

# UN Report on Palestine: Military Occupation, Apartheid, Torture - Israeli Violations are “Deliberate, Organised, and Institutionalised”

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk

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*[(Prefatory Note: This is my last report as Special Rapporteur on Occupied Palestine as my term is coming to an end after six years. The mandate is important as a source of information pertaining to the realities of occupation from the perspective of international humanitarian law and international criminal law. My hope is that this mandate can be brought to an end as early as possible, but not earlier than when Palestinians can live in equality with the Israelis either in a single bi-national state or in separate states. It is a matter that need to be decided by the two peoples in accordance with respective rights. No solution can be imposed or negotiated in a setting that is not premised on the equality of the peoples. RAF)]*

## Human Rights Council

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### Human rights situation in Palestine and other occupied Arab territories

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk

#### *Summary*

The present report is the final report of the current Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, submitted in accordance with Human Rights Council resolution 5/1. The report addresses Israeli settlements in the West Bank, including East Jerusalem, the wall in the context of the tenth anniversary of the Advisory Opinion of the International Court of Justice, and considers Israel's policies and practices in occupied Palestine in light of the prohibition on segregation and apartheid. It also addresses concern in relation to the deterioration of the human rights situation of Palestinians living under the Israeli blockade in the Gaza Strip.

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## 1. Introduction

**1.** In his final presentation to the Human Rights Council (HRC), the Special Rapporteur would like to underscore the importance of this mandate as providing an independent witness to the evolving effects of Israel's continuing occupation of Palestine. This exposure is centred upon the presentation of information received of the persistence of severe violations of international humanitarian law (IHL) and international human rights law. Bearing witness provides both a record of Israel's violations and defiant attitude, and challenges the United Nations to take steps to ensure compliance. It should be remembered that the suffering of the people of Palestine is inseparably linked to the partition arrangements initially proposed by the United Nations in 1947, and which were never implemented or revised in a manner that takes full account of the rights of the Palestinian people, above all their inalienable right of self-determination.

**2.** It was unfortunate that Israel refused even minimal cooperation with this mandate to the extent of allowing the Special Rapporteur to have access to occupied Palestine during the past six years or of responding to several 'urgent appeals' addressing specific situations of immediate concern that fell within the purview of the mandate. This Special Rapporteur was expelled in December 2008 when attempting to enter Israel to carry out a mission of the mandate to visit occupied Palestine, and detained overnight in unpleasant prison conditions. Such humiliating non-cooperation represents a breach of the legal duty of members of the United Nations to facilitate all official undertakings of the Organization. Although it has been possible to gain information needed to report on the situation confronting Palestinians living under occupation, it deprives the mandate of direct interaction, including the receipt of testimony bearing on international law grievances from representatives of the Palestinian people. It is to be hoped that the Special Rapporteur to be appointed as my successor will receive sufficient backing from the HRC to induce cooperation from Israel and some [\[RF1\]](#) protection against defamatory attacks by some NGOs than was my experience.

**3.** International Law. An abiding theme of my reports during the past six years has been the consistent failure of Israel to comply with clear legal standards embodied in the Fourth Geneva Convention and elsewhere in IHL and international human rights law. This pattern, as will be detailed below, is flagrant in relation to the wall, settlements, East Jerusalem, the Gaza Strip, water and land resources, and the human rights of Palestinians living under occupation. Also relevant is the failure of the United Nations to ensure implementation of the recommendations as to international law contained in two high-profile HRC reports of 2009 and 2013, respectively those of: The fact-finding mission on the Gaza Conflict (A/HRC/12/48) and the fact-finding mission to investigate the human rights implications of the Israeli settlements (A/HRC/22/63). To the extent such a pattern is tolerated, it undermines respect for international law.

**4. Palestine.** In light of the recognition of Palestine as a non-member observer state in its resolution of 29 November 2012 (A/RES/67/19), it seems appropriate to refer to territory under Israeli occupation as 'Palestine' rather than as 'Occupied Palestinian Territories.' Such a shift in language also emphasizes the inadequacy of the international law framework available to address a condition of prolonged occupation that has now extended for more than 45 years. Special steps and procedures need to be adopted that will confer rights and establish the rule of law. To sustain indefinitely an oppressive occupation containing many punitive elements also seems designed to encourage residents to leave Palestine, which is consistent with the apparent annexationist, colonialist, and ethnic cleansing goals of Israel, especially in relation to the West Bank, including East Jerusalem.

**5. Corporate Responsibility.** Recent reports have underscored the potential implications for corporations and financial institutions that engage with and profit from Israeli settlements. The establishment and continued development of settlements is in violation of Article 49(6) of the Fourth Geneva Convention, an assessment reinforced by the International Court of Justice (ICJ) in its advisory opinion of 2004 on the wall. Such an initiative has tried at all times to proceed cooperatively with the economic actors involved, and has acknowledged instances of compliance with international law and relevant United Nations guidelines and the encouraging recent indication of governmental and European Union reinforcement of these obligations. This trend also converges with and reinforces the social mobilization of civil society in a variety of initiatives, especially the growing campaign of Boycott, Divestment, and Sanctions.

**6. 'Legitimacy War'.** In the pursuit of Palestinian rights under circumstances of prolonged occupation, there is increasing reason to believe that despite the authority of international law and the expressed will of governmental members of the United Nations, the situation is essentially frozen, if not regressing. In addition, Palestinians seem increasingly disillusioned with armed resistance and with traditional inter-governmental diplomacy. Palestinian hopes now for the realization of their fundamental rights have shifted to engagement in a 'Legitimacy War'. Such a shift involves a worldwide struggle to gain control over the debate about legal entitlements and moral proprieties in the conflict as abetted by a global solidarity movement that is changing the climate of opinion. The United Nations has a crucial role to play in this process by lending support to Palestinian claims of rights and providing assessments of associated grievances resulting from Israel's violation of IHL and international human rights principles and standards.

**7. Language.** The Special Rapporteur believes that the language used to consider Palestinian grievances relating to IHL and international human rights law in Palestine needs to reflect everyday realities, and not remain beholden to technical wording and euphemisms that mask human suffering resulting from violations. It seems therefore appropriate to describe such unlawful impositions on the people resident in the West Bank by reference to 'annexation' and 'colonial ambitions' rather than 'occupation,'. Whether these impositions constitute 'apartheid' is discussed in more detail in my report. Such clarifications at the level of language reinforce the contention that it is a matter of urgency to pursue more concerted efforts within United Nations venues to implement the rights of the Palestinian people.

**8. Emergency in Gaza.** Developments in the region combined with an unlawful blockade maintained since mid-2007, has created a serious emergency situation in the Gaza Strip that threatens the entire population. From the perspective of international law, as argued in prior reports (A/HRC/20/32), Gaza remains 'occupied' despite Israel's implementation of its 'disengagement' plan in 2005, due to control of borders, airspace, and coastal waters, as

well as periodic military incursions. In that context, the present situation is dire as massive infrastructural failures cause daily hardship for the population, who are also at risk of epidemics. At the time of writing, with insufficient quantities of fuel reaching Gaza, electricity is available for only short periods, making it impossible for hospitals to provide proper treatment for seriously ill patients suffering from cancer and kidney ailments. The situation is aggravated by persisting tensions between the Palestinian Authority and the governing authorities in Gaza, and by the breakdown of cooperation along the border with Egypt. Egyptian security concerns in Sinai have led to greater restrictions at the Rafah Crossing, as well as to the destruction of the tunnel complex in southern Gaza that had eased some of the difficulties caused by the blockade. Some countries, notably Turkey and Qatar, have responded to this situation by providing emergency relief, but much more assistance is required, including pressure upon Israel to end the unlawful blockade.

**9.** Urgency. The stark reality is that the beleaguered occupied people of Gaza, over half of whom are children, are not receiving the protection to which they are entitled under IHL, which imposes an overall duty on the occupying Power to act in such a manner as to protect the civilian population from harm. Given the failure of Israel to live up to these obligations as set forth in the Fourth Geneva Convention, the United Nations and international society generally is challenged to take urgent action. The principles embedded in the R2P concept, 'the responsibility to protect,' would seem to have a special applicability to the emergency conditions currently existing in Gaza that is being brought to the attention of the world by graphic pictures of sewage in the streets, widespread flooding, seasonal cold including snow, and of children entrapped by these conditions.

