
Advance Unedited Version

Distr.: General
22 October 2020

Original: English

Seventy-fifth session

Item 72 (c) of the provisional agenda *

Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in the Palestinian territories occupied since 1967**

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, S. Michael Lynk, submitted in accordance with Human Rights Council resolution 5/1.

* A/75/150.

** The present report was submitted after the deadline in order to reflect the most recent developments.

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

Summary

The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, S. Michael Lynk, submits his fifth report to the General Assembly. The report is based primarily on information provided by victims, witnesses, civil society representatives, United Nations agencies. The report addresses a number of concerns pertaining to the situation of human rights in the West Bank, including East Jerusalem, and in Gaza and is the second report focusing on accountability related issues.

I. Introduction

1. The present report provides a brief overview of the most pressing human rights concerns in the Occupied Palestinian Territory at the time of submission as identified by the Rapporteur in conversations and meetings with civil society. The report then presents a detailed analysis of latest human rights concerns in the Occupied Palestinian Territory with a specific focus on accountability.

2. The Special Rapporteur would like to highlight once again that, despite his repeated requests, he has not yet been granted access to the Occupied Palestinian Territory by Israel. The Special Rapporteur emphasizes once again his view that an open dialogue among all parties is essential for the protection and promotion of human rights, and reminds Israel that he is ready and willing to engage. In addition, the Rapporteur continues to highlight that access to the Occupied Palestinian Territory would play a key role in understanding the fundamental realities of the human rights situation in the territory. Israel's pattern of non-cooperation with the mandate is a serious concern.

3. The Special Rapporteur was not able to travel to the region, including Amman, Jordan, due to travel restrictions in connection with the spread of COVID-19. However, he was able to engage actively with members of civil society and other United Nations Agencies and collect important information on the topic most notable through submissions.

4. In the present report, the Special Rapporteur focuses on two issues. First, the report reviews the accountability responsibilities of the United Nations Security Council in ensuring that its decisions and directions on the Israeli occupation are obeyed. It then assesses the accountability responsibilities of private corporations operating in, or benefiting from, directly or indirectly, the Israeli settlements and the Israeli occupation.

5. The Special Rapporteur wishes to express his appreciation for the full cooperation with his mandate extended by the Government of the State of Palestine.

6. The Special Rapporteur emphasizes again his support for the vital work being done by Palestinian, Israeli, and international human rights organizations. This work is indispensable not only to the Rapporteur as he seeks to fulfill his mandate, but to the broader international community. The efforts of human rights organizations to ensure that accurate and complete information about the situation in the Occupied Palestinian Territory is readily available should not go unacknowledged.

II. The Current Human Rights Situation

A. The impact of Covid-19

7. The spread of the COVID-19 pandemic in the occupied Palestinian territory has accentuated some of the existing negative and longstanding negative repercussions of Israeli occupation. In some respects, it has exposed further the structural deficiencies in vital sectors, particularly the health sector in the West Bank and Gaza, as a result of Israeli practices on the ground. It has also clearly demonstrated that, during a serious health crisis, one that crosses borders and communities, a two-tier occupation regime reinforces unequal rights, particularly the right to adequate health. Despite existing conditions on the ground, in the initial phase of the pandemic, specifically in the months of March and April, duty bearers applied strict preventive measures that have effectively curbed the spread of the virus. Some coordination, although short lived, was noted then between the Palestinian authority and

Israel.¹ However, an exponential increase in cases has been observed since late June, when the total number of confirmed cases was only around 2765.² By 13 October, the total number of confirmed cases had increased markedly and reached 52,292 in the West Bank and 4,175 in Gaza.

8. This exponential increase has significantly strained an already weakened and overstretched health sector, particularly in Gaza. This additional strain was further compounded by the suspension of security coordination between the Palestinian authority and Israel on 19 May, which came in the aftermath of Israel's announcement of its planned annexation of parts of the West Bank and the Jordan Valley.³ As a consequence, this has significantly affected Palestinians' access to health care, generally reduced humanitarian assistance and significantly reduced the Palestinian Authority's monthly revenues by more than 80%, severely limiting its capacity to pay its employees particularly health personnel. Israel has withheld the Palestinian Authority's tax revenues numerous times in the past. Since December, those revenues have been withheld again. In his briefing to the Security Council, the UN Special Coordinator for the Middle East peace Process noted that "I am also concerned that we are far below the level of coordination that existed in the beginning of the year, when the first wave of the virus hit. This situation could have serious repercussions on the ability to control its spread and its impact on people's lives".⁴

