found that “the civilian and military security forces of Israel rarely protect Palestinians from settler violence. They have been documented standing by and observing violent attacks by settlers and, on occasion, collaborating with such attacks. Judicial authorities rarely hold settlers accountable.”<sup>826</sup> The Commission:

“emphasize[d] that Israel as the occupying Power bears responsibility for protecting Palestinians against settler attacks. Such attacks violate the right of Palestinians to life, liberty and security of the person.”<sup>827</sup>

And it found that:

“[s]ettler violence is a key manifestation of the coercive environment, with incidents increasing in number and severity over the years. From January to July 2022, there were 398 settler attacks in the West Bank, with 84 attacks resulting in casualties. By comparison, there were 496 attacks during the whole of 2021 and 358 attacks in 2020. The severity of the attacks has also increased; recently there have been verified reports of settlers carrying out

<sup>823</sup> *Ibid.*, para. 50.

<sup>824</sup> Report of the United Nations High Commissioner for Human Rights, “Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan”, 30 January 2020, A/HRC/43/67, para. 49 (<https://undocs.org/A/HRC/43/67>).

<sup>825</sup> Report of the United Nations High Commissioner for Human Rights, “Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan”, 30 January 2020, A/HRC/43/67, paras. 66-67 (<https://undocs.org/A/HRC/43/67>).

<sup>826</sup> Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 14 September 2022, A/77/328, para. 66 (<https://undocs.org/A/77/328>).

<sup>827</sup> *Ibid.*, para. 64.

attacks while Israeli security forces were nearby, and of Israeli security forces attacking Palestinians alongside settlers.”<sup>828</sup>

4.190. The problem continues to grow worse. In its Concluding Observations of 2022, the Human Rights Committee confirmed that there had been “a significant increase in the number and severity of incidents of settler violence”<sup>829</sup>. The Special Rapporteur has confirmed that “[i]ncreasingly egregious cases have been documented in 2021, as well as cases involving active support and collaboration between settlers and Israeli security forces”<sup>830</sup>, stressing that the “atmosphere of impunity surrounding attacks by settlers is deeply concerning and sends an affirmation to settlers that there will be no consequences for their illegal and egregious acts against Palestinians.”<sup>831</sup>

4.191. In one of the more harrowing recent incidents, on 26 February 2023, hundreds of Israeli settlers attacked Palestinians in the village of Huwwara and in the three nearby villages and set fire to at least 35 homes, caused damage to another 40 homes, and torched dozens of vehicles, terrorizing the population and leaving behind a trail of destruction, with one Palestinian killed and hundreds others wounded, all committed under the watch and with the accompaniment of Israeli occupation forces<sup>832</sup>. Over 300 attacks of Israeli settlers were reported by Palestinians throughout the West Bank by the next day. A similar scene was repeated in the village of Turmusayya on 21 June 2023, when hundreds of Israeli settlers descended upon the village, attacking Palestinian civilians and once again perpetrating arson, setting dozens of homes and vehicles ablaze. Israeli forces shot and killed one Palestinian man and injured 41 Palestinians, including two children<sup>833</sup>. On the same day, the Secretary-General reported to the Security Council that he was

“particularly disturbed by the high levels of settler-related violence, including reports of armed settlers carrying out attacks inside Palestinian communities, sometimes in the proximity to or with the support of Israeli security forces. Reports of Israeli security forces standing by and not

<sup>828</sup> *Ibid.* (footnotes omitted).

<sup>829</sup> Human Rights Committee, Concluding observations on the fifth periodic report of Israel, 5 May 2022, CCPR/C/ISR/CO/5, para. 24 (<https://undocs.org/CCPR/C/ISR/CO/5>).

<sup>830</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 22 October 2021, A/76/433, para. 16 (<https://undocs.org/A/76/433>).

<sup>831</sup> *Ibid.*, para. 19.

<sup>832</sup> “Israel’s military called the settler attack on this Palestinian town a ‘pogrom’. Videos show soldiers did little to stop it”, CNN, 15 June 2023 (<https://tinyurl.com/4k3n2np>).

<sup>833</sup> UNOCHA, “Protection of Civilians Report | 13 June–4 July 2023”, 8 July 2023 (<https://tinyurl.com/2w34w3b6>).

preventing settler attacks against Palestinians or failing to intervene when violence begins are deeply concerning. Settlers are rarely held accountable for these attacks, increasing the level of threat to Palestinians and their property. Israel, as the occupying Power, has an obligation to protect Palestinians and their property in the Occupied Palestinian Territory and ensure prompt, independent, impartial and transparent investigations into all acts of violence.”<sup>834</sup>

### *3. The Blockade of Gaza*

4.192. The most far-reaching collective punishment inflicted on Palestinian civilians occurs in the Gaza Strip where a blockade, imposed on the entire population, is now in its sixteenth year. As the Special Rapporteur explained in September 2022, Israel has brought about “[t]he transformation of the Gaza Strip into a heavily populated, impoverished enclave controlled by Israel through a suffocating sea, land and air blockade”<sup>835</sup>. **Figure 4.2** at p. 237, drawn from UNOCHA maps and data, depicts how Israel tightly controls access of people and goods to and from the Gaza Strip.

4.193. Several provisions of the Fourth Geneva Convention are applicable: Article 50 (duty to facilitate the working of care and education institutions), Article 55 (duty to ensure food and medical supplies), and Article 56 (duty to ensure and maintain hospitals and medical services)<sup>836</sup>. The obligation contained in Article 55 of the Fourth Geneva Convention is particularly relevant:

“The Rule that the Occupying Power is responsible for the provision of supplies for the population places that Power under a definite obligation to maintain at a reasonable level the material conditions under which the population of the occupied territory lives.”<sup>837</sup>

4.194. The United Nations Fact-Finding Mission on the Gaza Conflict of 2008-2009 found that “Israel continues to be duty-bound under the Fourth Geneva

<sup>834</sup> Report of the Secretary-General on the implementation of Security Council resolution 2334 (2016), 21 June 2023, S/2023/458, para. 69 (<https://undocs.org/S/2023/458>).

<sup>835</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 21 September 2022, A/77/356, para. 46 (<https://undocs.org/A/77/356>).

<sup>836</sup> See Report of the United Nations Fact-Finding Mission on the Gaza Conflict, “Human Rights in Palestine and other Occupied Arab Territories”, 25 September 2009, A/HRC/12/48, para. 1301 (<https://undocs.org/A/HRC/12/48>).

<sup>837</sup> J. Pictet, *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, Geneva, ICRC, 1958, p. 310.

Convention ... to meet the humanitarian needs of the population of the Gaza Strip without qualification”<sup>838</sup>. It concluded that, by its blockade, Israel had “violated its duty to respect the right of the Gaza population to an adequate standard of living, including access to adequate food, water and housing.”<sup>839</sup> It added:

“Finally, the Mission considered whether the series of acts that deprive Palestinians in the Gaza Strip of their means of sustenance, employment, housing and water, that deny their freedom of movement and their right to leave their own country, that limit their access to courts of law and effective remedies could amount to persecution, a crime against humanity. From the facts available to it, the Mission is of the view that some of the actions of the Government of Israel might justify a competent court finding that crimes against humanity have been committed.”<sup>840</sup>

4.195. In January 2009, the Security Council stressed the need “to ensure sustained and regular flow of goods and people through the Gaza crossings” and called for:

“the unimpeded provision and distribution throughout Gaza of humanitarian assistance, including of food, fuel and medical treatment”<sup>841</sup>.

4.196. This call, unheeded by Israel, was reiterated by Secretary-General Ban Ki-Moon in 2016 when he declared that the Palestinian people in Gaza

“are enduring enormously difficult living conditions. The closure of Gaza suffocates its people, stifles its economy and impedes reconstruction efforts. *It is a collective punishment for which there must be accountability* ... Today, some 70 per cent of the population in need of humanitarian assistance, and over half of Gaza’s youth have little or no job prospects or horizons of hope. The situation cannot continue.”<sup>842</sup>

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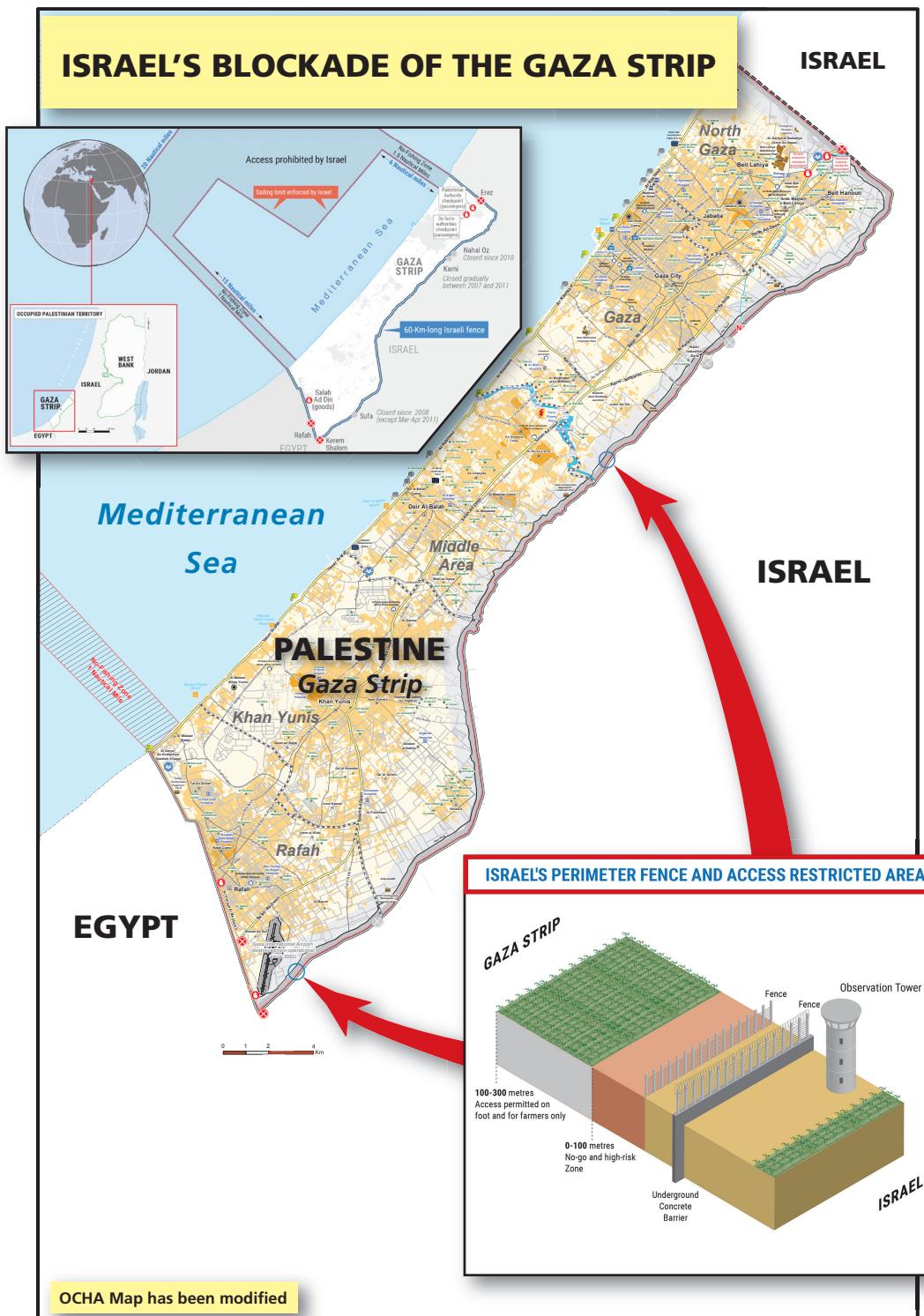
<sup>838</sup> Report of the United Nations Fact-Finding Mission on the Gaza Conflict, “Human Rights in Palestine and other Occupied Arab Territories”, 25 September 2009, A/HRC/12/48, paras. 28, 326 (<https://undocs.org/A/HRC/12/48>).

<sup>839</sup> *Ibid.*, para. 73.

<sup>840</sup> Report of the United Nations Fact-Finding Mission on the Gaza Conflict, “Human Rights in Palestine and other Occupied Arab Territories”, 25 September 2009, A/HRC/12/48, para. 75 (<https://undocs.org/A/HRC/12/48>).

<sup>841</sup> Security Council, Resolution 1860 (2009), 8 January 2009, para. 2.

<sup>842</sup> Secretary-General, *Secretary-General’s Remarks at Press Encounter*, 28 June 2016 (emphasis added) (<https://tinyurl.com/mryjv2n6>).



Source: United Nations Office for the Coordination of Humanitarian Affairs, (OCHA)

[https://www.google.com/search?q=OCHA+2022+map+of+the+Gaza+Strip&bm=isch&sa=X&ved=2ahUKEwj7ju\\_zrpSAAxVVEvkFHeWaAvEQ0pQjegQIDBAB&biw=2535&bih=1298&dpr=2#imgrc=Zuj\\_D1Bum2bT5M](https://www.google.com/search?q=OCHA+2022+map+of+the+Gaza+Strip&bm=isch&sa=X&ved=2ahUKEwj7ju_zrpSAAxVVEvkFHeWaAvEQ0pQjegQIDBAB&biw=2535&bih=1298&dpr=2#imgrc=Zuj_D1Bum2bT5M)

Figure 4.2



4.197. The devastating consequences of the Israeli blockade on the Gaza Strip have indeed been dire. As reported in 2019 by the Independent International Commission of Inquiry:

“The blockade resulted in Gaza falling into a deep recession. By 2015, according to the World Bank, it had shaved 50 per cent of Gaza’s GDP.

.....

Gaza, historically a place of trade and commerce, was reduced to a humanitarian case of profound aid-dependency. Humanitarian relief and the rebuilding of assets destroyed by Israeli military operations now dominate Gaza’s economy. Today, the real income of an average Gazan is about 30 per cent less than in 1999. According to the World Bank, Gaza’s economy will never improve without easing the restrictions on movement and access for goods and people.”<sup>843</sup>

4.198. In 2022, the Special Rapporteur described how Israel’s blockade of Gaza had

“barricaded the 2 million Palestinians into what former British Prime Minister David Cameron called ‘an open-air prison’, a method of population control unique in the modern world”.

The Report explained that Israel has brought about

“the indefinite warehousing of an unwanted population of 2 million Palestinians, whom it has confined to a narrow strip of land through its comprehensive 15-year-old air, land and sea blockade”.<sup>844</sup>

4.199. The devastating consequences that the blockade of Gaza has had on the Palestinians who live there were documented by the World Bank, among others, as recounted by the Special Rapporteur:

“The World Bank reported in 2021 that Gaza had undergone a multi-decade process of de-development and deindustrialization, resulting in a 45 per cent unemployment rate and a 60 per cent poverty rate, with 80 per cent of the

<sup>843</sup> Human Rights Council, Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory, 18 March 2019, A/HRC/40/CRP.2, paras. 152 and 154 (footnotes omitted) (<https://undocs.org/A/HRC/40/CRP.2>).

<sup>844</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 12 August 2022, A/HRC/49/87, para. 45 (<https://undocs.org/A/HRC/49/87>).

population dependent on some form of international assistance, in significant part because of the *hermetic sealing* of the access of Gaza to the outside world. The coastal aquifer, the sole source of natural drinking water in Gaza, has become polluted and unfit for human consumption because of contamination by seawater and sewage, substantially driving up water costs for an already destitute population. Gaza is heavily dependent on external sources – Israel and Egypt – for power, and Palestinians live with rolling power blackouts of between 12 and 20 hours daily, severely impairing daily living and the economy. The entry and export of goods is strictly controlled by Israel, which has throttled the local economy. The health-care system in Gaza is flat on its back, with serious shortages of health-care professionals, inadequate treatment equipment and low supplies of drugs and medicines. Palestinians in Gaza can rarely travel outside of Gaza, which is a denial of their fundamental right to freedom of movement. More acutely, they have endured four highly asymmetrical wars with Israel over the past 13 years, with enormous loss of civilian life and immense property destruction. The suffering was acknowledged by [Secretary-General] Antonio Guterres in May 2021, when he stated: '*If there is a hell on earth, it is the lives of children in Gaza.*'<sup>845</sup>

4.200. In its 2022 report, the Human Rights Committee expressly concluded that the Israeli blockade of Gaza amounted to “collective punishment of the residents of Gaza”<sup>846</sup>. In so doing, it joined the High Commissioner for Human Rights<sup>847</sup>, the Commissions of Inquiry on the situation in Gaza<sup>848</sup>, various other

<sup>845</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 12 August 2022, A/HRC/49/87, para. 45 (emphasis added and footnotes omitted) (<https://undocs.org/A/HRC/49/87>).

<sup>846</sup> Human Rights Committee, Concluding observations on the fifth periodic report of Israel, 5 May 2022, CCPR/C/ISR/CO/5, para. 38 (<https://undocs.org/CCPR/C/ISR/CO/5>).

<sup>847</sup> Report of the United Nations High Commissioner for Human Rights, “Implementation of Human Rights Council Resolution S-9/1 and S-12/1”, 28 April 2022, A/HRC/49/83, paras 14-15, 55(f) (<https://undocs.org/A/HRC/49/83>).

<sup>848</sup> Report of the United Nations Fact-Finding Mission on the Gaza Conflict, “Human Rights in Palestine and other Occupied Arab Territories”, 25 September 2009, A/HRC/12/48, paras. 326, 73 and 75 (<https://undocs.org/A/HRC/12/48>); Human Rights Council, Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council Resolution S-21/1, 24 June 2015, A/HRC/29/CRP.4, para. 681(d) (<https://undocs.org/A/HRC/29/CRP.4>); Human Rights Council, Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory, 18 March 2019, A/HRC/40/CRP.2, para. 797(a) (<https://undocs.org/A/HRC/40/CRP.2>).

United Nations human rights monitoring bodies<sup>849</sup>, and the ICRC<sup>850</sup>, which also concluded that the blockade of Gaza constitutes collective punishment of the Palestinian people, and called for its end.

4.201. In 2023, the Special Rapporteur underlined that:

“Within the fragmented occupied Palestinian territory, Israel has entrapped the Palestinians within a physical architecture that resembles a prison, but on a much larger territorial and societal scale … The illegal blockade of the Gaza Strip is the most well-known example of this physical entrapment, with over two million Palestinians subjected to collective punishment since 2007. The heavily militarized fence surrounding the Gaza Strip and its ‘no-go zone’ further shrink the enclave by 17 percent and the agricultural area by 35 percent, while access to the maritime area is reduced by 85 percent as a result of the heavily-patrolled sea blockade.”<sup>851</sup>

4.202. Israel continues to maintain its blockade of Gaza Strip with no end in sight.

## **II. Racial Discrimination Against Palestinian Citizens of Israel**

4.203. Israel’s systematic discrimination against Palestinians is not confined to the OPT. Its origins can be found in Israel’s policies towards the Palestinian citizens of Israel, who constitute approximately 20 % of the population, since 1948 until today<sup>852</sup>.

4.204. Established by its own terms as a “Jewish State”, Israel has, since its inception, discriminated in favour of its Jewish citizens and against its Palestinian citizens on the basis of race. During the *Nakba*, between 750,000 and 900,000 Palestinians were forcibly driven from the territory that comprised Mandatory Palestine and denationalized. To this day, they and their descendants have been

<sup>849</sup> Human Rights Committee, Concluding observations on the fifth periodic report of Israel, 5 May 2022, CCPR/C ISR/CO/5, paras. 38-39 (<https://undocs.org/CCPR/C/ISR/CO/5>); Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth periodic report of Israel, 12 November 2019, E/C.12/ISR/CO/4, para. 11 (a) (<https://undocs.org/E/C.12/ISR/CO/4>).

<sup>850</sup> “ICRC says Israel’s blockade breaks law”, BBC, 14 June 2010 (<https://tinyurl.com/2wwvea9t>).

<sup>851</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 9 June 2023, A/HRC/53/59 (Advance Unedited Version), para. 81 (footnote omitted) (<https://tinyurl.com/ynuxb5kv>).

<sup>852</sup> Israel Central Bureau of Statistics, *Population of Israel on the Eve of 2023*, 29 December 2022, p. 1 (<https://tinyurl.com/mm84y9p>).

forbidden by Israel from returning to their homes and other property in their ancestral land, as required under international law<sup>853</sup>. This contrasts sharply with Israel's treatment of foreign-born Jews, who are entitled by Israeli law to settle in Israel and become citizens as of right.

4.205. The CERD Committee has repeatedly referred to the racial discrimination and segregation endured by Palestinians citizens of Israel.

- In 2012, the CERD Committee's Concluding Observations on Israel "note[d] with increased concern that Israeli society maintains Jewish and non-Jewish sectors, which raises issues under article 3 of the Convention". The Committee stressed that "the concerns as regards segregation remain pressing" and urged Israel "to give full effect to article 3 and to make every effort to eradicate all forms of segregation between Jewish and non-Jewish communities"<sup>854</sup>.
- In 2020, the Committee drew Israel's attention "to its general recommendation 19 (1995) on article 3 of the Convention, concerning the prevention, prohibition and eradication of all policies and practices of racial segregation and apartheid", and urged Israel "to give full effect to article 3 of the Convention to eradicate all forms of segregation between Jewish and non-Jewish communities and any such policies or practices that severely and disproportionately affect the Palestinian population in Israel proper and in the Occupied Palestinian Territory".<sup>855</sup>

4.206. Numerous Israeli laws discriminate between Jewish Israelis and Palestinian citizens of Israel on the basis of race. In 2020, the CERD Committee's Concluding Observations on Israel expressed serious concern about Israeli laws that:

"discriminate against Arab [Palestinian] citizens of Israel and Palestinians in the Occupied Palestinian Territory, and that create differences among them, as regards their civil status, legal protection, access to social and economic benefits, or right to land and property."<sup>856</sup>

<sup>853</sup> See para. 4.214 below.

<sup>854</sup> Committee on the Elimination of Racial Discrimination, Concluding observations on the combined fourteenth to sixteenth reports of Israel, 9 March 2012, CERD/C/ISR/CO/14-16, para. 11 (<https://undocs.org/CERD/C/ISR/CO/14-16>).

<sup>855</sup> Committee on the Elimination of Racial Discrimination, Concluding observations on the combined seventeenth to nineteenth reports of Israel, 27 January 2020, CERD/C/ISR/CO/17-19, para. 23 (<https://undocs.org/CERD/C/ISR/CO/17-19>).

<sup>856</sup> Committee on the Elimination of Racial Discrimination, Concluding observations on the combined seventeenth to nineteenth reports of Israel, 27 January 2020, CERD/C/ISR/CO/17-19, para. 15 (<https://undocs.org/CERD/C/ISR/CO/17-19>). There are at least 50 Israeli laws that

4.207. In its September 2022 report, the Independent Commission of Inquiry found that:

“[i]n 2022, Palestinian citizens of Israel are still subjected to discriminatory policies including the confiscation of land, demolitions and evictions that affect in particular the Bedouin in the Negev and Palestinians residing in other areas of Israel. In addition, several Israeli laws discriminate against Palestinian citizens of Israel.”<sup>857</sup>

4.208. The Commission of Inquiry concluded that:

“[i]n relation to the situation in Israel itself, the Commission has reviewed the treatment of Palestinian citizens of Israel and notes that they are still subjected to discriminatory laws and public policies, including in the areas of education, housing and construction, and employment”.<sup>858</sup>

4.209. In fact, the Commission of Inquiry found there are “similarities between the treatment of Palestinians by Israel inside Israel in the period since 1948, and its policies in the Occupied Palestinian Territory.”<sup>859</sup>

4.210. The following examples illustrate, but do not even begin to fully describe, the systematic racial discrimination that Israel practices against its own citizens of Palestinian origin.

#### A. DISCRIMINATORY RESTRICTIONS ON THE RIGHT TO NATIONALITY AND THE RIGHT TO RESIDE IN ISRAEL

4.211. Shortly after it was created, the State of Israel adopted laws which expressly discriminate between Jews and Palestinians in respect of entitlement to Israeli citizenship and the right to reside in Israel. In 1950, Israel adopted the Law of Return which provides that:

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discriminate overtly against Palestinians in Israel, which can be examined in the Discriminatory Laws Database produced by Adalah, The Legal Centre for Arab Minority Rights in Israel (<https://tinyurl.com/4yzuukkv>).

<sup>857</sup> Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 14 September 2022, A/77/328, para. 23 (<https://undocs.org/A/77/328>).

<sup>858</sup> *Ibid.*, para. 83.

<sup>859</sup> *Ibid.*, para. 21.

“Every Jew has the right to come to this country as an *oleh* [a Jew immigrating to Israel]”<sup>860</sup>.

4.212. Israel’s Prime Minister, David Ben-Gurion, informed the Knesset that:

“[t]his law does not provide for the State to bestow the right to settle upon the Jew living abroad; it affirms that this right is inherent in him *from the very fact of being a Jew*”<sup>861</sup>.

4.213. In 1970, Israel amended the Law of Return through legislation which provided (amongst other things) that:

“[t]he rights of a Jew under this Law and the rights of an *oleh* [a foreign-born Jew who immigrates to Israel] under the Nationality Law, 5712-1952, as well as the rights of an *oleh* under any other enactment, are also vested in a child and a grandchild of a Jew, the spouse of a Jew, the spouse of a child of a Jew and the spouse of a grandchild of a Jew, except for a person who has been a Jew and has voluntarily changed his religion.”<sup>862</sup>

4.214. Accordingly, Israel’s laws confer an absolute right upon all Jews to settle in Israel – a right which, if exercised, automatically results in entitlement to Israeli citizenship<sup>863</sup>. In contrast, only Palestinians who remained during the *Nakba* and found themselves to be residents of the newly-established State of Israel have been entitled to Israeli citizenship<sup>864</sup>. The many hundreds of thousands of Palestinians who were expelled or were forced to flee their homeland during the *Nakba*, as well as their descendants were and are denied such rights. As Human Rights Watch explains:

“Inside Israel, Israel’s Proclamation of Independence affirms the ‘complete equality’ of all residents, but a two-track citizenship structure contradicts that vow and effectively regards Jews and Palestinians separately and unequally. Israel’s 1952 Citizenship Law contains a separate track exclusively for Jews to obtain automatic citizenship. That law grows out of the 1950 Law of Return which guarantees Jewish citizens of other countries

<sup>860</sup> Law of Return 5710-1950, Article 1 (emphasis added).

<sup>861</sup> Martin Edelman, “Who is an Israeli?: *Halakhah* and Citizenship in the Jewish State”, *Jewish Political Studies Review*, Vol. 10, 1998, No. 3/4, p. 91 (emphasis added).

<sup>862</sup> Law of Return (Amendment no. 2) 5370-1970, Article 4A (a).

<sup>863</sup> Law of Return 5710 (1950), Article 1; The Citizenship and Entry into Israel Law (Temporary Order) 5763 (2003).

<sup>864</sup> Y. Harpaz and B. Herzog, *Report on Citizenship Law: Israel, Country Report 2018/02 (June 2018)*, European University Institute, 2018, p. 9 (<https://tinyurl.com/ycjsfhxb>).

the right to settle in Israel. By contrast, the track for Palestinians conditions citizenship on proving residency before 1948 in the territory that became Israel, inclusion in the population registry as of 1952, and a continuous presence in Israel or legal entry in the period between 1948 and 1952. Authorities have used this language to deny residency rights to the more than 700,000 Palestinians who fled or were expelled in 1948 and their descendants, who today number more than 5.7 million. This law creates a reality where a Jewish citizen of any other country who has never been to Israel can move there and automatically gain citizenship, while a Palestinian expelled from his home and languishing for more than 70 years in a refugee camp in a nearby country, cannot.”<sup>865</sup>

## B. NATION STATE LAW OF 2018

4.215. As discussed in Chapter 3<sup>866</sup>, in 2018 the Knesset enacted the Basic Law: Israel – The Nation-State of the Jewish People<sup>867</sup> (“the Nation State Law”). The law stipulates that “exercising the right to national self-determination in the State of Israel is unique to the Jewish people” and, among other provisions, “removes the status of Arabic as an official language alongside Hebrew.”<sup>868</sup> The inherently racially discriminatory character of the Nation State Law, and its centrality to the character of the Israeli State, has been described in a United Nations report as follows:

“The Nation State Law entrenches constitutional inequality and racial-national discrimination into Israeli law by distinguishing the rights of Jewish Israelis from those of Palestinians and other non-Jewish citizens of Israel. ... The Nation State Law is consistent with the regular proclamation by Israeli political leaders, including Benjamin Netanyahu, that ‘Israel is the national state, not of all its citizens, but only of the Jewish people’.”<sup>869</sup>

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<sup>865</sup> Human Rights Watch, *A Threshold Crossed – Israeli Authorities and the Crimes of Apartheid and Persecution*, 27 April 2021 (<https://tinyurl.com/4ufjn368>).

<sup>866</sup> See paras. 3.164 and 3.210 above.

<sup>867</sup> Basic Law: Israel – The Nation State of the Jewish People 5778-2018.

<sup>868</sup> Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, 14 September 2022, A/77/328, para. 23 (footnote omitted) (<https://undocs.org/A/77/328>).

<sup>869</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 12 August 2022, A/HRC/49/87, para. 48 (footnotes omitted) (<https://undocs.org/A/HRC/49/87>).

4.216. The racially discriminatory nature of this legislation was also highlighted by the CERD Committee in its 2020 Concluding Observations, which stated that:

“[t]he Committee is concerned about the discriminatory effect of the Basic Law: Israel – The Nation-State of the Jewish People (2018) on non-Jewish people in the State party, as it stipulates that the right to exercise self-determination in Israel is ‘unique to the Jewish people’ and establishes Hebrew as Israel’s official language, downgrading Arabic to a ‘special status’.”<sup>870</sup>

### C. DISCRIMINATION WITH RESPECT TO LAND AND HOUSING

4.217. Israel has adopted many laws and administrative policies and practices which discriminate against Palestinian citizens of Israel in respect of the right to property. As in the OPT, these laws and measures are designed to acquire Palestinian-held land, to impede the development of Palestinian communities, and to facilitate the expansion of Jewish communities. The cumulative effect of these measures on Palestinians in Israel was recently summarised by Human Rights Watch:

“As a result of decades of land confiscations and discriminatory land policies, Israeli authorities have hemmed in Palestinian towns and villages, while nurturing the growth and expansion of Jewish communities ....

Ninety-three percent of all land in Israel constitutes state land, directly controlled by the Israeli government. Israeli authorities confiscated much of this land, several million dunams, from Palestinians through several different legal instruments ....

A government agency, the Israel Land Authority (ILA), managed and allocated state lands. Almost half the members of its governing body belong to the [Jewish National Fund], whose explicit mandate is to develop and lease land for Jews and not any other segment of the population. The fund owns 13 percent of Israel’s land, which the state is mandated to use ‘for the purpose of settling Jews’.

Israeli authorities have almost exclusively allocated state lands for the development and expansion of Jewish communities. Since 1948, the government has authorized the creation of more than 900 ‘Jewish localities’

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<sup>870</sup> Committee on the Elimination of Racial Discrimination, Concluding observations on the combined seventeenth to nineteenth reports of Israel, 27 January 2020, CERD/C ISR/CO/17-19, para. 13 (<https://undocs.org/CERD/C/ISR/CO/17-19>).

in Israel, but none for Palestinians except for a handful of government-planned townships and villages in the Negev and Galilee, created largely to concentrate previously displaced Bedouin communities. Less than 3 percent of all land in Israel falls under the jurisdiction of Palestinian municipalities, where the majority of Palestinian citizens live ...”<sup>871</sup>.

4.218. Israel has thus continued its policy of dispossession and displacement of Palestinians, even toward those who are citizens of Israel, in an effort to appropriate the land for its Jewish citizens.

4.219. Israel’s discriminatory policies have been reiterated and even reinforced by its current government. The Coalition Agreement between the political parties that constitute it provides for Jewish settlement in all parts of historic Palestine, referred to as the “Land of Israel”, from the Mediterranean Sea to the Jordan River:

“The Jewish people have an exclusive and uncontested right to all parts of the Land of Israel. The Government will advance and develop settlement in all parts of the Land of Israel in the Galilee, the Negev, the Golan, Judea and Samaria.”<sup>872</sup>

4.220. What land will be used to build the new Jewish settlements in Israel (the Galilee, the Negev)? The only land available is State land and private Palestinian land. To dedicate any of this land exclusively to Israeli Jews, to the exclusion of Palestinians is overt and unlawful racial discrimination. Yet that is precisely the policy that Israel has adopted.

## CONCLUSION

4.221. As the matters described above make clear, Israel has established a deeply entrenched system of racial discrimination which pervades every aspect of the Palestinian people’s lives on both sides of the Green Line. In the OPT, the foundation of that regime is a dual legal system which applies different laws – administered by different courts – to Palestinians and Jewish Israeli settlers,

<sup>871</sup> Human Rights Watch, *A Threshold Crossed – Israeli Authorities and the Crimes of Apartheid and Persecution*, 27 April 2021, pp. 151-152 (footnotes omitted) (<https://tinyurl.com/4ufjn368>).

<sup>872</sup> Coalition Agreement between the Likud Party and the Religious Zionist Party for the Establishment of a National Government, 28 December 2022, Appendix A (Vol. II, Annex 12).

combined with a comprehensive set of discriminatory policies and practices violating the rights of the Palestinian people and breaching international law. The regime includes the discriminatory detention of thousands of Palestinian civilians – adults and children, the discriminatory demolition of thousands of Palestinian homes, and the discriminatory denial of Palestinians' rights to freedom of movement, religion and marriage and a wide range of other fundamental civil, political, economic, social and cultural rights. Through its discriminatory laws and its administrative and bureaucratic practices, Israel deliberately treats Palestinians as a lower and lesser class of people than Jewish Israeli settlers. That is, in fact, its point: to indelibly mark the OPT as a *de facto* and *de jure* extension of Israel itself, to which it applies the laws it has promulgated, including the 2018 Nation State Law, to ensure Jewish supremacy and domination between the Mediterranean Sea and the Jordan River. Its aim is to advance and entrench permanent Jewish Israeli possession and domination of the land which, as Israel's current Minister responsible for Civil Administration in the OPT has written, can only be accomplished by suppressing the rights and legitimate aspirations of the Palestinian people<sup>873</sup>.

4.222. The regime which Israel has established in the OPT is thus purposefully imbued with widespread and systematic violations of the prohibition of racial discrimination, in gross violation of customary international law of a *jus cogens* character, in addition to innumerable other human rights violations. It is, in fact, indistinguishable from apartheid, as discussed in the next Section of this Chapter, and is in many ways even worse than that which was practiced by South Africa between 1948 and the early 1990s, as observed by many who lived and witnessed apartheid in South Africa and Namibia.

4.223. Even in Israel itself, Israel continues its appropriation of the land for the benefit of its Jewish citizens at the expense of its Palestinian citizens and their fundamental rights. Israeli laws, policies and practices are similar on both sides of the Green Line as they stem from the rejection of the Palestinian presence – over thousands of years – and Palestinian self-determination in the land between the Mediterranean Sea and the Jordan River, and their legitimate aspiration to enjoy their fundamental rights in their ancestral homeland.

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<sup>873</sup> B. Smotrich, "Israel's Decisive Plan", *Hashiloach*, 7 September 2017 (<https://hashiloach.org.il/israels-decisive-plan/>). On Smotrich's statement, see also paras. 3.162, 3.175, 3.178-3.179 and 3.192 above and 5.50 below.

### **III. Israel's Racial Discrimination Against the Palestinian People Amounts to Apartheid**

4.224. Special Rapporteurs on the Situation of Human Rights in the Occupied Palestinian Territories occupied since 1967 and other United Nations Special Procedures have been referring to the systematic racial discrimination against Palestinians by Israel as apartheid since 2007<sup>874</sup>.