**10.** The wall and the 2004 Advisory Opinion July 2014 will mark 10 years since the ICJ gave its near unanimous advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory<sup>[1]</sup>. Israel's refusal to implement this assessment of international law by the highest judicial body in the United Nations is cause for severe concern.

**11.** The question put to the Court by the General Assembly bears repeating<sup>[2]</sup>: "What are 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, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?" The ICJ was *unequivocal* in its reply. In summary, it concluded that the construction of the wall in occupied Palestine, including East Jerusalem, and its associated regime, was contrary to international law. The crucial point being that it would not have been unlawful for Israel to build a security wall on an established international border, but to encroach unilaterally on territory occupied in the 1967 was a flagrant violation of international law. The Court stated that Israel had a continuing duty to comply with its international obligations in this regard. It found that Israel was obliged to end the illegal situation, cease construction and dismantle the wall in the OPT, and to make reparations for all damage caused as a result of the wall.

**12.** In addition to the conclusions addressing Israel's obligations, the Court stated that all States are obliged not to recognise the illegal situation arising from the wall, and that States parties to the Fourth Geneva Convention of 1949 were obliged to ensure compliance by Israel with that Convention. Finally, the Court suggested that the United Nations, and especially the General Assembly and the Security Council, should consider further action to overcome this illegal situation resulting from the construction of the wall and its associated

regime[3].

**13.** In clear defiance of international law, Israel has continued construction of the wall and maintains on its website a map of 30 April 2006 showing its revised route[4]. At the time of the advisory opinion, the Secretary-General estimated that approximately 180 km of the wall had been completed[5]. Since that time, parts of the wall have been re-routed[6]. In 2013, the Secretary-General (A/68/502) reported that approximately 62 per cent of the wall had been completed. A further 10 per cent was under construction, and construction of the remaining 28% of the planned route had not yet commenced. Upon completion, the wall is expected to run approximately 708 km.

**14.** 85% of the planned route of the wall lies within the West Bank, and will cut off and isolate 9.4% of the West Bank territory, including East Jerusalem and so-called No-Man's land[7]. Palestinian communities affected by the wall experience varying degrees of isolation and restrictions on their freedom of movement. The seam zone's[8] associated permit regime requires Palestinians to continually apply for temporary permits to allow them to reside in their home area and carry on aspects of their lives that require entering or exiting the seam zone. In order to access farming land beyond Israeli controlled access gates, leave and return for work, access education, health and other services, visit family and friends or arrange for visits to those communities for non-resident Palestinians, prior permission by Israeli authorities is necessary. This permit procedure imposes daily hardships on many Palestinian lives[9].

**15.** The Ministry of Defence states that "The Security Fence does not annex territories to the State of Israel, nor will it change the status of the residents of these areas[10]." Israel maintains that the purpose of the wall is to ensure security and protect Israeli citizens from terrorist attacks. In 2011, the Israeli High Court supported this reasoning regarding security in rejecting NGO petitions which claimed that the permit regime was aimed at expropriation and annexation of Palestinian land, and argued that its exclusive application to Palestinians, and not e.g. to settlers in the zone, was discriminatory and comparable to the Pass Laws of apartheid South Africa[11]. However, the High Court's assertion does not overcome the conclusion by the ICJ that the grave infringements of the rights of Palestinians caused by the wall in the OPT were not necessary to satisfy legitimate Israeli security requirements[12].

**16.** If protection of Israeli citizens were indeed the only reason for the wall and the associated regime, it begs the question of why Israel continues to support the expansion of illegal settlements in the West Bank, thus moving an increasing number of Israeli citizens into the very area from which it says the risk emanates. That continued settlement in West Bank land, including East Jerusalem, cut off by the wall seems to be creating a fait accompli amounting to de facto annexation, is a grave concern raised by the HRC, which has demanded that Israel comply with the Advisory Opinion (A/HRC/Res/22/26).

**17.** For Palestinian residents isolated from the rest of the West Bank by the wall, and living under the permit regime and other restrictions, the issue is not alone about status, but also about how life is made untenable, inducing more and more Palestinians to abandon their land and leave. By way of illustration, for years, the village of Nabi Samwel reportedly attempted to improve the village school. The village's location in the seam zone complicates access to outside education. The United Nations Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Valerie Amos, stated on her 2011 visit to the village: "I am horrified by the way the Barrier affects Palestinians. It divides communities and inhibits the provision of services. I visited a one-room school with no windows and very

few facilities, which can't be improved because the planning rules don't allow it. This is unacceptable[13]." In September 2013, the village succeeded in installing a container on the school ground to serve as an additional classroom. However, the school is now in danger of losing one of its two rooms for lack of a building permit[14]. These acutely burdensome living conditions lead to the displacement of long term residents. In 2012, the Village Council noted that over the past decade at least 10 families have left the village, which counts some 260 residents[15].

**18.** Another case in point is the approximately 25 houses making up the village of Al-Numan. It is also encircled by the wall, with its only access through an Israeli checkpoint, and restricted from unlicensed building activity, effectively resulting in the inability of families and the population of the village to grow as housing needs cannot be met[16]. Consequently, the villagers have seen their own number fall while observing the neighbouring illegal Har Homa settlement's steady growth in occupied territory. In 2006 Al-Haq published a case study on the indirect forcible transfer taking place in Al-Numan[17]. These are but two concrete examples of the obstacles communities face daily. In 2012, the Office for the Coordination of Humanitarian Affairs estimated that there were approximately 7,500 Palestinians still living in the seam zone[18]. This is a decrease from an estimated 10,000 people in 2003[19]. Upon completion of the wall, an estimated 25,000 Palestinians would be located in the seam zone, a figure which does not include the Palestinian population in East Jerusalem[20].

**19.** Regular demonstrations against the wall and its associated regime staged affected villages are often violently suppressed[21]. A website for the village of Bil'in, a farming community, describes its struggle thus: "[Bil'in] is fighting to safeguard its land, its olive trees, its resources... its liberty. ... .Supported by Israeli and international activists, Bil'in residents peacefully demonstrate every Friday in front of the "work-site of shame". And every Friday the Israeli army responds with both physical and psychological violence[22]."

**20.** The impact of the wall on people's lives is reflected in the progress report of the Board of the United Nations Register of Damage Caused by the Construction of the Wall in the OPT[23]. As of June 2013, 36803 claim forms for registration of damage had been received and, of the almost 9000 claims decided, all but 580 claims were found to meet the eligibility criteria for inclusion in the register. Claimants may submit claims under categories of losses including: agriculture; commercial; residential; employment; access to services; and public resources[24].

**21.** In his first report (A/63/326) to the General Assembly, the Special Rapporteur recommended seeking the assistance of the Security Council for the implementation of the advisory opinion. In the face of the unequivocal opinion of the ICJ, and of General Assembly resolution ES-10/15 that called on Israel to comply with the advisory opinion, Israel has defiantly acted as if international law and international judicial authority has no bearing on their policies and behavior[25]. With the tenth anniversary of the advisory opinion approaching, it is time again to examine what legitimate action by the international community can be taken to achieve compliance with international law, as set out by the ICJ. It is often supposed that because the legal findings of the ICJ were embedded in an 'advisory opinion', it has no bearing on the status of Israel's legal obligations. This is incorrect. An advisory opinion of the ICJ is as determinative with respect to the authority of international law as a judgment in a dispute between two or more states, but unlike such a judgment between states that can be directly enforced by reliance on Article 94 of the United Nations Charter, an advisory opinion cannot be so implemented. However, this difference does not

weaken the obligation of Israel to act in accordance with this authoritative determination of international legal obligations, and its failure to do so puts it in breach of international law and responsible for the cumulative harm inflicted on the Palestinian people. It is past time, for the United Nations to take action that seeks to protect the rights of the Palestinian people bearing on the sanctity of their territory and its relation to the underlying right of self-determination.