9. Beyond the impact of this suspension, existing measures directly resulting from facts on the ground that Israel, the occupying power, has imposed significantly reduced access to Palestinians' health care and to humanitarian assistance. These include a vast settlement infrastructure with associated security zones and bypass roads, the separation wall, zoning policies and an extensive network of fixed and mobile checkpoints that effectively dissect the West Bank into separate, fragmented and disconnected areas. In terms of accessing proper healthcare -- including access to more equipped and specialized hospitals -- Palestinians continue to face movement restrictions within the West Bank but also when attempting to receive treatment in East Jerusalem. Moreover, delays continue to be reported in terms of receiving vital medical equipment including testing kits and other necessary equipment for prevention.⁵

10. Continued Israeli control over law enforcement, planning and reconstruction in Area C, constituting more than 60% of the occupied West Bank, has also hampered efforts to combat the pandemic. Palestinians living in Area C, currently estimated to be around 300,000, face additional complications in accessing proper health care. On 21 July, Israeli authorities destroyed a building structure in Hebron that was intended to deal with cases of COVID-19 and relieve pressure from other hospitals. It was alleged that the new structure lacked the proper permit as it was built in the H2 zone (Area C) requiring a building permit from Israeli authorities thus purportedly violating Israel's sovereignty.⁶ Palestinian are thus prevented from taking initiatives of their own to curb the spread of the virus while in many cases being offered no alternatives by Israeli relevant authorities. Attempts to coordinate entry of Palestinian Police in the Hebron H2 area to reinforce prevention measures with Palestinians living there have so far failed. In East Jerusalem, similar dynamics could be

¹ <https://www.un.org/press/en/2020/sc14167.doc.htm>.

² WHO:<https://app.powerbi.com/view?r=eyJrIjojODJlYWM1YTEtNDAxZS00OTFILThkZjktNDA1ODY2OGQ3NGJkIiwidCI6ImY2MTBjMGI3LWJkMjQtNGIzOS04MTBiLTNkYzI4MGFmYjU5MCIslmMiOjh9>.

³ <https://reliefweb.int/report/occupied-palestinian-territory/end-palestinian-authority-coordination-israel-response>.

⁴ https://unsco.unmissions.org/sites/default/files/security_council_briefing_-_21_july_2020_0.pdf.

⁵ <https://mondoweiss.net/2020/09/palestinians-faces-consistent-testing-kit-shortages-during-covid-19/>.

⁶ <https://www.middleeasteye.net/news/israel-demolish-palestinian-coronavirus-test-centre-hebron>.

observed. In April, Israeli Security Forces raided a Covid-19 testing clinic in the Palestinian neighbourhood of Silwan under the pretext that it was run, and was supported, by the Palestinian Authority.⁷ While rates of infection were markedly increasing during that period, Palestinians in East Jerusalem lacked adequate access to medical facilities, services and testing kits. The lack of aggregated data by Israel on cases is also hampering efforts to combat the pandemic. Since then, Israeli authorities opened another centre in the neighbourhood. With the recent spike in cases, there remains severe restrictions on the operations of health care professionals in East Jerusalem as health development efforts continue to be undermined by the occupying power.

11. In another worrying development, there was an increase in rates of infection among Palestinian detainees in Israeli detention centers, including one reported case of a child.⁸ In April, the Special Rapporteur had called for the release of the most vulnerable detainees, including children, women, older persons and those with pre-existing conditions. The increase in infections amongst Palestinian detainees again highlights the critical need to release Palestinian political prisoners or find alternative arrangements for detention to ensure their safety.

12. As rates of infections augment significantly in the Occupied Palestinian Territory, the impact of structural issues resulting directly from occupation and Israeli practices will continue to be increasingly felt. The complex set of measures applied to different areas by the occupying power, often resulting in discriminatory practices, is bound to compound the impact of occupation especially under such a serious health crisis. Even in the midst of a serious health pandemic, the demolition of Palestinian homes and instances of excessive use of force continue to be recorded and, in some cases, have increased. It is imperative that Israel, as the occupying power, and in light of the currently alarming rates of Covid-19, reverse these practices, and allow for the better protection of Palestinians and the improved access to health care services. Absent such measures, health conditions for Palestinians, already suffering the scourge of occupation, are bound to worsen.