4.225. In 2010, for example, the Special Rapporteur described the “entrenching of the colonialist and apartheid features of the Israeli occupation”<sup>875</sup>. He went on to list some of those “apartheid features”:

“Among the salient apartheid features of the Israeli occupation are the following: preferential citizenship, visitation and residence laws and practices that prevent Palestinians who reside in the West Bank or Gaza from reclaiming their property or from acquiring Israeli citizenship, as contrasted to a Jewish right of return that entitles Jews anywhere in the world with no prior tie to Israel to visit, reside and become Israeli citizens; differential laws in the West Bank and East Jerusalem favouring Jewish settlers who are subject to Israeli civilian law and constitutional protection, as opposed to Palestinian residents, who are governed by military administration; dual and discriminatory arrangements for movement in the West Bank and to and from Jerusalem; discriminatory policies on land ownership, tenure and use; extensive burdening of Palestinian movement, including checkpoints applying differential limitations on Palestinians and on Israeli settlers, and onerous permit and identification requirements imposed only on Palestinians; punitive house demolitions, expulsions and restrictions on entry and exit from all three parts of the Occupied Palestinian Territories.”<sup>876</sup>

4.226. In 2014, the Special Rapporteur observed that it was “incontestable that Israeli measures do divide the population of the Occupied Palestinian Territory along racial lines, create separate reserves for Palestinians and expropriate their

<sup>874</sup> See Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 29 January 2007, A/HRC/4/17, paras. 49-50, 58-63 (<https://undocs.org/A/HRC/4/17>).

<sup>875</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 30 August 2010, A/65/331, para. 3 (<https://undocs.org/A/65/331>).

<sup>876</sup> *Ibid.*, para. 5.

land.”<sup>877</sup> He catalogued numerous “human rights violations” by Israel and explained that the commission of those violations:

“reflects systematic and discriminatory Israeli policies, laws and practices, which determine where in the occupied land Palestinians may or may not travel, live and work. Laws and policies have also institutionalized just how lightly a civilian Palestinian life may be weighed, when placed on the scales against claims of overarching security concerns, contrasting with the legal protection of the Israeli constitutional system given to unlawful Israeli settlers. The combined effect of the measures … is *hafrada*, discrimination and systematic oppression of, and domination over, the Palestinian people.”<sup>878</sup>

Those “policies and practices”, he concluded, “appear to constitute apartheid”<sup>879</sup>.

4.227. In 2020, 47 of the United Nations Special Procedures mandate holders, appointed by the Human Rights Council, declared in a joint statement issued in response to plans for Israel to formalize its annexation of the West Bank, that:

“Human rights violations would only intensify after annexation. What would be left of the West Bank would be a Palestinian Bantustan, islands of disconnected land completely surrounded by Israel and with no territorial connection to the outside world. Israel has recently promised that it will maintain permanent security control between the Mediterranean and the Jordan River. Thus, the morning after annexation would be the crystallization of an already unjust reality: two peoples living in the same space, rules by the same state, but with profoundly unequal rights. This is a vision of a 21<sup>st</sup> century apartheid.”<sup>880</sup>

4.228. Most recently, after a comprehensive examination of the evidence, the Special Rapporteur reached the conclusion in 2022 that Israel’s regime in the OPT constitutes apartheid:

“Is this situation now apartheid? Applying each of the three steps of the amalgamated test from the International Convention on the Suppression and

<sup>877</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 13 January 2014, A/HRC/25/67, para. 71 (<https://undocs.org/A/HRC/25/67>).

<sup>878</sup> *Ibid.*, para. 77.

<sup>879</sup> *Ibid.*, para. 78.

<sup>880</sup> “Israeli annexation of parts of the West Bank would break international law - UN experts call on the international community to ensure accountability”, United Nations Press Release, 16 June 2020 (<https://tinyurl.com/jy7vkeze>).

Punishment of the Crime of Apartheid and the Rome Statute, the Special Rapporteur has concluded that the political system of entrenched rule in the Occupied Palestinian Territory that endows one racial-national-ethnic group with substantial rights, benefits and privileges while intentionally subjecting another group to live behind walls and checkpoints and under a permanent military rule *sans droits, sans égalité, sans dignité et sans liberté* (without rights, without equality, without dignity and without freedom) satisfies the prevailing evidentiary standard for the existence of apartheid.”<sup>881</sup>

4.229. Three particular factors were identified as leading to this conclusion:

“First, an institutionalized regime of systematic racial oppression and discrimination has been established. Israeli Jews and Palestinian Arabs in East Jerusalem and the West Bank live their lives under a single regime that differentiates its distribution of rights and benefits on the basis of national and ethnic identity, and that ensures the supremacy of one group over, and to the detriment of, the other. … The differences in living conditions and citizenship rights and benefits are stark, deeply discriminatory and maintained through systematic and institutionalized oppression.

Second, this system of alien rule has been established with the intent to maintain the domination of one racial-national-ethnic group over another. Israeli political leaders, past and present, have repeatedly stated that they intend to retain control over all of the occupied territory in order to enlarge the blocs of land for present and future Jewish settlement while confining the Palestinians to barricaded population reserves. This is a two-sided coin: the plans for more Jewish settlers and larger Jewish settlements on greater tracts of occupied land cannot be accomplished without the expropriation of more Palestinian property together with harsher and more sophisticated methods of population control to manage the inevitable resistance. Under this system, the freedoms of one group are inextricably bound up in the subjugation of the other.

Third, the imposition of this system of institutionalized discrimination with the intent of permanent domination has been built upon the regular practice of inhumane and inhuman acts. Arbitrary and extrajudicial killings. Torture. The violent deaths of children. The denial of fundamental human rights. A fundamentally flawed military court system and the lack of criminal due process. Arbitrary detention. Collective punishment. The repetition of these acts over long periods of time, and their endorsement by the Knesset and

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<sup>881</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 12 August 2022, A/HRC/49/87, para. 52 (<https://undocs.org/A/HRC/49/87>).

the Israeli judicial system, indicate that they are not the result of random and isolated acts but integral to the system of rule by Israel.”<sup>882</sup>

4.230. The Special Rapporteur was therefore clear that:

“This is apartheid. … With the eyes of the international community wide open, Israel has imposed upon Palestine an apartheid reality in a post-apartheid world.”<sup>883</sup>

4.231. The findings and conclusions of successive Special Rapporteurs and other Special Procedures align with the comprehensive studies undertaken by highly regarded NGOs, which have similarly found that Israel practices apartheid in the OPT. Indeed, some of these studies have gone further and found that Israel practices a system of apartheid in both the OPT and in Israel itself. The reports which have concluded that Israel is committing apartheid include those produced by Human Rights Watch<sup>884</sup>, Amnesty International<sup>885</sup>, the International Federation for Human Rights<sup>886</sup>, the highly regarded Palestinian NGOs Al Haq<sup>887</sup> and Al Mezan<sup>888</sup>, and the respected Israeli NGOs Yesh Din<sup>889</sup> and B’Tselem<sup>890</sup>. Amnesty International, for example, after an extensive factual and legal assessment, concluded that:

“The totality of the regime of laws, policies and practices described in this report demonstrates that Israel has established and maintained an institutionalized regime of oppression and domination of the Palestinian

<sup>882</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 12 August 2022, A/HRC/49/87, paras. 53-55 (<https://undocs.org/A/HRC/49/87>).

<sup>883</sup> *Ibid.*, para. 56.

<sup>884</sup> Human Rights Watch, *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution*, 27 April 2021 (<https://tinyurl.com/4ufjn368>).

<sup>885</sup> Amnesty International, *Israel’s Apartheid against Palestinians: A Cruel System of Domination and a Crime Against Humanity*, 1 February 2022 (<https://tinyurl.com/mt7a7c24>).

<sup>886</sup> International Federation for Human Rights, *The International Community must hold Israel Responsible for its Crimes of Apartheid*, 28 April 2021 (<https://tinyurl.com/3nk2ycra>).

<sup>887</sup> Al Haq, *Israeli Apartheid. Tool of Zionist Settler Colonialism*, 29 November 2022 (<https://tinyurl.com/22x6t8ae>). See also Al Haq, Addameer and Habitat International, *Entrenching and Maintaining an Apartheid Regime over the Palestinian People as a Whole*, January 2022 (<https://tinyurl.com/253rbwux>).

<sup>888</sup> Al Mezan, *The Gaza Bantustan: Israeli Apartheid in the Gaza Strip*, November 2021 (<https://tinyurl.com/ye4vubwb>).

<sup>889</sup> M. Sfard, *The Israeli Occupation of the West Bank and the Crime of Apartheid: Legal Opinion*, Yesh Din, 2020 (<https://tinyurl.com/3k7prnks>).

<sup>890</sup> B’Tselem, *A Regime of Jewish Supremacy from the Jordan River to the Mediterranean Sea: This is Apartheid*, January 2021 (<https://tinyurl.com/3mvvyrav>).

population for the benefit of Jewish Israelis – a system of apartheid – wherever it has exercised control over Palestinians’ lives since 1948. The report concludes that the State of Israel considers and treats Palestinians as an inferior non-Jewish racial group. The segregation is conducted in a systematic and highly institutionalized manner through laws, policies and practices, all of which are intended to prevent Palestinians from claiming and enjoying equal rights with Jewish Israelis within the territory of Israel and within the OPT, and thus are intended to oppress and dominate the Palestinian people. This has been complemented by a legal regime that controls (by negating) the rights of Palestinian refugees residing outside Israel and the OPT to return to their homes.”<sup>891</sup>

4.232. Prominent international figures have reached the same conclusion. The late Archbishop Desmond Tutu, Nobel Peace Prize Laureate who chaired a Human Rights Council fact-finding mission into one of Israel’s assaults on Gaza<sup>892</sup>, stated publicly in 2014 that:

“I know firsthand that *Israel has created an apartheid reality within its borders and through its occupation*. The parallels to my own beloved South Africa are stark indeed.”<sup>893</sup>

4.233. Two former Israeli Ambassadors to South Africa drew a similar parallel between the situation in Apartheid South Africa and the OPT. They noted that:

“[t]he Bantustans of South Africa under the apartheid regime and the map of the occupied Palestinian territories today are predicated on the same idea of concentrating the ‘undesirable’ population in as small an area as possible, in a series of non-contiguous enclaves … It is clearer than ever that the occupation is not temporary, and there is not the political will in the Israeli government to bring about its end … Israel is the sole sovereign power that operates in this land, and it systematically discriminated on the basis of nationality and ethnicity. Such a reality is, as we saw ourselves, apartheid.

<sup>891</sup> Amnesty International, *Israel’s Apartheid against Palestinians: A Cruel System of Domination and a Crime Against Humanity*, 1 February 2022, p. 266 (<https://tinyurl.com/mt7a7c24>).

<sup>892</sup> Report of the high-level fact-finding mission to Beit Hanoun established under Council resolution S-3/1, “Human Rights Situation in Palestine and Other Occupied Arab Territories”, 1 September 2008, A/HRC/9/26 (<https://undocs.org/A/HRC/9/26>).

<sup>893</sup> “Desmond Tutu: U.S. Christians Must Recognize Israel as Apartheid State”, *Haaretz*, 17 June 2014 (emphasis added) (<https://tinyurl.com/45tzubvw>).

It is time for the world to recognize that what we saw in South Africa decades ago is happening in the occupied Palestinian territories too.”<sup>894</sup>

4.234. Other Israeli officials have reached the same conclusion. In 2017, former Israeli Prime Minister Ehud Barak warned that Israel was on a “slippery slope towards apartheid.”<sup>895</sup>

4.235. In May 2023, former Prime Minister Ehud Olmert declared:

“We can’t afford to continue to live under circumstances where there are millions of people without rights that they deserve. It is simple as day … I feel that we’re coming close to the point where Israel will be perceived as an apartheid country … One option is to pull out from all the territories … The alternative is to occupy all the territories, to deprive the Palestinians sitting in the territories of human rights, to deny them the right which we always ask for ourselves, of self-determination. And to actually make Israel look like South Africa.”<sup>896</sup>

4.236. Likewise, Israeli Attorney General, Michael Benyair, stated that “[b]etween the Jordan River and the Mediterranean Sea, it is Israel that is permanently depriving millions of Palestinians of their civil and political rights. This is Israeli apartheid.”<sup>897</sup>

4.237. This assessment, and the body of reports summarized above, support the conclusion that Israel’s systematic racial discrimination, segregation, oppression, persecution and domination of the Palestinian people – for the purpose of crushing their right to self-determination and enabling the permanent acquisition of the territory for the sole benefit of Jewish Israelis – constitutes a clear case of apartheid.

<sup>894</sup> Ilan Baruch and Alon Liel, “It’s apartheid, says Israeli ambassadors to South Africa”, 8 June 2021 (<https://tinyurl.com/3wv2cf38>).

<sup>895</sup> “Former PM Barak: Israel on ‘slippery slope’ towards apartheid”, *Deutsche Welle*, 21 June 2017 (<https://tinyurl.com/2hevf7v4>).

<sup>896</sup> “If you love Israel, you must protect this government, says the former Prime Minister”, *Vox*, 16 May 2023 (<https://tinyurl.com/2ftz8ube>).

<sup>897</sup> “With great sadness I conclude that my country now is an apartheid regime”, *The Journal*, 10 February 2022 (<https://tinyurl.com/5n86ybmc>).

### A. DEFINING APARTHEID

4.238. There is no definition of apartheid in the CERD, the Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity<sup>898</sup> and Additional Protocol I. Both the Apartheid Convention and the Rome Statute contain definitions of apartheid, but these definitions differ in certain respects. Although these treaties are also concerned with individual criminal responsibility and prosecution, the contents of the treaties provide an accepted definition of apartheid. Accordingly, they are an appropriate touchstone for assessing whether Israel's policies and practices in the OPT constitute the internationally wrongful act of apartheid.

4.239. The Apartheid Convention provides that apartheid involves the commission of particular "inhuman acts ... for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them"<sup>899</sup>. The Convention contains a long list of "inhuman acts" which include denial of the right to life and liberty (murder, the infliction of bodily harm and arbitrary arrest and illegal imprisonment)<sup>900</sup>; legislative and administrative measures calculated to prevent a racial group from participating in the political, economic, social and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group<sup>901</sup>; the creation of any measures designed to divide the population along racial lines by the creation of separate reserves and ghettos<sup>902</sup>; and persecution of persons or organizations because of their opposition to apartheid<sup>903</sup>.

4.240. The Rome Statute in turn defines apartheid in Article 7 (2) (h) as comprising the commission of a number of inhumane acts "committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime"<sup>904</sup>. The inhumane acts are spelled out in Article 7 (1) and include murder, deportation, forcible transfer of population, imprisonment in violation of fundamental rules of international law, torture, rape,

<sup>898</sup> General Assembly, Resolution 2391 (XXIII), 26 November 1968.

<sup>899</sup> Apartheid Convention, Article II.

<sup>900</sup> *Ibid.*, Article II (a).

<sup>901</sup> *Ibid.*, Article II (c).

<sup>902</sup> *Ibid.*, Article II (d).

<sup>903</sup> *Ibid.*, Article II (f).

<sup>904</sup> Rome Statute of the International Criminal Court, 17 July 1998, Article 7(2)(h). The Rome Statute describes the proscribed acts as "inhumane" while the Apartheid Convention uses the term "inhuman".

persecution, enforced disappearance, the crime of apartheid and “[o]ther inhumane acts of a similar character intentionally causing great suffering ...”<sup>905</sup>.

4.241. The principal difference between the two definitions is that the Apartheid Convention stresses that the inhuman acts must be committed *for the purpose* of establishing and maintaining domination by one racial group over another and systematically oppressing that group, while the Rome Statute provides that the inhumane acts must be committed in the “context of an institutionalized regime of systematic oppression and domination”. Scholars are divided over the implications of this difference, particularly in respect of the formation of the customary rule prohibiting apartheid<sup>906</sup>. For present purposes, the differences between the two conventions may be reconciled on the basis of their principal common requirements, namely:

- (i) Two or more racial groups;
- (ii) An institutionalized regime of systematic oppression and domination by one racial group over another;
- (iii) The commission of inhumane acts;
- (iv) The inhumane acts are committed with the intention and purpose of maintaining that regime.

## B. ISRAEL’S RACIAL DISCRIMINATION AGAINST THE PALESTINIAN PEOPLE AMOUNTS TO APARTHEID

### *1. Two Racial Groups*

4.242. Israeli law confirms the separate identity of the Jewish racial group. The Citizenship Law (1952)<sup>907</sup> recognizes a strict distinction between Jewish and non-Jewish persons and the Nation State Law of 2018 provides that “[t]he State of Israel is the Nation State of the Jewish people” and “shall strive to secure the

<sup>905</sup> Rome Statute of the International Criminal Court, 17 July 1998, Article 7(1).

<sup>906</sup> See M. Jackson, “The definition of apartheid in customary international law and ICERD”, *International and Comparative Law Quarterly*, Vol. 71, 2022, No. 4, pp. 831-855 (who argues that the customary rule is to be found in the Apartheid Convention). See also P. Eden, “The Role of the Rome Statute in the Criminalization of Apartheid”, *Journal of International Criminal Justice*, Vol. 12, 2014, No. 2, pp. 171-191, and A. Cassese, P. Gaeta *et al.*, *Cassese’s International Criminal Law*, 3<sup>rd</sup> edn. (Oxford University Press, 2013), p. 107.

<sup>907</sup> The Citizenship Law 5712-1952.

welfare of the members of the Jewish people”<sup>908</sup>. The result of these laws is that Jewish Israelis form a group that enjoys a privileged legal status in all areas under the control and domination of Israel, to the detriment of the rights of the Palestinian people.

4.243. Palestinians regard themselves as a people with shared, historical, political, social and cultural ties. They share a common language and have shared customs and cultural practices. They identify themselves as a distinct racial group with a common heritage<sup>909</sup>. It is therefore clear in the context of the OPT and inside Israel that Jewish Israelis and Palestinians are perceived by both themselves and by external actors as stable and permanent groups distinct from each other who can be considered as different racial groups for the purposes of the definition of apartheid.

4.244. In his 2022 report, the Special Rapporteur concluded that: “in the context of the actions of Israel towards the Palestinians living in the occupied territory, Jewish Israelis and Palestinian Arabs may be understood as distinct racial groups distinguished by their nationality, ethnicity, religion, ancestry and descent.”<sup>910</sup>

## *2. An Institutionalized Regime of Systematic Oppression and Domination by One Racial Group Over Another*

4.245. Both the Apartheid Convention and the Rome Statute stress that apartheid involves systematic domination and oppression by one racial group over another. In addition, the Rome Statute requires that the crime be “committed in the context of an institutionalized regime of systematic oppression and domination”<sup>911</sup>.

4.246. The International Criminal Tribunals for the former Yugoslavia (“ICTY”) and Rwanda and the ICC have interpreted the term systematic to mean a “regular pattern”<sup>912</sup> and “continuous commission” of crimes<sup>913</sup>. In *Prosecutor v Kunarac* the Appeals Chamber of the ICTY stated that the word “systematic” refers

<sup>908</sup> Basic-Law: Israel-The Nation State of the Jewish People, as adopted 5778-2018, Articles 1 (a) and 6 (a) (Vol. II, Annex 9).

<sup>909</sup> See R. Khalidi, *Palestinian Identity: The Construction of Modern National Consciousness* (New York, Columbia University Press, 2010), 310 p.

<sup>910</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 12 August 2022, A/HRC/49/87, para. 33 (footnote omitted) (<https://undocs.org/A/HRC/49/87>).

<sup>911</sup> Rome Statute, Article 7 (2) (h).

<sup>912</sup> ICTR, *Prosecutor v Akayesu*, ICTR-96-4-T, Trial judgment, 2 September 1998, para. 580.

<sup>913</sup> ICTY, *Prosecutor v Kordic and Cerkez*, IT-95-14/2-T, Trial judgment, 26 February 2001, para. 179.

to “the organised nature of the acts of violence and the improbability of their random occurrence”<sup>914</sup>. Domination “may be understood as a particularly powerful form of control” while oppression “may be understood as prolonged or continual cruelty”<sup>915</sup>.

4.247. As demonstrated in Section I of this Chapter, Israel has established an institutionalized regime premised on racial segregation, discrimination, subjugation and domination. Underpinning Israel’s discriminatory policies and practices against Palestinians is a legal system that distinguishes between Jewish nationality and Israeli citizenship, with Jewish nationals privileged over non-Jews, including Palestinian citizens of Israel. This privileged status is made clear in the Basic Law of 2018 which describes “[t]he State of Israel as the nation state of the Jewish People”<sup>916</sup>. As early as 2009, the United Nations Fact-Finding Mission on the Gaza Conflict, found that:

“[e]xclusive benefits reserved for Jews derive from the two-tiered civil status under Israel’s legal regime based on ‘Jewish nationality’, which entitles ‘persons of Jewish race or dependency’ to superior rights and privileges, particularly in land use, housing, development, immigration and access to natural resources, as affirmed in key legislation.”<sup>917</sup>

4.248. The Special Rapporteur explained in 2022 that “the Government of Israel has determined the allocation, and the denial, of rights in the Occupied Palestinian Territory through a series of laws, practices and policies that define who is a Jew and who is not a Jew (the non-Jewish population being overwhelmingly Palestinian)”<sup>918</sup>. Israel’s administration in the West Bank, including East Jerusalem, and its control of the Gaza Strip plainly follow a “regular pattern” of continuous commission of offensive acts which cannot be described as “random”

<sup>914</sup> ICTY, *Prosecutor v Kunarac, Kovac and Vukovic*, IT-96-23 & IT-96-23/1-A, Appeal judgment, 12 June 2002, para. 94; ICC, *Prosecutor v Katanga and Ngudjolo*, ICC-01/04-01/07, Pre-Trial decision, 30 September 2008, para. 394.

<sup>915</sup> M. Jackson, *Expert Opinion on the Interplay between the Legal Regime Applicable to Belligerent Occupation and the Prohibition of Apartheid under International Law*, March 2021, para. 18 (footnote omitted) (<https://tinyurl.com/49b8n3w6>).

<sup>916</sup> Basic-Law: Israel, The Nation State of the Law of Israel, 5778-2018, Article 1 (b). (<https://tinyurl.com/5xr5m8s>).

<sup>917</sup> Report of the United Nations Fact-Finding Mission on the Gaza Conflict, “Human Rights in Palestine and other Occupied Arab Territories”, 25 September 2009, A/HRC/12/48, para. 206 (footnotes omitted) (<https://undocs.org/A/HRC/12/48>).

<sup>918</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 12 August 2022, A/HRC/49/87, para. 33 (<https://undocs.org/A/HRC/49/87>).

occurrences<sup>919</sup>. For these reasons, “an *institutionalized regime of systematic racial oppression and discrimination* has been established” in the OPT<sup>920</sup>.

### *3. The Commission of Inhumane Acts*

4.249. As demonstrated in this Chapter, Israel has committed – and continues to commit – a wide array of inhumane acts against Palestinians, notably in the OPT, but also in Israel itself. These include unlawful killings; torture and cruel, inhuman or degrading treatment or punishments; unlawful arrests and detention; forcible transfers; destruction of property and collective punishments. Furthermore, Israel has systematically violated the civil, political, economic, social and cultural rights of Palestinians in the OPT on racial grounds. These violations also constitute inhumane acts for the purposes of the definition of apartheid under the Apartheid Convention<sup>921</sup> and the Rome Statute<sup>922</sup>.

### *4. Intention/Purpose of Maintaining the Regime*

4.250. The Rome Statute, in Article 7 (2) (h), requires that apartheid be committed with the intention of maintaining an institutionalized regime of systematic oppression by one racial group over another<sup>923</sup>. Such an intent “may, in the absence of direct explicit evidence, be inferred from a number of facts and circumstances”<sup>924</sup>. The Apartheid Convention requires inhumane acts to be committed for the purpose of establishing a regime of racial domination and oppression<sup>925</sup>.

4.251. The twin purposes of Israel’s occupation of the OPT are to extend the “sovereignty” of Israel also over Jerusalem and the rest of the Palestinian territory that it occupied in June 1967 and to subjugate the Palestinian people who continue to live in this territory by denying them the right to self-determination and independence. Institutionalized and systematic apartheid is an essential element of the occupation as it serves to further Israel’s colonization and annexation goals,

<sup>919</sup> *Ibid.*, para. 55.

<sup>920</sup> *Ibid.*, para. 53 (emphasis added).

<sup>921</sup> See Article II of the Apartheid Convention.

<sup>922</sup> The Rome Statute includes persecution as an inhumane act, defined as “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group.”

<sup>923</sup> This is a form of specific intent additional to the general intent required in article 30 of the Rome Statute.

<sup>924</sup> ICTY, *Prosecutor v Jelisic*, IT-95-10-A, Appeal judgment, 5 July 2001, para. 47.

<sup>925</sup> Apartheid Convention, Article II.

including the subjugation of the Palestinian people and the extinction of their right of self-determination in their own land. As the Special Rapporteur found in 2022, Israel is “an acquisitive occupier determined to maintain permanent control over the land and its indigenous population”<sup>926</sup>. Indeed, “prime ministers of Israel have regularly and openly proclaimed that the country’s rule over the Palestinians and their land is permanent and that no Palestinian State will emerge.”<sup>927</sup> To this end, Israel has chosen “to double down with increasingly more sophisticated and harsher methods of population control as the inevitable consequence of entrenching permanent alien rule over” the Palestinian people<sup>928</sup>. The methods employed by Israel to achieve this goal, described in this Written Statement, provide abundant evidence of Israel’s intention to make permanent its occupation, and, in furtherance of that objective, to impose apartheid as an indispensable component of its effort to maintain control over the territory by subjugating its indigenous population on the basis of a comprehensive scheme of racial discrimination against them.

4.252. As shown in the previous Section, Israel has also enacted laws and adopted policies and practices discriminating against Palestinian citizens of Israel and for the benefit of Jewish Israelis, including through allocation of State land, dispossession and displacement from their homes, and restrictions on where they can live, to ensure control of one group over the land at the expense of the other, and to assert the supremacy of Jewish Israelis in Israel.

## CONCLUSION

4.253. Israel’s occupation of the OPT is characterized by a system of apartheid in which an institutionalized military regime directed by a political leadership systematically persecutes and aims to colonize and annex Palestinian territory. More broadly, Israel discriminates against all Palestinians, on both sides of the Green Line and Palestinian refugees and diaspora, on grounds of their race, in order to establish, promote and perpetuate the supremacy of Jewish Israelis and their permanent dominion over all the territory between the Mediterranean Sea and the Jordan River. Israel’s policy towards the Palestinian people has become a textbook illustration of apartheid. It is no less malign in its aim, and no less pervasive in its devastating consequences for the Palestinian people, than the apartheid regime which existed in South Africa – and in Namibia under South African occupation

<sup>926</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 12 August 2022, A/HRC/49/87, para. 47 (<https://undocs.org/A/HRC/49/87>).

<sup>927</sup> *Ibid.*, para. 9 (footnote omitted).

<sup>928</sup> *Ibid.*, para. 36.

prior to its independence – until the 1990s. Accordingly, based on the abundant evidence that has been brought before the Court as set out in this Chapter, it is well established that Israel is committing the internationally wrongful act of apartheid.



## **Chapter 5.**

### **ONGOING VIOLATION BY ISRAEL OF THE RIGHT OF THE PALESTINIAN PEOPLE TO SELF-DETERMINATION**

5.1. It is indisputable that the Palestinian people have the right to self-determination, as the Court itself confirmed in the *Wall Opinion*<sup>929</sup>. Tragically, that right has been, and continues to be, violated by Israel. Israel has sought to deny and suppress this right by annexing Palestinian territory, discriminating against the Palestinian people and denying them their fundamental rights in their ancestral land.

5.2. This Chapter addresses in more detail the nature and content of the Palestinian people's right to self-determination, and its violation by Israel. Section I addresses the content of the right to self-determination. It explains that the right of self-determination comprises four specific components, namely (i) the right to territorial integrity; (ii) the prohibition on demographic manipulation within that territory by a foreign power; (iii) permanent sovereignty over natural resources; and (iv) the right to freely determine political status and pursue economic, social and cultural development.

5.3. Section II demonstrates that the Palestinian people have the right to self-determination under international law. It shows that this right was first recognized internationally under the Mandate System that was established following World War I and the creation of the League of Nations. However, the partition plan recommended by the United Nations General Assembly in 1947, though recognizing the right of the Palestinian people to self-determination, effectively undermined it by unduly limiting its territorial component against the Palestinian people's express wishes. Nevertheless, over the last three-quarters of a century, the right of the Palestinian people to self-determination, including their right to an independent State, has been repeatedly and continually reaffirmed by each of the principal organs of the United Nations, including this Court, and by the vast majority of States and regional and international organizations.

5.4. Section III demonstrates that Israel, since its creation in 1948, has denied and refused to recognize the Palestinian people's right of self-determination anywhere within the territory that constituted Palestine under the former British

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<sup>929</sup> *Wall Opinion*, p. 183, para. 118.

Mandate. Its policy of dispossession, displacement and replacement, ethnic cleansing, discrimination and denial of rights which began with the 1947-1949 *Nakba*, has continued to this very day. Israel persists in denying the Palestinian people's existence, national identity, heritage, historic roots and rights in the land. Israel has, in fact, systematically violated every component of the Palestinian people's right to self-determination.

5.5. Israel's colonization and annexation of the Palestinian territory and its systematic racial discrimination tantamount to apartheid against the Palestinian people constitute two of the gravest forms of violation of the right of peoples to self-determination under international law. As shown below, by its seizure of Jerusalem and the rest of the West Bank, assertion of "sovereignty" and declaration that it will never leave, Israel has severely disrupted Palestine's territorial integrity. By its implantation of over 700,000 of its own nationals in the OPT and its displacement of tens of thousands of Palestinians from their own land, it has engaged in egregious demographic manipulation. By its takeover of the critical water sources, hydrocarbon deposits and mineral quarries and exploitation of them for its own benefit, including the establishment and expansion of its settlements, it has deprived the Palestinian people of the exercise of their sovereignty over their own natural resources. Finally, by its suppression of all forms of national expression, and systematic discrimination affecting all aspects of their daily life, Israel has attempted to extinguish the right of the Palestinian people to freely determine their political status and to freely pursue their economic, social and cultural development.

### **I. The Content of the Right of Self-Determination**

5.6. The right to self-determination is recognised as a principle of "universal application", having *erga omnes* effects. This is consistent with its status as a *jus cogens* norm<sup>930</sup>. The International Law Commission has included the right to self-determination in its non-exhaustive list of *jus cogens* norms<sup>931</sup>.

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<sup>930</sup> M. Shaw, *Title to Territory in Africa: International Legal Issues* (Oxford University Press, 1986), p. 91; D. Raic, *Statehood and the Law of Self-Determination* (Martinus Nijhoff Publishers, 2002), p. 219.

<sup>931</sup> Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (*Jus Cogens*), *Report of the International Law Commission*, Seventy-third session (18 April–3 June and 4 July–5 August 2022), A/77/10, p. 88, para. (14) of the commentary to Conclusion 23 and its annex. See also para. 2.50 above.

5.7. As indicated, the right to self-determination includes four components, as follows.

#### A. THE RIGHT TO TERRITORIAL INTEGRITY

5.8. In its resolutions 1514 (XV) and 2625 (XXV), the General Assembly affirmed the right to territorial integrity as an essential corollary of the right to self-determination:

“Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country”;<sup>932</sup>

“Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.”<sup>933</sup>

5.9. In the *Chagos* Advisory Opinion, the Court concluded that “[b]oth State practice and *opinio juris* … confirm the customary law character of the right to territorial integrity”, and that it represented “a key element of the exercise of the right to self-determination under international law.”<sup>934</sup> In this way, the Court recognized the right to territorial integrity in relation to self-determining peoples.

5.10. Acquisition of territory belonging to another State, or a self-determining people, by military force is a specific manifestation of the total or partial “disruption” of territorial integrity, and constitutes an egregious form of denying the right of the people of that State to self-determination. As the General Assembly stated clearly in its resolution 2649 (XXV) of 30 November 1970<sup>935</sup>, “the acquisition and retention of territory in contravention of the right of the people of that territory to self-determination is inadmissible and a gross violation of the Charter”<sup>936</sup>.

<sup>932</sup> General Assembly, Resolution 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, 24 October 1970.

<sup>933</sup> General Assembly, Resolution 1514 (XV), 14 December 1960, para. 6.

<sup>934</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 134, para. 160.

<sup>935</sup> General Assembly, Resolution 2649 (XXV), 30 December 1970, preamble: “The importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights”.

<sup>936</sup> *Ibid.*, para. 4.

5.11. Resolution 1514 (XV) and 2625 (XXV) further recognized that “[a]ll States shall ... respect ... the sovereign rights of all peoples and their territorial integrity”<sup>937</sup> and that “[e]very State shall refrain from any action aimed at the partial or total disruption of the *national unity* ... of any State or country.”<sup>938</sup>

#### B. THE PROHIBITION ON DEMOGRAPHIC MANIPULATION

5.12. In addition to respecting the territorial integrity of a non-self-governing territory, States are obliged to desist from acts that impair the unity (spatial and political) of the peoples concerned. Measures designed to dilute the integrity of a people entitled to a right of self-determination, by displacing them from the territorial unit, by confining them to isolated enclaves within the unit, or by introducing a different people into the unit, severely infringe that right.

5.13. Two distinct aspects of the principle may be discerned<sup>939</sup>. The first is the prohibition on forcible transfer of a people (by practices of ethnic cleansing or forced relocation, or by making life within the territorial unit unsustainable for them), in a manner that undermines the integrity of the self-determining people. As the United Nations Special Rapporteurs explained in 1993, the exercise of the right to self-determination “would necessarily be frustrated if a population were uprooted from its homeland and when transfers contribute to the destruction of a distinct identity and remove a people’s ability to determine their own destiny as a people”<sup>940</sup>. This dimension of the right to self-determination was confirmed by the Court in the *Wall Opinion*:

“There is also a risk of further alterations to the demographic composition of the Occupied Palestinian Territory resulting from the construction of the wall inasmuch as it is contributing ... to the departure of the Palestinian populations from certain areas. That construction, along with measures taken previously, thus severely impedes the exercise by the Palestinian

<sup>937</sup> General Assembly, Resolution 1514 (XV), 14 December 1960, para 7.

<sup>938</sup> General Assembly, Resolution 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, 24 October 1970 (emphasis added). See also General Assembly, Resolution 1514 (XV), 14 December 1960.

<sup>939</sup> C. Drew, “Self-Determination, Population Transfer and the Middle East Peace Accords”, in S. Bowen (ed.), *Human Rights, Self-Determination and Political Change in the Occupied Palestinian Territories*, Brill, 1997, p. 135.

<sup>940</sup> A. Al-Khasawneh and R. Hatano, Preliminary Report, The Realisation of Economic, Social and Cultural Rights: The Human Rights Dimensions of Population Transfer, including the Implantation of Settlers, 6 July 1993, E/CN.4/Sub.2/1993/17, p. 44, para. 203 (<https://tinyurl.com/2p2kd9ex>).

people of its right to self-determination, and is therefore a breach of Israel's obligation to respect that right.”<sup>941</sup>

5.14. The second aspect concerns the transfer of other peoples *into* the territory of a self-determining people (settler implantation), which also undermines the exercise of self-determination. This, of course, is prohibited by the Fourth Geneva Convention<sup>942</sup>. The General Assembly has made clear that both forms of demographic manipulation – displacement of the population out of the territory and introduction of another people into it – violate the right to self-determination<sup>943</sup>.

### C. THE RIGHT TO PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES

5.15. The General Assembly has repeatedly stressed that the right to permanent sovereignty over natural resources is a “basic constituent of the right to self-determination”<sup>944</sup>. This is reiterated in common Article 1 of the two International Covenants, which affirm the right of all peoples to “freely dispose of their natural resources”<sup>945</sup>, and in resolution 3281 (XXIX) of 12 December 1974 which declares that “Every State has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities.”<sup>946</sup>

<sup>941</sup> *Wall Opinion*, p. 184, para. 122.

<sup>942</sup> Fourth Geneva Convention, Article 49.