### III. Israeli settlements and the fragmentation of occupied Palestine

#### ▪ **Facts on the ground**

**22.** The hallmark of Israel's 46-year prolonged annexing occupation of Palestine has been Israel's determined pursuit of settlement construction and expansion in the West Bank, including East Jerusalem, in defiance of its international law obligations<sup>[26]</sup>. This was clearly reflected in the findings of the international fact-finding mission on the implications of Israeli settlements.<sup>[27]</sup> Throughout the past six years, the Special Rapporteur has periodically reported on the expansion of settlements and outposts<sup>[28]</sup> in the West Bank, including East Jerusalem, (in breach of Israel's own commitment to freeze settlement expansion, including natural growth under the 2003 Middle East Quartet Road Map), and the impact of associated policies and practices on the human rights of Palestinians living in the occupied territory.<sup>[29]</sup> While the pro-settlement camp claims that, "Settlements aren't the problem"<sup>[30]</sup>, this view stands in sharp contrast to the facts on the ground.

**23.** Increasing fragmentation of the West Bank, including East Jerusalem, by way of a combination of policies and practices including, but not limited to: the wall; the creation of seam zones; checkpoints; zoning and planning restrictions; demolition of homes and forced evictions (particularly of Bedouin communities in Area C); revocation of residency rights; the designation of vast tracts of land in the West Bank as closed military zones or natural reserves; and the expropriation of land for settler agriculture or industrial zones, may irreversibly disrupt the contiguity of the West Bank undermining a just and sustainable "two-state" solution<sup>[31]</sup>.

**24.** Peace Now, an Israeli NGO, called attention to "Bibi's Settlements Boom" in 2013, reporting that tenders had been published for 3,472 new units in settlements, and that plans had been promoted 8,943 new settlement units in the eight months since the Netanyahu government took office in March 2013.<sup>[32]</sup> Despite a brief and limited ten month moratorium on settlement construction in 2010 during the last round of unsuccessful peace talks (which also demonstrated Israel's ability to halt settlement activity if desired), Israel issued tenders for the construction of 5,302 housing units in the West Bank, including East Jerusalem, during the period from March 2009 to January 2013.<sup>[33]</sup>

**25.** The timing of announcements regarding settlement expansion has also been provocative, with the two most recent announcements coinciding with the first and second round of Palestinian prisoner releases by Israel in the context of the renewed peace negotiations that began in August 2013. The passage of time under the status quo has not been a neutral factor for Palestinians as more "facts on the ground" are created on a daily basis, strengthening Israel's position in its preferred mode of power-based negotiations (as opposed to negotiations based on rights and international law). Despite protestations over settlement activity by the United Nations, and notably also by the United States, and the European Union<sup>[34]</sup>, Israel continues to use state power and resources to promote its defiant settlement policies. The Secretary-General has described Israel as playing a "leading

role” in the construction and expansion of settlements through the control of land and natural resources as well as the preferential treatment given to settlers by way of benefits and incentives.[\[35\]](#)

**26.** This latter factor is important to note if the removal of existing settlements were to occur as part of a peace agreement. Approximately half of all settlements in the West Bank can be classified by type as either ‘quality of life’, or a mixture of ‘quality of life/ideological’, which tend to be inhabited by predominately secular or mixed settler populations.[\[36\]](#) At least for the economic settlers who were persuaded to move to the West Bank settlements through various government benefits and incentives, Israel might be able to re-incentivise those settlers to re-settle to the west of Israel’s pre-1967 borders. Israel would have a more difficult time removing the more religious settlers who live in approximately 70 settlements across the West Bank, all the more so as population growth in the settlements of approximately 2.8 per cent continues to outstrip population growth in Israel.[\[37\]](#) It also remains to be seen whether an emergent settler unity precludes implementing a future peace agreement based on inducing economic settlers to return to Israel. Certainly, it may be anticipated that ideological settlers would do their best to prevent such a division and the implementation of such an agreement.

**27.** It has been a small minority within the ideologically motivated settlers who have been responsible for most of the violence committed against Palestinian men, women and children as well as their homes and properties. 361 incidents of settler violence were reported in the first ten months of 2013, including 87 resulting in the injury of Palestinians (compared to a total of 366 incidents in 2012).[\[38\]](#) Most of these incidents occurred in the Nablus, Ramallah and Hebron governorates. Settler violence is reinforced by a lack of accountability and the related failure of Israeli law enforcement forces to protect vulnerable Palestinian communities.[\[39\]](#)

**28.** Housing demolitions and displacement of Palestinian communities also kept up with the settlement boom in 2013. From January to October 2013, 533 Palestinian homes and livelihood structures were demolished, including 205 residential structures displacing 969 people, including 441 children. International donor-funded structures, paid for by taxpayers around the world were not spared from demolition, and 96 donor funded structures, including residential, livestock-related and water and sanitation facilities in the West Bank were demolished by Israeli authorities.

**29.** Herding communities living in small villages in Area C have been particularly vulnerable to Israeli practices accelerating the fragmentation of the West Bank. In 2013, the United Nations High Commissioner for Human Rights twice spoke out against the demolition of at least three Bedouin and herder communities in Mak-hul, Tel al Adassa and Az Za’ayem in the northern Jordan Valley.[\[40\]](#) Israel’s violations of international law extend to actively preventing the provision of urgent humanitarian assistance from the international community to the affected Palestinian communities.[\[41\]](#)

#### ▪ **The future of outposts**

**30.** In July 2012, the Committee to Examine the State of Construction in the West Bank appointed by the Ministry of Justice and chaired by Supreme Court Justice (Ret.) Edmund Levy (the Levy Committee), issued its report on the legal status of Israeli settlements in the West Bank and in particular, set forth recommended steps to regularize the construction of ‘illegal settlements’ (outposts) in the West Bank (currently numbering over 100).It



concluded that the international laws of occupation, including the Fourth Geneva Convention, did not apply to Israel's unique situation in Judea and Samaria (the name given the West Bank in internal Israeli discourse and signalling a claimed biblical attachment), and that Israelis had the legal right to settle in the West Bank despite the international consensus.

**31.** The Levy Committee conclusions not only reflected disregard of international law but also set forth a quasi-legal retroactive endorsement of outposts, formally unauthorized under Israeli law. In fact, the Committee determined that existing outposts were "carried out with the knowledge, encouragement and tacit agreement of the most senior political level, government ministers and the Prime Minister, and therefore such conduct is to be seen as implied agreement".[\[42\]](#) A previous report of 2005 by Talia Sasson, a former chief state prosecutor concerning the illegal outposts had not gone so far as to implicate the senior most political echelon of the country, but had found the Settlement Division of the World Zionist Organization (fully funded from the State Treasury), the Ministry of Construction and Housing, the Civil Administration in Judea and Samaria, and the Assistant to Defense Minister complicit in the establishment of new unauthorized outposts and exposed an unelected bureaucracy in charge of creating new outposts without political authorization or oversight.[\[43\]](#)

**32.** The Special Rapporteur notes that while Sasson's report clearly labelled the outposts as illegal under Israeli law and recommended their dismantlement, developments on the ground since then have shown that successive Israeli Governments preferred to follow the approach endorsed post-facto by the Levy Committee. Of 1,708 units constructed in West Bank settlements in the first half of 2013, 180 units were located in outposts.[\[44\]](#) In May 2013, Israel announced plans to legalize four outposts in the West Bank (in other words to recognise them as official settlements)[\[45\]](#) While the Netanyahu Government never adopted the Levy report, the Knesset Committee on Constitution, Law and Justice is expected to debate the report in early December 2013, indicating that it is being taken seriously at the highest levels in Israel.[\[46\]](#)

#### ▪ 'Demographic balance' in East Jerusalem

**33.** The status of East Jerusalem remains one of the most contentious issues to be resolved in the Israeli-Palestinian conflict. It is worth recalling that United Nations Security Council resolution 478 (1980) affirmed that Israel's Basic Law proclaiming Jerusalem, including the annexed area, as the capital of Israel constitutes a violation of international law and did not affect the application of the Fourth Geneva Convention in Palestine, including East Jerusalem.