B. Israel's planned annexation and illegal settlement expansion

13. As part of a unity deal, on 20 April, between Israeli Prime Minister Benjamin Netanyahu and the leader of the Blue and White party Benn Gantz agreed to formally initiate a process to annex parts of the West Bank and the Jordan Valley.⁹ The planned annexation would have affected a third of the West Bank if implemented. The Special Rapporteur stressed that besides leading to a “cascade of human rights violations”, any annexation, even if partial, would be a serious breach of international law, the UN Charter and would set a dangerous precedent for the rules-based international order.¹⁰ The High Commissioner for Human Rights, Michelle Bachelet, also stated on 29 June that annexation was illegal and that would have disastrous consequences not only for Palestinians but Israel itself.¹¹

14. While formal annexation plans appear to have been delayed for the time being, it is imperative to stress that Israel's *de facto* annexation of Palestinian territory is ongoing and

⁷ <https://www.middleeastmonitor.com/20200416-israel-closes-coronavirus-testing-centre-in-occupied-east-jerusalem/>.

⁸ https://www.dci-palestine.org/palestinian_child_detainee_tests_positive_for_coronavirus_in_israeli_prison.

⁹ <https://www.amnesty.or,g/en/latest/news/2020/07/israelopt-10-things-you-need-to-know-about-annexation/>.

¹⁰ <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25857&LangID=E>.

¹¹ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26009&LangID=E>.

has intensified in 2020, most notably through illegal settlement expansion. This year alone, Israel has approved or advanced more than 12,150 settlement homes, making it the single highest rates on record and since 2012, when such figures started to be recorded by Peace Now.¹² More than 5000 of these housing units were approved in mid-October alone. Settlements and settlement construction are illegal under international law and they are one of the major obstacles to peace. Concurrently, demolitions of Palestinian-owned structures has increased significantly over the past year. In 2020 alone, more than 560 structures were destroyed leading to the displacement of 747 Palestinians.¹³ The Special Rapporteur stresses that, while it was important to counter the Israeli formal annexation plans, it was also imperative counter all measures on the ground that amount to *de facto* annexation, which Israel advances in the plain sight of the international community, and which lead to serious breaches of the human rights of Palestinians on a daily basis.

C. Gaza

15. The Israeli-imposed land, sea and air blockade of Gaza has now entered its fourteenth year with no end in sight. As a result, Gaza's two million residents, including around one million children, continue to endure a grave and worsening humanitarian crisis at multiple levels. Gazans have had virtually all their human rights undermined under the weight of the blockade as they continue to face lack of access to adequate housing, education, water and sanitation., Food insecurity is endemic. Gaza bears one of the world's highest unemployment rates (estimated to be around 45%), with poverty levels that exceeded 53% as of late 2019.¹⁴ Gaza's economy is flat on its back, with the GDP growth virtually at zero in 2019 and with an export sector that has nearly expired as a result of the closure and severe restrictions.¹⁵

16. Gaza students continue to lack adequate education infrastructure and the tools for distance learning, especially under the current pandemic. More than 575,000 children and teenagers lack access to computer equipment, reliable power supply and internet.¹⁶ It is estimated that only 30% of Gaza households have internet, while internet networks crash more than ten times an hour on average.¹⁷ Despite its availability for more than 15 years, Gaza still lacks 3G networks, which significantly slows down data upload times. As part of its comprehensive blockade, Israel prevents the entry of equipment needed for advanced data networks infrastructure. With pre-existing limitations on networks and confinement measures, Gaza students face insurmountable difficulties to learning and to one of the only gateways they have to the outside world. All of this undermines their fundamental right to education.

17. Gaza's health-care system is at the verge of total collapse, which would cascade into a full-blown humanitarian catastrophe. After the first community transmissions in Gaza were detected on 25 August, confirmed cases increased exponentially, putting significant strain on an already battered health care system.¹⁸ As of 14 October, there were 4,285 confirmed cases in Gaza, a marked increase from 1 July, when there were only 11 cases. Strict preventive measures have been implemented by the *de facto* authorities including through the imposition

¹² <https://www.aljazeera.com/news/2020/10/15/israels-settlement-approvals-hit-record-high-watchdog>.