<sup>943</sup> General Assembly, Resolutions 2105 (XX), 20 December 1965, para. 5: “Calls upon the colonial Powers to discontinue their policy of violating the rights of colonial peoples through the systematic influx of foreign immigrants and the dislocation, deportation and transfer of the indigenous inhabitants”; 3548 (XXX), 10 December 1975, para. 7 2228 (XXI), 20 December 1966, para. 2: “Calls upon the administering Power to ensure that the right of self-determination shall be freely expressed and exercised by the indigenous inhabitants of the Territory on the basis of universal adult suffrage and with full respect for human rights and fundamental freedoms”; 2356 (XXII), 19 December 1967, para. 3: “Calls upon the administrative Power to create the political conditions necessary for accelerating the implementation of the right of the people to self-determination and independence, including the full exercise of political freedoms, and to allow the return of all refugees to the Territory”; 3480 (XXX), 11 December 1975, para. 3: “Calls upon the administering Power to create the necessary condition in order to accelerate the process of independence of the people of so-called French Somaliland (Djibouti) by effecting in particular the release of political prisoners and the return of the representatives of the liberation movements recognized by the Organization of African Unity and of all refugees ...”.

<sup>944</sup> General Assembly, Resolution 1803 (XVII), 12 December 1962. See also General Assembly, Resolutions 35/118, 11 December 1980; 52/78, 10 December 1997; 54/9, 6 December 1999; 55/147, 8 December 2000; 56/74, 10 December 2001.

<sup>945</sup> International Covenant on Economic, Social and Cultural Rights, 16 December 1966 (entry into force: 3 January 1976), *UNTS*, Vol. 993, Article 1; International Covenant on Civil and Political Rights, 16 December 1966 (entry into force 23 March 1976), *UNTS*, Vol. 999, Article 1.

<sup>946</sup> General Assembly, Resolution 3281 (XXIX), 12 December 1974, Art. 2, para. 1.

5.16. The General Assembly adopted this approach in its Declaration on Permanent Sovereignty in which it stated that the violation of the right “of peoples and nations to sovereignty over their natural wealth and resources is contrary to the spirit and principles of the Charter of the United Nations”<sup>947</sup>. In its Declaration on the Right of Development, the General Assembly stated that “[t]he human right to development also implies the full realization of the right of peoples to self-determination”, including the exercise of “full sovereignty over all their natural wealth and resources”<sup>948</sup>.

5.17. The “natural wealth and resources” over which a people enjoys “full sovereignty” includes, of course, the supply of fresh water, mineral resources, and hydrocarbon deposits, which are present in the OPT.

#### D. THE RIGHT TO FREELY DETERMINE THEIR POLITICAL STATUS AND FREELY PURSUE ECONOMIC, SOCIAL AND CULTURAL DEVELOPMENT

5.18. The right of a people to freely determine its political status, including the establishment of an independent State, is fundamental to the right to self-determination. This is reflected by the words of General Assembly Resolution 1514 (XV):

“All peoples have the right to self-determination; by virtue of that right they freely determine their political status ...”<sup>949</sup>.

5.19. Resolution 2625 (XXV) likewise stressed that:

“By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, *all peoples have the right freely to determine, without external interference, their political status ...*”<sup>950</sup>.

5.20. In 2007, the General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples, which:

“Acknowleg[ed] that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International

<sup>947</sup> General Assembly, Resolution 1803 (XVII), 12 December 1962, para. 7.

<sup>948</sup> General Assembly, Resolution 41/128, 4 December 1986, para.1 (2).

<sup>949</sup> General Assembly, Resolution 1514 (XV), 14 December 1960, para. 2.

<sup>950</sup> General Assembly, Resolution 2625 (XXV), 24 October 1970, Annex (emphasis added). See also General Assembly, Resolution 1514 (XV), 14 December 1960.

Covenant on Civil and Political Rights, as well as the Vienna Declaration and Programme of Action, affirm the fundamental importance of the right to self-determination of all peoples, *by virtue of which they freely determine their political status ...*<sup>951</sup>.

5.21. The right to self-determination also includes the freedom to pursue economic, social and cultural development. This principle is confirmed by resolutions 1514 (XV), 2625 (XXV) and 61/295 and by Articles 1 of ICCPR and ICESCR which have both been ratified by the vast majority of the international community. The General Assembly has repeatedly emphasized the connection between the right to self-determination and the right to pursue political, economic, social and cultural development. Its Declaration on the Right to Development describes the right to self-determination as “an inalienable human right by virtue of which ... all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized”<sup>952</sup>. As the Human Rights Committee pointed out in its General Comment No. 12:

“The right to self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. It is for that reason that States set forth the right to self-determination in a provision of positive law in both Covenants and placed this provision as article 1 apart from and before all of the other rights in the two Covenants”.<sup>953</sup>

## II. The Right to Self-Determination of the Palestinian People

5.22. The Court has recognized that the right to self-determination is a right to which the Palestinian people are entitled, and that Israel has acted in violation of that right. In the *Wall* Opinion in 2004, the Court stated:

“As regards the principle of the right of peoples to self-determination, the Court observes that the existence of a “Palestinian people” is no longer in issue.”<sup>954</sup>

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<sup>951</sup> General Assembly, Resolution 61/295, 13 September 2007, Annex (emphasis added).

<sup>952</sup> General Assembly, Resolution 41/128, 4 December 1986, para. 1 (1).

<sup>953</sup> Human Rights Committee, General Comment No. 12, The Right to Self-Determination of Peoples, 13 March 1984, HRI/GEN/1/Rev.9 (Vol. I), para 1 (<https://tinyurl.com/4nf6fuf>).

<sup>954</sup> *Wall* Opinion, pp. 182-183, para. 118.

It went on to determine that the construction of the Wall:

“severely impedes the exercise by the Palestinian people of its right to self-determination, and is therefore a breach of Israel’s obligation to respect that right”<sup>955</sup>.

5.23. Long before the Court addressed the issue in 2004, United Nations bodies had recognized the right of self-determination of the Palestinian people. In resolution 2535 B (XXIV) of 10 December 1969, for example, the General Assembly recognized that: “the problem of the Palestinian Arab refugees has arisen from the denial of their inalienable rights under the Charter of the United Nations and the Universal Declaration of Human Rights” and reaffirmed, thus, its recognition of the “inalienable rights of the people of Palestine”, calling upon the Security Council to take effective measures to ensure implementation of its relevant resolutions.

5.24. The following year, the General Assembly confirmed that the inalienable rights in question included the right to self-determination. In resolution 2649 (XXV) it condemned “those Governments that deny the right to self-determination of peoples recognized as being entitled to it, especially of the peoples of southern Africa and Palestine”<sup>956</sup>; and in resolution 2672 (XXV) of 8 December 1970 it recognized “that the people of Palestine are entitled to equal rights and self-determination, in accordance with the Charter of the United Nations” and that “full respect for the inalienable rights of the people of Palestine is an indispensable element in the establishment of a just and lasting peace in the Middle East”<sup>957</sup>.

5.25. Resolution 3236 (XXIX) of 22 November 1974 reaffirmed “the inalienable rights of the Palestinian people in Palestine, including: (a) The right to self-determination without external interference; (b) The right to national independence and sovereignty”, as well as “the inalienable right of the Palestinians to return to their homes and property from which they have been displaced and uprooted, and call[ed] for their return”<sup>958</sup>.

5.26. It was followed by repeated affirmation by the General Assembly of the “inalienable rights of the Palestinian people” in, *inter alia*, resolution 3376 (XXX) of 10 November 1975; resolution 37/43 of 3 December 1982; resolution 38/17 of

<sup>955</sup> *Ibid.*, p. 184, para. 122.

<sup>956</sup> General Assembly, Resolution 2649 (XXV), 30 November 1970.

<sup>957</sup> General Assembly, Resolution 2672 (XXV), 8 December 1970.

<sup>958</sup> General Assembly, Resolution 3236 (XXIX), 22 November 1974.

22 November 1983; resolution 39/17 of 23 November 1984; resolution 40/25 of 29 November 1985; resolution 41/101 of 4 December 1986; resolution 42/95 of 7 December 1987; resolution 46/87 of 16 December 1991; resolution 46/130 of 17 December 1991; resolution 47/82 of 16 December 1992; and resolution 48/94 of 20 December 1993.

5.27. From resolution 49/149 of 23 December 1994 onwards, the General Assembly has adopted annual resolutions specifically entitled “The right of the Palestinian people to self-determination”<sup>959</sup>. The most recent is resolution 77/208 of 15 December 2022, which “[r]eaffirms the right of the Palestinian people to self-determination, including the right to their independent State of Palestine” and urges all States and specialized agencies to “support and assist the Palestinian people in the early realization of their right to self-determination.”<sup>960</sup>

5.28. The Human Rights Council also adopts annual resolutions which “[r]eaffirm[] the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and the right to their independent State of Palestine”; “[c]all[] upon Israel, the occupying Power, to immediately end its occupation of the Occupied Palestinian Territory, including East Jerusalem, and to reverse and redress any impediments to the political independence, sovereignty and territorial integrity of Palestine”; “[e]xpress[] grave concern at any action taken in contravention of the General Assembly and Security Council resolutions relevant to Jerusalem”; “[a]lso express[] grave concern at the fragmentation and the changes in the demographic composition of the Occupied Palestinian Territory, including East Jerusalem, which are resulting from the continuing construction and expansion of settlements, forcible transfer of Palestinians and construction of the wall by Israel, stress[] that this fragmentation, which undermines the possibility of the Palestinian people realizing their right to self-determination, is incompatible with the purposes and principles of the Charter of the United Nations, and emphasize[] in this regard the

<sup>959</sup> General Assembly, Resolutions 50/140, 21 December 1995; 51/82, 12 December 1996; 52/114, 12 December 1997; 53/136, 9 December 1998; 52/152, 17 December 1999; 55/87, 4 December 2000; 56/142, 19 December 2001; 57/147, 16 December 2002; 58/163, 22 December 2003; 59/179, 20 December 2004; 60/146, 16 December 2005; 61/184, 20 December 2006; 62/146, 18 December 2007; 63/165, 18 December 2008; 64/150, 18 December 2009; 65/202, 20 December 2010; 66/146, 19 December 2011; 68/154, 18 December 2013; 69/165, 18 December 2014; 70/141, 17 December 2015; 71/184, 19 December 2016; 72/160, 19 December 2017; 73/158, 17 December 2018; 74/139, 18 December 2019; 75/172, 16 December 2020; and 76/150, 16 December 2021.

<sup>960</sup> General Assembly, Resolution 77/208, 15 December 2022.

need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem”<sup>961</sup>.

5.29. These resolutions also:

“[c]onfirm[] that the right of the Palestinian people to permanent sovereignty over their natural wealth and resources must be used in the interest of their national development, the well-being of the Palestinian people and as part of the realization of their right to self-determination”; “[c]all[] upon all States to ensure their obligations of non-recognition, non-aid or assistance with regard to the serious breaches of peremptory norms of international law by Israel, in particular of the prohibition of the acquisition of territory by force, in order to ensure the exercise of the right to self-determination, and also call[] upon them to cooperate further to bring, through lawful means, an end to these serious breaches and a reversal of the illegal policies and practices of Israel” and “[u]rg[e][] all States to adopt measures as required to promote the realization of the right to self-determination of the Palestinian people, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of this right”<sup>962</sup>.

5.30. The recognition of the right of the Palestinian people to self-determination predates even the establishment of the United Nations. It was recognized by the Mandate System of the League of Nations. As Professor James Crawford put it:

“the principle of self-determination, in its application to Palestine, is not one of these doubtful or later-developed rules. It has been argued that since self-determination was not a general rule or principle of international law in 1920 or in 1948, it can have had no application to Palestine at either period. But the Covenant and ... the Mandate specifically applied the principle of self-determination to the territory of Palestine. This position was, at least by implication, reaffirmed by Article 80 of the Charter. Palestine in 1948 constituted a self-determination unit in international law.”<sup>963</sup>

5.31. Article 80 (1) of the Charter provides:

“Except as may be agreed upon in individual trusteeship agreements, made under Articles 77, 79, and 81, placing each territory under the trusteeship

<sup>961</sup> See, for example, Human Rights Council, Resolution 49/28, 11 April 2022, paras. 1, 3-5.

<sup>962</sup> *Ibid.*, paras 6-8.

<sup>963</sup> J. Crawford, *The Creation of States in International Law*, 2<sup>nd</sup> edn. (Oxford University Press, 2007), p. 428.

system, and until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties.”<sup>964</sup>

5.32. As the Court made clear in the *Namibia* case, a “striking feature” of this “safeguard clause” was “the stipulation in favour of the preservation of the rights of ‘any peoples’, thus clearly including the inhabitants of the mandated territories, and, in particular, their indigenous populations.”<sup>965</sup> The rights thus preserved had “an existence independent of that of the League of Nations”. The Court further pointed out that Article 80 served not only to preserve the rights enjoyed by peoples under the Mandate pending the establishment of a Trusteeship agreement, but also a situation in which a Trusteeship agreement was never concluded. The Court thus recognized that the peoples of South-West Africa continued to enjoy the right to self-determination. *Ipsa facto*, the Palestinian people must continue to enjoy the rights recognized as belonging to them under the Mandate System. Indeed, the rights recognized for the people of South-West Africa under a Class C Mandate were less extensive than those recognized for the Palestinian people under a Class A Mandate<sup>966</sup>.

5.33. **Figure 5.1** at p. 275 below depicts Palestine under the British Mandate, the territorial unit in which the Palestinian people were to enjoy the right of self-determination.

5.34. However, the Mandatory Power, instead of facilitating the realization of the right of the Palestinian people to self-determination as was done in respect of the indigenous people in other Class A Mandates, furthered policies aimed at

<sup>964</sup> Charter of the United Nations, Article 80(1).

<sup>965</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), Advisory Opinion*, I.C.J. Reports 1971, p. 33, para. 59.

<sup>966</sup> Article 22 of the Covenant of the League of Nations established three classes of Mandate. Class A Mandates were “[c]ertain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone”. Class B Mandates were deemed to be “at such a stage that the Mandatory must be responsible for the administration of the territory”. Class C Mandates comprised “territories … which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilisation, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory”.

changing the demographic composition of the territory against the will of its indigenous people, with the aim of creating a Jewish homeland in Palestine, an objective stated in the Balfour Declaration of 1917<sup>967</sup>. This demographic engineering undermined the Palestinian people's inalienable right to self-determination and paved the way for the recommendation by the General Assembly in resolution 181 (II) to partition Palestine in November 1947 without consulting with or giving regard to the will and wishes of the Palestinian people. **Figure 5.2** at p. 277 below shows the partition of Palestine as proposed by the United Nations General Assembly.

5.35. Within a few months, Zionist militias seized control of the majority of historic Palestine, including around half of the territory allotted to the Arab State in the plan recommended by the General Assembly, and between 750,000 and 900,000 Palestinians were expelled and uprooted from their homeland, in what is known as the *Nakba* (the catastrophe) endured by the Palestinian people in 1947-1949. **Figure 5.3** at p. 279 below shows how Israel enlarged itself during this period even beyond the territory allotted to it by the Partition Plan, resulting in the 1949 Armistice Line, referred to as the Green Line. Since 1967, and Israel's occupation of the West Bank, including East Jerusalem, and the Gaza Strip, this line has served as delineation of the Occupied Palestinian Territory.

5.36. The Mandate ended without the Palestinian people having been allowed to realize their right to self-determination. Israel was admitted thereafter as member of the United Nations following its commitment to respect General Assembly resolutions 181 (II) and 194 (III), pertaining respectively, *inter alia*, to the partition of Palestine into two States, with Jerusalem being placed under an international regime, and the right of return of Palestinian refugees (see paras. 1.20-1.21 above) – but it has continued to violate their spirit and letter to this day despite its pledge to honour them at the time.

5.37. The international community has recognized the right of the Palestinian people to self-determination, including their right to independence of their State. The resolution on the right of the Palestinian people to self-determination mentioned above enjoys quasi-universal support. Moreover, General Assembly resolution 67/19 of 29 November 2012, supported by 138 States with only 9 voting

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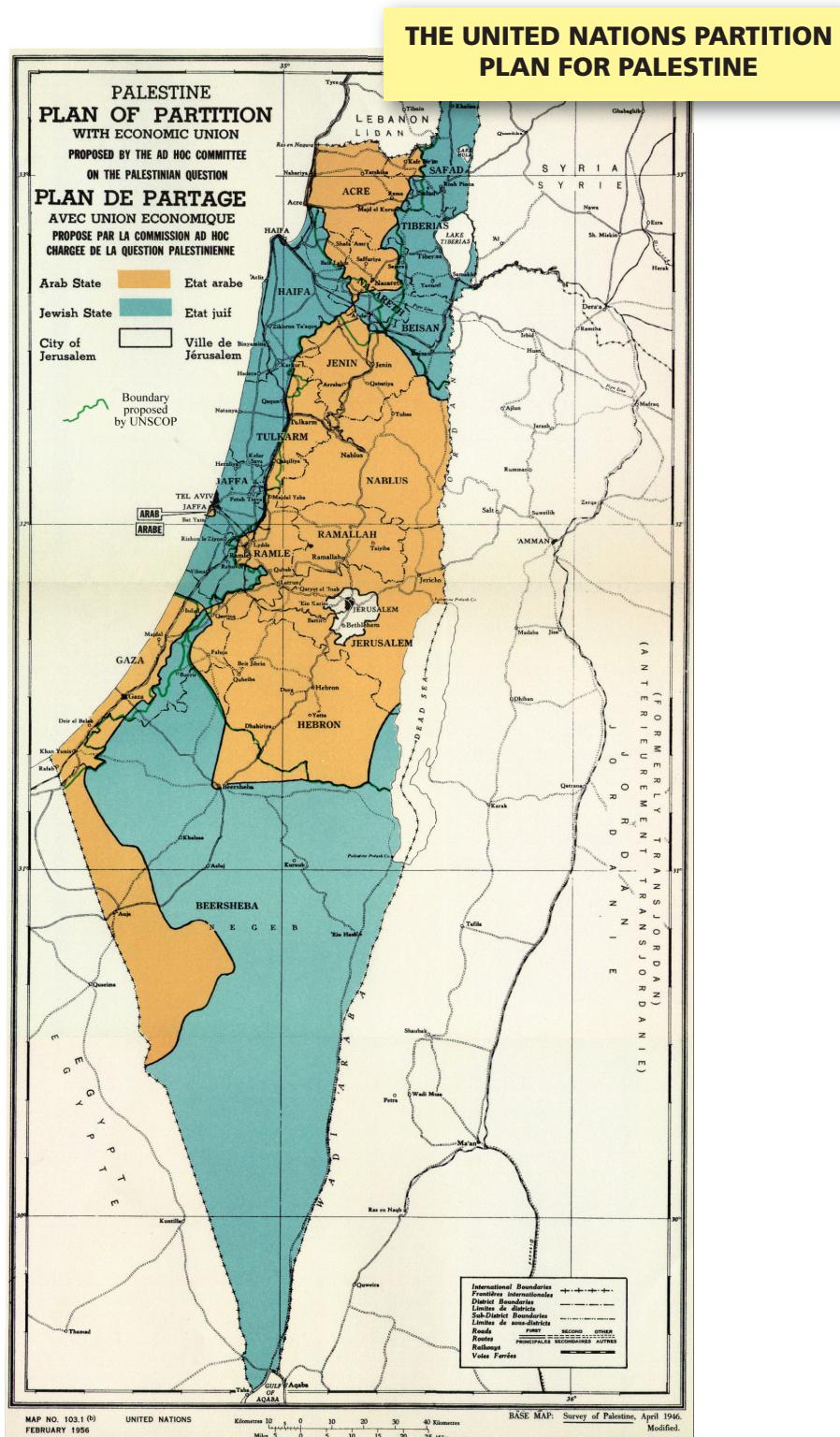
<sup>967</sup> Balfour Declaration, 2 November 1917 (<https://tinyurl.com/mvbnrna7>). See also M. C. Bassiouni, “‘Self-Determination’ and the Palestinians”, *American journal of International Law Proceedings*, Vol. 65, 1971, pp. 31 and 36.

**THE BRITISH MANDATE FOR PALESTINE**

Source: [https://ar.wikipedia.org/wiki/%D9%85%D9%84%D9%81:Map\\_of\\_Mandatory\\_Palestine\\_in\\_1946\\_with\\_major\\_cities\\_%28in\\_English%29.svg](https://ar.wikipedia.org/wiki/%D9%85%D9%84%D9%81:Map_of_Mandatory_Palestine_in_1946_with_major_cities_%28in_English%29.svg)

**Figure 5.1**





Source: [https://www.salon.com/2015/11/30/u\\_n\\_voted\\_to\\_partition\\_palestine\\_68\\_years\\_ago\\_in\\_an\\_unfair\\_plan\\_made\\_even\\_worse\\_by\\_israels\\_ethnic\\_cleansing/](https://www.salon.com/2015/11/30/u_n_voted_to_partition_palestine_68_years_ago_in_an_unfair_plan_made_even_worse_by_israels_ethnic_cleansing/)

Figure 5.2



**UN PARTITION PLAN - 1947  
AND  
UN ARMISTICE LINES - 1949**



Map No. 4153 UNITED NATIONS  
October 2000

Figure 5.3



in opposition, reaffirmed “the right of the Palestinian people to self-determination and to independence in their State of Palestine on the Palestinian territory occupied since 1967”, and accorded to Palestine “non-member observer State status” in the United Nations.

5.38. More than 140 States have explicitly recognized Palestine as a State and statehood as a critical component of the Palestinian people’s right to self-determination. Many other States which have not yet formally recognized the State of Palestine have indicated that they would do so under certain conditions, and notwithstanding the qualifications they identify, nevertheless affirm the common view that the Palestinian people have a right to self-determination under international law that is being infringed upon and that includes a right to an independent and sovereign State of Palestine. The Security Council and the General Assembly have repeatedly called for an end of the Israeli occupation and for two democratic States – including an independent, sovereign, contiguous State of Palestine living side by side in peace and security with Israel – on the basis of the relevant United Nations resolutions<sup>968</sup>.

### **III. Israel’s Denial of, and Ongoing Refusal to Recognize, the Right of the Palestinian People to Self-Determination**

5.39. Israel has negated the right of the Palestinian people to self-determination, in all its aspects, everywhere on the territory of Mandatory Palestine. Israel has not sought to conceal the nature of what it is doing; on the contrary, it has made its purpose clear in its deeds, in the words of its leaders, and even in its own quasi-constitutional laws addressing the right to self-determination. Its policy is reflected in its Basic Law, which declares that: “The realization of the right to national self-determination in the State of Israel is exclusive to the Jewish People.”<sup>969</sup> As a consequence, the Palestinian people are deliberately excluded from exercising the right to self-determination anywhere within the territory encompassed by Mandatory Palestine, including their right to independence of their State on the Palestinian territory occupied since 1967, namely the West Bank, including East Jerusalem, and the Gaza Strip. Notably, the Basic Law does not specify the borders of the “State of Israel,” within which only the “Jewish People” are given the exclusive “right to national self-determination”. However, it expressly encompasses the entirety of Jerusalem, East and West, and other parts of the OPT,

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<sup>968</sup> See, e.g., Security Council, Resolutions 242 (1967), 22 November 1967; 1397 (2002), 12 March 2002; 1515 (2003), 19 November 2003; and 2334 (2016), 23 December 2016.

<sup>969</sup> Basic Law: Israel – The Nation State of the Jewish People 5778-2018, para. 1 (c) (Vol. II, Annex 9).

to which it refers not as Palestine or even the West Bank, but as “Judea and Samaria”, connoting that for Israel they are part of the Land of Israel. Senior Israeli officials are increasingly outspoken in declaring Israel’s “sovereignty” over, and intention to remain permanently in, Jerusalem and “Judea and Samaria,” as evidenced by their public statements referenced in Chapter 3 (see in particular paras. 3.179-3.193 above).

5.40. The consequences for Palestinians have been dire and far-reaching. For over 75 years, from the *Nakba* onwards, Israel has persisted in its attempts to permanently dispossess and displace Palestinians, denying their connection to, and legitimate claims and inalienable rights in, their ancestral homeland. Israel has prevented Palestinian refugees from returning to their homes since 1948 and until today. Palestinians who were able to remain in present day Israel following the *Nakba* and became its citizens continue to face systemic discrimination affecting their fundamental freedoms and rights, and severely restricting their access to property and land. Palestinians in the OPT face a military rule that violates their human rights and that explicitly benefits the Israeli settlers illegally present on their territory to the detriment of their fundamental rights, including especially and emphatically their right to self-determination.

#### A. VIOLATION OF TERRITORIAL INTEGRITY

5.41. Israel has violated the territorial integrity of the OPT by annexing East Jerusalem and the rest of the West Bank, as shown in Chapter 3, Parts A and B, respectively. The purported annexation of a people’s territorial unit by another State is a gross violation of the principle of territorial integrity. Israel’s actions violate the fundamental precept, embodied in the United Nations Charter, prohibiting the use or threat of force against the territorial integrity or political independence of any other State, or in any other manner inconsistent with the Purposes of the United Nations and its corollary, the inadmissibility of the acquisition of territory by force. Its annexation of Palestinian territory also violates numerous Security Council and General Assembly resolutions which condemn and declare inadmissible Israel’s acquisition of Palestinian territory as violations of international law, including the right of the Palestinian people to self-determination<sup>970</sup>.

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<sup>970</sup> See, e.g., General Assembly, Resolutions 67/120, 18 December 2012; 68/82, 11 December 2013; 69/92, 5 December 2014; 70/89, 9 December 2015; 71/97, 6 December 2016; 72/86, 7 December 2017; 73/98, 7 December 2018; 75/97, 18 December 2020; 76/82, 9 December 2021; and 77/126, 12 December 2022. See also Security Council,

5.42. In addition, numerous United Nations bodies – such as the General Assembly<sup>971</sup>, the Security Council<sup>972</sup> and the Human Rights Council<sup>973</sup> – have affirmed the need to preserve the “unity, contiguity and integrity” of the Palestinian territory. The General Assembly in particular has stressed repeatedly “the need for respect for and preservation of the territorial unity, contiguity and integrity of all of the Occupied Palestinian Territory, including East Jerusalem”, including in its annual resolution on the right of the Palestinian people to self-determination<sup>974</sup>.

5.43. In its effort to grab maximum Palestinian land with minimum Palestinians, Israel has fragmented the Palestinian territory, confining the Palestinians in enclaves, separated by vast areas in which only Israeli settlements are allowed, and by a road and transit system that connects the settlements to Israel and each other and further isolates the Palestinian enclaves, or that have been declared as Israeli military zones and nature reserves to ensure continued control by Israel over them.

5.44. Jerusalem, in particular, has been severed from its Palestinian environment by Israeli laws, policies and practices, including the settlements (now numbering more than 230,000 Israeli settlers in East Jerusalem)<sup>975</sup> and their associated regime, which have also deeply fragmented the West Bank and the Palestinian communities confined therein and cut them off from their historic capital and most of their sacred religious sites.

5.45. As described in Chapter 3, Part A, and Chapter 4, this has been accomplished through measures such as construction and expansion of Jewish Israeli-only settlements encircling the Holy City and extension of the Wall, accompanied by restrictions on entry into Jerusalem by Palestinians who live in the West Bank and the Gaza Strip. These restrictions prevent Palestinians living outside the annexation Wall from entering the Holy City and from accessing their means of livelihood severed by the Wall, including farms and businesses. And they attempt to prevent the Palestinians living in East Jerusalem from integrating, politically, economically, socially and culturally, into the Palestinian polity within the OPT.

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Resolutions 242 (1967), 22 November 1967; 252 (1968), 21 May 1968; 298 (1971), 25 September 1971; 465 (1980); 1 March 1980; and 2334 (2016), 23 December 2016.

<sup>971</sup> See, e.g., General Assembly, Resolution 76/150, 16 December 2021, preamble.

<sup>972</sup> Security Council, Resolution 242 (1967), 22 November 1967, para. 1 (ii).

<sup>973</sup> Human Rights Council, Resolution 52/34, 18 April 2023, para. 5.

<sup>974</sup> General Assembly, Resolution 77/208, 28 December 2022, preamble.

<sup>975</sup> Peace Now, *Settlements Map 2023*, 5 January 2023, p. 2 (<https://tinyurl.com/2p97bz6p>).

5.46. As shown in Chapter 3, Part B, and Chapter 4, Israel has fragmented the West Bank by separating Palestinian communities from one another by declaring large parts of that territory – amounting to some 60 % – off-limits to Palestinians, including the Jordan Valley which Israel has reserved for itself as a “military” zone; by crisscrossing the West Bank with a system of roads and highways which Palestinians are restricted or prohibited from using, and which cut off Palestinian towns and villages from one another; and by denying Palestinians the building permits they require to accommodate normal population growth and then demolishing thousands of homes built without the permits required by Israel, confining the respective Palestinian communities to isolated and confined areas or coercing them to leave Palestine altogether.

5.47. As shown in Chapter 4 (see in particular paras. 4.192–4.202 above), the Gaza Strip has been transformed “into a heavily populated, impoverished enclave controlled by Israel through a suffocating sea, land and air blockade”<sup>976</sup>, entirely separated and cut off from the West Bank, including East Jerusalem.

5.48. The United Nations Special Rapporteur for the situation of human rights in the Palestinian territories occupied since 1967 has stated that the “prime vector” for the fragmentation of the Palestinian territory, in addition to the physical separation imposed by the blockade and the restrictions regime, described in Chapter 4, is the deliberate adoption of different regimes applicable to different areas within the OPT<sup>977</sup>, which singularly and cumulatively violate the right of the Palestinian people to self-determination.

## B. DEMOGRAPHIC MANIPULATION

5.49. Israel has engaged in a demographic manipulation of the population in Palestine; first, in regard to the transfer of its own population to Palestinian territory; second, in regard to its expulsion and displacement of Palestinians from their own homeland.

### *1. Transfer of Israeli Nationals to the OPT*

5.50. As shown in Chapter 3, Parts A and B, Israel has implanted hundreds of settlements and hundreds of thousands of its own nationals in East Jerusalem and

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<sup>976</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 21 September 2022, A/77/356, para. 46. (<https://undocs.org/A/77/356>).

<sup>977</sup> *Ibid.*, para. 44.

the rest of the West Bank, and it has publicly declared that they will remain there permanently. This effort to alter the demography of the OPT by the transfer of its own citizens began in 1967 and has gathered force ever since, with ever more settlements and settlers planned. Most recently, as related in Chapter 3 (see paras. 3.85 and 3.214 above), the Israeli government streamlined the process of authorizing new settlements and immediately approved another 6,500 housing units in East Jerusalem and in February 2023 it authorised the construction of a further 7,349 housing units in the West Bank. The Minister responsible for these settlements, and for so-called civil administration in the OPT, foresees “hundreds of thousands” of new Israeli settlers, further entrenching Israel’s “sovereign” claims with the proclaimed aim to render it impossible for the national aspirations of the Palestinian people – including independence of their State – to be realized. In this regard, the Minister has called for:

“full Israeli sovereignty to the heartland regions of Judea and Samaria, and end of conflict by settlement in the form of establishing new cities and settlements deep inside the territory and bringing hundreds of thousands of additional settlers to live therein. This process will make it clear to all that the reality in Judea and Samaria is irreversible, that the State of Israel is here to stay, and that the dream of an Arab State in Judea and Samaria is no longer viable.”<sup>978</sup>

## *2. Expulsion of Palestinians*

5.51. Long before it began transferring its own nationals to Palestinian territory, Israel adopted and vigorously pursued a policy of expelling Palestinians, in an effort to create an Israeli majority. Of the roughly 1.4 million Palestinians living within Mandatory Palestine in 1948, between 750,000 and 900,000 were expelled and uprooted from their homes during the *Nakba* of 1947-1949<sup>979</sup>. In the

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<sup>978</sup> B. Smotrich, *Israel's Decisive Plan*, 7 September 2017 (<https://tinyurl.com/2d3bkfcy>).

<sup>979</sup> See the First Interim Report of the United Nations Economic Survey Mission for the Middle East (16 November 1949, A/AC.25/4), which put the number of refugees at 774,000. Today, there are over 7 million Palestinian refugees, including over 5.7 million in the OPT and neighbouring countries who are registered with and assisted by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the United Nations agency established by resolution 302 (IV) of 8 December 1949 after the *Nakba* with the initial mandate to provide “direct relief and works programmes” to Palestinian refugees, in order to “prevent conditions of starvation and distress ... and to further conditions of peace and stability”. The General Assembly has repeatedly renewed the mandate of UNRWA to provide services to ensure the well-being, protection and human development of the refugees pending a just solution to their plight in accordance with resolution 194 (III) of 11 December 1948, which affirmed, inter alia, their right to return and which has been recalled in countless resolutions from 1948 to the present day, most recently in Resolution 77/123 of 12 December 2022 (<https://undocs.org/A/RES/77/123>).

midst of that displacement, on 15 May 1948, Israel was established. Almost immediately thereafter, in June 1948, the Israeli Cabinet decided to bar the return of the Palestinian refugees to their homes within the newly established State of Israel<sup>980</sup>. That decision was subsequently codified in a series of Israeli laws aimed at dispossessing Palestinians of their property and denationalizing them *en bloc*. Thus, under the Emergency Regulations (Absentees' Property) of 2 December 1948 (later amended to the Absentee Property Law 1950), Israel unilaterally seized the moveable and immovable property of every Palestine refugee as well as those Palestinians internally displaced in what became Israel, even though those Palestinians became citizens of Israel.

5.52. In 1950, Israel enacted the Law of Return, described above in Chapter 4, which granted foreign-born Jews the right to immigrate to Israel and become citizens (see paras. 4.211-4.214 above). In contrast, Israel's Nationality Law of 1952 barred all Palestinians who had been forcibly exiled from returning, and unilaterally annulled their prior Palestine citizenship thereby rendering them stateless in one fell swoop<sup>981</sup>. In addition, Israel's Prevention of Infiltration (Offences and Jurisdiction) Law of 1954 provided for criminal sanction and expulsion for Palestinian refugees who attempted to exercise their legitimate right of return<sup>982</sup>.

5.53. Israeli actions resulted in a further round of forcible and deliberate displacement during the war of 1967, during which around 400,000 Palestinians were forced to flee the part of Mandate Palestine that became the OPT<sup>983</sup>, namely the West Bank, including East Jerusalem, and the Gaza Strip. Israel dealt with those exiles in much the same way as it did the refugees of 1948: it sought to render their absence permanent by prohibiting their return. Military Order 1 declared the West Bank and Gaza Strip closed military areas<sup>984</sup>. In 1969, Israel adopted two further military orders (290 and 329) which prohibited Palestinians who were present in Jordan, Syria, Egypt, or Lebanon at any time after 7 June 1967 from entering the OPT<sup>985</sup>. Since April 2010, Israel has broadened the scope of the prohibition under

<sup>980</sup> See B. Morris, "Falsifying the Record: a Fresh Look at the Zionist Documentation of 1948", *Journal of Palestine Studies*, Vol. 24, 1995, no. 3, p. 56.

<sup>981</sup> Nationality Law, 5712-1952 (<https://tinyurl.com/2p8yzs92>).

<sup>982</sup> Prevention of Infiltration Law (Offenses and Jurisdiction), 5714-1954.

<sup>983</sup> F. Albanese, *Palestinian Refugees in International Law*, 2<sup>nd</sup> edn. (Oxford University Press, 2020), p. 50, fns. 265 and 266.

<sup>984</sup> Order Closing Area, Gaza Strip and Northern Sinai, No. 1, 1967.

<sup>985</sup> Order Regarding Prevention of Infiltration (Judea and Samaria) (No. 329), 1969 and its equivalent counterpart in Gaza, Military Order No. 290, 1969. A copy of the text of the Orders can be found in J. Hiltermann, *Israel's Deportation Policy in the Occupied West Bank and Gaza* (Al Haq, 1986), pp. 93-95 (<https://tinyurl.com/4ve6y865>).