**34.** For Palestinians living in East Jerusalem, their situation would not be as precarious if, despite the illegality of annexation, they were treated equally to Israeli citizens and afforded access to quality education, health care and housing. Instead, Palestinians living in East Jerusalem are regarded as 'permanent residents' and subject to a gradual and bureaucratic process of ethnic cleansing.[\[47\]](#) This has consisted of revocation of residency permits, demolitions of residential structures built without Israeli permits (often virtually impossible to obtain)[\[48\]](#), and forced evictions of Palestinian families, in violation of the basic right to adequate housing, enshrined in the International Covenant on Economic, Social and Cultural Rights.

**35.** A 2013 report by the United Nations Conference on Trade and Development on the

Palestinian economy in East Jerusalem detailed Israeli policies that have impeded the natural growth of the Palestinian economy. It also noted that Palestinians are made to pay high municipal taxes in return for poor services and disproportionately low public expenditure in East Jerusalem.[\[49\]](#) This has been particularly evident with respect to education, characterised by shortage of classrooms, a high overall dropout rate of 13 per cent among Palestinian schools in East Jerusalem, and a general neglect of the Arab schooling system in comparison to their Jewish counterparts literally metres away in West Jerusalem.[\[50\]](#)

**36.** The situation in East Jerusalem today is a microcosm of the fragmentation of territory taking place across the West Bank. Israel actively seeks to undermine the Palestinian presence to serve its goal of preserving a Jewish majority in East Jerusalem. This has been a decades old policy of Israel, acknowledged by the Jerusalem Municipality, to maintain a demographic balance of approximately 70 per cent Jewish to 30 per cent Palestinian in Jerusalem.[\[51\]](#)

**37.** Since 1996, an estimated 11,023 Jerusalem Palestinians have lost their resident status and right to live in occupied East Jerusalem.[\[52\]](#) During the period 2004-2013, a total of 479 housing units were demolished in East Jerusalem displacing 1,892 Palestinians. These figures account only for officially demolished housing units and do not include homes demolished by some owners after receiving a demolition order to avoid perverse heavy municipal penalties and demolition costs associated with the destruction of their own homes.[\[53\]](#)

**38.** The most problematic plan advanced in East Jerusalem in recent years has been the expansion of settlements and infrastructure around Har Homa, Gilo, and Givat Hamatos, as well as the E1 settlement bloc to the east, which threatens to cut off East Jerusalem from the rest of the West Bank.[\[54\]](#) Eventual peace depends crucially on ensuring that Palestinian rights in East Jerusalem are not further jeopardized.

- **Corporate complicity in international crimes**

**39.** Over the past two years, the Special Rapporteur focussed attention on companies involved in business and financial activities related to the Israeli settlement enterprise as well as the possibility of corporate complicity in international crimes related to Israeli settlements in the West Bank, including East Jerusalem.[\[55\]](#) .

**40.** The effort to focus on business activities in the settlements was made, in part, to bring a measure of accountability with respect to the human rights obligations of companies in conformity with international law and the United Nations Guiding Principles on Business and Human Rights. In so doing, the Special Rapporteur's intention was not only to provide a sound legal basis upon which to assess the complicity of businesses in international crimes related to the settlements, but also in order to clearly set out the risks and associated costs in terms of reputation, as well as the potential legal consequences of doing business in the settlements.

**41.** The responses received from some of the 13 companies analysed in an earlier report (A/67/379) were mixed. Nonetheless, there have been a number of recent developments in relation to the involvement of other businesses involved in the settlements to indicate that public pressure and media attention does bring some ethical dividends, and has encouraged governments to be more vigilant.

**42.** Some positive developments in this regard include Royal HaskoningDHV, a Dutch company, which announced its decision to terminate a contract with the Jerusalem municipality to build a wastewater treatment plant in East Jerusalem in September 2013.<sup>[56]</sup> This was followed in December by the decision of Vitens, a Dutch water utility company, to cut its ties with Mekorot, the Israeli national water company, citing concerns in relation to the adherence of international laws.<sup>[57]</sup> In August 2013, the Swedish-Norwegian bank Nordea excluded Cemex, one of the companies taken up in the Special Rapporteur's earlier report from its investment portfolio, due to its extraction of non-renewable natural resources from occupied Palestine.<sup>[58]</sup> Such examples should lead the way for more countries and companies to follow suit, as well as alerting governments to their responsibility to urge companies subject to their authority to act in accordance with international law.

**43.** While due diligence on the part of businesses is an inherent aspect of corporate responsibility, Governments also have the obligation, as noted by the fact-finding mission on settlements, to take measures to ensure that they do not recognise an unlawful situation arising from Israel's illegal activities.<sup>[59]</sup> In this regard, the European Union guidelines which establish that all agreements between Israel and the European Union for grants, prizes and financial instruments funded by the European Union must now unequivocally and explicitly indicate their inapplicability to the territories occupied by Israel in 1967 represents a step in the right direction.

**44.** The Special Rapporteur is also encouraged by the UK government's recent issuance of guidelines to businesses, which for the first time outlines the risks of trading with Israeli settlements, and specifically warns of the legal and economic risks stemming from the fact that the Israeli settlements, according to international law, are built on occupied land and are not recognised as a legitimate part of Israel's territory.<sup>[60]</sup>

- **Trade with the settlements**

**45.** The diligence shown by the European Union and some of its Member States on the responsibility of businesses operating in occupied Palestine naturally leads to the question: are the same human rights standards applied by countries when it comes to trade relations with the settlements? If the statements protesting the expansion of settlements issued by the European Union and the United States reiterate their illegality and illegitimacy, then their actions should also reflect a genuine commitment to human rights and respect for international law by ceasing trade with the settlements starting with a ban on imports of settlement produce.

**46.** While produce originating in the Israeli settlements are not entitled to benefit from preferential tariff treatment under the EU-Israel Association Agreement, fresh agricultural produce exported from the settlements – but mislabelled as 'made in Israel' – can still be found on many supermarket shelves across the European Union due to the voluntary nature of labelling requirements. Considering the fact that the EU remains one of the most important trading partners for the settlements with annual exports worth \$300 million, a ban on settlement produce would have a significant impact. It should also not be forgotten that trade with settlements has adverse ramifications for the Palestinian economy and is linked to the violation of human rights with respect to Palestinian communities denied access to fertile agricultural land, water and other natural resources.

**47.** So long as illegal settlements are supported through trade, statements protesting the

expansion of settlements from the main trading partners of Israel will have little resonance on the ground, and third party States will continue to be associated with the violation of human rights in occupied Palestine.

#### **IV. The Gaza Strip**

**48.** In the space of six years since this Special Rapporteur assumed this mandate, the population of the Gaza Strip has lived through two major Israeli military operations (Cast Lead in December 2008 to January 2009 and Pillar of Defense in November 2012), and endured Israel's illegal blockade (in place since June 2007). Both conflicts inflicted disproportionate casualties and devastation on the Palestinian civilian population. This has been well-documented by the United Nations.[\[61\]](#)

**49.** Since June 2013, the humanitarian situation in Gaza has worsened. In recent months, the destruction by the Egyptian authorities of most underground tunnels, which although problematic, had been a lifeline to the residents has had a particularly serious impact on the availability of fuel at affordable prices in Gaza. This has led to severe power shortages resulting in shut downs of sewage treatment facilities, and disruptions to specialized health services, such as kidney dialysis, operating theatres, blood banks, intensive care units and incubators, putting the lives of vulnerable patients in Gaza at risk.[\[62\]](#) The frequent closures of the Rafah crossing in recent months have generally prevented access to affordable health care in Egypt, which remains essential given the limitations of the Gaza health system.