¹³ <https://www.ochaopt.org/data/demolition>.

¹⁴ <https://reliefweb.int/report/occupied-palestinian-territory/increase-gaza-s-unemployment-rate-2019>.

¹⁵ UNCTAD, Report on UNCTAD assistance to the Palestinian people: Developments in the economy of the Occupied Palestinian Territory, 5 August 2020, TD/B/67/5, para. 2 and para 13.

¹⁶ <https://gisha.org/en-blog/2020/10/13/remote-learning/>.

¹⁷ <http://pngoportal.org/en/3049.html>.

¹⁸ <https://www.aljazeera.com/news/2020/8/25/gaza-in-lockdown-after-first-covid-19-community-transmission>.

of full and partial curfews and the establishment of quarantine centres. Such measures did mitigate the impact and the spread of the virus but they could not remedy the fundamental structural deficiencies in the healthcare sector caused by the blockade.

18. Prohibiting or severely restricting the entry of vital and dual use materials –those that Israel considers could be used for both military and civilian purposes, including cement and steel -- chronic power shortages and the contamination of more than 90% of Gaza’s drinkable water supply, have debilitated the work of hospitals even before the onset of the current pandemic. Current statistics are extremely disconcerting: it is estimated there are only 93 ventilators and 110 beds in Gaza’s intensive care units to cover a population of two million.¹⁹ As of the end of September, WHO estimated that 47% of essential drugs were at zero stock level, with less than a month supply jeopardizing the lives of more than 350 oncology patients and causing the suspension of more than 13,000 elective surgeries. More than 50% of primary health care staff in Gaza have been re-assigned to support the COVID-19 response gravely affecting an appropriate response and treatment of other non-COVID-19 related illnesses. The Special Rapporteur had specifically warned in early September that “Should the Covid-19 pandemic take root in Gaza, the consequences would likely be very serious”.²⁰

19. Faced with few alternatives for treatment, Palestinians in Gaza, especially those with critical health conditions, continue to experience arbitrary delays and denials of Israeli-issued exit permits needed for essential and often life-saving healthcare outside of Gaza. The suspension of security coordination between the Palestinian Authority and Israel in May 2020, in the context of announced annexation plans by Israel in the West Bank, has further complicated and delayed the process of exit permit applications. Since September 2020, the World Health Organization has been operating a coordination mechanism to support Palestinian patients to apply for Israeli exit permits in order to mitigate the impact of the coordination suspension.²¹ The Special Rapporteur reiterates that Israel as the occupying Power has the primary responsibility to ensure respect, protection and fulfilment of the right to health of Palestinians in Gaza to the full extent of their actual control, while the Palestinian Authority and the de-facto authorities in Gaza also have responsibilities to the extent of their effective control over the population.

20. The Israeli-imposed blockade on Gaza contravenes international law, specifically Article 33 of the *Fourth Geneva Convention*, and amounts to the collective punishment of the entire civilian population in Gaza. The Special Rapporteur has recently stated that “Gaza is on the verge of becoming unlivable. There is no comparable situation in the world where a substantial population has endured such a permanent lockdown, largely unable to travel or trade, and controlled by an occupying power in breach of its solemn international human rights and humanitarian obligations. Our international standards of dignity and morality do not allow such experiments in human despair”.²² The High Commissioner also noted on 14 September in her global update that “The blockade, which contravenes international law, has conclusively failed to deliver security or peace for Israelis and Palestinians, and should urgently be lifted”.²³ More than ever and after fourteen years, Israel’s security rationale for the blockade has been undermined by the reality on the ground demonstrating that Gaza’s civilian population continues to suffer the brunt of this blockade.

21. The latest asymmetrical escalation of hostilities between Israel and armed groups in Gaza, which ended with a mediated ceasefire in late August, demonstrates that instability will remain unless the fundamental human rights of Palestinians are achieved and protected.

¹⁹ <https://www.icrc.org/en/document/icrc-donates-vital-intensive-care-equipment-gaza..>

²⁰ <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26201&LangID=E>.

²¹ <https://www.ochaopt.org/content/covid-19-emergency-situation-report-18>.