Military Order 329, providing for deportation from the West Bank of any person found without an Israeli-issued permit<sup>986</sup>. Such a clear denial of the right of Palestinian refugees and other displaced Palestinians to return to their homes and reclaim their property and receive reparations also constitutes a fundamental breach of the Palestinian people's right to self-determination.

5.54. The same goal of displacement has been sought for the Palestinians who remained in the OPT following Israel's 1967 military seizure of the territory. As recounted in Chapter 3, Parts A and B, and Chapter 4, Israel has adopted and implemented a series of policies designed to establish what authoritative United Nations bodies have characterized as a "coercive environment" in which the conditions of life for Palestinians are made so desperate that they are forced to leave their territory, or to leave the communities in which their families have resided for generations, to take shelter in one of the small and increasingly isolated enclaves where they have been confined. This is a manifest case of demographic manipulation, gravely impairing the right of the Palestinian people to self-determination.

### C. DENIAL OF SOVEREIGNTY OVER NATURAL RESOURCES

5.55. The General Assembly adopts annually a resolution entitled "Permanent sovereignty of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan over their natural resources". The resolution "[r]eaaffirms the principle of the permanent sovereignty of peoples under foreign occupation over their natural resources", indicating that it was "[g]uided by the principles of the Charter of the United Nations", and recalls "the inadmissibility of the acquisition of territory by force", and "relevant Security Council resolutions, including resolutions 242 (1967) of 22 November 1967, 465 (1980) of 1 March 1980, 497 (1981) of 17 December 1981 and 2334 (2016) of 23 December 2016". It then:

"Reaffirms the inalienable rights of the Palestinian people ... over their natural resources, including land, water and energy resources;

Demands that Israel, the occupying Power, cease the exploitation, damage, cause of loss or depletion and endangerment of the natural resources in the Occupied Palestinian Territory, including East Jerusalem".<sup>987</sup>

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<sup>986</sup> Order regarding Prevention of Infiltration, Amendment No. 2, No. 1650 (<https://tinyurl.com/2p98pm5d>).

<sup>987</sup> General Assembly, Resolution 77/187, 14 December 2022, paras. 1 and 2.

5.56. In his June 2022 report to the General Assembly, the Secretary General observed:

“The system of restrictive policies imposed by Israel on Palestinian economic activity, resources and land since 1967 has systematically stripped the Palestinian economy of many elements that are vital for its healthy operation, rendering it highly vulnerable to internal and external shocks. The multilayered restrictive system continues to deny Palestinian control over natural resources and egress, which constrains access to regional and international markets and limits policy space.”<sup>988</sup>

He further noted that:

“Since 1967, Israel has placed all water resources in the Occupied Palestinian Territory under its military control and prohibited Palestinians from constructing new water installations or maintaining existing installations without a military permit.”<sup>989</sup>

5.57. Israel’s seizure of fresh water sources in the West Bank – its most precious natural resources essential to survival – and exploitation of them for its own benefit, and that of its implanted settler population, jeopardizes water security which is essential for the sustenance of the Palestinian people and for its economy. Israel’s control over and exploitation of the water sources in the OPT, and the deleterious impact this has had on the Palestinian inhabitants, has been set out in detail in Chapter 4 (see paras 4.145-4.153 above).

5.58. Also, Chapter 3, Part B describes Israel’s annexation of the West Bank, notably 60% of that territory that has been virtually entirely seized and planned for Israeli settlements, military zones and nature reserves, making it almost entirely off limits for Palestinians (see para 3.195 above, in particular). Israel has not only appropriated the land but also the natural resources in that area. UNCTAD underlines that:

“Area C, which accounts for about 60 per cent of the area of the West Bank, incorporates Israeli settlements and is fully under civil and security control

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<sup>988</sup> Economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan, Note by the Secretary-General, 8 June 2022, A/77/90, para. 75 (<https://undocs.org/A/77/90>).

<sup>989</sup> *Ibid.*, para. 58.

by Israel, although it contains the most valuable natural resources in the West Bank.”<sup>990</sup>

It notes in this regard:

“The West Bank is divided into disconnected islands and the only contiguous part is Area C, which remains under the control of Israel and is largely inaccessible to Palestinian producers, although it has the most valuable natural resources, such as fertile land, minerals and stones, as well as tourist attractions and cosmetic products.

.....

Evidence suggest that the occupying Power continues to deplete the natural resources, particularly water resources, in the occupied territory to its advantage and to the detriment of the Palestinian people. The water policy of Israel furthers economic and political advantages and the expansion of settlements, while depriving the Palestinian economy and agriculture of critical water resources.”<sup>991</sup>

5.59. Likewise, Israel’s takeover of Palestinian quarries for operation by Israeli companies engaged in construction within Israel itself, as well as the settlements in the OPT and its prevention of Palestinian exploitation of hydrocarbon deposits both onshore and offshore, have been amply documented<sup>992</sup>. By effectively expropriating the natural resources of the OPT for itself, Israel has not only deprived the Palestinian people of their right to exercise “full sovereignty” over their natural resources; it has denied them the enjoyment of any significant benefits from them over decades and has depleted them. Such acts undermine the ability of the Palestinian people to self-reliance and are a manifest violation of the right to self-determination of the Palestinian people<sup>993</sup>.

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<sup>990</sup> UNCTAD, The Economic Costs of the Israeli Occupation for the Palestinian People: The Cost of Restrictions in Area C Viewed from Above, 9 March 2023, UNCTAD/GDS/APP/2022/1, p. vii (<https://tinyurl.com/3uaykkt2>).

<sup>991</sup> *Ibid.*, pp. 3 and 7.

<sup>992</sup> See, e.g., UNCTAD, The Economic Costs of the Israeli Occupation for the Palestinian People: The Unrealized Oil and Natural Gas Potential, United Nations, 2019 (<https://tinyurl.com/yvusxt9>); World Bank, West Bank and Gaza – Area C and the Future of the Palestinian Economy, 2 October 2013 (<https://tinyurl.com/2p982j6x>).

<sup>993</sup> I. Scobie, “An Intimate Disengagement: Israel’s withdrawal from Gaza, the Law of Occupation and of Self-Determination”, *Yearbook of Islamic and Middle Eastern Law Online*, Vol. 11, 2004, no. 1, pp. 3-31.

#### D. DENIAL OF CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS

5.60. As shown in Chapter 4, to establish and maintain its dominion over the Palestinian people, Israel has imposed a comprehensive system of racial discrimination and denial of fundamental rights, in breach of the peremptory norm of international law prohibiting discrimination against, and subjugation of, a people on grounds of race. Israel's systematic racial discrimination against the Palestinian people and denial of the freedom to exercise their civil, political, economic, social and cultural rights also violates the peremptory obligation to respect their right to self-determination. As UNCTAD noted in its 2023 report:

“The violence and restrictions imposed on Palestinians impact every aspect of Palestinian life, from the right to housing to the right to economic development, education and access to health services.”<sup>994</sup>

5.61. Underlying the denial of these fundamental rights is Israel's refusal to accept the existence of the Palestinians as a people. The public declaration by the Minister in charge of “civil administration” in the OPT in March 2023, that “there is no such thing as the Palestinian people”<sup>995</sup>, is only the most recent manifestation of Israel's denial of Palestinian existence and rights. It serves Israel's purposes: if there is no Palestinian people, then they can enjoy no civil, political, economic, social or cultural rights as such.

5.62. On this basis, Israel prohibits and punishes any political expression of Palestinian identity and nationhood. Palestinian symbols are outlawed and commonly attacked. National flags reflect the identity of a people and are a manifestation of their existence and presence. For those denying this existence and assaulting that presence, the Palestinian flag cannot be tolerated. The Palestinian flag is, according to the United Nations Special Rapporteur, “systematically attacked and torn down, in public places, during public events, protests and even funerals”<sup>996</sup>. More recently, the Israeli Minister for National Security declared: “I directed the Israel police to enforce the prohibition of flying any PLO flag that

<sup>994</sup> UNCTAD, The Economic Costs of the Israeli Occupation for the Palestinian People: The Cost of Restrictions in Area C Viewed from Above, 9 March 2023, UNCTAD/GDS/APP/2022/1, p. 9 (<https://tinyurl.com/3uaykkt2>).

<sup>995</sup> “Smotrich says there's no Palestinian people, declares his family 'real Palestinians'", *The Times of Israel*, 20 March 2023 (<https://tinyurl.com/3k368zh7>).

<sup>996</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 21 September 2022, A/77/356, para. 53 (<https://undocs.org/A/77/356>).

shows identification with a terrorist organization from the public sphere”<sup>997</sup>. It is indicative that the Israeli Minister did not wish to refer to it as the Palestinian flag, as he denies the existence of a Palestinian people. His statement is consistent with a longstanding policy by Israel to consider any manifestation of Palestinian identity or any opposition to, or rejection of, the occupation, as terrorism.

5.63. As noted by the United Nations Economic and Social Commission for Western Asia:

“Israeli military orders in the West Bank allow the army authorities to declare as ‘unlawful’, ‘hostile’ or ‘terrorist’ virtually any association and to detain for incitement anyone showing ‘sympathy’ or ‘support’ for such ‘unlawful’ entities, including the singing of slogans. These broad restrictions carry a significant risk of criminalizing the lawful exercise of freedom of expression, peaceful assembly and association. As of March 2020, Israel had banned as ‘unlawful’ 430 organizations, including all major political parties, such as the ruling group Fatah.”<sup>998</sup>

5.64. The Human Rights Committee expressed its concern in relation to the Counter Terrorism Law 5776-2016 indicating it “contains vague and overbroad definitions of ‘terrorist organization’ and ‘terrorist act’ and may be used to oppress and criminalize legitimate political or humanitarian acts, as illustrated by the designation, in October 2021, of six Palestinian civil society organizations as terrorist organizations based on secret information.”<sup>999</sup>

5.65. It also expressed its concern “about the use of secret evidence in counter-terrorism proceedings, which is inaccessible to defendants and their lawyers, thereby violating their right to a fair trial”, as well as about the fact that the “amendment No. 30 to the Entry into Israel Law of 2018, providing for the revocation of permanent residency on the vague ground of ‘breach of allegiance against the State of Israel’, which is defined as a terrorist act under the Counter

<sup>997</sup> “Israel security minister bans Palestinian flag-flying in public”, *The Guardian*, 9 January 2023 (<https://tinyurl.com/mw3ebn5v>).

<sup>998</sup> Economic and Social Council, Economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan, 8 June 2022, A/77/90-E/2022/66, para. 6 (<https://undocs.org/A/77/90>).

<sup>999</sup> Human Rights Committee, Concluding observations on the fifth periodic report of Israel, 5 May 2022, CCPR/C/ISR/CO/5, para. 18 (<https://undocs.org/CCPR/C/ISR/CO/5>).

Terrorism Law, has been used to revoke the permanent residency of Palestinian residents and human rights defenders advocating for the rights of Palestinians”<sup>1000</sup>.

5.66. Palestinian political, economic and cultural institutions, particularly in Jerusalem, have also faced frequent attacks and closure, leading the General Assembly, most recently in 2021 to “express[] grave concern over the continued closure of Palestinian institutions in the city”<sup>1001</sup>. Many of these institutions, notably the Orient House, have been closed since 2001 despite repeated calls by the international community for their reopening.

5.67. These attacks are not a new phenomenon. They follow a pattern of incessant assaults over decades on the Palestinian presence in East Jerusalem. As remarked already in a United Nations report in 1997:

“Restrictions on civil liberties have also often been imposed on Palestinians, particularly during the *intifadah*, such as censorship of Arabic-language publications, the closing of newspapers and educational, cultural and other institutions based in East Jerusalem, and the arrest of their representatives.”<sup>1002</sup>

5.68. More generally. Israel has actively aimed at suppressing the Palestinian national movement and disrupting Palestinian political life, including elections. Its assault against Palestinian leaders and elected representatives<sup>1003</sup>, including through killing<sup>1004</sup>,

<sup>1000</sup> *Ibid.*

<sup>1001</sup> General Assembly, Resolution 76/12, Jerusalem, 6 December 2021 (<https://undocs.org/A/RES/76/12>).

<sup>1002</sup> United Nations, *The Status of Jerusalem*, 1997, p. 21 (<https://tinyurl.com/24nbftype>).

<sup>1003</sup> See Security Council, Resolution 1435 (2002), 24 September 2002, preamble (“*Gravely concerned* at the reoccupation of the headquarters of the President of the Palestinian Authority in the City of Ramallah that took place on 19 September 2002 and demanding its immediate end”) ([https://undocs.org/S/RES1435\(2002\)](https://undocs.org/S/RES1435(2002))).

<sup>1004</sup> See, e.g., Security Council, Resolution 611 (1988), 25 April 1988, preamble and para. 1 (“*Having noted with concern* that the aggression perpetrated on 16 April 1988 in the locality of Sidi Bou Said has caused loss of human life, particularly the assassination of Mr. Khalil al-Wazir” ... “*Condemns* vigorously the aggression, perpetrated on 16 April 1988 against the sovereignty and territorial integrity of Tunisia in flagrant violation of the Charter of the United Nations, international law and norms of conduct”) ([https://undocs.org/S/RES/611\(1988\)](https://undocs.org/S/RES/611(1988))).

forced exile<sup>1005</sup>, or arrest<sup>1006</sup> has continued over decades.

5.69. As noted by the United Nations Special Rapporteur, the system put in place by Israel “has allowed punishment of Palestinians for merely expressing their opinions or dissent, or peacefully opposing the occupation”, adding that “[c]riminalization and incarceration strip Palestinians of their rights to move freely, work, gather peacefully, express their identity, culture, opinions, pursue their education, live their economic, social and political life. The Palestinian people’s right to self-determination that these restrictions ultimately target, appears as the ultimate ‘threat’ to be suppressed.”<sup>1007</sup>

5.70. As stated by forty-seven of the independent Special Procedures mandates appointed by the Human Rights Council in a joint statement in 2020:

“The United Nations has stated on many occasions that the 53-year-old Israeli occupation is the source of profound human rights violations against the Palestinian people. … Above all, the Israeli occupation has meant the denial of the right of Palestinian self-determination.”<sup>1008</sup>

5.71. The right of Palestinians to freedom of worship and their cultural development has also been hindered by Israel. Cultural development is critical to a sense of identity, belonging, and cohesion amongst a people, and is therefore essential to their existence and development. The Palestinian people have the

<sup>1005</sup> See, e.g., Security Council, Resolution 484 (1980), preamble and para. 3 (“Expressing its grave concern at the expulsion by Israel of the Mayor of Hebron and the Mayor of Halhoul”, “[d]eclares it imperative that the Mayor of Hebron and the Mayor of Halhoul be enabled to return to their homes and resume their responsibilities”) ([https://undocs.org/S/RES/484\(1980\)](https://undocs.org/S/RES/484(1980))). See also Security Council, Resolution 608 (1988), 14 January 1988, preamble and para. 1 (“Expressing its deep regret that Israel, the occupying Power, has, in defiance of that resolution, deported Palestinian civilians, “Calls upon Israel to rescind the order to deport Palestinian civilians and to ensure the safe and immediate return to the occupied Palestinian territories of those already deported”, “Requests that Israel desist forthwith from deporting any other Palestinian civilians from the occupied territories”) ([https://undocs.org/S/RES/608\(1988\)](https://undocs.org/S/RES/608(1988))). See also Security Council Resolutions 636, 641, 681, 694, 726, 799 deplored and condemning deportation of Palestinian civilians.

<sup>1006</sup> See, for example, General Assembly, Resolution 77/247, 30 December 2022 (“Expressing grave concern that thousands of Palestinians, including many children and women, as well as elected representatives, continue to be held in Israeli prisons or detention centres under harsh conditions”) (<https://undocs.org/A/RES/77/247>).

<sup>1007</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 9 June 2023, A/HRC/53/59 (Advance Unedited Version), paras. 33 and 37 (<https://tinyurl.com/ynuxb5kv>).

<sup>1008</sup> “Israeli annexation of parts of the Palestinian West Bank would break international law – UN experts call on the international community to ensure accountability”, 16 June 2020 (<https://tinyurl.com/3jvwmt28>).

undeniable right to access, take part in and contribute to cultural life<sup>1009</sup> as a means of expressing their collective identity in their own land, without interference<sup>1010</sup>. However, Israel has obstructed this by, *inter alia*, restricting access to religious and cultural sites, interfering with religious, social and cultural events, and destroying and/or usurping Palestinian cultural heritage.

5.72. The Israeli occupation has restricted the Palestinian people's freedom of movement in a way that restricts their access to religious and cultural sites, as described in Chapters 3, Part A, and 4. For decades, millions of Muslims and Christians have been impeded from worshipping at some of the sites they consider to be their most holy places in the world, especially in Jerusalem<sup>1011</sup>. Attending holy rituals at places of worship has been denied or restricted to Palestinians at specific times, such as Ramadan and Easter<sup>1012</sup>. Palestinians in Gaza are also impeded from visiting religious sites in the West Bank, including in East Jerusalem, Bethlehem and Hebron<sup>1013</sup>. Restricting access to such venues hinders the cultural development of the Palestinian people.

5.73. The Israeli occupation has hindered access to education and therefore cultural development in the Palestinian territory through, for instance, eliminating Palestinian history in schools<sup>1014</sup>. Palestinian schools in Jerusalem which do not adhere to Israeli curriculum policies have also had their licenses revoked<sup>1015</sup>. More significantly, as described in Chapter 4, Israeli discriminatory restrictions on movement have hindered access to education in Palestinian universities. Palestinian refugees outside of the OPT are denied the right to study in a Palestinian university in the West Bank or Gaza and Palestinians in Gaza are banned from pursuing

<sup>1009</sup> Committee on Economic, Social and Cultural Rights, General comment No. 21, Right of everyone to take part in cultural life (art. 15, para. 1(a), of the International Covenant on Economic, Social and Cultural Rights), 21 December 2009, E/C.12/GC/21 (<https://undocs.org/E.C.12/GC/21>).

<sup>1010</sup> General Assembly, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 21 September 2022, para. 53 (<https://undocs.org/A/77/356>).

<sup>1011</sup> General Assembly, Report of the Special Rapporteur on freedom of religion or belief, Addendum, Mission to Israel and the Occupied Palestinian Territory, 12 January 2009, A/HRC/10/8/Add.2, 12 January 2009, para. 26 (<https://undocs.org/A/HRC/10/8/Add.2>).

<sup>1012</sup> *Ibid.*, para. 27; Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, 7 February 2013, A/HRC/22/63, para. 60 (<https://undocs.org/A/HRC/22/63>).

<sup>1013</sup> Economic and Social Council, Concluding observations on the fourth periodic report of Israel, 12 November 2019, E/C.12/ISR/CO/4, para. 70 (<https://undocs.org/E.C.12/ISR/CO/4>).

<sup>1014</sup> General Assembly, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 21 September 2022, A/77/356, para. 54 (<https://undocs.org/A/77/356>).

<sup>1015</sup> *Ibid.*

education in the West Bank except with Israel's permission that is nearly impossible to obtain<sup>1016</sup>. Attacks by the Israeli military on schools, kindergartens and other educational facilities, as well as its demolition of educational infrastructure and facilities in both the West Bank, including East Jerusalem and the Gaza Strip have also hindered access to education<sup>1017</sup>.

5.74. As a United Nations independent expert has explained, the right of peoples to freely pursue their cultural development, as a component of their right to self-determination, "has a clear link with cultural heritage"<sup>1018</sup>. Cultural heritage such as monuments, buildings, museums or religious sites preserve expressions of the Palestinian people's cultural identity and history for future generations. The Human Rights Council has condemned what it has described as the "systematic destruction" of the cultural heritage of the Palestinian people by Israel<sup>1019</sup>. Palestinian venues have been closed down, destroyed, or seized and converted to Israeli cultural sites<sup>1020</sup>, as described in Chapter 4. In addition to its assaults on the tangible cultural heritage of the Palestinian people, Israel has also attacked, usurped and appropriated their intangible cultural heritage<sup>1021</sup>.

5.75. Destruction of Palestinian cultural heritage has been particularly grievous in the Old City of Jerusalem, as described in Chapter 3, Part A. The destruction has included places on Palestine's list of national heritage sites, and on UNESCO's List of World Heritage in Danger<sup>1022</sup>. A United Nations independent fact-finding mission reported that archaeological excavations were being conducted in and around the Old City of Jerusalem to emphasize Jewish cultural heritage while undermining Palestinian culture<sup>1023</sup>. The Palestinian right to self-determination is

<sup>1016</sup> See para. 4.163 above.

<sup>1017</sup> See para. 4.162 above.

<sup>1018</sup> Human Rights Committee, Report of the Independent Expert in the Field of Cultural Rights, 21 March 2011, A/HRC/17/38, para. 45 (<https://undocs.org/A/HRC/17/38>).

<sup>1019</sup> Human Rights Council, Resolution 16/29, Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, 13 April 2011, para. 4 (<https://undocs.org/A/HRC/RES/16/29>).

<sup>1020</sup> General Assembly, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 21 September 2022, A/77/356, paras. 53 and 54 (<https://undocs.org/A/77/356>).

<sup>1021</sup> State of Palestine, Periodic reporting on the Convention for the Safeguarding of the Intangible Cultural Heritage, 15 December 2017 (<https://tinyurl.com/4ndtbx52>).

<sup>1022</sup> UNESCO, Decision 39 Com 7A.27, Old City of Jerusalem and its Walls (sited proposed by Jordan) (C 148 rev), 8 July 2015, para. 30 (<https://tinyurl.com/y2sdebpu>). See also UNESCO, Decision 44 Com 8C.2, Updated of the List of World Heritage in Danger (Retained Properties) (<https://tinyurl.com/uksh5j9s>).

<sup>1023</sup> General Assembly, Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and

therefore denied by the impairment of, infringement upon, and destruction of, Palestinian cultural heritage.

5.76. The economic development of the Palestinian people has also been compromised by the Israeli occupation. The annexation of the West Bank, including East Jerusalem, and the blockade of the Gaza Strip, the settlements and the Wall and their associated regime and infrastructure, the fragmentation of the land, the deprivation of resources, the severe restrictions on freedom and movement of people and goods, have undermined Palestinian economic development, and have made the country aid dependent while access to its own land and resources would allow it to be not only aid independent but to enjoy sustained economic growth. The UNCTAD reports to date, while examining only a small part of the impact the occupation has had on the Palestinian economy, have assessed the cost of occupation at billions of dollars<sup>1024</sup>. In parallel, UNCTAD has assessed that “the contribution to the economy of Israel of settlements in so-called Area C and occupied East Jerusalem is estimated at an average of \$ 30 billion per year (constant 2015 dollars). In other words, the cumulative contribution of settlements to the economy of Israel in 2000-2020 is estimated at \$ 628 billion (constant 2015 dollars)”<sup>1025</sup>.

5.77. This situation has a severely detrimental economic but also social impact, driving poverty and unemployment. The Economic and Social Council in its annual resolution on the Economic and Social Repercussions of the Israeli occupation declared it was:

*“Convinced that the Israeli occupation has gravely impeded the efforts to achieve sustainable development and a sound economic environment in the Occupied Palestinian Territory, including East Jerusalem … and expressing grave concern about the consequent deterioration of economic and living conditions”*<sup>1026</sup>.

5.78. In relation to the Wall built in the OPT and declared illegal by the Court, the Council emphasized that it was:

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cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, 7 February 2013, A/HRC/22/63, para. 59 (<https://undocs.org/A/HRC/22/63>).

<sup>1024</sup> UNCTAD, The Economic Costs of the Israeli Occupation for the Palestinian People: The Cost of Restrictions in Area C Viewed from Above, 9 March 2023, UNCTAD/GDS/APP/2022/1, p. vii (<https://tinyurl.com/3uaykkt2>).

<sup>1025</sup> *Ibid.*

<sup>1026</sup> General Assembly, Economic and Social Council, Resolution 2016/14, 25 July 2016 (<https://tinyurl.com/mszkaa2z>).

*“Gravely concerned by the serious repercussions on the economic and social conditions of the Palestinian people caused by Israel’s construction of the wall and its associated regime inside the Occupied Palestinian Territory, including in and around East Jerusalem, and the resulting violation of their economic and social rights, including the rights to work, to health, to education, to property, to an adequate standard of living and to freedom of access and movement”.*<sup>1027</sup>

5.79. Restrictions on freedom of movement, in particular, as described in Chapter 4, have severely curtailed the access of the Palestinian people to employment<sup>1028</sup>. Due to closures and checkpoints, workers in the OPT have been prevented from reaching their workplaces, which has deprived them of income and livelihood<sup>1029</sup>. Palestinian farmers have been victims of violence and intimidation by Israeli settlers, who have also destroyed, taken over or prevented access to their crops, particularly, olive trees<sup>1030</sup>. Inaccessibility to employment has also largely been caused by the Wall<sup>1031</sup>. A number of Palestinian businesses were destroyed to build it. It has cut off Palestinian farmers from their agricultural lands, and other activities were closed down as the Wall cut off trade between neighbouring villages<sup>1032</sup>. In Gaza, fishermen and farmers have suffered and businesses and

<sup>1027</sup> *Ibid.*

<sup>1028</sup> General Assembly, Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, 7 February 2013, A/HRC/22/63, para. 73 (<https://undocs.org/A/HRC/22/63>).

<sup>1029</sup> Economic and Social Council, Concluding Observations of the Committee on Economic, Social and Cultural Rights, 4 December 1998, E/C.12/1/Add.27, para. 18 (<https://undocs.org/E/C.12/1/Add.27>).

<sup>1030</sup> General Assembly, Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, 7 February 2013, A/HRC/22/63, para. 54 (<https://undocs.org/A/HRC/22/63>). See also International Labour Organisation, Report of the Director-General, Appendix: The situation of workers of the occupied Arab territories, International Labour Conference, 110<sup>th</sup> Session, 2022, ILC.110/DG/APP, para. 77 (<https://tinyurl.com/22h833cw>).

<sup>1031</sup> Committee on the Elimination of Racial Discrimination, Concluding Observations, 14 June 2007, CERD/C/ISR/CO/13, para. 34. See also Human Rights Council, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 12 August 2022, A/HRC/49/87, para. 57 (b) (<https://undocs.org/A/HRC/49/87>).

<sup>1032</sup> Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, 7 February 2013, A/HRC/22/63, paras. 89-91 (<https://undocs.org/A/HRC/22/63>).

industries have been shut down or severely downsized due to the blockade.<sup>1033</sup> As a result of such difficult conditions, the rate of unemployment in the OPT is over 50%<sup>1034</sup>. The obstacles to exercising such rights have deeply set back Palestinian economic development and growth, and national prosperity. Along with controlling their land and natural resources, this external interference hinders their economic self-determination.

5.80. As noted by UNCTAD:

“Settlements constrain the space available for Palestinian socioeconomic development. They impoverish the Palestinian people by dispossessing them of their land and natural resources, and additional Palestinian land is confiscated for the infrastructure and road networks that serve the settlements.”<sup>1035</sup>

5.81. The Economic and Social Council has also addressed the socio-economic impact of forced displacement and dispossession of Palestinian civilians, notably in and around East Jerusalem:

“Expressing grave concern also over the continuing forced displacement and dispossession of Palestinian civilians, including the Bedouin community, due to the continuing and intensifying policy of home demolitions, evictions and revocation of residency rights in and around occupied East Jerusalem, as well as measures to further isolate the city from its natural Palestinian environs, which have seriously exacerbated the already critical socioeconomic situation being faced by the Palestinian population”<sup>1036</sup>.

5.82. The Palestinian people’s right to pursue their social development is another critical component of their right to self-determination, as this right equips

<sup>1033</sup> Committee on Economic, Social and Cultural Rights, Concluding Observations on the third periodic report of Israel, 16 December 2011, E/C.12 ISR/CO/3, para. 12 (<https://undocs.org/E/C.12/ISR/CO/3>).

<sup>1034</sup> Committee on Economic, Social and Cultural Rights, Concluding Observations on the second periodic report of Israel, 26 June 2003, E/C.12/1/Add.90, para. 20 (<https://undocs.org/E/C.12/1/Add.90>).

<sup>1035</sup> UNCTAD, The Economic Costs of the Israeli Occupation for the Palestinian People: The Cost of Restrictions in Area C Viewed from Above, 9 March 2023, UNCTAD/GDS/APP/2022/1, p. 9 (<https://tinyurl.com/3uaykkt2>).

<sup>1036</sup> Economic and Social Council, Resolution 2016/14, Economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and the Arab population in the occupied Syrian Golan, 25 July 2016 (<https://undocs.org/E/C.12/1/Add.90>).

a people with the resources necessary for their survival and well-being – such as access to healthcare, food and adequate housing. However, the pursuit of social development of the Palestinian people has been severely obstructed by Israel. The Economic and Social Council has declared it was:

*“Gravely concerned about various reports of the United Nations and specialized agencies regarding the substantial aid dependency caused by prolonged border closures, inordinate rates of unemployment, widespread poverty and severe humanitarian hardships, including food insecurity and rising health-related problems, including high levels of malnutrition, among the Palestinian people, especially children, in the Occupied Palestinian Territory, including East Jerusalem”<sup>1037</sup>.*

5.83. Access to healthcare is essential for a people to reach its full potential. However, the WHO has described the health system in the OPT, including East Jerusalem, as “fragmented and fragile”<sup>1038</sup>, attributing this to several features of the Israeli occupation. Chapter 4 describes this (see paras. 4.166-4.171 above, in particular).

5.84. Access to food is crucial as it promotes health, reduces poverty, improves educational prospects and contributes to economic development. However, Palestinians in the OPT “suffer from impingement of their … access to … food”<sup>1039</sup>. Indeed, food insecurity amongst the Palestinians has been increasing<sup>1040</sup> and Israel’s blockade of Gaza and other restrictive measures have aggravated malnutrition of the Palestinian population<sup>1041</sup>. This food insecurity inhibits the Palestinian people from pursuing social development necessary to their self-determination.

5.85. Finally, access to adequate housing is a fundamental aspect of social development. Here, the Palestinian people’s right has been significantly impaired

<sup>1037</sup> Economic and Social Council, Resolution 2022/22, Economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and the Arab population in the occupied Syrian Golan, 1 August 2022 (<https://undocs.org/E/RES/2022/22>).

<sup>1038</sup> World Health Organisation, *Right to health in the occupied Palestinian territory: 2018, 2019*, p. 18 (<https://tinyurl.com/ycxvxbsk>).

<sup>1039</sup> Committee on Economic, Social and Cultural Rights, Concluding Observations on the second periodic report of Israel, 26 June 2003, E/C.12/1/Add.90, para. 19 (<https://undocs.org/E/C.12/1/Add.90>).

<sup>1040</sup> Committee on Economic, Social and Cultural Rights, Concluding Observations on the third periodic report of Israel, 16 December 2011, E/C.12/ISR/CO/3, para. 28 (<https://undocs.org/E/C.12/ISR/CO/3>).

<sup>1041</sup> Israel’s blockade of Gaza is addressed in Chapter 4, paras.4.192-4.202 above.

by Israel's forced evictions, demolition orders, seizure and destruction of property, discriminatory planning and building regulations that limit construction of homes, and violence and intimidation from settlers, described in Chapter 4 (see paras. 4.128-4.144 above, in particular).

### **Conclusion**

5.86. Taken alone, each of the actions by, or attributable to, Israel as described above is sufficient to establish a serious breach by Israel of the Palestinian people's right to self-determination. Collectively, in the form of Israel's seizure and annexation of Palestinian land and displacement and subjugation of the Palestinian people through racial discrimination, persecution and apartheid – of which all of these actions form an integral and indissoluble part – they amount to a manifest, grave, longstanding and ongoing violation of the right to self-determination, one of the most egregious such violations in contemporary history.

## **Chapter 6.**

### **THE UNLAWFULNESS OF ISRAEL'S OCCUPATION OF THE PALESTINIAN TERRITORY**

6.1. In its resolution 77/247 of 30 December 2022, the General Assembly asked the Court, in part: “How do the policies and practices of Israel referred to in paragraph 18 (a) above affect the legal status of the occupation?” Chapters 3 through 5 have addressed these policies and practices, namely:

- (a) Israel’s “prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem”;
- (b) Israel’s adoption of “discriminatory legislation and measures”, namely its systematic racial discrimination, tantamount to apartheid, against the Palestinian people, and its systematic violation of their fundamental rights; and
- (c) “the ongoing violation by Israel of the right of the Palestinian people to self-determination”.

6.2. These Chapters have shown that Israel’s 56-year occupation of Palestinian territory is a continuing, gross and systematic breach of its legal obligations under the United Nations Charter, general international law, international humanitarian law, international human rights law, and customary international law, including the violation of at least three peremptory norms of general international law of a *jus cogens* and *erga omnes* character. The evidence adduced in this Written Statement demonstrates overwhelmingly that Israel has annexed and plans to continue to annex Jerusalem and the rest of the West Bank; that it has imposed systematic and comprehensive racial discrimination tantamount to apartheid against the Palestinian people based on their race; and that it has denied their right to self-determination in their own land in an attempt to extinguish that inalienable right permanently.

6.3. More particularly, all available evidence – including as consistently and openly furnished by generations of Israeli leaders over five decades – establishes that Israel itself does not regard its presence in the OPT as a temporary occupation. Its actions and its words establish that it regards its rule over the OPT and the Palestinian people as permanent and irreversible. This is demonstrated by:

- (a) Its annexation of East Jerusalem and the rest of the West Bank as described in Chapter 3, with the express purpose, as consistently declared and pursued by successive Israeli governments over the last half century, of maintaining permanent possession and dominion over the OPT.
- (b) Its imposition and maintenance of systematic racial discrimination meeting all the defining elements of apartheid, and its denial, on the basis of race, of the fundamental rights to which the Palestinian people are entitled under international law, as shown in Chapter 4.
- (c) Its denial, and attempted extinction, of the right of the Palestinian people to self-determination, *inter alia*, by denying that there is a “Palestinian people” and by declaring publicly that only one group has the right to exercise self-determination in the land between the Jordan river and the Mediterranean sea – Jewish Israelis – and that no Palestinian State will ever be allowed to exist there, as shown in Chapters 3, 4 and 5.

6.4. This Chapter concludes Part One of this Written Statement by demonstrating that, in view of these policies and practices, Israel’s occupation of the OPT is in and of itself unlawful, rendering Israel’s continued presence in the OPT an internationally wrongful act as it seriously breaches at least three peremptory norms of general international law, derogation from which is not permitted. It is impossible to distinguish between Israel’s occupation of the OPT and its serious breaches of peremptory norms of general international law therein, which are reciprocal in nature, organically interrelated and mutually reinforcing<sup>1042</sup>.

### **I. Israel’s Occupation of the Palestinian Territory Seriously Breaches Peremptory Norms of General International Law**

6.5. Israel’s occupation of the OPT seriously breaches at least three peremptory norms of general international law derogation from which is not permitted. As identified in Chapter 2, these are: (1) the inadmissibility of the acquisition of territory through the threat or use of force; (2) the prohibition against racial discrimination and/or apartheid; and (3) the obligation to respect the right of peoples to self-determination.

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<sup>1042</sup> In line with the questions submitted by the General Assembly to the Court, the State of Palestine limits its argument on the illegality of the occupation to Israel’s denial of the right of the Palestinian people to self-determination, its prolonged occupation, settlement, and annexation of Palestinian territory, as well as its imposition of related discriminatory laws and measures. This is without prejudice to the State of Palestine’s position that Israel’s occupation is also illegal because it derives from an illegal use of force in 1967.

6.6. As higher order norms, peremptory norms embody “three essential characteristics” according to the ILC: (1) they protect values fundamental to the international legal order “shared by the international community as a whole”; (2) they are “universally applicable” by virtue of their non-derogability, since States cannot derogate from them by creating their own special rules that conflict with them; and (3) they are “hierarchically superior to other norms of international law not having the same character”<sup>1043</sup>, entailing obligations of an *erga omnes* character<sup>1044</sup>.

6.7. Evidence of the *jus cogens* nature of each of the overarching norms at issue in these proceedings is found in the non-exhaustive list of peremptory norms of general international law adopted by the ILC in 2022<sup>1045</sup>.