**50.** The most egregious violations of human rights committed by Israel have been in its enforcement using excessive force, of arbitrary access to restricted areas at sea and on land, profoundly affecting the lives of Palestinian fishermen and agricultural farmers and households dependent upon them. The more pervasive forms of human rights violations also linked to the blockade have been well documented by the Secretary-General (A/68/502), and include inter alia, severe movement restrictions into and out of Gaza from Israel and adverse impacts on the rights of Palestinians in Gaza to education, health and work. In addition, severe export restrictions (and limitations on imports) undermine the potential of the Gaza economy, and accentuate the impoverished conditions that prevail in Gaza.[\[63\]](#) The recent refusal of Israel to allow exports from Gaza to the West Bank, despite a Dutch donation of a container security scanner, is emblematic of the denial of the right to development in Gaza, and undercuts Israel's claims that its actions are taken to serve genuine security concerns.[\[64\]](#)

##### **1. Question of apartheid and segregation**

**51.** In 2011 (A/HRC/16/72), the Special Rapporteur reiterated the call made by his predecessor, John Dugard, in 2007 (A/HRC/4/17), for a referral to the ICJ for an advisory opinion on the question of whether "elements of the [Israeli] occupation constitute forms of colonialism and apartheid".[\[65\]](#) More precisely, he recommended that the ICJ be asked to assess the allegations that the prolonged occupation of the West Bank and East Jerusalem possess elements of "colonialism", "apartheid" and "ethnic cleansing" inconsistent with IHL in circumstances of belligerent occupation and unlawful abridgement of the right to self-determination of the Palestinian people".[\[66\]](#) Since no advisory opinion has been sought following the aforementioned reports of successive Special Rapporteurs, the present report assumes part of the task of analysing whether allegations of apartheid in occupied Palestine are well-founded. It discusses Israeli policies and practices, through the lens of the international prohibition upon ethnic discrimination, segregation, and apartheid.

- **Legal Framework**

**52.** Apartheid is prohibited under international law, and Israel, as a State and an occupying power, is bound by this prohibition. Under the First Geneva Protocol, which is declaratory of international law and therefore widely regarded as universally binding, ‘practices of ‘ apartheid ‘ and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination’ are included as grave breaches[67]. Further, the International Law Commission (ILC) has recognised apartheid among the prohibitions that there seems to be “widespread agreement” constitute peremptory norms[68]. In addition, article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination (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”[69]. At the second Universal Periodic Review of Israel in October 2013, South Africa recommended that Israel “Prohibit policies and practices of racial segregation that disproportionately affect the Palestinian population in the OPT”[70].

**53.** Apartheid involves the domination of one racial group over another, and some may argue that neither Israeli Jews nor Palestinians constitute racial groups per se. However, article 1 of CERD, in its definition of racial discrimination, makes it clear that “race” is in fact not the sole factor, but that racial discrimination may be based on “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin”. The CERD Committee has stressed that under the definition in article 1 “the Convention relates to all persons who belong to different races, national or ethnic groups or to indigenous peoples”[71].

**54.** The International Convention on the Suppression and Punishment of the Crime of Apartheid (AC) in article 2, provides a detailed definition of the crime of apartheid, providing that it “shall include similar policies and practices of racial segregation and discrimination as practised in southern Africa,” and applies to “inhuman acts committed 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”. The Rome Statute of the International Criminal Court (ICC) echoes these core elements (article 7.2(h)) and further specifies that for such acts to constitute “crimes against humanity” they must be “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”. Without prejudice to any possible differences in the elements of apartheid as an international crime and an internationally wrongful act, apartheid will be treated as a single concept for the purpose of this report, which will be framed around the inhuman acts laid out in article 2 (a) - (f) AC[72].

- **Acts potentially amounting to segregation and apartheid**

**55.** Article 2 (a) concerns denial of the right to life and liberty of person, including by (i) murder; (ii) serious bodily and mental harm, infringement of freedom, and torture, and (iii) arbitrary arrest and illegal imprisonment. With respect to article 2(a)(i), continuing excessive use of force by Israeli Security Forces (ISF) and a lack of accountability for violations of IHL and international human rights law is well-documented by successive UN resolutions and reports[73]. Palestinians are killed as a result of regular Israeli military incursions into occupied Palestine; lethal use of force against demonstrators; official endorsement of targeted killings; and large-scale military operations.[74]

**56.** According to B'tselem, between 1987 and 2000 approximately 1,400 Palestinians were killed by ISF[75]. After the year 2000, deaths of Palestinians caused by the ISF accelerated with more than 6,500 deaths[76], as of October 2013. Of this number, over 3,000 were civilians not involved in hostilities. B'tselem's statistics show that during Israel's operation 'Cast Lead' in Gaza, of the 344 children reportedly killed, 318 did not take part in hostilities. During the same operation, of the 110 Palestinian women recorded as killed, two were police officers and the remaining 108 did not take part in the hostilities. During operation 'Pillar of Defence', approximately 100 Palestinian civilians were reportedly killed as a result of ISF actions, a third of whom were children.[77]

**57.** Additional deaths were caused by ISF's policy of targeted killing which resulted in the killing of approximately 250 Palestinians in the aforementioned period. Moreover, on average, for every one person killed as a target of ISF, one or two other persons have been killed in any given operation. Thus, during the same period, more than 400 Palestinians who were not targets were also killed[78].

**58.** Individual accounts by former Israeli Defence Force (IDF) soldiers, published by the Israeli NGO 'Breaking the Silence', bear witness to Israeli policy in respect to the occupied people: "Prevention of terror" is the stamp of approval granted to any offensive IDF action in the Territories, obscuring the distinction between the use of force against terrorists and the use of force against civilians. In this way, the IDF is able to justify actions that intimidate and oppress the Palestinian population overall.[79]"

**59.** Under a simple interpretation the term murder, as referred to in the AC, signifies the unlawful taking of life. Therefore, the taking of lives - outside the limited circumstances in which IHL and international human rights law do not absolutely prohibit this - potentially constitutes an element of apartheid, in the context of a systematic and institutional regime in which these unlawful killings form part of acts carried out in order to maintain dominance over Palestinians. The relatively high proportion of civilian casualties caused by ISF in occupied Palestine is notable in this respect.

**60.** In regard to article 2(a) (ii) and (iii), detention by Israel of Palestinians is closely linked to the occurrence of torture and ill-treatment. According to the Prisoner Support and Human Rights Association, Addameer, in September 2013, there were some 5,000 Palestinian political prisoners, including 137 administrative detainees.[80] Many detainees are transferred to prisons in Israel, in violation of the Fourth Geneva Convention (art.76).[81]

**61.** In 2012, the CERD Committee urged Israel to end administrative detention, which is discriminatory and constitutes arbitrary detention under international human rights law. [82] Similar recommendations were made by a number of States during the most recent Universal Periodic Review of Israel.[83] The CERD Committee further recommended that Israel ensure equal access to justice for all persons living in territories under its effective control, noting that Jewish settlers in occupied Palestine are subject to a civil law regime, while a military regime applies to Palestinians in the West Bank, including East Jerusalem.

**62.** Despite the absolute prohibition of torture[84], Palestinians detained by Israel continue to be subjected to torture and ill-treatment[85]. Methods of torture and ill-treatment reportedly include: sleep deprivation; excessive use of handcuffs; beatings; verbal abuse; stress positions; solitary confinement; humiliation and threats of killing, sexual assault and house demolitions, against the detainee or his or her family[86].

**63.** In 1999 the Israeli High Court said that using certain methods of physical pressure for the purpose of “breaking” a detainee are unlawful and that interrogation methods must be fair and reasonable, and respectful of human dignity[87]. While representing an important recognition of the illegality of certain methods of torture employed against Palestinian detainees, the decision failed to outlaw torture by allowing the ‘ticking bomb’ or ‘necessity’ defence. According to Addameer, ‘necessity’ is used by interrogators as a blanket defence with little to no accountability[88]. The Public Committee against Torture in Israel reported that of 701 formal complaints of torture submitted from 2001-10, none resulted in a criminal investigation[89].