²² <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26201&LangID=E>.

²³ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26226>.

Short-term solutions will only serve to deepen the humanitarian crisis as a result of the blockade and increase the frustration of a population already living in extremely dire conditions. The Palestinians in Gaza urgently require immediate steps to ease the impact of the blockade. The Special Rapporteur calls for a specific set of measures including the reconstruction of the Gaza seaport, the building of new power, water and sewage treatment plants and allowing the entry of much larger quantities of construction materials, and freedom of movement for Gazans. The crisis in Gaza is human-made and only through the exercise of concerted political will by those with authority can a full-blown humanitarian catastrophe be averted.

D. Children

22. The daily lives of Palestinian children continue to be especially negatively impacted by the continuation of occupation and the exposure of children to violence. According to the report of the Secretary-General on children and armed conflict, in 2019, 32 Palestinian children (29 boys, 3 girls) and 1 Israeli girl were killed in the occupied West Bank, including East Jerusalem. Most of the Palestinian children's casualties were attributed to Israeli forces and mostly caused by live ammunition or air-strikes. In the same year, 1 539 Palestinian children (1 460 boys, 79 girls) and 8 Israeli children (5 boys, 3 girls) were maimed.²⁴ In the report, the Secretary-General urged Israel to end excessive use of force against children and ensure accountability for cases of killing and maiming of children. He urged Palestinian armed groups to ensure children's safety, including preventing them from being exposed to violence or instrumentalizing children for political purposes.²⁵

23. Palestinian children's access to healthcare continues to be severely affected. The intricate system of movement restrictions in the case of West Bank, including East Jerusalem, and the 14-year blockade of Gaza by Israel, has resulted in serious challenges in access to health care facilities and specialized medical treatment for children. In Gaza, children continue to face denial or delay in access to healthcare facilities or specialized treatment outside of the Strip.

24. The Special Rapporteur also continues to be seriously concerned about reports of ill-treatment of children during arrest, interrogation or detention. In 2019, the United Nations received testimonies of children who reported breaches of due-process and ill-treatment by Israeli forces in the context of detention, including physical violence²⁶ Children held in Israeli detention report patterns of ill-treatment, such as the use of blindfolds, hand ties or leg ties, denial of food and water, or access to toilets. Children also report being denied access to lawyers or parent during interrogation, compelling them to sign documents in Hebrew, which many of the children do not understand and not being adequately informed about their rights.²⁷ Israeli practices and policies thus continue to prioritize punishment and criminalization of Palestinian children instead of their rehabilitation.

E. The Palestinian Authority and the de-facto authorities in Gaza

25. There continues to be reports of cases of arbitrary arrest and detention by the de-facto authorities in Gaza, particularly of journalist, human rights and political activists. Many continue to be arrested because of their political affiliation and perceived opposition to the Hamas authorities. Serious restrictions on freedom of expression continue to be in place

²⁴ A/74/845, S/2020/525, paras. 85 and 86.

²⁵ A/74/845, S/2020/525, paras. 91 and 92.

²⁶ A/74/845, S/2020/525, para 84.

²⁷ A/75/336, para. 20.

particularly in the context of reporting on the socio-economic impact of the COVID-19 pandemic. There are also concerning reports of excessive use of force against those who violate curfews in relation to imposed preventive measures.

26. During the Covid-19 crisis, it has been reported that the Palestinian Authority has released some prisoners in order to try to contain the pandemic. However, a number of arrests by Palestinian Security Forces continued to be reported in the West Bank. Many of those arrested were accused of using social media platforms to criticize the Palestinian Authority or for expressing opposing political views.²⁸ Limitations on freedom of expression remain a concern for journalists. A number of allegations of ill-treatment of those arrested also continue to be received.

III. Accountability, Impunity and the Responsibility of the International Community

27. Accountability – the institutional check on the exercise of public and private power on behalf of the common good – is the indispensable component of the rule of law. When used purposively and effectively, accountability entrenches fairness and equality, it promotes healing and resolution, it delivers justice to victims and perpetrators alike, it alleviates conflicts and prevents others from igniting, and it sews together the ten thousand threads of accommodation which nurture social trust.