6.8. On the matter of the inadmissibility of the acquisition of territory through the threat or use of force, it has been shown that Israel’s 56-year occupation of the OPT cannot reasonably be regarded as temporary military rule but has rather evolved into a situation of outright annexation and colonial conquest, absolutely prohibited under international law. As noted by Sir Ilan Brownlie, “there is no magic in the formal declaration of sovereignty by a government” over territories it intends to annex. Rather, annexation is a question of fact<sup>1046</sup>. And the facts presented in this Written Statement indisputably point only in one direction: that of Israel’s annexation of Palestinian territory in violation of one of the most fundamental norms of international law, the inadmissibility of the acquisition of territory by force, with the intention of permanent colonization and control.

6.9. The published Guidelines of Israel’s government, which set out its official policies and priorities, assert that: “The Jewish people have an exclusive and

<sup>1043</sup> *Ibid.*, pp. 18 and 22-24, paras. (2)-(3), (10) and (14) of the commentary to Conclusion 2.

<sup>1044</sup> Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (*Jus Cogens*), Conclusion 2 (Nature of peremptory norms of general international law (*jus cogens*)), in *Report of the International Law Commission*, Seventy-third session (18 April–3 June and 4 July–5 August 2022), A/77/10, p. 11, para. 43. On the special character of these serious breaches, see paras. 6.12-6.19 below.

<sup>1045</sup> Annex to the Draft Conclusions, *ibid.*, p. 16, where, in addition to the “prohibition of aggression” and the “right of self-determination”, the ILC lists the “prohibition of racial discrimination and apartheid”, “the prohibition of crimes against humanity” and “the basic rules of international humanitarian law” as *jus cogens* norms. The inadmissibility of acquisition of territory through the threat or use of force is a corollary of the prohibition of aggression. According to the Friendly Relations Declaration, the Assembly appears to be of the view that there is little, if any, *normative* difference between the prohibition of aggression and its corollary prohibiting the acquisition of territory through the threat or use of force.

<sup>1046</sup> I. Brownlie, *Principles of Public International Law*, 6<sup>th</sup> edn. (Oxford University Press, 2003), p. 140.

inalienable right to all parts of the Land of Israel. The government will promote and develop the settlement of all parts of the Land of Israel – in the Galilee, the Negev, the Golan and Judea and Samaria.”<sup>1047</sup> The evidence demonstrates that this statement is the culmination of decades of Israeli policies and practices that have been openly pursued by every Israeli government since 1967, all of which have been aimed at solidifying and making permanent Israel’s conquest of the OPT while simultaneously refusing to restore the territory to its rightful sovereign, the Palestinian people. The Israeli occupation is thus tantamount to, and indistinguishable from, annexation<sup>1048</sup>.

6.10. Likewise, on the matter of race discrimination, it has been demonstrated that, since 1967, Israel has established a deeply entrenched system of racial discrimination in the OPT. This system openly and unapologetically distinguishes along racial lines between the Palestinian population and the Israeli settler population that has been transferred to the OPT in violation of international law. It has also been demonstrated that this regime of racial discrimination has assumed an apartheid character as laid out in relevant customary and conventional international law. As recently noted by the United Nations Special Rapporteur:

“an institutionalized regime of systematic racial oppression and discrimination has been established [by Israel in the OPT]. Israeli Jews and Palestinian Arabs in East Jerusalem and the West Bank live their lives under a single regime that differentiates its distribution of rights and benefits on the basis of national and ethnic identity, and that ensures the supremacy of one group over, and to the detriment of, the other. ... The differences in living conditions and citizenship rights and benefits are stark, deeply discriminatory and maintained through systematic and institutionalized oppression. ... [T]his system of alien rule has been established with the intent to maintain the domination of one racial-national-ethnic group over another.”<sup>1049</sup>

6.11. On the matter of self-determination, it has been demonstrated in the preceding Chapter that since 1948, Israel has not only denied the right of the Palestinian people to self-determination, but has actively tried to suppress and extinguish it. Even after the Court’s ruling in 2004 that Israel is under an obligation

<sup>1047</sup> “Judicial reform, boosting Jewish identity: the new coalition’s policy guidelines”, *The Times of Israel*, 28 December 2022 (<https://tinyurl.com/2mne27kj>). See also Vol. II, Annex 12.

<sup>1048</sup> Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, 12 August 2022, A/HRC/49/87, p. 17, para. 51 (<https://undocs.org/A/HRC/49/87>).

<sup>1049</sup> *Ibid.*, pp. 17-18, paras. 53-54.

*erga omnes* to respect the right of the Palestinian people to self-determination, Israel has in fact escalated its policies and practices with the specific intention of permanently precluding the exercise of this right by the Palestinian people, including their right to independence of their State. In line with the Friendly Relations Declaration, every State has the duty to refrain from any forcible action which deprives peoples of their right to self-determination and freedom and independence. The evidence presented in this Written Statement demonstrates that Israel's prolonged occupation of the OPT, its annexation of Palestinian territory, and its subjugation of the Palestinian people by its racial discrimination against them tantamount to apartheid and denial of their fundamental rights amount to the gravest of violations to their right to self-determination, guaranteed to them under international law.

## **II. Israel's Occupation of the OPT Is Indistinguishable from Its Serious Breaches of Peremptory Norms of General International Law**

6.12. An occupying Power conducting its occupation of foreign territory in good faith would strictly adhere to the fundamental principles at the core of international law. None of these fundamental principles have been observed by Israel. In particular, from the outset Israel has treated the OPT as a fruit of conquest, and it has defied the clear direction of the international community – expressed over five decades through countless resolutions of the Security Council, the General Assembly and the Human Rights Council and its predecessor – that the Israeli colonization and annexation of Palestinian territory are illegal and the occupation must be brought to an end; that the systematic racial discrimination and wholesale violation of fundamental principles of human rights and humanitarian law are illegal and must be brought to an end; and that the denial of the Palestinian people's right to self-determination is illegal and must be brought to an end. Israel has continued to violate the applicable legal rules and to act in contempt of such international demands based on those rules, perpetrating its breaches with impunity. All of this establishes that Israel has conducted the occupation in violation of its solemn obligations under international law.

6.13. Already in 1977, ten years into the occupation, the General Assembly declared that it was:

“Deeply concerned that the Arab territories occupied since 1967 have continued, for more than ten years, to be under illegal Israeli occupation and

that the Palestinian people, after three decades, are still deprived of the existence of their inalienable national rights.”<sup>1050</sup>

6.14. By 1981, the General Assembly began calling for Israel’s “immediate, unconditional and total withdrawal” from the OPT<sup>1051</sup>. It also stated repeatedly that it was “[d]eeply concerned that the Arab territories occupied since 1967 have been under continued *illegal Israeli military occupation*”<sup>1052</sup> and unequivocally “called upon Israel to put an end to its *illegal occupation* of the Arab territories and to withdraw from all those territories”<sup>1053</sup>.

6.15. The Security Council, in its resolution 476 (1980), expressed its alarm over the prolonged duration and severity of Israel’s then 13-year-old occupation and the “overriding necessity” to end it, and it “deplore[d]” Israel’s persistent defiance of its own resolutions and those of the General Assembly. The Security Council declared that it:

- “1. *Reaffirms* the overriding necessity to end the prolonged occupation of Arab territories occupied by Israel since 1967, including Jerusalem;
- 2. *Strongly deplores* the continued refusal of Israel, the occupying Power, to comply with the relevant resolutions of the Security Council and the General Assembly”<sup>1054</sup>.

6.16. If the General Assembly considered the Israeli military occupation as illegal and the Security Council reaffirmed the overriding necessity to end the prolonged occupation when the occupation had lasted 10-13 years, there is no doubt its unlawfulness is even more flagrant now that it has entered its 57<sup>th</sup> year. Indeed, four decades later, Israel continues to entrench its occupation instead of heeding the calls of the Security Council and the General Assembly to end it, in compliance with the United Nations Charter and international law.

<sup>1050</sup> General Assembly, Resolution 32/20, 25 November 1977, preamble

<sup>1051</sup> General Assembly, Economic and Social Council Resolution 36/226, 17 December 1981, para. 1.

<sup>1052</sup> See, e.g., General Assembly, Resolutions 32/20, 25 November 1977; 33/29, 7 December 1978; 34/70, 6 December 1979; 35/122 E, 11 December 1980; 35/207, 16 December 1980; and 36/147 E, 16 December 1981.

<sup>1053</sup> See, e.g., General Assembly, Resolutions 3414 (XXX), 5 December 1975, 31/61, 9 December 1976, 32/20, 25 November 1977, 33/28 and 33/29, 7 December 1978, 34/70, 6 December 1979, and 35/122 E, 11 December 1980.

<sup>1054</sup> Security Council, Resolution 476 (1980), 30 June 1980, paras. 1 and 2.

6.17. The evidence overwhelmingly demonstrates that Israel is not acting as an occupying Power who is responsible for certain violations in the conduct of its occupation, while being otherwise respectful of its obligations under international law to the protected population of the OPT. Rather, the evidence demonstrates that these are the acts of a foreign acquisitive power that has forcibly and openly transformed its occupation of another people's territory into outright conquest and colonization of that territory, and suppression and attempted extinction of the rights of the occupied people it is obligated to protect. This has led the General Assembly to consistently reaffirm it was “[c]onvinced that occupation itself represents a grave violation of human rights”<sup>1055</sup>.

6.18. In view of Israel's continuing, gross and systematic breach of its obligations in respect of the OPT for over five decades, the occupation itself is indistinguishable from the breaches of the abovementioned peremptory norms in the context of that occupation. Indeed, the evidence demonstrates that these violations are not merely the result of the occupation but are rather the foundation upon which the occupation rests. They are its essential structural features, not its incidental byproducts, all of which are rooted in the singular unlawful goal of maintaining permanent Israeli dominion over the OPT, pursued by Israel since 1967, and relegating the Palestinians it has not been able to displace to inferior status in their own land, in perpetuity, deprived of their inalienable rights, including their right to self-determination.

6.19. Because Israel's prolonged 56-year occupation of the OPT is structurally and existentially reliant upon and inseparable from its egregious violations of peremptory norms of general international law, derogation from which is not permitted, the occupation itself must be regarded as illegal, with all relevant legal consequences that attach under the law of international responsibility. This means that it must be brought to an “immediate, unconditional and total” end<sup>1056</sup>.

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<sup>1055</sup> For the most recent example, see General Assembly, Resolution 76/80, 9 December 2021 (<https://undocs.org/A/RES/76/80>).

<sup>1056</sup> General Assembly, Resolution 36/147 E, 16 December 1981. For similar calls by the Assembly, see General Assembly, Resolutions 36/226 A, 17 December 1981; 37/123 F, 20 December 1982; 38/180 D, 19 December 1983; 39/146 A, 14 December 1984; 40/168 A, 16 December 1985; 41/162 A, 4 December 1986; 42/209 B, 11 December 1987; 43/54 A, 6 December 1988; 44/40 A, 4 December 1989; 45/83 A, 13 December 1990; and 46/82 A, 16 December 1991.



## **Chapter 7.**

### **LEGAL CONSEQUENCES**

7.1. This Chapter addresses the legal consequences for Israel and for Third States and International Organizations, notably the United Nations, which arise from the internationally wrongful acts detailed in Chapters 3 to 6 above.

7.2. Part A is directed at the legal consequences for Israel. Part B is focused on the legal consequences for Third States and International Organizations, including the United Nations.

#### **Part A.**

##### **ISRAEL'S OBLIGATIONS RESULTING FROM ITS INTERNATIONALLY WRONGFUL ACTS**

7.3. In accordance with the ILC Articles on State Responsibility, the expression “Israel’s internationally wrongful acts” means *all* breaches of Israel’s international obligations attributable to it<sup>1057</sup>.

7.4. The acts attributable to Israel include the conduct of any State organ, whether the organ exercises legislative, executive, judicial or any other functions (Article 4), and of a person or entity which is not an organ of the State, but which is empowered by the law of that State to exercise elements of the governmental authority, provided the person or entity is acting in that capacity in the particular instance (Article 5).

7.5. The Articles on State Responsibility also recognize that the responsibility of the State may be engaged where private persons act on the instructions of, or under the direction or control of, the State (Article 8) or if their “[c]onduct [is] acknowledged and adopted by a State as its own” (Article 11). This is undoubtedly the case for the illegal Israeli settlements established throughout East Jerusalem and the rest of the West Bank whose creation, continued existence and expansion have

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<sup>1057</sup> See Draft Articles on Responsibility of States for Internationally Wrongful Acts, *ILC Yearbook*, 2001, Vol. II, Part Two, p. 34, Article 2 (Elements of an internationally wrongful act of a State) (hereinafter: “Articles on State Responsibility”).

been planned, endorsed, encouraged, advanced, funded and supported in a myriad of ways by the Israeli Government<sup>1058</sup>. Similarly, Israel's responsibility is entailed for not having prevented "the effects of the conduct of private parties, if it failed to take necessary measures to prevent those effects"<sup>1059</sup> or to punish the wrongdoers<sup>1060</sup>. Thus, Israel is also responsible for the widespread violence which Israeli settlers have inflicted with impunity on Palestinians in the OPT<sup>1061</sup>.

7.6. As the ILC's commentary on Article 28 of the Articles on State Responsibility explains, "[t]he core legal consequences of an internationally wrongful act ... are the obligations of the responsible State to cease the wrongful conduct (art. 30) and to make full reparation for the injury caused by the internationally wrongful act (art. 31)"<sup>1062</sup>. Accordingly, Israel is required to cease its breaches of international law (I) and to make full reparation for the injury suffered by the State of Palestine and the Palestinian people (II).

### **I. Israel is under an Obligation to Cease its Wrongful Conduct and to Give Assurances and Guarantees of Non-Repetition**

7.7. Article 30 of the Articles on State Responsibility provides:

"The State responsible for the internationally wrongful act is under an obligation:

- (a) to cease that act, if it is continuing;
- (b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require."

7.8. The present Section therefore deals with the obligation of Israel to cease its wrongful conduct (A) and, since there can be no doubt that the circumstances of

<sup>1058</sup> See Chapter 3B, Israel's Annexation of the West Bank, paras. 3.179-3.193. See also, for example, ICRC, International Humanitarian Law Databases, Responsibility for violations of International Humanitarian Law, Rule 149, paras. (c) and (d) ("(c) violations committed by persons or groups acting in fact on its instructions, or under its direction or control; and (d) violations committed by private persons or groups which it acknowledges and adopts as its own conduct") (<https://tinyurl.com/4n7y4k8c>).

<sup>1059</sup> Articles on State Responsibility, p. 37, Art. 3, para. (6).

<sup>1060</sup> See *Questions relating to the Obligation to Prosecute or Extradite, Judgment, I.C.J. Reports 2012*, p. 460, para. 115.

<sup>1061</sup> See Chapter 3A, paras. 3.114-3.117 and Chapter 4, para. 4.184-4.191.

<sup>1062</sup> *ILC Yearbook*, 2001, Vol. II, Part Two, p. 87, para. (2) of the commentary.

the case so require, with the related obligation to offer appropriate assurances and guarantees of non-repetition (B).

## A. OBLIGATION OF CESSATION

### *1. The Applicable Principles*

7.9. As the Court explained in the *Wall* Opinion:

“The obligation of a State responsible for an internationally wrongful act to put an end to that act is well established in general international law, and the Court has on a number of occasions confirmed the existence of that obligation.”<sup>1063</sup>

7.10. The cessation of an internationally wrongful act is *ipso facto* required whenever an internationally wrongful act has a continuing (or composite)<sup>1064</sup> character. The duty to cease arises as a necessary and inevitable consequence of the continuing commission of that wrongful act and (provided the obligation violated is still in force at the time when the breach is found) is not subject to any other condition. As the Arbitral Tribunal explained in the *Rainbow Warrior* case:

“The authority to issue an order for the cessation or discontinuance of a wrongful act or omission results from the inherent powers of a competent tribunal which is confronted with the continuous breach of an international obligation which is in force and continues to be in force. The delivery of such an order requires, therefore, two essential conditions intimately linked, namely that the wrongful act has a continuing character and that the violated rule is still in force at the time in which the order is issued.”<sup>1065</sup>

<sup>1063</sup> *Wall* Opinion, p. 197, para. 150. See also, mentioned by the Court in the same paragraph: “*Military and Paramilitary Activities in and against Nicaragua, Merits, Judgment, I.C.J. Reports 1986*, p. 149; *United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980*, p. 44, para. 95; *Haya de la Torre, Judgment, I.C.J. Reports 1951*, p. 82)”.

<sup>1064</sup> See the Articles on State Responsibility, p. 62, Article 15:

“1. The breach of an international obligation by a State through a series of actions or omissions defined in aggregate as wrongful occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act.

2. In such a case, the breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation.”

<sup>1065</sup> See, e.g., *Case concerning the difference between New Zealand and France concerning the interpretation or application of two agreements concluded on 9 July 1986 between the two States*

7.11. The Court's case-law is in full accord with this statement. In its 1951 Judgment in *Haya de la Torre*, the Court stated that:

"In its [previous] Judgment of November 20<sup>th</sup>, the Court held that the grant of asylum by the Government of Colombia to Haya de la Torre was not made in conformity with Article 2, paragraph 2 ('First'), of the Convention. This decision entails a legal consequence, namely that of putting an end to an illegal situation: *the Government of Colombia which had granted the asylum irregularly is bound to terminate it*. As the asylum is still being maintained, *the Government of Peru is legally entitled to claim that it should cease.*"<sup>1066</sup>

7.12. In the *Chagos* Advisory Opinion, the Court explained that:

"The Court having found that the decolonization of Mauritius was not conducted in a manner consistent with the right of peoples to self-determination, it follows that the United Kingdom's continued administration of the Chagos Archipelago constitutes a wrongful act entailing the international responsibility of that State ...<sup>[1067]</sup> It is an unlawful act of a continuing character which arose as a result of the separation of the Chagos Archipelago from Mauritius.

*Accordingly*, the United Kingdom is under an obligation to bring an end to its administration of the Chagos Archipelago *as rapidly as possible*, thereby enabling Mauritius to complete the decolonization of its territory in a manner consistent with the right of peoples to self-determination."<sup>1068</sup>

7.13. And, in the *Wall* Opinion, the Court stated that:

"Since the Court has concluded that the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated régime, are contrary to various of Israel's international obligations, it follows that the responsibility of that State is engaged under international law."<sup>1069</sup>

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*and which related to the problems arising from the Rainbow Warrior Affair, Decision, 30 April 1990, Reports of International Arbitral Awards (RIAA), Vol. XX, pp. 270-271, para. 114.*

<sup>1066</sup> *Haya de la Torre, Judgment, I.C.J Reports 1951*, p. 82 (emphasis added).

<sup>1067</sup> The Court refers to "Corfu Channel", *Merits, Judgment, I.C.J. Reports 1949*, p. 23; *Gabčíkovo-Nagymaros Project, Judgment, I.C.J. Reports 1997*, p. 38, para. 47; see also Article 1 of the Articles State Responsibility.

<sup>1068</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, pp. 138-139, paras. 177-178 (emphasis added).

<sup>1069</sup> *Wall Opinion*, p. 197, para. 147.

The Court went on to explain that Israel's responsibility entailed, amongst other things:

“an obligation to put an end to the violation of its international obligations flowing from the construction of the wall in the Occupied Palestinian Territory”<sup>1070</sup>.

7.14. The well-established obligation to cease a continuous internationally wrongful act is inseparable from the principle of the “Continued duty of performance” embodied in Article 29 of the Articles on State Responsibility. This provides that:

“The legal consequences of an internationally wrongful act under [Part II on the ‘Content of the Responsibility of a State’] do not affect the continued duty of the responsible State to perform the obligation breached.”

7.15. In line with this principle, the Court has repeatedly called upon States to cease committing an internationally wrongful act and to comply with their duty to perform the obligation of which they are in breach.

7.16. It must also be noted that, “[u]nlike restitution, cessation is not subject to limitations relating to proportionality”<sup>1071</sup>.

## *2. Israel’s Duty To Cease its Wrongful Acts*

7.17. One of the main characteristics of the internationally wrongful acts attributable to Israel is their continuous nature.

7.18. As shown in the previous Chapters, Israel’s internationally wrongful acts are manifold and diverse in nature.

7.19. They relate to Israel’s colonization of the OPT with hundreds of Israeli settlements and hundreds of thousands of Israeli settlers, and its annexation of Jerusalem and the rest of the West Bank; Israel’s racial discrimination and denial of fundamental rights of the Palestinian people tantamount to apartheid; and its denial over decades of the right of the Palestinian people to self-determination. Israel is therefore under an obligation to cease these wrongful acts.

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<sup>1070</sup> *Ibid.*, p. 197, para. 150. See also *ibid.*, pp. 197-198, para. 151.

<sup>1071</sup> Articles on State Responsibility, p. 89, para. (7) of the commentary on Article 30.

7.20. Israel's wrongful acts are inseparable from, and are inherent to its occupation of the Palestinian territory, which, as a consequence of these breaches, is unlawful in the present circumstances<sup>1072</sup> and which must be characterized, without the shadow of a doubt, as a "breach of an international obligation by an act of a State having a continuing character" within the meaning of the 2001 ILC Articles<sup>1073</sup>.

7.21. Since there is no question that the obligations breached by Israel are still in force, there can be no doubt that Israel is under an obligation to cease – immediately, fully and permanently – all of its breaches of those obligations. Given the length, scope, nature and character of the breaches of Israel's international obligations by its unlawful occupation of the Palestinian territory, the cessation of these wrongful acts, including the illegal occupation itself, is essential.

7.22. The General Assembly has repeatedly called upon Israel to put an end to the illegal occupation of the OPT. As early as 1970, in resolution 2628 (XXV), it "[r]eaffirm[ed] that the acquisition of territories by force is inadmissible and that, consequently, territories thus occupied must be restored"<sup>1074</sup>. In 1977, the General Assembly adopted resolution 32/20 in which it stated that it was "[d]eeply concerned that the Arab territories occupied since 1967 have continued, for more than ten years, to be under illegal Israeli occupation and that the Palestinian people, after three decades, are still deprived of the exercise of their inalienable national rights"<sup>1075</sup>. In resolution 44/42 adopted in 1989, the General Assembly stressed the necessity of "the withdrawal of Israel from the Palestinian territory occupied since 1967, including Jerusalem, and from the other occupied Arab territories"<sup>1076</sup>. Likewise, in 2000, the General Assembly stressed again "the need for ... (b) The withdrawal of Israel from the Palestinian territory occupied since 1967"<sup>1077</sup>. Most recently, in the present Request for an Advisory Opinion, the General Assembly demanded once again that:

"Israel, the occupying Power, cease all of its settlement activities, the construction of the wall and any other measures aimed at altering the character, status and demographic composition of the Occupied Palestinian Territory, including in and around East Jerusalem, all of which, *inter alia*,

<sup>1072</sup> See above, Chapter 6, paras. 6.12-6.19.

<sup>1073</sup> See Articles on State Responsibility, Article 14, p. 59.

<sup>1074</sup> General Assembly, Resolution 2628 (XXV), 4 November 1970, para. 1.

<sup>1075</sup> General Assembly, Resolution 32/20, 25 November 1977, preamble. See also General Assembly, Resolutions 33/29, 7 December 1978; 34/70, 6 December 1979; 35/122 E, 11 December 1980; 35/207, 16 December 1980; 36/147E, 16 December 1981.

<sup>1076</sup> General Assembly, Resolution 44/42, 6 December 1989.

<sup>1077</sup> General Assembly, Resolution 55/55, 1 December 2000.

gravely and detrimentally impact the human rights of the Palestinian people, including their right to self-determination, and the prospects for *achieving without delay an end to the Israeli occupation that began in 1967* and a just, lasting and comprehensive peace settlement between the Palestinian and Israeli sides, and calls for the full respect and implementation of all relevant General Assembly and Security Council resolutions in this regard, including Security Council resolution 2334 (2016) of 23 December 2016.”<sup>1078</sup>

7.23. The General Assembly called once again the same year for, *inter alia*, “[t]he withdrawal of Israel from the Palestinian territory occupied since 1967, including East Jerusalem”<sup>1079</sup>.

7.24. Similar concerns and demands have been expressed by the Security Council. For example, in 1967 it adopted resolution 242 which emphasised the need for “[w]ithdrawal of Israel armed forces from territories occupied in the recent conflict”<sup>1080</sup>. In 1980, it adopted resolution 471 which stressed “the overriding necessity to end the prolonged occupation of Arab territories occupied by Israel since 1967, including Jerusalem”<sup>1081</sup>. And in resolution 2334, adopted in 2016, the Security Council “[c]ondemn[ed] all measures aimed at altering the demographic composition, character and status of the Palestinian Territory occupied since 1967, including East Jerusalem, including, *inter alia*, the construction and expansion of settlements, transfer of Israeli settlers” and “[d]emand[ed] that Israel immediately and completely cease all settlement activities in the occupied Palestinian territory, including East Jerusalem, and that it fully respect all of its legal obligations in this regard”<sup>1082</sup> and “[u]rge[d] in this regard the intensification and acceleration of international and regional diplomatic efforts and support aimed at achieving, *without delay ... an end to the Israeli occupation that began in 1967*”<sup>1083</sup>.

7.25. Despite these and numerous other United Nations resolutions and the Court’s call for their implementation by the Parties, Israel has still not ended its occupation of the OPT<sup>1084</sup>.

<sup>1078</sup> General Assembly, Resolution 77/247, 30 December 2022, para. 6 (emphasis added). See also among numerous resolutions, General Assembly, Resolution 75/172, 16 December 2020 or General Assembly, Resolution 73/255, 20 December 2018.

<sup>1079</sup> General Assembly, Resolution 77/25, 6 December 2022, para. 1.

<sup>1080</sup> Security Council, Resolution 242, 22 November 1967. In its French version, the same resolution mentions the “*retrait des forces israéliennes des territoires occupés*”.

<sup>1081</sup> Security Council, Resolution 471 (1980), 5 June 1980, para. 6. See also, Security Council, Resolution 2334 (2016), 23 December 2016, para. 9.

<sup>1082</sup> Security Council, Resolution 2334 (2016), 23 December 2016.

<sup>1083</sup> *Ibid.* (emphasis added).

<sup>1084</sup> See *Wall Opinion*, pp. 197-201, paras. 150-162.

7.26. The conclusion is clear: the first and most indisputable consequence of Israel's violations of numerous rules and principles of international law – including fundamental *jus cogens* norms – is that Israel must *as rapidly as possible*<sup>1085</sup> and *without further delay*<sup>1086</sup> put an end to those violations. Most importantly, this means that Israel must “immediately” and “unconditionally” withdraw from the whole of the OPT<sup>1087</sup>. This means, *inter alia*, that Israel must abandon its policy of annexing Jerusalem and the rest of the West Bank, dismantle its illegal settlements and infrastructure on the Palestinian territory, end its blockade of the Gaza Strip, revoke all legislation and measures that discriminate against the Palestinian people, and refrain from further violation of the fundamental rights of the Palestinian people under international law, including their right to self-determination<sup>1088</sup>.

7.27. Moreover, as noted above<sup>1089</sup>, the consequences of Israel's internationally wrongful acts are not limited to those covered by the “General principles” codified in Articles 28 to 33 of the Articles on State Responsibility. Since Israel has committed numerous breaches of obligations under peremptory norms of general international law<sup>1090</sup>, those actions also trigger the particular consequences of “serious breach[es]” of such obligations as defined in Article 40.

## B. ASSURANCES AND GUARANTEES OF NON-REPETITION

7.28. Although the obligation to provide assurances and guarantees of non-repetition is not an automatic consequence of every internationally wrongful act<sup>1091</sup>, the present case is a paradigmatic example of a situation where “circumstances ... require” such measures as provided for under Article 30 (b) of the Articles on State Responsibility. Indeed, it is difficult to envisage a case where the need for assurances and guarantees that there will be no repetition of the myriad of unlawful acts could be greater. The Palestinian people are indeed faced with the most protracted denial of the right to self-determination in the world, including forced exile from their ancestral homeland and prevention of return, due to Israel's unlawful actions. The length of Israel's illegal occupation of the West Bank, including East Jerusalem, and the Gaza Strip – which has lasted for more than half

<sup>1085</sup> See para. 7.12 above.

<sup>1086</sup> See *Jadhav Case, Judgment, I.C.J. Reports 2019*, p. 36, para. 134.

<sup>1087</sup> See, e.g., General Assembly, Resolutions 37/123 F, 20 December 1982; 46/82 A, 16 December 1991, para. 5; 77/187, 14 December 2022, para. 5; 77/208, 15 December 2022.

<sup>1088</sup> See Chapter 6, paras. 6.11 and 6.18-6.19.

<sup>1089</sup> See above, para. 7.5.

<sup>1090</sup> See Chapter 6, paras. 6.5-6.11.

<sup>1091</sup> The ILC defined these measures as having a “rather exceptional character” (Articles on State Responsibility, p. 91, para. (13) of the commentary on Article 30).

a century with no end in sight – and the ensuing breaches of fundamental principles of international law are without parallel. The numerous breaches of *jus cogens* norms and fundamental principles of international law have occurred in spite of repeated appeals and exhortations by the international community, including all the relevant organs of the United Nations, for Israel to cease its internationally wrongful acts. In light of these facts, and the devastating human, political, economic and social consequences for the Palestinian people, it is essential that Israel provide guarantees and assurances that those wrongful acts will not be repeated.

7.29. These guarantees are all the more indispensable in light of the fact that Israel's leaders have repeatedly proclaimed that there is no intention of putting an end to them<sup>1092</sup>. In respect of the nature and content of such guarantees, as the ILC has observed: “[w]ith regard to the kind of guarantees that may be requested, international practice is not uniform”<sup>1093</sup>. However, generally speaking, “[w]here assurances and guarantees of non-repetition are sought by an injured State, the question is essentially the reinforcement of a continuing legal relationship and the focus is on the future, not the past”<sup>1094</sup>.

7.30. The assurances which Israel should be required to provide would pertain to (but are by no means limited to)<sup>1095</sup>:

- (a) guarantees to immediately, unconditionally and totally end the occupation of the State of Palestine's territory and to fully respect its sovereignty and political independence, and not to attempt to alter in any manner, including by force, the borders of the State of Palestine resulting from the “Green Line”, in conformity with the relevant United Nations resolutions, including Security Council resolution 2334 (2016) and General Assembly resolution 77/25 of 30 November 2022;
- (b) a pledge to submit to an impartial means of binding settlement any dispute between Israel and the State of Palestine (including to the Court);

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<sup>1092</sup> See above Chapter 3, paras. 3.70-3.71 and 3.179-3.193.

<sup>1093</sup> Articles on State Responsibility, p. 90, para. (12) of the commentary on Article 30.

<sup>1094</sup> *Ibid.*, para. (11).

<sup>1095</sup> As noted by the ILC, “there is … some overlap … in practice” between assurances or guarantees of non-repetition on the one hand and satisfaction on the other hand (see *ibid.*). When there is an overlap, for the clarity of the explanations, the State of Palestine has elected to deal with the consequences of Israel's internationally wrongful acts under the heading of “Satisfaction” – see paras. 7.72 ff. below. However, this must not be taken as an acknowledgment that it could not prevail itself of Israel's obligation to cease its internationally wrongful acts.

- (c) guarantees to withdraw the Israeli occupying forces from the OPT, including East Jerusalem, and to dismantle the Israeli settlements, the Wall and their associated regime in the West Bank, including East Jerusalem;
- (d) guarantees to lift the blockade over the Gaza Strip, which forms part of the *restitutio in integrum* which Israel must provide<sup>1096</sup>, but which would also constitute a strong assurance against the prolongation and repetition of the most serious violations of the sovereignty, territorial integrity and political independence of the State of Palestine;
- (e) guarantees to end Israel's annexation of the Holy City of Jerusalem, to respect and enforce the international status of Jerusalem, including the historic status quo, and to repeal any legislative or administrative measure that violates international law and conflicts with the international status of the Holy City;
- (f) guarantees to end and not reinstate any discrimination against Palestinians under any pretext in violation of the prohibition on racial discrimination and apartheid;
- (g) guarantees in relation to the recognition and exercise by the Palestinian refugees of their right to return to their homes and property and to compensation; and
- (h) guarantees of respect for the right of the Palestinian people to self-determination, including the independence of the State of Palestine.

7.31. Moreover, in view of the contempt for international law which Israel has manifested throughout its decades-long illegal occupation of the OPT, and the scale, gravity and impact of Israel's breaches of its international legal obligations, international guarantees of its compliance with these obligations are required, and these are addressed in Part B of this Chapter.

## **II. Israel is under an Obligation to Make Full Reparation**

7.32. The second core obligation stemming from the responsibility of the State for internationally wrongful acts is the obligation to make full reparation. This obligation is clearly expressed in Article 31 of the Articles on State Responsibility:

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<sup>1096</sup> See paras. 7.46 ff. below.

“1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.

2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State.”

7.33. In 1928, the Court’s predecessor explained, in a celebrated *dictum*, that:

“It is a principle of international law, and even a general conception of law, that any breach of an engagement involves an obligation to make reparation ... The essential principle contained in the actual notion of an illegal act – a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals – is that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.”<sup>1097</sup>

7.34. Far from being an incidental aspect of a State’s international responsibility, reparation has been described by the Permanent Court as “the indispensable complement of a failure”<sup>1098</sup>.

7.35. In this regard, some, if not all, of Israel’s wrongful acts certainly belong also to the category of breaches consisting of composite acts as defined in the ILC Articles, which as explained in the commentary of the Articles, is a sub-category of the acts having a continuing character. As defined in Article 15:

“1. The breach of an international obligation by a State through a series of actions or omissions defined in aggregate as wrongful occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act.

<sup>1097</sup> *Factory at Chorzów, Merits, Judgment no. 13, 1928, P.C.I.J., Series A, No. 17*, pp. 29 and 47. See also, e.g., *Avena and Other Mexican Nationals, Judgment, I.C.J. Reports 2004*, p. 59, para. 119; *Certain Activities carried out by Nicaragua in the Border Area, Compensation, Judgment, I.C.J. Reports 2018*, p. 25, para. 29; *Jadhav Case, Judgment, I.C.J. Reports 2019*, pp. 455-456, para. 138.

<sup>1098</sup> *Factory at Chorzów, Jurisdiction, Judgment no. 8, 1927, P.C.I.J., Series A, No. 9*, p. 21; see also *Factory at Chorzów, Merits, Judgment no. 13, 1928, P.C.I.J., Series A, No. 17*, p. 29; *Case concerning the difference between New Zealand and France concerning the interpretation or application of two agreements concluded on 9 July 1986 between the two States and which related to the problems arising from the Rainbow Warrior Affair, Decision, 30 April 1990, RIAA, Vol. XX*, p. 251, para. 75. See also Articles on State Responsibility, p. 91, para. (1) of the commentary on Article 31.

2. In such a case, the breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation.”

7.36. Several of the Israeli wrongful acts enter in full under this definition. As expressly explained by the ILC: “Some of the most serious wrongful acts in international law are defined in terms of their composite character.”<sup>1099</sup> According to the ILC, “[e]xamples include the obligations concerning … apartheid or crimes against humanity, systematic acts of racial discrimination …” which are precisely among those breached by Israel as has been established in Chapter 4 above.

7.37. In the present case, the continuous nature of Israel’s breaches of its international obligations cannot be separated from their long spread over time, notably the protracted denial of the inalienable rights of the Palestinian people to self-determination and return of Palestinian refugees, the very unusual and unjustifiable length of the Israeli occupation and the policies and measures it enacted from the onset of the occupation to annex and colonize the Palestinian territory.

7.38. Therefore, both the occupation as such and its constituent violations stemming from and inherent to it, such as the ongoing settlement and related annexation of territory by the occupying Power, Israel’s imposition of a regime of racial discrimination and policies of apartheid against the Palestinian people, and the ongoing violation of the right of the Palestinian people to self-determination, fall within the definition given in paragraph 2 of Article 14 of the Articles on State Responsibility (“Extension in time of the breach of an international obligation”):

“The breach of an international obligation by an act of a State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation.”