**64.** Palestinian children are not exempt. In 2013, UNICEF concluded that “ill-treatment ... appears to be widespread, systematic and institutionalized[90]” in the case of Palestinian children held in the Israeli Military detention system. Israeli authorities seem to have taken some limited steps towards meeting UNICEF’s recommendations[91], including by piloting test summons in two West Bank areas instead of conducting frightening night arrests of children[92]. While this is clearly a needed development, it also shows just how basic the denial and lack of protection of Palestinian children’s rights is under the Israeli military legal regime. By comparison, Israeli settler children in conflict with the law are subject to regular Israeli law. According to Defence for Children International, as of October 2013, 159 Palestinian children were in Israeli military detention[93]. On average, around 700 children are detained and prosecuted per year, most commonly on charges of throwing stones[94].

**65.** The regular denial by Israel of the right to life and liberty of significant numbers of Palestinians is reflected in its policies, laws and practices in occupied Palestine.

**66.** Article 2 (b) refers to the imposition of living conditions calculated to cause a group’s physical destruction in whole or in part. It seems unlikely that Israel’s policies, laws and practices can be said to have as their aim the physical destruction of the occupied people[95].

**67.** Article 2 (c) concerns measures calculated to prevent participation in the political, social, economic and cultural life of the country and the full development of a racial group, including and especially by denying them their rights to work, education, to leave and to return to their country, nationality, and freedoms of movement and residence, opinion and expression, and peaceful assembly and association.

Violations of many of these rights have already been touched on in preceding sections. For instance the violations by Israel of the rights to work, education, freedom of movement and residence, as well as freedom of expression and assembly have been illustrated in the context of discussing the wall and its associated regime, and policies and laws related to the development of settlements, including in East Jerusalem. The rights to work, and to freedom of movement, and to leave and return to one’s country, are particularly relevant to Gaza. In the West Bank, the denial of rights to Palestinians is made possible by the existence of parallel legal systems operating in the same territory: one set of civil and criminal laws for Israeli settlers and another for Palestinian Arabs, subject to Israeli military orders, as well as other laws. While the Israeli High Court of Justice formally exercises judicial oversight of the Israeli administration in occupied Palestine, according to NGOs, case law illustrates a trend whereby major policy decisions of government, e.g. relating to the wall and settlements, tend to be immune from judicial intervention, and that human rights and protection under international humanitarian law have not been adequately upheld by the High Court in its rulings[96]. The creation of Israeli legal zones for settlers and the resulting segregation was

noted in the 2013 report by the independent fact-finding mission on settlements (A/HRC/22/63). The CERD Committee in 2012 expressed that it was “extremely concerned” at policies and practices amounting to de facto segregation and that it was “particularly appalled at the hermetic character of the separation of the two groups”[\[97\]](#).

**68.** It is clear that Israeli measures, in the form of policies, laws and practices, have the effect of preventing Palestinians from full participation in the political, social, economic and cultural life of Palestine and arguably also prevent their full development in both the West Bank and the Gaza Strip.

**69.** Article 2 (d) refers to measures, designed to divide the population along racial lines including by the creation of separate reserves and ghettos for the members of a racial group or groups, and the expropriation of landed property.

The expropriation of Palestinian land is an obvious part of the expansion of settlements and of the construction of the wall. The fragmentation of Palestinian land and creation of separate reserves and enclaves, including the plans threatening to cut off East Jerusalem from the rest of the West bank, is well-documented[\[98\]](#). The final conclusions of the Russell Tribunal on Palestine (Russell Tribunal) state “Israel has through its laws and practices divided the Israeli Jewish and Palestinian populations and allocated them different physical spheres, with varying levels and quality of infrastructure, services and access to resources. The end result is wholesale territorial fragmentation and a series of separate reserves and enclaves, with the two groups largely segregated. The Tribunal heard evidence to the effect that such a policy is formally described in Israel as *hafrada*, Hebrew for “separation”[\[99\]](#). The Special Rapporteur has previously drawn attention to the dual system of roads in the West Bank, as a clear example of segregation, where Palestinians are largely relegated to alternative roads and forced to take long detours[\[100\]](#).

**70.** It seems incontestable that Israeli measures do divide the population of OPT along racial lines, create separate reserves for Palestinians, and expropriate their land.

**71.** Article 2(e) refers to exploitation of the labour.

There exist historical reports[\[101\]](#) as well as current campaigns and reports[\[102\]](#) which address poor working conditions of Palestinian citizens working in Israel or in settlements. However, it is noted that there has been a sharp drop in Israeli use of Palestinian workers since the 1990s, especially as it is now impossible for Gazans to work in Israel and since in the West Bank the construction of the wall has further diminished the number of Palestinians working in Israel or for Israeli employers[\[103\]](#).

**72.** Article 2 (f) concerns persecution of those who oppose apartheid.

This provision potentially relates to a wide range of human rights violations against Palestinians in the OPT, who as a people desire self-determination and oppose the segregation, restrictions and discriminatory regime imposed by Israel on them. In this sense, the punitive response often meted out to those who demonstrate against the wall and its associated regime, or more oppose Israeli violations of human rights, arguably fall under this provision.

**73.** An individual case in point concerns the Palestinian human rights defender and a founder of non-governmental organizations Youth Against Settlements and Hebron



Defenders, Issa Amro. In 2012, Mr. Amro was arrested and detained 20 times without charge[104]. At the time of writing, he had been detained multiple times in 2013 and had been hospitalised, allegedly following a beating by ISF while in detention. In August 2013, a number of Special Rapporteurs, including this Special Rapporteur, expressed deep concern at the alleged ongoing judicial harassment, intimidation and abusive treatment of him. According to the Special Rapporteur on the situation of Human Rights Defenders, Margaret Sekaggya: “This is an unacceptable campaign of harassment, intimidation and reprisals against Mr. Amro, and other human rights defenders who peacefully advocate for the rights of Palestinians in the West Bank, including by cooperating with UN human rights bodies”.

**74.** An example of an Israeli citizen, belonging to the Druze minority, who has reportedly been imprisoned for his conscientious objection to serving in the Israeli Army is Omar Saad. In an open letter to the Prime Minister and Minister of Defence he explained: “I couldn’t imagine myself wearing military uniform and participating in the suppression of my Palestinian people” and asking “How can I be a soldier standing at Qalandia checkpoint or any other checkpoint, after I experienced the injustices at these checkpoints? How can I prevent someone from Ramallah to visit his city, Jerusalem? How can I guard the apartheid wall? How can I be a jailer to my own people while I know that the majority of prisoners are freedom prisoners and seekers of rights and freedom?”[105].

**75.** It is strongly arguable that those who oppose Israeli measures amounting to apartheid risk persecution because of their opposition.

- Systematic oppression

**76.** None of the human rights violations discussed in the context of possibly constituting “inhuman acts” for the purpose of the AC or the Rome Statute can be said to be isolated events. Rather, their commission 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 institutionalised 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 designed to ensure security for Israeli citizens; to facilitate and expand settlements; and it would appear, to annex land, is: “*hafrada*”, discrimination, and systematic oppression of, and domination over, the Palestinian people.

## 1. Concluding Observations

**77.** Through prolonged occupation, with practices and policies of apartheid and segregation, ongoing expansion of settlements, and continual construction of the wall arguably amounting to de facto annexation of parts of the occupied Palestinian territory; the denial by Israel of the right to self-determination of the Palestinian people is evident. The ILC’s Draft Articles on State Responsibility provide guidance as to the consequences of serious breaches of peremptory norms under international law. In this respect there is authority[106] to suggest that the following prohibitions have attained the status of peremptory norms: Aggression through military occupation and imposition of military blockades on ports and coasts[107], racial discrimination and apartheid, and torture. In addition, the right to self-determination itself has been recognised as a peremptory norm[108] which applies *erga omnes*[109].

**78.** Under article 40(2) of the Draft Articles, for breaches of peremptory norms to be “serious”, they must “involve a gross or systematic failure of the responsible State to fulfil the obligation”. Without prejudice to an authoritative determination of whether the breaches of the discussed peremptory norms qualify as “serious”, it is noted that the violations discussed in the context of the prolonged occupation appear deliberate, organised, institutionalised and longstanding. ILC’s commentary considers it likely that competent international organizations, including the Security Council and the General Assembly address such serious breaches. The implications for Member States for serious breaches of this nature include an obligation to cooperate to bring an end to breaches; non-recognition of, and abstention from maintaining, the illegal situation[110].