28. Without accountability, the best designed systems of law and human governance will wither for lack of enforceability and respect. Without accountability, the possibility of political reconciliation, let alone its flourishing, is unattainable. And without accountability, social wounds metastasize, leaving unchecked retaliation, rather than measured restitution, as the likely response to the injustices of the past and present. As the UN Office of the High Commission for Human Rights has noted: “Lack of the rule of law and accountability for human rights violations leads to failures of justice and impunity for crimes, conflict over unaddressed grievances, and oppressive unaccountable rule”.²⁹

29. The accountability principle applies to all stakeholders, public and private, who have the capacity, through their authority or power, to affect the common good. Kofi Annan, the former Secretary General of the United Nations, endorsed this broad application of the principle in a report to the UN Security Council in 2004: “[The rule of law] refers to a principle of governance in which all persons, institutions and entities, public and private...are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards”.³⁰

30. The breadth of this principle ensures that not only must those who are violating the norms of international human rights and humanitarian norms end their transgressions and be held accountable, but – equally as important – those who have the individual and collective capacity to influence the behaviour of these perpetrators are also accountable to utilize, to the extent possible, their weight to meaningfully sanction and end these breaches and crimes.

31. The international supervision of the 53-year-old Israeli occupation of Palestine illustrates that, between international law and accountability, there is an enormous gap between promise and performance. The tragic paradox is that there has been no other conflict

²⁸ <https://www.amnesty.org/en/latest/news/2020/05/palestine-end-arbitrary-detention-of-critics-in-west-bank-and-gaza/>.

²⁹ <https://bangkok.ohchr.org/rule-of-law-accountability/>.

³⁰ UN Secretary-General, The rule of law and transitional justice in conflict and post-conflict societies, Report to the Security Council, 23 August 2004, UN Doc. S/2004/616, par. 6.

in the modern world to which the United Nations has contributed so decisively to the development of international law in such a large number of significant areas – providing depth and breadth to the rights of refugees, the application and meaning of belligerent occupation, the strict prohibition against the annexation of occupied territory, the legal status of civilian settlements in occupied lands, and the centrality of the right of self-determination, among others – while delivering such a paucity of actual protections to the occupation’s many victims.³¹

32. The United Nations and other authoritative international institutions have spoken, often with lucidity and incisiveness, about the incompatibility of the Israeli occupation with international law and basic rights-based principles. On a number of occasions, they have warned Israel about its defiance of, and non-compliance with, Security Council, General Assembly and Human Rights Council resolutions. But rarely have they actually taken steps to hold Israel accountable – through effective counter-measures and sanctions – for its obstructive policies and practices concerning the occupation.

33. The purpose of this call for consequential accountability is plainly obvious: Israel has been operating a largely cost-free occupation for decades, with every available indicator – whether it is the unrelenting growth in the settlement population, the confiscation of more and more Palestinian public and private lands for settlements and the Israeli military, the repeated proclamations by Israeli political leaders that the occupied lands are Israeli by right, and the refusal by Israel to acknowledge that its rule over the Palestinian Territory is governed by the laws of occupation – pointing to an unremitting occupation. Carmi Gillon, the former head of the Israeli Shin Bet (the country’s internal security unit) has recently observed, with regret, that: “The status quo is good for Israel, because Israel gets all it wants without paying a price”.³²

34. Israel is a rational actor, and it understands that, if the incentives to thicken its occupation are high and the deterrents from the international community are virtually non-existent, it can continue to devour the territory meant for a Palestinian state unimpeded. If impunity continues to be indulged and even rewarded by the international community, then it is magical thinking to expect an acquisitive occupying power would do anything else but further expand its settlement enterprise, prepare even more assiduously for a future *de jure* annexation claim, doom the Palestinians to a future without hope, and write the obituary for the two-state solution.

35. The Special Rapporteur’s October 2019 report on accountability focused on the responsibilities of the international community.³³ This current report addresses the accountability responsibilities of two other important and influential actors in the context of the occupation: the United Nations Security Council and private corporations. The Security Council is the custodian for ensuring international peace and security, and it has the authority to impose international sanctions and other actions to protect international law when peace and security are threatened. Private corporations play a significant role in sustaining the economic viability of the illegal Israeli settlements, thereby inextricably entangling businesses in the abusive human rights record of the occupation.

³¹ S. Akram et al (eds.) *International Law and the Israeli-Palestinian Conflict: A Rights-Based Approach to Middle East Peace* (Routledge, 2011).