7.39. This definition was endorsed by the Arbitral Tribunal in the case of the *Rainbow Warrior*. In that case, the Tribunal considered that it was “clear that the breach consisting in the failure of returning [two agents of the French secret services to the French military facility on an isolated island outside of Europe where they

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<sup>1099</sup> Articles on State Responsibility, p. 62, para. (2) of the commentary on Article 15.

should have been transferred for a period of three years] has been not only a material but also a continuous breach”<sup>1100</sup>. And the Tribunal added:

“And this classification is not purely theoretical, but, on the contrary, it has practical consequences, since the seriousness of the breach and its prolongation in time cannot fail to have considerable bearing on the establishment of the reparation which is adequate for a violation presenting these two features.”<sup>1101</sup>

7.40. The same holds true in the present case where the time of commission of the breaches “extends over the entire period during which the unlawful act continues to take place”. And, paraphrasing the decision in *Rainbow Warrior*, it is clear that Israel has “committed a continuous breach of its obligations, without any interruption or suspension, during the whole period when” the right of the Palestinian people to self-determination has been denied, the fundamental rights of Palestinians have been breached and the occupation and the ensuing breaches have taken place. Therefore, “the seriousness of the breach” committed by Israel “and its prolongation in time cannot fail to have considerable bearing on the establishment of the reparation which is adequate for a violation presenting these two features”.

7.41. The obligation to make full reparation is independent of the obligations to cease continuous breaches of international law and to give guarantees and assurances of non-repetition when the circumstances so require<sup>1102</sup>. This is why, when the Court addresses the obligation to cease an internationally wrongful act, it often also explains how the responsible State can positively discharge its obligation to make full reparation in respect of the injury caused by that wrongful act. For example, in the *Wall* Opinion the Court indicated that Israel’s obligation to cease the breaches of international law linked to the construction of the Wall also entailed:

“an obligation to return the land, orchards, olive groves and other immovable property seized from any natural or legal person for purposes of construction of the wall in the Occupied Palestinian Territory. In the event that such restitution should prove to be materially impossible, Israel has an obligation to compensate the persons in question for the damage suffered. The Court considers that Israel also has an obligation to compensate, in

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<sup>1100</sup> *Case concerning the difference between New Zealand and France concerning the interpretation or application of two agreements concluded on 9 July 1986 between the two States and which related to the problems arising from the Rainbow Warrior Affair*, Decision, 30 April 1990, RIAA, Vol. XX, pp. 263-264, para. 101.

<sup>1101</sup> *Ibid.*

<sup>1102</sup> See Articles on State Responsibility, Article 29 (Continued duty of performance), quoted in para. 7.14 above.

accordance with the applicable rules of international law, all natural or legal persons having suffered any form of material damage as a result of the wall's construction.”<sup>1103</sup>

7.42. Article 34 of the Articles on State Responsibility identifies several distinct but related forms which the obligation to provide full reparation entails:

“Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination, in accordance with the provisions of this chapter.”

7.43. The State of Palestine is conscious that the Court may be reluctant to make a concrete decision on the form and content of the reparation in view of the continuous nature of Israel’s breaches of its obligations.

7.44. However, the present case is different from past precedents in important respects. Most relevantly, this is an advisory proceeding, in which the Court has been specifically requested by the General Assembly to determine the “legal consequences” of Israel’s various unlawful acts in the OPT. An important aspect of those “legal consequences” is the form and content of Israel’s obligation to make reparation for its internationally wrongful acts. The Court’s determination of this issue will provide a framework for States and the United Nations to determine the practical measures and mechanisms which are required to effectively implement those reparational obligations. While the continuing character of Israel’s breaches prevents a determination at this stage of the *amount of compensation* due to the State of Palestine in respect of those breaches, it does not prevent the Court from determining in principle what *forms* of reparation Israel should be required to provide.

7.45. With this in mind, in the present section of this Chapter the State of Palestine will elaborate as far as possible on the different forms of reparation due by Israel to the State of Palestine, namely restitution (*restitutio in integrum*) (A), compensation (B) and satisfaction (C).

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<sup>1103</sup> *Wall Opinion*, p. 198, para. 153. See also *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion*, I.C.J. Reports 1971, p. 54, para. 118.

## A. RESTITUTION

7.46. “[R]estitution is the first of the forms of reparation available to a State injured by an internationally wrongful act.”<sup>1104</sup> Article 35 of the Articles on State Responsibility makes clear that:

“A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:

- (a) is not materially impossible;
- (b) does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.”

7.47. Even more than other forms of reparation, restitution aims to “wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed”<sup>1105</sup>. Accordingly, it should be the preferred means of reparation – wherever possible – over other forms of reparation<sup>1106</sup>.

7.48. In this regard, “[r]estitution, as the first of the forms of reparation, is of particular importance where the obligation breached is of a continuing character, and even more so where it arises under a peremptory norm of general international law”<sup>1107</sup>. Moreover, in such cases, “restitution may be required as an aspect of compliance with the primary obligation”<sup>1108</sup>. Since Israel’s breaches of its international obligations are both of a continuous character<sup>1109</sup> and arise under several peremptory norms of international law<sup>1110</sup>; it follows that restitution is of particular importance in this case<sup>1111</sup>.

<sup>1104</sup> Articles on State Responsibility, p. 96, para. (1). See also *ibid.*, para. (3) (restitution “comes first among the forms of reparation”).

<sup>1105</sup> See fn. 1097 above.

<sup>1106</sup> See, e.g., among the recent case law of the Court, *Pulp Mills on the River Uruguay, Judgment, I.C.J. Reports 2010*, pp. 103-104, para. 273; *Certain Activities carried out by Nicaragua in the Border Area, Compensation, Judgment, I.C.J. Reports 2018*, p. 26, para. 31; *Armed Activities on the Territory of the Congo, Reparations, Judgment*, 9 February 2022, para. 101.

<sup>1107</sup> Articles on State Responsibility, p. 98, para. (6) of the commentary on Article 35.

<sup>1108</sup> *Ibid.*, p. 97, para. (3).

<sup>1109</sup> See paras. 7.17-7.20 above.

<sup>1110</sup> See notably Chapter 6, paras. 6.5-6.11 above.

<sup>1111</sup> Articles on State Responsibility, p. 98, para. (6) of the commentary on Article 35.

7.49. Restitution may take various forms depending on the circumstances. Given the variety of obligations which Israel has breached and the diverse forms of damage which those breaches have caused to the State of Palestine and the Palestinian people, it follows that a range of restitutive measures will be required.

7.50. In respect of Israel's illegal occupation of the OPT and its annexation of Jerusalem and the rest of the West Bank, the first and indispensable steps to achieving restitution include:

- (a) the immediate, unconditional and complete withdrawal of Israel, including its occupying forces, from the OPT, including East Jerusalem<sup>1112</sup>;
- (b) the dismantling of the illegal settlements and the Wall and the withdrawal of the settlers; and
- (c) the annulment of the laws, regulations and orders of annexation concerning Jerusalem and the rest of the West Bank, as well as those imposing a regime of racial discrimination tantamount to apartheid against the Palestinian people.

As previously noted, these measures are also a necessary consequence of Israel's obligation of cessation<sup>1113</sup>.

7.51. There can be no doubt that the invalidity of the laws and regulations which Israel has enacted in furtherance of its illegal occupation of the Palestinian territory and annexation of Jerusalem and the rest of the West Bank is a necessary consequence of their unlawfulness under international law. There are clear precedents to this effect. In the *Eastern Greenland* case, for example, the Permanent Court decided that:

“the declaration of occupation promulgated by the Norwegian Government on July 10<sup>th</sup>, 1931, and any steps taken in this respect by that Government, constitute a violation of the existing legal situation and are accordingly unlawful and invalid.”<sup>1114</sup>

<sup>1112</sup> See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, *Advisory Opinion*, *I.C.J. Reports 1971*, p. 54, para. 32.

<sup>1113</sup> See Articles on State Responsibility, p. 98, para. (6) of the commentary on Article 35. See also *ibid.*, p. 89, paras. (7) and (8) of the commentary on Article 30.

<sup>1114</sup> *Eastern Greenland, Judgment, 1933, P.C.I.J., Series A/B, No. 53*, p. 75. See also the *Free Zones* case, in which the Permanent Court decided that France “must withdraw its customs line in accordance with the provisions of” previous treaties and instruments (*Free Zones of Upper Savoy*

7.52. It follows that the restoration of the *status quo ante* requires the adoption by Israel<sup>1115</sup> of measures which annul the entire corpus of laws and regulations which give effect to its illegal occupation and annexation, including the laws and measures which authorize or facilitate Israeli settlements in the OPT and which impose discriminatory restrictions on the rights of Palestinians.

7.53. It also requires Israel to adopt measures which reverse the consequences which have resulted from the enactment and application of those laws. Accordingly, Israel is required to take measures to ensure (amongst other things):

- (a) the return of Palestinians expelled and uprooted from their homes, lands, cities and villages, and their descendants;
- (b) the withdrawal of the Israeli occupation forces and Israeli settlers from the Occupied Palestinian Territory, including East Jerusalem;
- (c) the return of moveable and immovable property seized from Palestinians in the course of the armed conflict and the occupation<sup>1116</sup>; and
- (d) the release of the Palestinians deprived of their liberty, including because of their status as Palestinians or of reasons connected to their opposition to Israel's illegal occupation of the OPT.

7.54. It goes without saying that Israel cannot invoke the *fait accompli* which it has deliberately sought to create in the OPT, including by the construction of hundreds of illegal settlements and implantation of hundreds of thousands of Israeli settlers<sup>1117</sup>, to escape or dilute the content of its obligation of restitution<sup>1118</sup>.

7.55. Moreover, in circumstances where Israel has constructed settlements and related infrastructure in full knowledge of their illegality and with the specific aim of entrenching its presence in territory which does not belong to it, it would be a grave affront to justice to reward Israel for that deliberate and calculated illegality

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*and the District of Gex, Judgment, 1932, P.C.I.J., Series A/B, No. 46, p. 172).* The doctrinal debate concerning whether or not a State can be held responsible for the adoption of a law is irrelevant in the present case: the laws and regulations in question have not only been adopted but fully implemented.

<sup>1115</sup> See para. 7.32 above.

<sup>1116</sup> See, e.g., Security Council, Resolution 686 (1991), 2 March 1991; Articles on State Responsibility, p. 98, para. (6) of the commentary on Article 35.

<sup>1117</sup> On the invocation of the *fait accompli* resulting from the length of the occupation by Israeli high officials, see above Chapter 3, and more particularly paras. 3.6, 3.98 and 3.123.

<sup>1118</sup> See Articles on State Responsibility, Article 32 (Irrelevance of internal law): "The responsible State may not rely on the provisions of its internal law as justification for failure to comply with its obligations under this Part."

by using the presence of those settlements and related infrastructure as a reason for relieving Israel of its duty to provide restitution.

7.56. Nor can Israel rely on the content of its own laws, or political or practical difficulties in restoring the *status quo ante*, as a basis for reducing or abrogating its obligation of restitution. Although it is recognized that *ad impossibilem nemo tenetur*, it is equally well established that, “restitution is not impossible merely on grounds of legal or practical difficulties, even though the responsible State may have to make special efforts to overcome these”<sup>1119</sup>.

7.57. In respect of the limitation in paragraph (b) of Article 35 of the Articles on State Responsibility, this must be interpreted in view of the explanations provided by the ILC in its commentary on that provision:

“only where there is a grave disproportionality between the burden which restitution would impose on the responsible State and the benefit which would be gained, either by the injured State or by any victim of the breach. It is thus based on considerations of equity and reasonableness, although with a preference for the position of the injured State in any case where the balancing process does not indicate a clear preference for compensation as compared with restitution. The balance will invariably favour the injured State in any case where the failure to provide restitution would jeopardize its political independence or economic stability.”<sup>1120</sup>

7.58. In the present context, it cannot possibly be suggested that the end of the illegal occupation of the OPT from which Israel (and the settlers in the illegal settlements) have benefited enormously for more than half a century (including by exploiting and denuding the OPT of extremely valuable water resources, mineral deposits and other natural resources<sup>1121</sup>) could be unfair or unreasonable. Indeed, the denial of restitution would most seriously jeopardize the State of Palestine’s independence and economic stability and would continue to cause harm to its population. This would represent a manifest conflict with the principle *ex injuria jus non oritur*<sup>1122</sup>.

7.59. Nor could it reasonably be suggested that withdrawal from the OPT and dismantling of the illegal settlements is impossible in practical terms. Indeed,

<sup>1119</sup> Articles on State Responsibility, p. 98, para. (8) of the commentary on Article 35.

<sup>1120</sup> Articles on State Responsibility, p. 98, para. (11) of the commentary on Article 35 (footnote omitted).

<sup>1121</sup> See Chapter 3B, Exploitation of Water and Other Natural Resources, in particular paras. 3.249-3.256.

<sup>1122</sup> See above Chapter 7, para. 7.54.

precedents exist in this regard. Dismantling the settlements and their associated regime is critical to the State of Palestine's political independence and it cannot be deemed excessively burdensome or costly, especially given the fact that Israel, has benefited from this illegal situation for decades, and must now bear the consequences.

## B. COMPENSATION

7.60. Even though restitution is “the first of the forms of reparation” and the obligation to restore the *status quo ante* can amply, and should, be implemented in the present case, the mere restoration of that earlier state of affairs would not fully discharge Israel’s obligations “to make full reparation for the injury caused by the internationally wrongful act”<sup>1123</sup> and to “wipe out all the consequences of [its] illegal act[s]”<sup>1124</sup>. Compensation, as well as restitution, is required in order to fulfil those duties.

7.61. Article 36 of the Articles on State Responsibility provides that:

- “1. The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.”
- 2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.”

7.62. In the *Factory at Chorzów* case, the Permanent Court explained that:

“It is a principle of international law that the reparation of a wrong may consist in an indemnity corresponding to the damage which the nationals of the injured State have suffered as a result of the act which is contrary to international law.”<sup>1125</sup>

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<sup>1123</sup> Articles on State Responsibility, Article 31. See para. 7.32 above.

<sup>1124</sup> *Factory at Chorzów, Merits, Judgment no. 13, 1928, P.C.I.J., Series A, No. 17*, pp. 29 and 47. See para. 7.33 above.

<sup>1125</sup> *Ibid.*, pp. 27 and 28.

7.63. The Court has described this obligation as “a well-established rule of international law”<sup>1126</sup> “[i]nsofar as restitution is not possible”<sup>1127</sup>.

7.64. The State of Palestine does not suggest that the questions referred to the Court by the General Assembly in resolution 77/247 require it to evaluate and quantify the amount of compensation which Israel must provide as a consequence of its illegal activities. Such an exercise would inevitably be highly speculative in circumstances where the wrongful acts are continuing, and where evidence as to *quantum* has not been placed before it. It is, however, the responsibility of the Court “to guide the United Nations in respect of its own action”<sup>1128</sup>. In the present context, this requires the Court to assist the other organs of the Organisation to assess the precise consequences of Israel’s internationally wrongful acts<sup>1129</sup>.

7.65. As the preceding Chapters have demonstrated<sup>1130</sup>, Israel’s actions and policies have resulted in harm of exceptional magnitude to the State of Palestine and the Palestinian people. To the extent that full reparation of some of this damage is truly impossible (as opposed to merely difficult), Israel is obliged to compensate the injury caused by its wrongful acts.

7.66. Although it is impossible to be exhaustive in this respect within the framework of the present advisory proceedings, it is appropriate to give examples of the many types of damage caused by Israel’s breaches of international law and their legal consequences. To that end, it is necessary to distinguish between the injuries to the State of Palestine on the one hand and to the Palestinian people on the other.

7.67. In respect of the main injuries caused to the State of Palestine itself, the cessation of the illegal occupation and annexation of its territory, the withdrawal of Israeli occupation forces and settlers, and the dismantling of the settlements, the Wall and related infrastructure created there are essential aspects of Israel’s obligations to the State of Palestine arising from Israel’s unlawful acts. However,

<sup>1126</sup> *Gabčíkovo-Nagymaros Project, Judgment, I.C.J. Reports 1997*, p. 81, para. 152; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Judgment, I.C.J. Reports 2007*, pp. 232-233, para. 460 (quoting: *Wall Opinion*, p. 198, paras. 152-153).

<sup>1127</sup> *Ibid.*, pp. 232-233, para. 460.

<sup>1128</sup> *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 19. See also *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 24, para. 32; *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 27, para. 41; *Wall Opinion*, pp. 162-163, para. 60.

<sup>1129</sup> See para. 1.50 above.

<sup>1130</sup> See, e.g., Chapter 4, paras. 4.32-4.91 or Chapter 5, para. 5.59.

the end of the occupation and the dismantling of the settlements and the Wall would clearly not make good all of the injury – including both material and moral damage – caused to the State of Palestine by Israel’s internationally wrongful acts<sup>1131</sup>.

7.68. While the-establishment of the *status quo ante* would prevent the occurrence of new damage for which further reparation would be due, it would in no way remedy the damage suffered during the past 56 years of illegal occupation of the OPT. This damage includes (but is by no means limited to):

- (a) the cost to the Palestinian economy of the Israeli occupation and restrictions;
- (b) the cost of rebuilding or repairing the vast number of collective facilities destroyed or degraded by Israel including health facilities and schools<sup>1132</sup>;
- (c) the losses caused by Israel’s expropriation of the natural resources of Palestine<sup>1133</sup>, including the exploitation of land, water resources and vast amounts of valuable minerals, the destruction of structures for the management and allocation of water supply to Palestinians,<sup>1134</sup> and the destruction of olive trees<sup>1135</sup> and other sources of livelihood;
- (d) the vast damage caused by the serious attacks by Israel on the economic and social development of the State of Palestine and its population including, for example, the blockade imposed on the Gaza Strip<sup>1136</sup> and the impossibility for

<sup>1131</sup> *Wall* Opinion, p. 198, para. 152.

<sup>1132</sup> See World Health Organization (WHO), Regional Office for the Eastern Mediterranean, “Attacks on health care during the Great March of Return in Gaza”, Press release, 11 April 2019. See among other numerous examples Euro-Med Human Rights Monitor, “Israel’s targeting of economic facilities in Gaza signals disastrous consequences”, Press release, 19 May 2021. See also *Armed Activities on the Territory of the Congo, Reparations*, Judgment, 9 February 2022, para. 240.

<sup>1133</sup> See, e.g., General Assembly, Resolution 3175 (XXVIII), 17 December 1973, para. 3; General Assembly, Resolution 31/186, 21 December 1976, para. 1.

<sup>1134</sup> Human Rights Council, Report of the United Nations High Commissioner for Human Rights, The allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem, 15 October 2021, A/HRC/48/43, paras. 24 and 34. See also B’Tselem, “Parched, Israel’s policy of water deprivation in the West Bank”, May 2023 (<https://tinyurl.com/2dpixa4cx>).

<sup>1135</sup> See, e.g., *Wall* Opinion, p. 198, para. 153. See also General Assembly, Economic and Social Council, Economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan, Note by the Secretary-General, 8 June 2022, A/77/90-E/2022/66, para. 41.

<sup>1136</sup> See, e.g., United Nations Conference on Trade and Development (UNCTAD), The Economic Costs of the Israeli Occupation for the Palestinian People: The Impoverishment of Gaza under Blockade, 2020, UNCTAD/GDS/APP/2020/1; UNCTAD, The Economic Costs of the Israeli Occupation for the Palestinian People: The Cost of Restrictions in Area C Viewed from Above, 2022, UNCTAD/GDS/APP/2022/1/Corr.1.

Palestinians to access the fisheries resources available in a large part of the sea where they have a right to fish under international law including in Palestine's territorial waters and EEZ, as well as their inability to access the hydrocarbon deposits in Palestine's continental shelf<sup>1137</sup>;

- (e) the damage to the environment of the Palestinian territory caused by Israel including by the depositing and spreading of toxic substances<sup>1138</sup>; and
- (f) the cost of rehabilitating historical monuments and Palestinian cultural treasures damaged by Israel<sup>1139</sup>.

7.69. As far as the damage caused to the Palestinian people by Israel's internationally wrongful acts is concerned, it includes (also without being exhaustive):

- (a) physical injury, pain and death caused by Israel's killing, torture and inhuman and degrading treatment of Palestinians and its violations of their right to life<sup>1140</sup>;
- (b) medical expenses and losses of income caused by the unlawful violence of Israel's occupying forces and the unlawful denial of access to healthcare facilities<sup>1141</sup>;
- (c) loss of liberty caused by Israel's arbitrary detention of hundreds of thousands of Palestinians<sup>1142</sup>;
- (d) the moral damage and considerable suffering (*preium doloris*) resulting therefrom<sup>1143</sup>;

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<sup>1137</sup> See, e.g., General Assembly, Economic costs of the Israeli occupation for the Palestinian people, Note by the Secretary-General, 10 October 2018, A/73/201, para. 7.

<sup>1138</sup> See, e.g., UNOCHA, "Environmental and health risk still unfolding: the bombing of Gaza's largest agrochemical warehouse", Press release, 3 November 2021. See also *Certain Activities carried out by Nicaragua in the Border Area, Compensation, Judgment, I.C.J. Reports 2018*, p. 14, para. 41; *Armed Activities on the Territory of the Congo, Reparations, Judgment*, 9 February 2022, para. 348. See also General Assembly, Resolution 75/236, 21 December 2020, preamble and paras. 6 and 8.

<sup>1139</sup> See, e.g., United Nations Educational, Scientific and Cultural Organization (UNESCO), World Heritage Committee, Decision 44 COM 7A.10, Old City of Jerusalem and its Walls, 31 July 2021, WHC/21/44.COM/18, pp. 27-28.

<sup>1140</sup> See Chapter 4, paras. 4.32-4.109.

<sup>1141</sup> See Chapter 4, paras. 4.66-4.91 and paras. 4.166-4.171.

<sup>1142</sup> See Chapter 4, para. 4.32-4.50.

<sup>1143</sup> See, e.g., WHO, Emergency Trauma Response to the Gaza Mass Demonstrations 2018-2019, "A One-Year Review of Trauma Data and the Humanitarian Consequences", May 2019; *M/V "SAIGA" (No. 2), Judgment, ITLOS Reports 1999*, pp. 66-67, paras. 173 and 175.

- (e) confiscation of privately owned Palestinian land and destruction of tens of thousands of Palestinian homes and other private property<sup>1144</sup>; and
- (f) losses of agricultural crops and livestock<sup>1145</sup>.

7.70. Moreover, as is the case for the obligation of restitution<sup>1146</sup>, the State of Palestine is entitled to claim from Israel performance of the obligation of reparation “in the interest … of the beneficiaries of the obligation breached” as provided for in Article 48 (2) (b) of the Articles on State Responsibility. In this case it can be done in the interest of the whole Palestinian people who are the victims, both individually and collectively, of Israel’s policy of racial discrimination and apartheid<sup>1147</sup>.

7.71. This Written Statement is not the appropriate place to detail the methods for assessing the compensation due in respect of these different types of damage. For present purposes, it is sufficient to note that whatever their nature, the injuries and the amount of compensation must cover the loss of profit (*lucrum cessans*) for the beneficiaries<sup>1148</sup>; and that it must include time-dependent interest, which is the only means of ensuring full reparation for the damage suffered<sup>1149</sup>. Moreover, it would be appropriate to provide for an assessment by neutral experts through a mechanism for documentation, registration, verification and valuation of the damage caused by Israel’s unlawful activities.

### C. SATISFACTION

7.72. In addition to Israel’s obligations to make restitution and to compensate the State of Palestine and the Palestinian people for the damage caused by its unlawful decisions and practices, in accordance with Article 37 of the Articles on State Responsibility, Israel is also obliged to give satisfaction to the State of Palestine and the Palestinian people for the injury caused by these same acts “insofar as it cannot be made good by restitution or compensation”.

<sup>1144</sup> See Chapter 3, paras. 3.101-3.104, Chapter 4, paras. 4.175-4.183 and Chapter 5, para. 5.51.

<sup>1145</sup> See Chapter 4, paras. 4.156 and 4.184, and Chapter 5, para. 5.79.

<sup>1146</sup> See para. 7.49 above.

<sup>1147</sup> See above, Chapter 4, and Chapter 6, paras. 6.10-6.11.

<sup>1148</sup> See, e.g., *Factory at Chorzów, Merits, Judgment no. 13, 1928, P.C.I.J., Series A, No. 17*, p. 53, or *Ahmadou Sadio Diallo, Judgment, I.C.J. Reports 2012*, pp. 339-340, para. 40. See also Articles on State Responsibility, Article 36 (2).

<sup>1149</sup> See, e.g., *Certain Activities carried out by Nicaragua in the Border Area, Compensation, Judgment, I.C.J. Reports 2018*, pp. 40-41, paras. 151-155; *Armed Activities on the Territory of the Congo, Reparations, Judgment*, 9 February 2022, para. 402.

7.73. Paragraph 2 of Article 37 provides that: “Satisfaction may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.” In its recent Judgment on reparations in the case concerning *Armed Activities on the Territory of the Congo*, the Court explained that: “satisfaction can take an entirely different form depending on the circumstances of the case, and in so far as compensation does not wipe out all the consequences of an internationally wrongful act”<sup>1150</sup>. The Court added that, “the forms of satisfaction listed in the second paragraph of [Article 37] are not exhaustive”<sup>1151</sup> and are highly dependent upon the circumstances of the case at hand<sup>1152</sup>.

7.74. Given the seriousness of Israel’s breaches<sup>1153</sup> and the gravity of the damage which they have caused both materially and morally to the State of Palestine and the Palestinian people over many decades, the combination of restitution and compensation would not be sufficient to make good the moral damage caused by Israel’s internationally wrongful acts.

7.75. Here again, the present advisory proceedings might not be the proper framework to address in detail the forms of the satisfaction to be offered by Israel to the State of Palestine and the Palestinian people for the material and moral damage suffered as a result of Israel’s unlawful conduct. Among other steps, satisfaction could take the form of solemn speeches by the highest political authorities of the Israeli State apologising for the injury done<sup>1154</sup> and of a lump sum of money to erase the traces of the occupation<sup>1155</sup> and to encourage cooperation between the two States<sup>1156</sup>.

7.76. However, without prejudice to the obligations already incumbent on Israel<sup>1157</sup>, there is one form of satisfaction which is not only appropriate but

<sup>1150</sup> *Armed Activities on the Territory of the Congo, Reparations*, Judgment, 9 February 2022, para. 387.

<sup>1151</sup> *Ibid.*, para. 389.

<sup>1152</sup> See para. 7.72 above.

<sup>1153</sup> See above Chapter 6, paras. 6.5-6.11.

<sup>1154</sup> See, e.g., *Case concerning the differences between New Zealand and France arising from the Rainbow Warrior Affair*, Ruling, 6 July 1986, *RIAA*, Vol. XIX, p. 213; *LaGrand, Judgment, I.C.J. Reports 2001*, p. 489, para. 63; *Certain Iranian Assets*, Judgment, 30 March 2023, para. 232.

<sup>1155</sup> *Mavrommatis Jerusalem Concessions, Judgment, 1925*, *P.C.I.J.*, Series A, No. 5, p. 21; *Arctic Sunrise Arbitration*, PCA Case No. 2014-02, Award on Compensation, 10 July 2017, *RIAA*, Vol. XXXII, p. 341, para. 84.

<sup>1156</sup> *Case concerning the differences between New Zealand and France arising from the Rainbow Warrior Affair*, Ruling, 6 July 1986, *RIAA*, Vol. XIX, p. 215, para. 5; *Armed Activities on the Territory of the Congo, Reparations*, Judgment, 9 February 2022, para. 391.

<sup>1157</sup> *Ibid.*, para. 390.

indispensable in the circumstances of the case, and which is the necessary consequence of the violation of certain rules of international law by Israel. This is the obligation to investigate and prosecute individuals who have initiated, or contributed to, Israel's serious breaches of international obligations deriving from peremptory rules of international law.

7.77. As shown by the Ruling of the Secretary-General of the United Nations in the case of the *Rainbow Warrior*, the imposition of sanctions against the individuals who have committed an internationally wrongful act attributable to the State can be part of the duty of reparation owed to the injured State<sup>1158</sup>.

7.78. In the same vein, the Security Council affirmed that, as a High Contracting Party to the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, a State "is bound to comply fully with all its terms and in particular is liable under the Convention in respect of the grave breaches committed by it, *as are individuals who commit or order the commission of grave breaches*"<sup>1159</sup>.

7.79. The Court itself observed that pursuant to Article 146 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 and to Article 85 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), a State "has a duty to investigate, prosecute and punish those responsible for the commission of such violations"<sup>1160</sup>.

7.80. This reasoning and conclusion apply fully to the present case in which, as a consequence of Israel's gross violations of the rules relating to occupation enshrined in the Fourth Geneva Convention and Additional Protocol I, Israel is required to investigate and prosecute "those responsible for the commission of such violations". This duty also stems from rules of customary international law, as confirmed by the ICRC in Rule 158 of its study of customary rules:

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<sup>1158</sup> In that case, the Secretary-General decided that the two French service agents "should be transferred to a French military facility on an isolated island outside of Europe for a period of three years" (*Case concerning the differences between New Zealand and France arising from the Rainbow Warrior Affair*, Ruling, 6 July 1986, *RIAA*, Vol. XIX, p. 224).

<sup>1159</sup> Security Council, Resolution 670, 25 September 1990, para. 13 (emphasis added).

<sup>1160</sup> *Armed Activities on the Territory of the Congo, Reparations*, Judgment, 9 February 2022, para. 390. For a comparable declaration concerning the obligation to "punish", see *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, Judgment, *I.C.J. Reports 2007*, p. 235, para. 465.

“States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects.”<sup>1161</sup>

7.81. The same applies to other violations perpetrated by its nationals and attributable to Israel, whether or not those nationals were acting in an official capacity. Accordingly, Israel must “condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction” and it bears the obligation not to “permit public authorities or public institutions, national or local, to promote or incite racial discrimination” as provided for in Articles 3 and 4 of the International Convention on the Elimination of All Forms of Racial Discrimination. Article 6 of the same Convention provides that:

“States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.”

7.82. Furthermore, most of the violations of international law for which Israel is responsible are serious breaches of obligations arising under peremptory norms of general international law<sup>1162</sup>. One of the consequences of this is what has been called “State transparency” according to which “agents of the State can be required to answer personally before a criminal tribunal for official acts which played a part in the crime without their official status being an obstacle to conviction”<sup>1163</sup>. Such violations cannot be deemed to have been committed in the exercise of official

<sup>1161</sup> As clarified by the ICRC, this obligation is recalled in numerous instruments, including the “Genocide Convention, Article VI; Hague Convention for the Protection of Cultural Property, Article 28; Convention against Torture, Article 7; Chemical Weapons Convention, Article VII(1); Amended Protocol II to the Convention on Certain Conventional Weapons, Article 14 ; Ottawa Convention, Article 9; Second Protocol to the Hague Convention for the Protection of Cultural Property, Articles 15–17”. The ICRC also mentions Security Council resolutions which mentioned this obligation: “UN Security Council, Res. 978 (*ibid.*, § 558), Res. 1193 (*ibid.*, § 559) and Res. 1199 (*ibid.*, § 560); UN Security Council, Statements by the President (*ibid.*, §§ 561-569)”. For more information, see ICRC, *International Humanitarian Law Databases*, online, Rule 158, Prosecution of War Crimes (<https://tinyurl.com/ycxxh64e>).

<sup>1162</sup> See notably above, Chapter 6, paras. 6.5-6.11.

<sup>1163</sup> R. Maisom, “The ‘Transparency’ of the State”, in J. Crawford, A. Pellet and S. Olleson (eds.), *The Law of International Responsibility* (Oxford University Press, 2010), pp. 717-718.

functions under the rule of law. It follows that Israel cannot rely on the fact that its officials were acting within the scope of their responsibilities under Israeli law when they committed the relevant violations as an excuse for not prosecuting them in respect of those wrongful acts.

7.83. Israel's obligation to prosecute and punish such breaches is underscored by the fact that it would be paradoxical if all States were called upon to cooperate in ending and punishing such breaches – as addressed in Part B of this Chapter<sup>1164</sup> – with the exception of the State responsible. Furthermore, in its Judgment on the Merits in the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* case in 2007, the Court found by 14 votes to 1 that the Defendant State “has violated its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide by having failed to transfer” one of its nationals “indicted for genocide and complicity in genocide, for trial by the International Criminal Tribunal for the former Yugoslavia, and thus having failed fully to co-operate with that Tribunal”<sup>1165</sup>.

7.84. This finding applies *mutatis mutandis* in the present case. By refraining from prosecuting and punishing those responsible for serious breaches of obligations arising under a peremptory norm of general international law and formally declining to cooperate with the ICC, Israel is in breach of its secondary obligations arising from the consequences of its own internationally wrongful acts.

## Conclusions

7.85. Israel has a duty to make full reparation for all the injury caused to the State of Palestine and to the Palestinian people as a result of its internationally wrongful acts. As described above, this duty imposes on Israel obligations of cessation, assurances of non-repetition, restitution, compensation and satisfaction. The specific obligations incumbent upon Israel under each of these headings is set out in the relevant section. Collectively, they all fall into three categories:

### A. Cessation

7.86. The first and foremost consequence of Israel's violations of numerous rules and principles of international law – including fundamental *jus cogens* norms – is that Israel must as rapidly as possible and without further delay *put an end to*

<sup>1164</sup> See below, paras. 7.150-7.161.

<sup>1165</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Judgment, I.C.J. Reports 2007*, p. 238, para. 471 (6).

*those violations.* Most importantly, Israel must immediately and unconditionally put an end to its occupation of Palestinian territory and withdraw from the whole of the OPT.

7.87. Israel must in all respects fully restore the *status quo ex ante* which existed before the commission of its internationally wrongful acts. Compliance with that obligation entails, *inter alia*, that Israel must: withdraw its military and civilian personnel from the OPT; reverse and abandon its policy of annexing Jerusalem and the rest of the West Bank; dismantle its illegal settlements, the Wall and other related infrastructure in the Palestinian territory; withdraw its citizens unlawfully settled in the Palestinian territory; end its blockade of the Gaza Strip; revoke all legislation and measures and actions that discriminate against the Palestinian people or subject them to apartheid; cease and desist from denying to Palestinians their rights under international humanitarian law and international human rights law; accept the return of Palestinians expelled from their homes, lands, cities and villages, including their descendants, and the return of the property that was seized from them; and respect the right of the Palestinian people to self-determination, including their right to an independent Palestinian State.

7.88. The second aspect of Israel's duty to make full reparation is an obligation to compensate the State of Palestine and the Palestinian people for all the damage which they have suffered as a result of Israel's internationally wrongful acts which cannot be restored through restitution. In respect of the State of Palestine, this requires Israel to provide compensation for (amongst other things) the losses suffered as a result of Israel's widespread and systematic plundering of the natural resources in the OPT, and the vast damage caused by the military attacks on the Gaza Strip and the 16-year blockade of its population. In respect of damage to the people of Palestine, Israel is required to provide compensation for (amongst other things) the losses suffered through its confiscation of Palestinian land, and the destruction and attacks on Palestinian property; the physical injury, pain and death resulting from the use against them of unlawful force and torture and inhuman and degrading treatment; and the loss of liberty arising from the arbitrary detention of hundreds of thousands of people.

7.89. The third aspect of Israel's duty to make full reparation is its obligation to provide satisfaction in respect of all damage which cannot be made good by restitution or compensation. An essential aspect of that obligation is Israel's duty to investigate and prosecute individuals, including State officials, who have initiated or contributed to Israel's serious breaches of international obligations deriving from *jus cogens* norms of international law.