**79.** Finally, from the point of view of international criminal law, with the General Assembly’s recognition of Palestinian statehood, the opportunity for Palestine to accept the jurisdiction of the ICC is now clear. While a declaration was already lodged by the Palestinian Minister of Justice in 2009 purporting to accept its jurisdiction “for acts committed on the territory of Palestine since 1 July 2002”[111], it seems the Court’s decision of 3 April 2012[112] on the question of jurisdiction, had the effect of closing the preliminary examination[113]. An acceptance of jurisdiction would potentially bring a measure of accountability for key individuals, and address violations related to the crime of apartheid and other issues flowing from the more than 400 communications on crimes allegedly committed in Palestine, received by the ICC Office of the Prosecutor since 2009[114].

## **1. Recommendations**

**80.** In this my final report, I take the opportunity to reiterate some past recommendations and add several new ones, namely that:

**81. Palestinian legal rights, including the right of self-determination, be fully respected and implemented in attempts to reach a peaceful and just resolution of the conflict between these two peoples.**

**82. The General Assembly request the ICJ issue an advisory opinion on the legal status of prolonged occupation of Palestine, as aggravated by prohibited transfers of large numbers of persons from the occupying Power and the imposition of a dual and discriminatory administrative and legal system in the West Bank, including East Jerusalem, and further assess allegations that the prolonged occupation possesses legally unacceptable characteristics of “colonialism”, “apartheid” and “ethnic cleansing”.**

**83. The HRC appoint an expert group to propose a special protocol to the 4th Geneva Convention with the specific purpose of proposing a legal regime for any occupation that lasts for more than five years.**

**84. The international community comprehensively investigate the business activities of companies and financial institutions registered in their own respective countries, which profit from Israel’s settlements and other unlawful Israeli activities, and take appropriate action to end such practices and ensure appropriate reparation for affected Palestinians. Member States should consider imposing a ban on imports of settlement produce.**

**85. Future investigations consider whether other foreign corporate connections**

with unlawful occupation policies additional to settlements (e.g. separation wall, Gaza blockade, house demolitions, excessive use of force) should not be also deemed 'problematic' under international law, and treated in a manner analogous to the recommendations pertaining to settlements.

**86. The Government of Israel cease expanding and creating settlements in occupied Palestine, start dismantling existing settlements and returning its citizens to the Israeli side of the Green Line, provide appropriate reparations for the damage due to settlement and related activity since 1967, and act diligently to protect Palestinians living under Israeli occupation from settler violence.**

**87. The Government of Israel forthwith lift the unlawful blockade of Gaza, cease military incursions, allow Gazans to benefit fully from their natural resources situated within their borders or off the coast of Gaza, and take account of a deepening emergency in Gaza.**

**88. The HRC give increased attention to the failure by Israel to cooperate with the normal functioning of the United Nations by way of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967<sup>[115]</sup>, and to the protection of Special Rapporteurs from defamatory attacks diverting attention from substantive issues integral to the mandate.**

## Notes

[1] I.C.J. Reports 2004 (Advisory Opinion), p.136

[2] ES-10/14 (2003)

[3] Op. cit. footnote 1, para.163 (3)

[4] <http://www.securityfence.mod.gov.il/Pages/ENG/route.htm>.

[5] Advisory Opinion, p.82

[6] Some decisions of the Israeli High Court have reconnected communities with the West Bank. OCHA, Barrier Update (July 2011), p.4

[7] [http://www.ochaopt.org/documents/ochaopt\\_atlas\\_barrier\\_affecting\\_palestinians\\_december2011.pdf](http://www.ochaopt.org/documents/ochaopt_atlas_barrier_affecting_palestinians_december2011.pdf)

[8] A designated 'closed military zone' between the wall and the Green Line

[9] [http://www.hamoked.org/files/2013/1157660\\_eng.pdf](http://www.hamoked.org/files/2013/1157660_eng.pdf)

[10] <http://www.securityfence.mod.gov.il/Pages/ENG/route.htm>

[11] OCHA, Barrier Update (July 2011), p.7, [http://www.hamoked.org/files/2013/1157660\\_eng.pdf](http://www.hamoked.org/files/2013/1157660_eng.pdf).

Also V. Tilley, Beyond Occupation, 2012, p. 151-155

[12] Advisory Opinion, p.136

[13] OCHA, Barrier Update( July 2011) p.13

[14] Documentation collected by OHCHR.

[15] <http://www.unrwa.org/galleries/photos/nabi-samuel-“we-are-living-inside-prison>

[16] <http://www.alhaq.org/advocacy/topics/wall-and-jerusalem/594-visiting-a-ghost-town-drawing-attention-to-the-plight-of-al-numan-village>

[17] [http://www.alhaq.org/10yrs/images/stories/PDF\\_Files/2%20Al-Numan%20Village%20-%20a%20case%20study%20of%20indirect%20forcible%20transfer%20-%20November%202006.pdf](http://www.alhaq.org/10yrs/images/stories/PDF_Files/2%20Al-Numan%20Village%20-%20a%20case%20study%20of%20indirect%20forcible%20transfer%20-%20November%202006.pdf)

[18] [http://www.ochaopt.org/documents/ocha\\_opt\\_barrier\\_factsheet\\_july\\_2012\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_barrier_factsheet_july_2012_english.pdf)

[19] The Special Rapporteur believes both re-routings of sections of the wall, and Palestinians leaving due to the wall and its associated regime, have affected the decrease in numbers.

[20] OCHA, Barrier Update, July 2011, p.10

[21] <http://www.stopthewall.org/2013/04/07/further-suppression-demonstrations-occupation> , <http://>

[www.btselem.org/demonstrations](http://www.btselem.org/demonstrations), and Russell Tribunal, Findings of the South Africa Session (2011).

[22] <http://www.bilin-ffj.org/>

[23] A/ES-10/599

[24] Rules and Regulations governing the registration of claims, article 11(1).<http://www.unrod.org>

[25] A/HRC/RES/22/28

[26] A/68/513 (paras.4-5)

[27] A/HRC/22/63

[28] Outposts are settlements which although often established with some kind of Government support are not officially recognized under Israeli law.

[29] A/63/326, A/HRC/13/53/rev1, A/65/331, A/HRC/16/72, A/66/358, A/HRC/20/32

[30] <http://www.jpost.com/Opinion/Editorials/Settlements-arent-the-problem-330306>

[31] A/HRC/25/38, A/HRC/25/40, A/68/502 and A/68/513.

[32] <http://peacenow.org/Bibis%20Settlements%20Boom%20-%20March-November%202013%20-%20FINAL.pdf>

[33] <http://peacenow.org.il/eng/sites/default/files/summary-of-4-years-of-netanyahu-government.pdf>

[34] [www.haaretz.com/news/diplomacy-defense/1.556645](http://www.haaretz.com/news/diplomacy-defense/1.556645); [www.un.org/News/Press/docs/2013/sgsm15427.doc.htm](http://www.un.org/News/Press/docs/2013/sgsm15427.doc.htm)

[35] A/68/513

[36] Among 136 West Bank settlements listed by Peace Now, 25 settlements falls under the type 'quality of life', 35 settlements fall under the type 'quality of life/ideological', 70 settlements fall under the type 'ideological' and six settlements fall under the type 'ultra-orthodox';

<http://peacenow.org.il/eng/content/settlements-and-outposts>

[37] Palestinian Centre for Human Rights submission to Special Rapporteur, 22 November 2013

[38] [http://www.ochaopt.org/documents/ocha\\_opt\\_the\\_humanitarian\\_monitor\\_2013\\_11\\_25\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2013_11_25_english.pdf)

[39] A/68/513 (paras. 42-52)

[40] <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13662&LangID=E>; <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13786&LangID=E>

[41] [http://www.ochaopt.org/documents/unhc\\_obstruction\\_humanitarian\\_assistance\\_english.pdf](http://www.ochaopt.org/documents/unhc_obstruction_humanitarian_assistance_english.pdf)

[42] <http://unispal.un.org/UNISPAL.NSF/0/D9D07DCF58E781C585257A3A005956A6>

[43] <http://www.mfa.gov.il/mfa/aboutisrael/state/law/pages/summary%20of%20opinion%20concerning%20unauthorized%20outposts%20-%20talya%20sason%20adv.aspx>

[44] A/HRC/25/38 (para.6)

[45] <http://www.haaretz.com/news/diplomacy-defense/israel-to-legalize-four-west-bank-settlement-outposts-slated-for-demolition-1.524291>

[46] <http://www.jpost.com/Diplomacy-and-Politics/Knesset-panel-to-debate-Levy-Report-333137>

[47] A/65/331(para.14) and A/HRC/20/32 (para.32)

[48] A/68/513 (paras.30-33)

[49] [http://unctad.org/en/PublicationsLibrary/gdsapp2012d1\\_en.pdf](http://unctad.org/en/PublicationsLibrary/gdsapp2012d1_en.pdf)

[50] <http://www.acri.org.il/en/2013/09/02/ej-edu-report-13/>

[51] EU Heads of Mission Jerusalem Report 2012

[52] Submission to Special Rapporteur by the Civic Coalition for Palestinian Rights in Jerusalem (November 2013)

[53] [http://www.btselem.org/planning\\_and\\_building/east\\_jerusalem\\_statistics](http://www.btselem.org/planning_and_building/east_jerusalem_statistics)

[54] EU Heads of Mission Jerusalem Report 2012

[55] A/67/379, A/HRC/23/21, A/68/376

[56] <https://www.un.org/apps/news/story.asp?NewsID=45812&Cr=palestin&Cr1=>

[57] <http://www.jpost.com/Diplomacy-and-Politics/Dutch-firm-severs-ties-with-Mekorot-over-West-Bank-policy-even-as-Israel-Jordan-PA-sign-major-water-deal-334597>

[58] Palestinian BDS National Committee, submission to Special Rapporteur (November 2013)

[59] A/HRC/22/63 (paras.116-117)

[60] <http://www.theguardian.com/world/2013/dec/09/uk-government-warns-over-business-israeli-settlements>)

[61] A/HRC/12/48, A/HRC/22/35/Add.1 and A/HRC/23/21

[62] <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14028&LangID=E>

[63] [http://www.cogat.idf.il/Sip\\_Storage/FILES/0/4320.pdf](http://www.cogat.idf.il/Sip_Storage/FILES/0/4320.pdf)

[64] <http://www.haaretz.com/news/diplomacy-defense/.premium-1.562465>

[65] A/HRC/16/72, para8, A/HRC/4/17,para.10

[66] A/HRC/16/72, para.32(b)

[67] Art. 85(4)(c), A/HRC /16/72

[68] Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries 2001. Arts.40-41 and commentaries.

[69] Regardless of the possibility that CERD's inclusion of apartheid applies exclusively to South Africa, CERD prohibits all forms of racial segregation. General Recommendation XIX,1995

[70] A/HRC/WG.6/17/L.12

[71] A/54/18 (Annex V)

[72] Israel is not a party to the AC and it is debated whether it was intended to apply exclusively to South Africa. Nonetheless, it continues to inform the prohibition of apartheid in international law.

[73] A/68/502, A/67/372, A/66/356, A/65/366, A/HRC/22/35 and A/RES/67/118, A/HRC/RES/22/28 and A/RES/19/16

[74] Russell Tribunal, (2011).

[75] <http://www.btselem.org/statistics>

[76] Ibid.

[77] A/HRC/22/35/Add.1

[78] Ibid.

[79] <http://www.breakingthesilence.org.il/testimonies/publications>. Occupation of the Territories 2000-2010.

[80] <http://www.addameer.org/einside.php?id=9>

[81] <http://www.addameer.org/etemplate.php?id=302>

[82] CERD/C/ISR/CO/14-16

[83] A/HRC/WG.6/17/L.12

[84] ILC Draft Articles 2001.

[85] A/68/379

[86] <http://www.addameer.org/etemplate.php?id=294> and <http://www.stoptorture.org.il/en/skira1999-present>

[87] [http://www.btselem.org/torture/hcj\\_ruling](http://www.btselem.org/torture/hcj_ruling)

[88] <http://www.addameer.org/etemplate.php?id=294>

[89] [http://www.stoptorture.org.il/files/PCATI\\_eng\\_web.pdf](http://www.stoptorture.org.il/files/PCATI_eng_web.pdf)The formal complaints may not be representative of the actual number of victims.

[90][http://www.unicef.org/oPt/UNICEF\\_oPt\\_Children\\_in\\_Israeli\\_Military\\_Detention\\_Observations\\_and\\_Recommendations\\_-\\_6\\_March\\_2013.pdf](http://www.unicef.org/oPt/UNICEF_oPt_Children_in_Israeli_Military_Detention_Observations_and_Recommendations_-_6_March_2013.pdf)

[91][http://www.unicef.org/oPt/UNICEF\\_oPt\\_Children\\_in\\_Military\\_Detention\\_Bulletin\\_No\\_1\\_October\\_2013.pdf](http://www.unicef.org/oPt/UNICEF_oPt_Children_in_Military_Detention_Bulletin_No_1_October_2013.pdf)

[92] A/68/379 and <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-ISR-CO-2-4.pdf>

[93] <http://www.dci-palestine.org/content/child-detainees>

[94] <http://www.addameer.org/etemplate.php?id=296>

[95] The United Nations has questioned whether Gaza will be a liveable place in 2020 ( "Gaza in 2020: a liveable place?" 2012). Considering the situation in Gaza, the Russell Tribunal found Israeli policies aimed at causing displacement of

Palestinians, rather than their physical destruction (2011).

[96] Information from Diakonia

[97] CERD/C/ISR/CO/14-16

[98] A/HRC/22/63

[99] Russell Tribunal, Final Conclusions 2007-13.

[100] A/HRC/16/72 (section IV)

[101] <http://unispal.un.org/UNISPAL.NSF/1ce874ab1832a53e852570bb006dfaf6/57c45a3dd0d46b09802564740045cc0a?OpenDocument>

[102] <http://www.business-humanrights.org/Links/Repository/1023856>, <http://www.dci-palestine.org/documents/palestinian-children-invisible-workers-israeli-settlements>

[103] Russell Tribunal, (2011).

[104] <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13626&LangID=E>

[105] <http://www.wri-irg.org/node/20565>

[106] ILC Draft articles 2001, Chap.III

[107] A/RES/3314(XXIX) Definition of Aggression

[108] ILC Draft articles 2001, Chap.III

[109] Ibid.

[110] Ibid, art.41

[111] <http://www.icc-cpi.int/NR/rdonlyres/74EEE201-0FED-4481-95D4-C8071087102C/279777/20090122PalestinianDeclaration2.pdf>

[112] <http://www.icc-cpi.int/NR/rdonlyres/C6162BBF-FEB9-4FAF-AFA9-836106D2694A/284387/Situati oninPalestine030412ENG.pdf>

[113] [http://www.icc-cpi.int/en\\_menus/icc/press%20and%20media/press%20releases/Documents/OTP%20Preliminary%20Examinations/OTP%20-%20Report%20%20Preliminary%20Examination%20Activities%202013.PDF](http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Documents/OTP%20Preliminary%20Examinations/OTP%20-%20Report%20%20Preliminary%20Examination%20Activities%202013.PDF)

[114] [http://www.icc-cpi.int/en\\_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/pe-cdnp/palestine/Pages/palestine.aspx](http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/pe-cdnp/palestine/Pages/palestine.aspx)

[115] In 2013, the Special Rapporteur joined 26 other independent experts in an appeal to Member States to cooperate with their mandates. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14083&LangID=E>

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[RF1] I agree but substituted 'some' for 'better' (as there was none)

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