## B. Assurances of Non-Repetition

7.90. The assurances which Israel should be required to provide would include the following guarantees: (a) to immediately and unconditionally end the illegal occupation of the State of Palestine's territory and to fully respect its sovereignty and not to attempt to alter by force the borders of the State of Palestine resulting from the "Green Line", in conformity with the relevant United Nations resolutions, including Security Council resolution 2334 (2016) and General Assembly resolution 77/25 of 6 December 2022; (b) to submit to an impartial means of binding settlement any dispute between Israel and the State of Palestine; (c) to withdraw its military and civilian occupying forces from the OPT, including East Jerusalem and to dismantle the Israeli settlements, the Wall and their associated regime in the West Bank, including East Jerusalem; (d) to lift the blockade on the Gaza Strip in all its aspects; (e) to respect and enforce the international status of Jerusalem, including the historic status quo, and to repeal any legislative or administrative measure that conflicts with the international status of the Holy City; (f) to end and not reinstate any discrimination against Palestinians under any pretext in violation of the prohibition on racial discrimination and apartheid; (g) to recognize the right of Palestinian refugees to return to their homes and to receive compensation in accordance with relevant United Nations resolutions, including resolution 194 (III); and (h) to respect the right of the Palestinian people to self-determination, including their right to the independence of the State of Palestine.

## C. Restitution

7.91. The first and most indispensable steps to achieving restitution include: (a) the immediate, unconditional and complete withdrawal of Israel, including its occupying forces, from the OPT, including East Jerusalem; (b) the dismantling of the illegal settlements and withdrawal of the settlers and the dismantling of the Wall and their associated regime; (c) the annulment of the laws, regulations and orders of annexation concerning Jerusalem and the rest of the West Bank as well as those imposing a regime of racial discrimination tantamount to apartheid; and (d) the end of the blockade on the Gaza Strip.

7.92. It follows that the restoration of the *status quo ante* requires the adoption by Israel<sup>1166</sup> of measures which annul the entire corpus of laws and regulations which give effect to its illegal occupation and annexation of Palestinian territory,

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<sup>1166</sup> See para.7.32 above.

including the laws which authorize or facilitate Israeli settlements in the OPT and which impose discriminatory restrictions on the rights of Palestinians.

7.93. It also requires Israel to adopt measures which reverse the consequences which have resulted from the enactment and application of those laws. Accordingly, Israel is required to take measures to ensure (amongst other things): (a) the return of Palestinians expelled and uprooted from their homes, lands, cities and villages, including their descendants; (b) the withdrawal of the Israeli settlers from the Occupied Palestinian Territory, including East Jerusalem; (c) the return of moveable and immovable property seized from Palestinians in the course of the armed conflict and the occupation<sup>1167</sup>; and (d) the release of the Palestinians deprived of their liberty including because of their status as Palestinians or for reasons connected to their opposition to Israel's illegal occupation of the OPT.

#### D. Compensation

7.94. While the establishment of the *status quo ante* would prevent the occurrence of new damage for which further reparation would be due, it would in no way remedy the damage suffered during the past 56 years of illegal occupation of the OPT. This damage includes (but is by no means limited to): (a) the cost of rebuilding or repairing the vast number of collective facilities destroyed or degraded by Israel including health facilities and schools<sup>1168</sup>; (b) the losses caused by Israel's expropriation of the natural resources of Palestine<sup>1169</sup>, including the exploitation of land and water resources and vast amounts of valuable minerals, the destruction of structures for the management and allocation of water supply to Palestinians<sup>1170</sup>, and the destruction of olive trees<sup>1171</sup> and other sources of livelihood; (c) the vast

<sup>1167</sup> See, e.g., Security Council, Resolution 686, 2 March 1991; Articles on State Responsibility, p. 98, para. (6) of the commentary on Article 35.

<sup>1168</sup> See WHO, Regional Office for the Eastern Mediterranean, "Attacks on health care during the Great March of Return in Gaza", Press release, 11 April 2019. See among other numerous examples Euro-Med Human Rights Monitor, "Israel's targeting of economic facilities in Gaza signals disastrous consequences", Press release, 19 May 2021. See also *Armed Activities on the Territory of the Congo, Reparations*, Judgment, 9 February 2022, para. 240.

<sup>1169</sup> See, e.g., General Assembly, Resolution 3175 (XXVIII), 17 December 1973, para. 3; General Assembly, Resolution 31/186, 21 December 1976, para. 1.

<sup>1170</sup> Human Rights Council, Report of the United Nations High Commissioner for Human Rights, "The allocation of water resources in the Occupied Palestinian Territory, including East Jerusalem", 23 September 2021, A/HRC/48/43, paras. 24 and 34. See also B'Tselem, "Parched, Israel's policy of water deprivation in the West Bank", May 2023 (<https://tinyurl.com/2dpxa4cx>).

<sup>1171</sup> See e.g., *Wall Opinion*, p. 198, para. 153. See also Economic and Social Council, Economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan, Note by the Secretary-General, 8 June 2022, A/77/90-E/2022/66, p. 8, para. 41.

damage caused by the serious attacks by Israel on the economic and social development of the State of Palestine and its population including, for example, the blockade imposed on the Gaza Strip<sup>1172</sup> and the impossibility for Palestinians to access the fisheries resources available in a large part of the sea where they have a right to fish under international law including in Palestine's territorial waters and EEZ, as well as their inability to access the hydrocarbon deposits in Palestine's continental shelf<sup>1173</sup>; (d) the damage to the environment of the Palestinian territory caused by Israel including by the depositing and spreading of toxic substances<sup>1174</sup>; (e) the cost of rehabilitating historical monuments and Palestinian cultural treasures damaged by Israel<sup>1175</sup>.

7.95. As far as the damage caused to the Palestinian people by Israel's internationally wrongful acts is concerned, it includes (also without being exhaustive): (a) confiscation of privately owned Palestinian land and destruction of tens of thousands of Palestinian homes and other private property<sup>1176</sup>; (b) loss of agricultural crops and livestock<sup>1177</sup>; (c) physical injury, pain and death caused by Israel's killing, torture and inhuman and degrading treatment of Palestinians and its violations of their right to life<sup>1178</sup>; (d) medical expenses and losses of income caused by the unlawful violence of Israel's occupying forces and the unlawful denial of access to healthcare facilities<sup>1179</sup>; (e) loss of liberty caused by Israel's arbitrary detention of hundreds of thousands of Palestinians<sup>1180</sup>; and (f) the moral damage and considerable suffering (*pretium doloris*) resulting therefrom<sup>1181</sup>.

<sup>1172</sup> See, e.g., UNCTAD, The Economic Costs of the Israeli Occupation for the Palestinian People: The Impoverishment of Gaza under Blockade, 2020, UNCTAD/GDS/APP/2020/1; UNCTAD, The Economic Costs of the Israeli Occupation for the Palestinian People: The Cost of Restrictions in Area C Viewed from Above, UNCTAD/GDS/APP/2022/1.

<sup>1173</sup> See, e.g., General Assembly, Note by the Secretary-General, 10 October 2018, A/73/201, para. 7.

<sup>1174</sup> See, e.g., UNOCHA, "Environmental and health risk still unfolding: the bombing of Gaza's largest agrochemical warehouse", Press release, 3 November 2021. See also *Certain Activities carried out by Nicaragua in the Border Area, Compensation, Judgment, I.C.J. Reports 2018*, p. 14, para. 41; *Armed Activities on the Territory of the Congo, Reparations, Judgment*, 9 February 2022, para. 348. See also: General Assembly, Resolution 75/236, 21 December 2020, preamble and paras. 6 and 8.

<sup>1175</sup> See, e.g., UNESCO, World Heritage Committee, Decision 44 COM 7A.10, Old City of Jerusalem and its Walls, 31 July 2021, WHC/21/44.COM/18, pp. 27-28.

<sup>1176</sup> See Chapter 3, paras. 3.101-3.104, Chapter 4, paras. 4.175-4.183 and Chapter 5, para. 5.51.

<sup>1177</sup> See Chapter 4, paras. 4.156 and 4.184, and Chapter 5, para. 5.79.

<sup>1178</sup> See Chapter 4, paras. 4.32-4.109.

<sup>1179</sup> See Chapter 4, paras. 4.66-4.91 and paras. 4.166-4.171.

<sup>1180</sup> See Chapter 4, para. 4.32-4.50.

<sup>1181</sup> See, e.g., WHO, Emergency Trauma Response to the Gaza Mass Demonstrations 2018-2019, "A One-Year Review of Trauma Data and the Humanitarian Consequences", May 2019; *M/V "SAIGA" (No. 2), Judgment, ITLOS Reports 1999*, pp. 66-67, paras. 173 and 175.

### E. Satisfaction

7.96. Here again, the present advisory proceedings might not be the proper framework to address in detail the forms of the satisfaction to be offered by Israel to the State of Palestine and the Palestinian people for the material and moral damage suffered as a result of Israel's misconduct. Among other steps, satisfaction could take the form of solemn speeches by the highest political authorities of the Israeli State recognizing responsibility and apologising for the injury done<sup>1182</sup> and/or of a lump sum of money to erase the traces of the occupation<sup>1183</sup> and the suffering endured by the Palestinian people and to encourage cooperation between the two States<sup>1184</sup>.

7.97. However, without prejudice to the obligations already incumbent on Israel<sup>1185</sup>, there is one form of satisfaction which is not only appropriate but indispensable in the circumstances of the case, and which is the necessary consequence of the violation of certain rules of international law by Israel. This is the obligation to investigate and prosecute individuals who have initiated, or contributed to, Israel's serious breaches of international obligations deriving from peremptory rules of international law.

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<sup>1182</sup> See, e.g., *Case concerning the differences between New Zealand and France arising from the Rainbow Warrior Affair*, Ruling, 6 July 1986, *RIAA*, Vol. XIX, p. 213; *LaGrand, Judgment, I.C.J. Reports 2001*, p. 489, para. 63; *Certain Iranian Assets*, Judgment, 30 March 2023, para. 232.

<sup>1183</sup> *Mavrommatis Jerusalem Concessions, Judgment, 1925*, *P.C.I.J.*, Series A, No. 5, p. 21; *Arctic Sunrise Arbitration*, PCA Case No. 2014-02, Award on Compensation, 10 July 2017, *RIAA*, Vol. XXXII, p. 341, para. 84.

<sup>1184</sup> *Case concerning the differences between New Zealand and France arising from the Rainbow Warrior Affair*, Ruling, 6 July 1986, *RIAA*, Vol. XIX, p. 215, para. 5; *Armed Activities on the Territory of the Congo, Reparations*, Judgment, 9 February 2022, para. 391.

<sup>1185</sup> *Ibid.*, para. 390.

## Part B.

### **LEGAL CONSEQUENCES FOR OTHER STATES AND INTERNATIONAL ORGANISATIONS, INCLUDING THE UNITED NATIONS**

7.98. This Part of Chapter 7 addresses the legal consequences for third States and international organisations, including the United Nations “arising from the ongoing violations by Israel of the right of the Palestinian people to self-determination, from its prolonged occupation, settlement and annexation of the Palestinian territory occupied since 1967, including measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and from its adoption of related discriminatory legislation and measures”, as requested in paragraph 18 (a) of resolution 77/247 of the General Assembly.

7.99. The Court’s Advisory Opinion in this matter will be an authoritative statement of the law applicable to States and the United Nations. As the Special Chamber of ITLOS explained in its 2021 Judgment in the Dispute concerning the *Delimitation of the maritime boundary between Mauritius and Maldives*, “it is ... recognized that an advisory opinion entails an authoritative statement of international law on the questions with which it deals”<sup>1186</sup>.

7.100. The ITLOS Special Chamber elaborated on the “authoritative nature” of the Court’s advisory opinions:

“[J]udicial determinations made in advisory opinions carry no less weight and authority than those in judgments because they are made with the same rigour and scrutiny by the ‘principal judicial organ’ of the United Nations with competence in matters of international law.

.....

In the Special Chamber’s view, determinations made by the ICJ in an advisory opinion cannot be disregarded simply because the advisory opinion is not binding.”<sup>1187</sup>

7.101. The Opinion of the Court and the ITLOS Special Chamber thus relied on the Court’s “authoritative” determination that the Chagos Archipelago was an integral part of Mauritius’ territory under international law to conclude that the

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<sup>1186</sup> *Delimitation of the maritime boundary in the Indian Ocean, Preliminary Objections, Judgment, ITLOS Reports 2020-2021*, p. 77, para. 202.

<sup>1187</sup> *Ibid.*, pp. 61-63, paras. 203 and 205.

Archipelagos was not in doubt; in doing so, the Special Chamber rejected the argument that the Court' statement of the law was less authoritative because it was issued in an advisory proceeding rather than in a contentious case<sup>1188</sup>.

7.102. There is a consistent pattern of collective action – both by the General Assembly and a majority of States – in favour of respecting advisory opinions<sup>1189</sup>. Three months after the Court issued its Opinion in Chagos the General Assembly adopted resolution 73/295 which, after reaffirming the Court's principal findings:

“Demand[ed] that the United Kingdom of Great Britain and Northern Ireland withdraw its colonial administration from the Chagos Archipelago unconditionally within a period of no more than six months from the adoption of the present resolution, thereby enabling Mauritius to complete the decolonization of its territory as rapidly as possible”<sup>1190</sup>

and:

“Urge[d] the United Kingdom of Great Britain and Northern Ireland to cooperate with Mauritius in facilitating the resettlement of Mauritian nationals, including those of Chagossian origin, in the Chagos Archipelago, and to pose no impediment or obstacle to such resettlement”<sup>1191</sup>.

7.103. Specifically in regard to third States, the resolution:

“Call[ed] upon all Member States to cooperate with the United Nations to ensure the completion of the decolonization of Mauritius as rapidly as possible, and to refrain from any action that will impede or delay the completion of the process of decolonization of Mauritius in accordance with the advisory opinion of the Court and the present resolution”.<sup>1192</sup>

7.104. Another pertinent example is the resolution adopted by the General Assembly following the Advisory Opinion on *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* (the “Namibia

<sup>1188</sup> *Ibid.*

<sup>1189</sup> See the systematic review in M.N. Shaw and S. Rosenne, *Rosenne's Law and Practice of the International Court: 1920-2015*, 5<sup>th</sup> edn. (Brill Nijhoff, 2016), pp. 310-332.

<sup>1190</sup> General Assembly, Resolution 73/295, 22 May 2019, para. 3.

<sup>1191</sup> *Ibid.*, para. 5.

<sup>1192</sup> *Ibid.*, para. 5.

Opinion”).<sup>1193</sup> In resolution 2871 (XXVI), the General Assembly underlined the significance attributed to advisory opinions rendered by the Court by not only quoting or paraphrasing various passages of the *Namibia* Opinion, but also

“6. *Call[ing] upon* all States:

(a) To respect strictly the resolutions of the General Assembly and the Security Council concerning Namibia, *and the advisory opinion of the International Court of Justice of 21 June 1971.*”<sup>1194</sup>

7.105. Similarly, the General Assembly, following the advisory opinion on the Wall built by Israel in the OPT, adopted a resolution

“*Demand[ing]* that Israel, the occupying Power, comply with its legal obligations as mentioned in the advisory opinion;

*Call[ing]* upon all States Members of the United Nations to comply with their legal obligations as mentioned in the advisory opinion”<sup>1195</sup>.

7.106. Third States would thus be expected to uphold their legal obligations as resulting from the legal determinations made by the Court in its Opinion. This Opinion would also have legal consequences for international organisations, especially the United Nations. In view of the Court’s role and status as the “principal judicial organ” of the United Nations, and since an advisory opinion “represents its participation in the activities of the Organization”<sup>1196</sup>, the organs of the United Nations may not properly depart from the position taken by the Court when they are called upon to pronounce on legal matters<sup>1197</sup>.

<sup>1193</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16.

<sup>1194</sup> General Assembly, Resolution 2871 (XXVI), 20 December 1971, para. 6 (emphasis added).

<sup>1195</sup> General Assembly, Resolution ES-10/15, 20 July 2004, paras. 2 and 3.

<sup>1196</sup> *Legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 113, para. 65 quoting “*Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 71; *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999 (I)*, pp. 78-79, para. 29; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 156, para. 44”.

<sup>1197</sup> Scholars’ views are unanimous in this respect. See, e.g., R. Kolb, *The International Court of Justice* (Hart Publishing, 2014), pp. 1094-1100, and the doctrinal references given therein.

7.107. This is well-illustrated by resolution 73/295, implementing the Court's Opinion in Chagos, in which the General Assembly:

*"Call[ed] upon the United Nations and all its specialized agencies to recognize that the Chagos Archipelago forms an integral part of the territory of Mauritius, to support the decolonization of Mauritius as rapidly as possible, and to refrain from impeding that process by recognizing, or giving effect to any measure taken by or on behalf of, the 'British Indian Ocean Territory'."*<sup>1198</sup>

7.108. The remainder of Part B follows the framework adopted by the International Law Commission in Articles 40 and 41 of the 2001 Articles on State Responsibility concerning the particular consequences of serious breaches of obligations under peremptory norms of general international law<sup>1199</sup>.

## I. The Obligation of Non-Recognition

### A. THE OBLIGATION ON STATES<sup>1200</sup>

7.109. The obligation on States not to recognize any situation resulting from a serious breach of an obligation arising under a peremptory norm of general international law is provided for in Article 41, paragraph 2, of the ILC Articles on Responsibility of States for Internationally Wrongful Acts, which states:

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<sup>1198</sup> General Assembly, Resolution 73/295, 22 May 2019, para. 6.

<sup>1199</sup> Articles 40 and 41 of 2001 correspond, *mutatis mutandis*, to Articles 41 and 42 in the 2011 ILC Articles on the Responsibility of international organisations for internationally wrongful acts. However, neither the 2001 Articles nor the 2011 Articles deal with the responsibility of States vis-à-vis international organisations. In the remainder of this Chapter, the State of Palestine will only refer to the Articles on State Responsibility.

<sup>1200</sup> Given that virtually all States are members of the United Nations or, as did the State of Palestine, have accepted the principles of the Charter (see General Assembly, Resolution 67/19, Statute of Palestine in the United Nations, 29 November 2012), there is no practical utility in distinguishing between the consequences for Members and non-Members States. In the *Namibia* Advisory Opinion, the Court noted that "the declaration of the illegality of South Africa's presence in Namibia [being] opposable to all States in the sense of barring *erga omnes* the legality of a situation which is maintained in violation of international law: in particular, no State which enters into relations with South Africa concerning Namibia *may expect the United Nations or its Members to recognize the validity or effects of such relationship*, or of the consequences thereof" (*Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council resolution 276 (1970)*, *Advisory Opinion*, I.C.J. Reports 1971, p. 56, para. 126 (emphasis added)).

“No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40<sup>[1201]</sup>, nor render aid or assistance in maintaining that situation.”<sup>1202</sup>

This provision reflects an undeniable rule of customary international law<sup>1203</sup>.

7.110. In 1971, in the *Namibia* Opinion, the Court stated that:

“[M]ember States [of the United Nations] are under obligation to abstain from entering into treaty relations with South Africa in all cases in which the Government of South Africa purports to act on behalf of or concerning Namibia. With respect to existing bilateral treaties, member States must abstain from invoking or applying those treaties or provisions of treaties concluded by South Africa on behalf of or concerning Namibia which involve active intergovernmental co-operation.

.....

In the view of the Court, the termination of the Mandate and the declaration of the illegality of South Africa’s presence in Namibia are opposable to all States in the sense of barring *erga omnes* the legality of a situation which is maintained in violation of international law: in particular, no State which enters into relations with South Africa concerning Namibia may expect the United Nations or its Members to recognize the validity or effects of such relationship, or of the consequences thereof.”<sup>1204</sup>

7.111. This obligation of non-recognition has been reiterated on numerous subsequent occasions. For example, the Security Council has emphasized the duty not to recognize situations resulting from violations of peremptory norms of international law, notably in its resolution 276 (1970) concerning South Africa, in which it:

“2. *Declare[d]* that the continued presence of the South African authorities in Namibia is illegal and that consequently all acts taken by the Government

<sup>1201</sup> According to Article 40, “a serious breach by a State of an obligation arising under a peremptory norm of general international law ... involves a gross or systematic failure by the responsible State to fulfil the obligation.”

<sup>1202</sup> *Ibid.*, Article 41, paragraph 2.

<sup>1203</sup> *ILC Yearbook*, 2001, Vol. II, Part 2, pp. 114-115, paras. (6), (11) and (12) of the commentary to Article 41.

<sup>1204</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, pp. 55-56, paras. 122 and 126.

of South Africa on behalf of or concerning Namibia after the termination of the Mandate are illegal and invalid;”

and:

“5. *Call[ed] upon* all States, particularly those which have economic and other interests in Namibia, to refrain from any dealings with the Government of South Africa which are inconsistent with paragraph 2 of the present resolution”<sup>1205</sup>.

7.112. The 1987 Declaration of the General Assembly on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations provides that “[n]either acquisition of territory resulting from the threat or use of force nor any occupation of territory resulting from the threat or use of force in contravention of international law will be recognized as legal acquisition or occupation”<sup>1206</sup>.

7.113. In respect of Israel’s exploitation of its illegal occupation of the Palestinian territory with the aim to annex, and thereby permanently acquire, Palestinian territory, the Security Council emphasized that the establishment of settlements has no legal validity and constitutes a flagrant violation under international law and underlined the duty of non-recognition of acquisition of territory by force and of distinction between the territory of the State of Israel and the territories occupied since 1967 in its resolution 2334 (2016)<sup>1207</sup>.

7.114. The obligation not to recognize the situation resulting from Israel’s violations of peremptory norms of international law was also recalled in resolution 77/25 in November 2022, which called upon all States, consistent with their obligations under the Charter and relevant Security Council resolutions, *inter alia*, to uphold their obligation of non-recognition and distinction in the same terms

<sup>1205</sup> Security Council, Resolution 276 (1970), 30 January 1970.

<sup>1206</sup> General Assembly, Resolution 42/22, Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, 18 November 1987, para. 10. See also Resolution 375 (IV), Draft Declaration on Rights and Duties of States, 6 December 1949, paras. 9 and 11; Resolution 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 24 October 1970 or Conference on Security and Co-operation in Europe, Final Act, Helsinki, 1975, Declaration on Principles Guiding Relations between Participating States (“The participating States will likewise refrain from making each other’s territory the object of military occupation or other direct or indirect measures of force in contravention of international law, or the object of acquisition by means of such measures or the threat of them. No such occupation or acquisition will be recognized as legal.”).

<sup>1207</sup> Security Council, Resolution 2234 (2016), 23 December 2016.

as the Security Council. It called more specifically on States to ensure that “agreements with Israel do not imply recognition of Israeli sovereignty over the territories occupied by Israel in 1967”<sup>1208</sup>.

7.115. Again, in December 2022, the General Assembly

“*Call[ed] upon* all States, consistent with their obligations under international law and the relevant resolutions, not to recognize, and not to render aid or assistance in maintaining, the situation created by measures that are illegal under international law, including those aimed at advancing annexation in the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967”<sup>1209</sup>.

7.116. For its part, the Court, in the *Wall Opinion*, firmly pointed to the obligation of other States “not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem”<sup>1210</sup>.

7.117. In the specific context of Israel’s purported annexation of Jerusalem through the passage of its “Basic Law: Jerusalem” in 1980<sup>1211</sup>, the Security Council adopted resolution 478 (1980) which specifically “[r]eaffirm[ed] again that the acquisition of territory by force is inadmissible”. In that resolution the Security Council stressed the obligation of all States not to recognize this breach of Israel’s obligations arising under peremptory norms of general international law when it:

“*Decide[d]* not to recognize the ‘basic law’ and such other actions by Israel that, as a result of this law, seek to alter the character and status of Jerusalem and call[ed] upon:

(a) All Member States to accept this decision;

<sup>1208</sup> General Assembly, Resolution 77/25, Peaceful settlement of the question of Palestine, 30 November 2022, para. 13. See also General Assembly Resolutions 2949 (XXVII), 8 December 1972; 3411 D (XXX), 28 November 1975; 31/106, 16 December 1976; 32/91, 13 December 1977; 32/161, Permanent sovereignty over national resources in the occupied Arab territories, 19 December 1977; 33/113 C, 18 December 1978. See more recently General Assembly, Resolutions 75/97, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan, 10 December 2020; 77/187, Permanent sovereignty of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan over their natural resources, 14 December 2022.

<sup>1209</sup> General Assembly, Resolution 77/126, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan, 12 December 2022, para. 17.

<sup>1210</sup> *Wall Opinion*, p. 200, para. 159.

<sup>1211</sup> See paras. 3.53-3.57.

(b) Those States that have established diplomatic missions at Jerusalem to withdraw such missions from the Holy City”<sup>1212</sup>.

7.118. The strong language used in this resolution – and in others which are similar – (“Decides”, “Determines”, “Censures in the strongest terms”, “Deeply concerned”, “Urges”, “Calls” etc.) reflects the Security Council’s intent to impose a legal duty on all States<sup>1213</sup>. Article 25 of the United Nations Charter provides: “The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.” As the Court explained in the *Namibia* Opinion, once the Security Council has adopted a decision, “it is for member States to comply with that decision, including those members of the Security Council which voted against it and those Members of the United Nations who are not members of the Council”<sup>1214</sup>.

7.119. Similarly, as early as 1980, the United Nations General Assembly:

“Decide[d] not to recognize that ‘Basic Law’ [on Jerusalem] and such other actions by Israel that, as result of this law, seek to alter the character and status of Jerusalem, and call[ed] upon all States, specialized agencies and other international organizations to comply with the present resolution and other relevant resolutions and urges them not to conduct any business which is not in conformity with the provisions of the present resolutions and the other relevant resolutions.”<sup>1215</sup>

7.120. The General Assembly, most recently in its resolution 76/12, “[r]ecall[ed], in particular, Security Council resolution 478 (1980) of 20 August

<sup>1212</sup> Security Council, Resolution 478 (1980), 20 August 1980, para. 5. See also Security Council, Resolutions 476 (1980), 30 June 1980; 2334 (2016), 23 December 2016. Concerning the situation in Namibia, see Security Council, Resolution 276 (1970), 30 January 1970, paras. 2 and 5. See also *Namibia* Opinion, *I.C.J. Reports 1971*, p. 55, para. 123 (“Member States, in compliance with the duty of non-recognition imposed by paragraphs 2 and 5 of resolution 276 (1970), are under obligation to abstain from sending diplomatic or special missions to South Africa including in their jurisdiction the Territory of Namibia, to abstain from sending consular agents to Namibia, and to withdraw any such agents already there. They should also make it clear to the South African authorities that the maintenance of diplomatic or consular relations with South Africa does not imply any recognition of its authority with regard to Namibia.”)

<sup>1213</sup> See *ibid.*, p. 53, para. 114. See, e.g., Security Council, Resolutions 476 (1980), 30 June 1980; 478 (1980), 20 August 1980; 1402 (2002), 30 March 2002; 1435 (2002), 24 September 2002; 1544 (2004), 19 May 2004.

<sup>1214</sup> *I.C.J. Reports 1971*, p. 54, para. 116. See also United Nations Charter, Article 25, which provides: “The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.”

<sup>1215</sup> General Assembly, Resolution 35/169 E, 15 December 1980, para. 5.

1980, in which the Council, *inter alia*, decided not to recognize the “Basic Law” on Jerusalem, and such other actions by Israel that, as a result of this law, seek to alter the character and status of Jerusalem, and call[ed] upon States to act in accordance with the provisions therein”, before “[r]eiterat[ing] its determination that any actions taken by Israel, the occupying Power, to impose its laws, jurisdiction and administration on the Holy City of Jerusalem are illegal and therefore null and void and have no validity whatsoever ...”<sup>1216</sup>.

7.121. In view of the illegality of Israel’s 56-year occupation of the OPT, the obligation of non-recognition necessarily applies to the totality of that wrongful act, as well as to its myriad individual constituent elements and consequences. This includes Israel’s annexation of Palestinian territory, as well as all measures aimed at altering the demographic composition, character and status of the Holy City of Jerusalem, and the OPT as a whole. The duty of non-recognition thus includes an obligation on States not to treat any part of the OPT as part of Israel or subject to its “sovereignty”. It also includes an obligation not to treat the city of Jerusalem as “the capital of Israel” and to withdraw their diplomatic missions from it<sup>1217</sup>. Furthermore, States are obliged not to enter into international agreements with Israel that include any or all of the OPT, either expressly or impliedly, within the subject matter or geographical scope of the treaty. States are also obligated not to depict any portion of the OPT as part of the territory of Israel in any cartographic material<sup>1218</sup>.

7.122. The obligation not to recognize any situation resulting from Israel’s breach of obligations arising under a norm of *jus cogens* also has consequences concerning economic relations. To paraphrase the Court’s formulation in the *Namibia Opinion*<sup>1219</sup>, the obligation of non-recognition “imposes upon member States [of the United Nations] the obligation to abstain from entering into economic and other forms of relationship or dealings with [Israel] on behalf of or concerning [OPT] which may entrench its authority over the [OPT]”. The same principle was recalled both by the Security Council<sup>1220</sup> and by the General Assembly<sup>1221</sup>, when

<sup>1216</sup> General Assembly, Resolution 76/12, 1 December 2021, preamble and para. 1.

<sup>1217</sup> See, e.g., Security Council, Resolution 478 (1980), 20 August 1980; General Assembly, Resolutions 50/22, 4 December 1995; 71/25, 30 November 2016; ES-10/19, Status of Jerusalem, 21 December 2017; 76/12, 1 December 2021.

<sup>1218</sup> Security Council, Resolution 2234 (2016), 23 December 2016, para. 5.

<sup>1219</sup> See para. 7.110 above.

<sup>1220</sup> See para. 7.113 above.

<sup>1221</sup> See para. 7.114 above.

they stressed that States have “to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967”<sup>1222</sup>.

7.123. States’ obligation of non-recognition also includes not to undertake any action or adopt any stance that would recognize as lawful the situation resulting from Israel’s racial discrimination tantamount to apartheid against the Palestinian people, or from its denial of the right of the Palestinian people to self-determination, including their right to the independence of the State of Palestine.

#### B. OBLIGATIONS FOR THE UNITED NATIONS

7.124. The obligation of non-recognition is as much a matter for the United Nations as it is for third States. As various United Nations organs have recognized, the Organisation bears the obligation not to recognize the illegal situation resulting from serious breaches of peremptory norms of international law, including the prohibition of aggression, the prohibition of racial discrimination and apartheid and the right to self-determination<sup>1223</sup>.

7.125. In respect of the specific situation of the OPT, the General Assembly has made clear in numerous contexts that the obligation of non-recognition applies to international organisations, including the United Nations itself. Thus, for example, resolution 3005 (XXVII):

*“Calls upon all States, international organizations and specialized agencies not to recognize or cooperate with, or assist in any manner in, any measures undertaken by the occupying Power to exploit the resources of the occupied territories or to effect any changes in the demographic composition or geographic character or institutional structure of those territories”*.<sup>1224</sup>

7.126. This is in line with the above-mentioned positions of the Security Council and the General Assembly refusing to recognize the situation created by Israel’s internationally wrongful acts<sup>1225</sup>. This obligation applies both to States and to international organisations, in particular the United Nations. The obligation of

<sup>1222</sup> Security Council, Resolution 2234 (2016), 23 December 2016, para. 5.

<sup>1223</sup> See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, *Advisory Opinion*, I.C.J. Reports 1971, p. 56, para. 126.

<sup>1224</sup> General Assembly, Resolution 3005 (XXVII), 15 December 1972, para. 5 (emphasis added). See also among very numerous resolutions, General Assembly, Resolutions 3240 (XXIX), 29 November 1974, para. 8; 31/106, 16 December 1976, para. 8; 32/91, 13 December 1977, para. 8; 32/161, 19 December 1977, para. 7; 33/113 C, 18 December 1978, para. 8.

<sup>1225</sup> See paras. 7.112 and 7.119 above.

non-recognition requires that all United Nations documents, maps, and statements are consistent with non-recognition of Israel's wrongful acts, including its unlawful occupation of Palestinian territory, its annexation of Palestinian territory and its exercise of "sovereignty" over Palestinian territory. And it requires the United Nations not to recognize, expressly or impliedly, Jerusalem as the "capital of Israel" in any statement or act by the Organisation.

## **II. The Obligation not to Contribute to Violations of the Rights of the Palestinian People**

7.127. In addition to the obligation to refrain from recognizing situations resulting from serious breaches of international law for which Israel is responsible, all States and international organisations, including the United Nations must also refrain from contributing to the violation of the rights of the Palestinian people. This is the second consequence of the principles set out in Article 41 of the 2001 Articles on State responsibility<sup>1226</sup>.

7.128. The Security Council expressly acknowledged this obligation in resolution 465 of 1 March 1980, which "*call[ed] upon* all States not to provide Israel with any assistance to be used specifically in connection with settlements in the occupied territories".<sup>1227</sup> The General Assembly has repeatedly reiterated this obligation, including most recently in November 2022.<sup>1228</sup> Similarly, in the *Wall* Opinion, the Court, after referring to the Wall and its associated regime constructed by Israel in the OPT, including East Jerusalem, stated that: "[other States] are also under an obligation not to render aid or assistance in maintaining the situation created by such construction".<sup>1229</sup>

7.129. The obligation of States not to contribute to the injury caused to the Palestinian people by Israel's serious breaches also derives from other particular commitments, including for example Article 6, paragraph 3, of the Arms Trade Treaty of 3 June 2013, which provides that:

"A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, if it has knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or

<sup>1226</sup> See para. 7.109 above.

<sup>1227</sup> Security Council, Resolution 465 (1980), 1 March 1980, para. 7.

<sup>1228</sup> General Assembly, Resolution 77/25, 30 November 2022, para. 13 (c).

<sup>1229</sup> *Wall* Opinion, p. 200, para. 159.

civilians protected as such, or other war crimes as defined by international agreements to which it is a Party.”<sup>1230</sup>

7.130. The obligation not to assist Israel in the maintenance of its illegal occupation of the OPT, including its settlement and annexation of Palestinian territory, means that any action by other States that may reinforce or consolidate the illegal situation created by Israel’s internationally wrongful acts is prohibited. This prohibition is in some respects similar to the obligation of non-recognition – for example, with regard to the obligation not to enter into treaties which may entrench Israel’s unlawful control over the occupied or annexed territories<sup>1231</sup>, or the prohibition of trading in Israeli industrial or agricultural products or services produced or harvested in the OPT<sup>1232</sup>. States should also be prohibited from supplying arms to Israel that may be used in the OPT to perpetuate its unlawful occupation, to preserve or expand its illegal settlements, or to discriminate against the Palestinian people or deny them their fundamental rights, including their right to self-determination.

7.131. The obligation of non-assistance is related to the protection of the right to self-determination of peoples. It is expressly enshrined in the Friendly Relations Declaration which states that “[e]very State has the duty to refrain from any forcible action which deprives peoples ... of their right to self-determination”<sup>1233</sup>. The duty applies to the United Nations as well as to States. As set out above, under General Assembly resolution 2005(XVII) “all States, *international organizations* and specialized agencies” are required “not to recognize or cooperate with, *or assist in any manner in*, any measures undertaken by the occupying Power to exploit the resources of the occupied territories”<sup>1234</sup>.

7.132. The obligation not to contribute to Israel’s serious breaches of obligations arising under peremptory norms of general international law also entails

<sup>1230</sup> The Arms Trade Treaty, 2 April 2013, UNTS, Vol. 3013, p. 269 (entry into force: 24 December 2014). For the text of the treaty, see <https://tinyurl.com/zayz6533>.

<sup>1231</sup> See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council resolution 276 (1970)*, *Advisory Opinion*, I.C.J. Reports 1971, p. 55, para. 122.

<sup>1232</sup> See fn. 1205 above.

<sup>1233</sup> General Assembly, Resolution 2625 (XXV), 24 October 1970, Annex. See also *Wall Opinion*, p. 199, para. 156 and *Legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965*, *Advisory Opinion*, Separate opinion of Judge Sebutinde, I.C.J. Reports 2019, p. 276, para. 12.

<sup>1234</sup> See fn. 1214 above.

a prohibition on carrying out any project in the occupied State of Palestine, including its territory, airspace and maritime zone which:

- is not in the interest of the protected population of this territory; and
- has not received the approval of the State of Palestine.

7.133. The primacy of the interests of the protected population of the OPT, as a constituent element of the State of Palestine, is enshrined in common Articles 1, paragraph 1, of the International Covenants of 1966 which provide:

“The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the *interest of their national development and of the well-being of the people of the State concerned.*”<sup>1235</sup>

7.134. In the *Namibia* Opinion, the Court recalled the imperative need to consider the interests of the affected population when determining which acts and measures should be recognized notwithstanding the general obligation of non-recognition described in Section I above:

“In general, the non-recognition of South Africa’s administration of the Territory should not result in depriving the people of Namibia of any advantages derived from international co-operation. In particular, while official acts performed by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate are illegal and invalid, this invalidity cannot be extended to those acts, such as, for instance, the registration of births, deaths and marriages, the effects of which can be ignored only to the detriment of the inhabitants of the Territory.”<sup>1236</sup>

7.135. Accordingly, “the non-recognition of [Israel’s] administration of the Territory should not result in depriving the [Palestinian] people of any advantages derived from international co-operation.”<sup>1237</sup> The assessment of the interest of the

<sup>1235</sup> Emphasis added.

<sup>1236</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 56, para. 125. See also General Assembly, Resolution 1803 (XVII), Permanent sovereignty over natural resources, 14 December 1962, para. 1.

<sup>1237</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 56, para. 125.

Palestinian people in a particular action or development project must be done not by the occupying Power but by the legitimate representative of the people concerned.

7.136. As reflected in several United Nations resolutions, notably resolution 67/19 adopted by the General Assembly on 29 November 2012, it has been:

*“Decide[d] to accord to Palestine non-member observer State status in the United Nations, without prejudice to the acquired rights, privileges and role of the Palestine Liberation Organization in the United Nations as the representative of the Palestinian people, in accordance with the relevant resolutions and practice”<sup>1238</sup>.*

7.137. Accordingly, *any* agreement, project, or act on the territory of the State of Palestine must be in the interest of the Palestinian people and that interest can only be assessed by the legitimate representative of this people.

7.138. Plainly, racial discrimination tantamount to apartheid against the Palestinian people is not in their interest. Accordingly, all States are also under an obligation not to render aid or assistance to Israel’s policies and practices in this regard, and this obligation includes ensuring that their political, diplomatic, military, economic, financial relations, among others, with Israel do not contribute, directly or indirectly to the perpetuation of the systemic racial discrimination against the Palestinian people.

### **III. The Obligation to Cooperate to Protect the Rights of the Palestinian People and to End Israel’s Violations of Those Rights**

7.139. The twin obligations to refrain from recognising as lawful, and to refrain from contributing to, situations violating peremptory norms of international law are accompanied by a positive obligation to cooperate with a view to bringing such violations to an end. This duty is codified in the first paragraph of Article 41 of the ILC Articles on the International Responsibility of States for Internationally Wrongful Acts, which provides that:

*“States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40.”<sup>1239</sup>*

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<sup>1238</sup> General Assembly, Resolution 67/19, Status of Palestine in the United Nations, 29 November 2012, para. 2. See also Resolution 43/177, Question of Palestine, 15 December 1988.

<sup>1239</sup> For the definition of such a breach, see fn. 1200 above.

7.140. The ILC's commentary notes that this provision does not

"prescribe what measures States should take in order to bring to an end serious breaches in the sense of article 40. Such cooperation must be through lawful means, the choice of which will depend on the circumstances of the given situation. It is, however, made clear that the obligation to cooperate applies to States whether or not they are individually affected by the serious breach. What is called for in the face of serious breaches is a joint and coordinated effort by all States to counteract the effects of these breaches."<sup>1240</sup>

7.141. The first step required by this duty of cooperation is the clear, unambiguous and explicit recognition of the illegality of Israel's occupation of the Palestinian territory, in the same way that States were required to recognize the illegality of South Africa's occupation of Namibian territory. As the Court explained in the *Namibia* opinion: "The member States of the United Nations are ... under obligation to recognize the illegality and invalidity of South Africa's continued presence in Namibia."<sup>1241</sup> The Court added:

"As to the general consequences resulting from the illegal presence of South Africa in Namibia, all States should bear in mind that the injured entity is a people which must look to the international community for assistance in its progress towards the goals for which the sacred trust was instituted."<sup>1242</sup>

7.142. Similarly, in the *Chagos* Opinion, the Court declared that "all Member States must co-operate with the United Nations to complete the decolonization of Mauritius"<sup>1243</sup>.

7.143. The Court's conclusions in the *Namibia* and *Chagos* Opinions are transposable to the present context, where Israel's presence in the OPT is illegal and gives rise to a duty on all States to assist in putting an end to that situation – a duty that must be translated into meaningful assistance for the Palestinian people, whose rights, sovereignty and development is impeded by the protracted illegal

<sup>1240</sup> Draft Articles on State Responsibility of States for Internationally Wrongful Acts, *ILC Yearbook*, 2001, Vol. II, Part 2, p. 114, para. (3) of the commentary to Article 41.

<sup>1241</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion*, *I.C.J. Reports 1971*, p. 54, para. 119.

<sup>1242</sup> *Ibid.*, p. 56, para. 127.

<sup>1243</sup> *Legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, *I.C.J. Reports 2019*, p. 140, para. 182.

occupation of the Palestinian Territory and the system of subjugation, oppression, and persecution that maintains it.

7.144. Third States and the United Nations have the obligation to enable the Palestinian people to exercise their right to self-determination as derived from Article 1(2) of the Charter of the United Nations, which provides that one of the purposes of the United Nations and its Member States is “[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace”.

7.145. This obligation is also confirmed by common Article 1 of the two International Covenants of 1966 on Economic Social and Cultural Rights and on Civil and Political Rights, to which Israel is a party,<sup>1244</sup> which provide that:

- “1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
- 2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
- 3. The States Parties to the present Covenant ... shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.”

7.146. The duty to cooperate to enable the self-determination of the Palestinian people includes facilitating the exercise of both the right “to self-determination”, including “to independence in their State of Palestine on the Palestinian territory occupied since 1967”.<sup>1245</sup> This obligation has been underlined by the United Nations General Assembly, notably in its resolution 77/208 adopted on 15 December 2022, which:

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<sup>1244</sup> International Covenant on Civil and Political Rights, 16 December 1966 (entry into force: 23 March 1976) *UNTS*, Vol. 999, p. 171; International Covenant on Economic, Social and Cultural Rights, 16 December 1966 (entry into force: 3 January 1976), *UNTS*, Vol. 993, p. 3. For the ratifications of the Covenants by Israel, see *UNTS*, Vol. 1651, p. 566, and p. 564.

<sup>1245</sup> General Assembly, Resolution 67/19, Status of Palestine in the United Nations, 29 November 2012, para. 1.

“1. *Reaffirms* the right of the Palestinian people to self-determination, including the right to their independent State of Palestine;

2. *Urges* all States and the specialized agencies and organizations of the United Nations system to continue to support and assist the Palestinian people in the early realization of their right to self-determination.”<sup>1246</sup>

7.147. This duty to cooperate also extends to upholding the prohibition of racial discrimination and apartheid and putting an end to all Israeli legislation and measures that have breached this prohibition since 1948 and to this day.

7.148. The possible modalities for cooperation by States and the United Nations to end the violation of the rights of the Palestinian people are numerous. In general, States and the United Nations must do their utmost to ensure an end to Israel’s serious breaches of the fundamental rights of the Palestinian people, including to self-determination, an end to Israel’s illegal occupation, settlement and annexation of Palestinian territory, an end to Israel’s discriminatory legislation and measures, including systematic racial discrimination and apartheid against the Palestinian people on both sides of the Green Line, an end to Israel’s policies and laws prohibiting Palestinian refugees and other displaced Palestinians from exercising their right to return and compensation, and an end to Israel’s laws and practices aimed at changing the character, status and demographic composition of the Holy City of Jerusalem and the OPT as a whole.

7.149. The duty of all States and of the United Nations to cooperate to end these acts and practices that violate peremptory rules of international law excludes the possibility of making Israel’s compliance with these norms of international law conditional on any abandonment or limitation of sovereign rights by the State of Palestine. Since the norms violated by Israel are *jus cogens* norms from which there can be no derogation, there can be no conditionality on compliance with them, including especially the obligation of non-recognition.<sup>1247</sup>

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<sup>1246</sup> See also General Assembly, Resolution 76/126, Assistance to the Palestinian people, 10 December 2021. For a partial list of resolutions to the same effect, see Chapter 5, paras. 5.25-5.27 above.

<sup>1247</sup> Vienna Convention on the Law of Treaties, Article 53; Draft Articles on State Responsibility of States for Internationally Wrongful Acts, *ILC Yearbook*, 2001, Vol. II, Part 2, p. 73, para. (7) of the commentary to Article 20, and pp. 114-115, para. (4) or the commentary to Article 26.

7.150. Moreover, as explained above, as a consequence of the “principle of transparency” attached to the *jus cogens* nature of the norms breached by Israel,<sup>1248</sup> States and the United Nations have an obligation to cooperate in order to investigate and bring to justice those responsible for crimes related to the unlawful colonization, of East Jerusalem and the rest of the West Bank, or the unlawful annexation of Jerusalem and the rest of the West Bank, or, more generally, the violations of the fundamental rights of the Palestinian people, including to self-determination and to be free of systematic racial discrimination and apartheid.

7.151. This obligation is a special duty related to the obligation to assist, and it also arises from the Fourth Geneva Convention, which is applicable to the OPT, including East Jerusalem.<sup>1249</sup> As provided for in Article 1 of the Convention, “[t]he High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.” And, as provided for in Article 146 of the same Convention:

“Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a ‘*prima facie*’ case.”<sup>1250</sup>

7.152. By virtue of this provision, as well as of the general obligation to cooperate reflected in Article 41 of the ILC Articles on the Responsibility of States,

<sup>1248</sup> See R. Maison, “The ‘Transparency’ of the State”, in J. Crawford, A. Pellet and S. Olleson (eds.), *The Law of International Responsibility* (Oxford University Press, 2010), pp. 717-718.

<sup>1249</sup> *Wall* Opinion, p. 177, para. 101. See also General Assembly, Resolution 72/85, Applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, to the Occupied Palestinian Territory, including East Jerusalem, and the other occupied Arab territories, 7 December 2017 and Security Council, Resolution 694 (1991), 24 May 1991, para. 1.

<sup>1250</sup> According to the ICRC, the obligation of on all High Contracting Parties “to ensure respect” is not a “loose pledge but a commitment vested with legal force” (ICRC, Commentary of 2016 of the Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, para. 170). The ICRC goes on to say that when violations of the Geneva Conventions occur, the High Contracting Parties will only satisfy their obligations under Article 1 “as long as they have done everything reasonably in their power to bring the violations to an end” (*ibid*, para. 165). In *Bosnia and Herzegovina* (2007), the Court observed that Article 1’s requirement to “undertake” was “not merely hortatory or purposive”, or meant to simply “introduce subsequent obligations”, but was itself intended to “accept an obligation” (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Judgment, I.C.J. Reports 2007*, p. 111, para. 162).

the obligation is one owed by all States. The same holds true, for example, in respect of the International Convention on the Elimination of All Forms of Racial Discrimination concluded on 21 December 1965<sup>1251</sup>.

7.153. Furthermore, Article 148 of the Fourth Geneva Convention provides that “no High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party” in respect of grave breaches of the rights mentioned in Article 147 of the Convention, e.g.:

“wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly”<sup>1252</sup>.

7.154. The Conference of High Contracting Parties of the Fourth Geneva Convention held on 5 December 2001, “call[ed] upon all parties, directly involved in the conflict or not, to respect and to ensure respect for the Geneva Conventions in all circumstances, to disseminate and take measures necessary for the prevention and suppression of breaches of the Conventions” and “reaffirm[ed] the obligations of the High Contracting Parties under articles 146, 147 and 148 of the Fourth Geneva Convention with regard to penal sanctions, grave breaches and responsibilities of the High Contracting Parties”. The Conference also “call[ed] upon the Occupying Power to immediately refrain from committing grave breaches involving any of the acts mentioned in art. 147 of the Fourth Geneva Convention, such as wilful killing, torture, unlawful deportation, wilful depriving of the rights of fair and regular trial, extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly” and “recall[ed] that according to art. 148 no High Contracting Party shall be allowed to absolve itself of any liability incurred by itself in respect to grave breaches”<sup>1253</sup>.

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<sup>1251</sup> See in particular Articles 2 and 3 of the Convention ratified by Israel on 3 January 1979 (*UNTS*, Vol. 1136, p. 416).

<sup>1252</sup> In the same vein, see, *mutatis mutandis*, Articles 6 and 7 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Israel on 3 October 1991 (*UNTS*, Vol. 1651, p. 580).

<sup>1253</sup> Conference of High Contracting Parties to the Fourth Geneva Convention, Declaration, 5 December 2001, paras. 4 and 13.

The Conference of the High Contracting Parties held in December 2014 reaffirmed this statement<sup>1254</sup>.

7.155. Although the present request for an advisory opinion does not concern genocide, it is appropriate to recall the findings of the Court in its 2007 Judgment in the *Genocide* case since the general reasoning is also applicable by analogy in the present case:

“[T]he Applicant asks the Court in this respect to decide more specifically that ‘[the Respondent] shall immediately take effective steps to ensure full compliance with its obligation to punish acts of genocide under the Convention on the Prevention and Punishment of the Crime of Genocide or any other act prohibited by the Convention and to transfer individuals accused of genocide or any other act prohibited by the Convention to the International Criminal Tribunal for the former Yugoslavia and to fully co-operate with this Tribunal.’

It will be clear from the Court's findings above on the question of the obligation to punish under the Convention that it is satisfied that the Respondent has outstanding obligations as regards the transfer to the ICTY of persons accused of genocide, in order to comply with its obligations under Articles I and VI of the Genocide Convention ...”<sup>1255</sup>.

7.156. On this basis, the Court, by fourteen votes to one, found that the respondent State has:

“violated its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide by having failed to transfer Ratko Mladić, indicted for genocide and complicity in genocide, for trial by the International Criminal Tribunal for the former Yugoslavia, and thus having failed fully to co-operate with that Tribunal”<sup>1256</sup>.

7.157. By parity of reasoning, it is incumbent on any State which is in a position to arrest or assist in the arrest of the perpetrators or other persons

<sup>1254</sup> Conference of High Contracting Parties to the Fourth Geneva Convention, Declaration, 17 December 2014 (<https://undocs.org/A/69/711>, Annex).

<sup>1255</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Judgment, I.C.J. Reports 2007*, p. 235, paras. 464-465.

<sup>1256</sup> *Ibid.*, p. 238, para. 471 (6).

responsible for the serious breaches attributable to Israel, to try those individuals or to investigate their responsibilities in order to fulfil these obligations<sup>1257</sup>.

7.158. In the *Wall* Opinion, the Court itself affirmed the obligation of States “to ensure compliance by Israel with international humanitarian law as embodied in [the Fourth Geneva] Convention”<sup>1258</sup>. Similarly, every State must ensure compliance with Article IV of the Apartheid Convention and with other relevant human rights conventions by prosecuting individuals within its territory who are responsible for gross violations of the rights of the Palestinian people.

7.159. As for the United Nations, the Organisation too should make every effort to bring the perpetrators of these crimes to trial. In particular, the Security Council can and should rely on Article 13 of the Rome Statute to refer the situation to the ICC Prosecutor. This article provides that:

“The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

.....

(b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations”.

7.160. Under the Rome Statute, the ICC has jurisdiction to judge crimes against humanity<sup>1259</sup>, the definition of which, given in Article 7, includes: “(a) Murder ...; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture ...; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious ... grounds ...;

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<sup>1257</sup> This obligation is reiterated in numerous conventions including the Convention on the Prevention and Punishment of the Crime of Genocide, Article VI; Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, Article 146; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, Articles 6 and 7.

<sup>1258</sup> *Wall* Opinion, p. 200, para. 159.

<sup>1259</sup> See Article 5 (b) of the Rome Statute of which the State of Palestine is a Party (Palestine adhered to the Rome Statute on 2 January 2015 (see UNTS, Vol. 3023, p. 354 and the dedicated page on the United Nations Treaty Collection website, <https://tinyurl.com/yyx7a64x>). Concerning the State of Palestine’s accession to the Statute and its activity in the Court’s organs, see ICC, Pre-Trial Chamber 1, Situation in the State of Palestine, Decision on the ‘Prosecution request pursuant to article 19 (3) for a ruling on the Court’s territorial jurisdiction in Palestine’, ICC-01/18, 5 February 2021, pp. 44-45, para. 100.

(i) Enforced disappearance of persons [and] (j) The crime of apartheid” – all of which are acts that Israel is committing as part of its widespread and systematic attack directed against the Palestinian people. The ICC has also jurisdiction over war crimes, the definition of which given in Article 8, includes: “(a) [g]rave breaches of the Geneva Conventions of 12 August 1949” and “(b) [o]ther serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law”.

7.161. Some States have supported the reference of these acts to the ICC Prosecutor in conformity with the obligation to assist; a few, however, have opposed the referral by the State of Palestine<sup>1260</sup>. The Security Council has not used its capacity to initiate prosecution by referring the situation to the Prosecutor. However, the Prosecutor has found: “There is a reasonable basis to believe that war crimes have been or are being committed in the West Bank, including East Jerusalem, and the Gaza Strip.”<sup>1261</sup> This assertion was accepted by the Pre-Trial Chamber<sup>1262</sup>. Moreover, the Chamber also noted that “[t]he initiation of an investigation by the Prosecutor also means that *States Parties are under the obligation to cooperate* with the Court pursuant to part 9 of the Statute”<sup>1263</sup>. All States Parties have a duty to fulfil this obligation.

## Conclusions

7.162. The following conclusions can be drawn from the above:

(a) Given their predominant character as serious breaches of obligations arising under peremptory norms of general international law, Israel’s violations of those obligations entail its responsibility to the international community as a

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<sup>1260</sup> *Ibid.*, pp. 26-27, para. 53 and the references to the written proceedings; see also *ibid.*, p. 45, para. 101. The United States of America went as far as adopting the Executive Order 13928, “Blocking Property of Certain Persons Associated With the International Criminal Court”, 11 June 2020. With this Executive Order, the United States intended to freeze the assets of all ICC staff and restrict their access to US territory because of the ICC’s efforts to investigate, arrest, detain and prosecute US nationals and nationals of its allies, including Israel. This Executive Order was revoked by US President J. Biden on 1 April 2021 (see The White House, Executive Order on the Termination of Emergency With Respect to the International Criminal Court (<https://tinyurl.com/c33mh3nk>)). See also US Department of State, Ending Sanctions and Visa Restrictions against Personnel of the International Criminal Court, Press Statement, A. J. Blinken, Secretary of State, 2 April 2021 (<https://tinyurl.com/3b4ssfwc>).

<sup>1261</sup> ICC, Pre-Trial Chamber 1, Situation in the State of Palestine, Decision on the ‘Prosecution request pursuant to article 19 (3) for a ruling on the Court’s territorial jurisdiction in Palestine’, ICC-01/18, 5 February 2021, pp. 30-31, para. 64.

<sup>1262</sup> *Ibid.*, p. 31, para. 65.

<sup>1263</sup> *Ibid.*, p. 38, para. 86 (emphasis added).

whole, and impose particular duties both on third States and on the United Nations itself;

- (b) Primarily, both third States and the United Nations (as well as any other international organisation concerned) must refrain from recognizing as lawful, or rendering aid or assistance to, the situation which Israel has created by virtue of its wrongful acts, including: a) its unlawful annexation of Jerusalem and the rest of the West Bank; b) its unlawful racial discrimination against the Palestinian people tantamount to apartheid; c) its unlawful denial of the right of the Palestinian people to self-determination; and d) its unlawful occupation.
- (c) These general obligations have very concrete consequences which include (but are by no means limited to):
  - The obligation not to recognise, expressly or impliedly, Israel's jurisdiction or any "sovereign" claims by Israel over any part of the territory of the State of Palestine, including its airspace and maritime zones;
  - The obligation not to recognize, expressly or impliedly, as valid Israel's claim that Jerusalem is its capital, including by moving diplomatic representations or offices to Jerusalem and by withdrawing any representations already there and upholding the unique universal character and status of the City, including respect for the historic status quo;
  - The obligation not to recognise, expressly or impliedly, Israel as a legitimate authority or having any jurisdiction in Jerusalem and the rest of the OPT, and not recognise, expressly or impliedly, any decisions emanating from its institutions, including governmental or administrative bodies, courts, or military decisions;
  - The obligation not to provide Israel with any assistance likely to help in maintaining the illegal situation or enter into agreements that would directly or indirectly contribute to that situation, – including political, financial, economic, military or other cooperation and/or assistance;
  - The obligation not to conclude any treaty that does not clearly distinguish between Israel and the OPT, or does not expressly exclude the OPT from its scope;

- The obligation to ensure that all organs of the State, its citizens, companies, and entities do not render aid or assistance in maintaining the illegal situation;
  - The obligation not to represent, expressly or impliedly, any part of the OPT as being under Israeli “sovereignty”, including on any map or other cartographic material;
  - The obligation to abstain from sending diplomatic or special missions upon the invitation of Israeli representatives or accompanied by Israeli officials in any occupied and/or annexed area, including Jerusalem;
  - The obligation not to accept any credentials of Israeli representatives emanating from any occupied and/or annexed area, including Jerusalem.
- (d) In addition to the above-mentioned obligations, third States and the United Nations have a positive duty to cooperate in order to bring an end to Israel’s serious breaches of its obligations arising under peremptory norms of general international law. This general duty also has practical legal consequences, including (by way of non-exhaustive examples):
- The obligation of every State and of the United Nations to do their utmost to enable the Palestinian people to exercise their right to self-determination, including their right to the independence of the State of Palestine on the Palestinian territory occupied in 1967, including East Jerusalem, and to compel Israel, through all possible legal, political, diplomatic, and economic means, to put an end to its wrongful acts that are breaching this right, including its policy of racial discrimination and apartheid against the Palestinian people and its colonization and annexation of Palestinian territory;
  - The obligation of every State to investigate and prosecute before its national courts and tribunals any individual, regardless of their nationality, who may have committed serious crimes under international law against the Palestinian people;
  - The obligation for Parties to the Rome Statute to cooperate with the ICC Prosecutor in the investigations of international crimes against the Palestinian people in the OPT.<sup>1264</sup>

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<sup>1264</sup> The ICRC’s 2016 Commentary provides a detailed list of measures that have been taken and can be taken by High Contracting Parties to ensure compliance with the Geneva Conventions in

7.163. The Security Council has indicated “its determination to examine practical ways and means to secure the full implementation of its resolutions”,<sup>1265</sup> over decades, including in resolutions 476 (1980), 478 (1980) and 2334 (2016), but has yet to act upon this determination. In 75 years, the Security Council has not adopted a single resolution under Chapter VII pertaining to the question of Palestine. As noted by 47 United Nations Special Procedures mandates:

“The lessons from the past are clear: Criticism without consequences will neither forestall annexation nor end the occupation. Accountability and an end to impunity must become an immediate priority for the international community. Available to it is a broad menu of accountability measures that have been widely and successfully applied by the UN Security Council in other international crises over the past 60 years.”<sup>1266</sup>

7.164. Given Israel’s record of refusal to comply with the Court’s 2004 Opinion in the Wall case, and its defiance of numerous Security Council and General Assembly resolutions, States and United Nations bodies have a particular obligation to consider all appropriate means to ensure compliance with the legal consequences identified by the Court in its Advisory in these proceedings, including by sanctioning non-compliance and through the deployment of an international force to oversee Israel’s withdrawal from the OPT and the dismantlement of its settlements and the Wall and their associated regime, and to provide protection to the Palestinian people until such withdrawal is complete.

7.165. Given the historical role of the United Nations in the Question of Palestine and its permanent responsibility therefore, and its continuous reaffirmation of the inalienable rights of Palestinian people, including the right to self-determination and independence, the United Nations must act to guarantee that these rights are further protected including through granting the State of Palestine admission to membership in the United Nations, and States which have not yet done so should recognize the State of Palestine.

accordance with Article 1; these include arms embargoes, trade and financial restrictions, flight bans, the reduction or suspension of aid and cooperation agreements; measures of retorsion (such as the halting of ongoing negotiations or refusal to ratify agreements already signed, the non-renewal of trade privileges, and the suspension voluntary public aid. See ICRC, Commentary of 2016 of the Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, para. 181.

<sup>1265</sup> Security Council, Resolution 478 (1980), 20 August 1980, preamble.

<sup>1266</sup> “Israeli annexation of parts of the Palestinian West Bank would break international law – UN experts call on the international community to ensure accountability”, 16 June 2020 (<https://tinyurl.com/43s7xskw>).



## SUBMISSIONS

Over the last century, the Palestinian people have endured forcible displacement and replacement, and the systematic denial of their fundamental rights, including to life, liberty, dignity and security, in addition to their inalienable right to self-determination. An entire nation has been either confined in enclaves in its ancestral land, or forced to leave it, while the space it is allowed to live on becomes ever smaller and the violence and denial of rights it endures becomes ever harsher.

The Palestinian people have thus suffered the most protracted situation of denial of the right to self-determination, the most protracted refugee crisis, the most protracted protection crisis and the most protracted occupation in contemporary history, as a result of a long and arduous arc of ethnic cleansing, dispossession and displacement, denial of rights and discrimination, and acquisition of their territory by force.

At the very same time the world was establishing the international law-based order in response to the horrors of the Second World War and adopting the foundational rules and principles to uphold that order, including the Charter of the United Nations, the Universal Declaration of Human Rights and the 1949 Geneva Conventions, the Palestinian people were deprived of the very rights these instruments were designed to protect. And while colonialism was being removed from the face of the earth and apartheid was being outlawed, in Palestine they were allowed to become entrenched and to fester.

This manifest injustice and deprivation of fundamental rights would not have been possible had these rules and principles been observed and upheld. The question of Palestine remains unresolved because international duties towards the Palestinian people, including those clearly outlined in the Court's Advisory Opinion on the Wall (2004), are yet to be fulfilled.

The question of Palestine has also had universal implications, given how intricately linked it is to the international law-based order and the persistent failure of existing international mechanisms to resolve it. This failure has loomed large over the United Nations and the universal principles it embodies.

The tragic course of the Palestinian people's history is in part reflected in the four maps that chronicle it, displayed at the end of these Submissions. This Written Statement has described, in addition to this territorial reality, the impact on the Palestinian people of the internationally wrongful acts committed by Israel over the course of 75 years, including especially the denial of their right to self-determination.

The result for the Palestinian people is an archipelago of ever shrinking, non-contiguous Bantustans, fragmented and separated from one another, representing only a fraction of Palestine under the Mandate system, which should have been the territorial unit in which they exercised their right to self-determination, as well as a situation of racial discrimination and apartheid on both sides of the Green Line, which also affects those in forced exile among Palestinian refugees and the diaspora.

Palestine has been a standing item on the United Nations' agenda since the establishment of the Organization. After failing to request from the International Court of Justice its authoritative opinion on the legal dimensions of the question of Palestine in 1947 to guide its actions, the General Assembly has finally brought forward the legal dimensions of this question to the Court. The General Assembly's request is particularly timely. It comes at a critical juncture when the Palestinian people face the most urgent existential threat they have confronted since the 1947-1949 *Nakba*, with Israel openly and unreservedly vowing and acting to ensure an exclusive right to self-determination to Jewish Israelis between the Mediterranean Sea and the Jordan River and to suppress such a right for the Palestinian people as a whole.

In this Written Statement, the State of Palestine has presented the Court with insurmountable evidence of Israel's illegal policies and practices. This legal submission of the facts and applicable laws draws a picture of the wrongs and indignities suffered by the Palestinian people over decades and underscores the legal responsibilities arising from this situation, which Israel and the international community, including the United Nations, must assume. In the State of Palestine's view, the facts before the Court lead to a straight-forward conclusion: Israel's colonial occupation and annexation of Palestinian territory, its racial discrimination and apartheid against the Palestinian people, and its systematic denial of their inalienable rights, including to self-determination and return, are flagrantly unlawful, and must be brought to an immediate, unconditional, and complete end.

By determining the legal consequences of Israel's internationally wrongful acts, the Court will provide guidance to the United Nations and all States on their

obligations so as to ensure that the rules of international law are observed in regard to the question of Palestine. International law must be upheld, and must be applied, equally in all circumstances, with no exception, and no exceptionalism, allowed.

The State of Palestine hereby reaffirms its unwavering commitment to the Court, and to the rule of international law, as the basis for justice and peace among nations.

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For the reasons set out in this Written Statement, the State of Palestine respectfully makes the following Submissions to the Court:

- (1) The Court has jurisdiction to deliver the Advisory Opinion requested by the General Assembly in its resolution 77/47 on 30 December 2022, and there are no grounds for declining to exercise such jurisdiction.
- (2) Israel is responsible for serious breaches of obligations arising under peremptory norms of general international law, including but not limited to the illegality/inadmissibility of the acquisition of territory through the threat or use of force, which is a corollary of the prohibition on aggression; the prohibition against racial discrimination and of apartheid; the right of the Palestinian people to self-determination.
- (3) Israel's occupation, since its onset, has pursued colonization and annexation of the Palestinian territory and has imposed a dual regime favoring its settlers illegally present in the OPT to the detriment of the fundamental rights of the Palestinian people. Israel's occupation has thus, by design, and by its very purpose, breached the three peremptory norms mentioned above. Israel has also breached other peremptory norms, including the prohibition of crimes against humanity, the basic rules of IHL and the prohibition of torture.
- (4) As a consequence of these grave breaches, Israel is bound:
  - (a) To end immediately, unconditionally, and completely its occupation and to withdraw from the OPT. This entails, *inter alia*, the annulment of all

legislation and measures aimed at the annexation of Jerusalem and the rest of the West Bank, the end of the blockade of the Gaza Strip, the withdrawal of all Israeli occupation forces and the dismantlement of its illegal settlements and their associated regime;

- (b) To rescind all of its discriminatory legislation and measures against the Palestinian people on both sides of the Green Line and Palestinian refugees and the diaspora;
  - (c) To respect the inalienable rights of the Palestinian people, first and foremost their right to self-determination and of Palestinian refugees to return to their homes;
  - (d) To provide assurances and guarantees of non-repetition of the above-mentioned violations;
  - (e) To make full reparation of the injury caused by, and to wipe out all the consequences of, its policies and practices vis a vis the State of Palestine and the Palestinian people as a whole, as a result of its internationally wrongful acts.
- (5) All States and international organizations, including the United Nations, are bound:
- (a) Not to recognize the illegal situation resulting from Israel's internationally wrongful acts, first and foremost its serious breaches of obligations arising under peremptory norms of international law;
  - (b) Not to contribute to violations of the rights of the Palestinian people; including by not rendering aid or assistance to any of Israel's internationally wrongful acts, and by ensuring that persons and entities under their jurisdiction also do not render aid or assistance in maintaining the illegal situation;
  - (c) To cooperate to protect the rights of the Palestinian people and to end Israel's violations of those rights including by unambiguous and explicit recognition of the illegality of Israel's occupation of the OPT, by enabling the Palestinian people to exercise their right to self-determination and by holding accountable, including by investigating and bringing to justice, those responsible for crimes related to the colonization of the West Bank, including East Jerusalem; the unlawful annexation of Jerusalem and the rest of the West Bank; the blockade and successive assaults on the Gaza

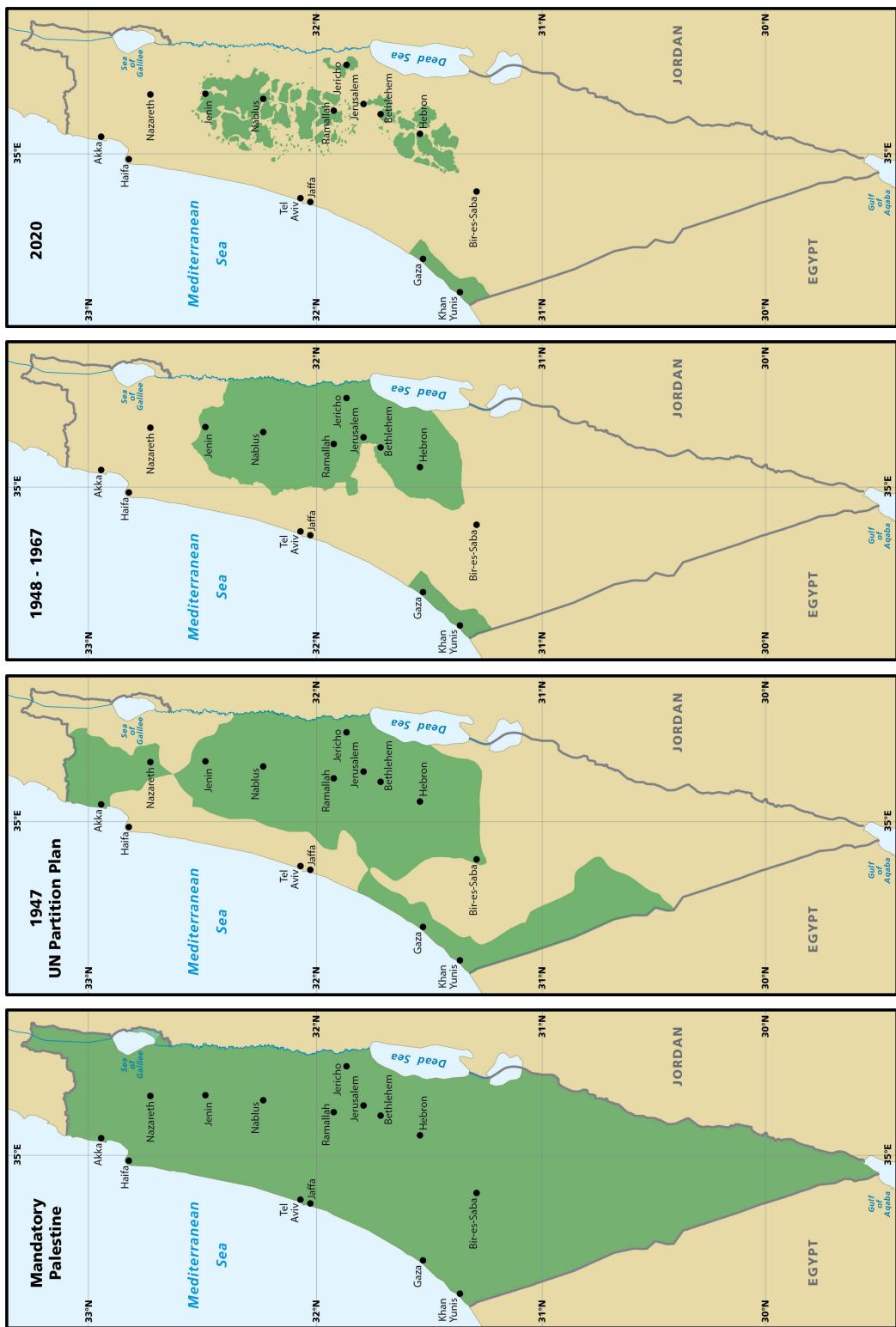
Strip, and more generally, the violations of the fundamental rights of the Palestinian people as a whole, including to self-determination, and to be free of racial discrimination and apartheid, as well as the right of Palestinians to life and liberty.

The Hague, 24 July 2023

H.E. Dr. Riad Malki

Minister of Foreign Affairs and Expatriates of  
the State of Palestine







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## **CERTIFICATION**

Pursuant to Articles 50, paragraph 1, and 51, paragraph 2, of the Rules of Court, I hereby certify that the documents annexed to the present Statement are true copies of the original documents and that the translations provided are accurate.

The Hague, 24 July 2023

H.E. Dr. Riad Malki

Minister of Foreign Affairs and Expatriates of  
the State of Palestine