³² <https://www.haaretz.com/middle-east-news/palestinians/.premium-the-palestinians-got-screwed-they-are-now-a-non-issue-1.8968748>.

³³ A/74/507.

A. The United Nations Security Council and the Israeli Occupation

Introduction

36. Over the past five decades, the United Nations Security Council has repeatedly and unambiguously endorsed three fundamental principles with respect to the Israeli occupation of the Palestinian Territory (the West Bank, including East Jerusalem, and Gaza). First, Israel is the occupying power, the *Fourth Geneva Convention of 1949* applies in full, and Israel is required to fulfil all of its obligations under the *Convention*.³⁴ Second, the acquisition of territory by force or war is inadmissible.³⁵ And third, the creation and expansion of the Israeli settlements is a serious violation of the absolute prohibition under international law respecting the transfer by the occupying power of parts of its civilian population into the occupied territory.³⁶ All three of these principles have been expressly re-affirmed by the Security Council through Resolution 2334 in December 2016.³⁷ These three principles are among the most settled and widely-accepted tenets in modern international law.

37. At no time have any of these three principles been accepted or applied by Israel. The Security Council has spoken, at times sharply, about Israel's defiance, but it has not imposed any consequences in the face of Israel's ongoing obstructiveness. There is no other grave international human rights situation, and no other insubordinate state actor, in the world today with which the Security Council has spoken about in such quantity and with such critical clarity, but acted with such passivity.³⁸ And yet, even as Israel has deepened its obstinacy in recent years, the Security Council has not only failed to act, it no longer even speaks on the issue with the regularity it had before: since January 2009, the Security Council has adopted only two resolutions critical of the Israeli occupation,³⁹ even as human rights conditions on the ground have progressively worsened.

Principle 1: Fourth Geneva Convention

38. The *Fourth Geneva Convention* was enacted in the aftermath of the Second World War to offer broad protections to civilians caught in war, the most vulnerable people in any armed conflict. Regarding the applicability of the *Convention*, Israel has argued – virtually alone in the world – that it does not apply to the Palestinian Territory, and therefore that the Territory is not occupied. This is because, in its view, no other state had a valid sovereign claim to these lands when it captured them in 1967.⁴⁰ The Security Council has consistently repudiated this stance, confirming in at least 22 resolutions since 1967 that the *Convention* applies in full to the Israeli occupation, most recently in 2016.⁴¹ On various occasions, the Security Council has “strongly deplored” Israel's continued refusal to comply with previous resolutions directing it to abide by the *Convention*,⁴² demanded that Israel “immediately and

³⁴ The Security Council first referred to the applicability of the *Fourth Geneva Convention* to the Israeli occupation in Resolution 237 (14 June 1967), within a week of the end of the June 1967 war.

³⁵ UNSC Resolution 242 (22 November 1967).

³⁶ UNSC Resolution 446 (22 March 1979).

³⁷ UNSC Resolution 2334 (23 December 2016).

³⁸ Kofi Annan, in his memoirs, observed that: “...the [Security] Council's aggressive stance against the Syrian presence in Lebanon stood in stark contrast to its passivity regarding Israel's occupation of Arab lands...the perception of double standards in the Middle East undermined the United Nations”, *Interventions*, with N. Mousavizadeh (Penguin, 2012), p. 298.

³⁹ UNSC Resolutions 1860 (8 January 2009) and 2334.

⁴⁰ <https://mfa.gov.il/MFA/MFA-Archive/2003/Pages/DISPUTED%20TERRITORIES-%20Forgotten%20Facts%20About%20the%20We.aspx>.

⁴¹ See generally UNSC Resolutions 446 and 2334.

⁴² UNSC Resolution 476 (30 June 1980).

scrupulously” comply with the *Convention*,⁴³ and noted that, in the event of non-compliance, it would examine “practical ways and means” to secure Israel’s “full implementation” of prior resolutions on the application of the *Convention*.⁴⁴

39. Twice in 1980 – after 13 years of occupation – the Security Council affirmed the “overriding necessity to end the prolonged occupation of Arab territories occupied by Israel since 1967, including Jerusalem”.⁴⁵ Yet, in 2020 – with the Israeli occupation now four times as prolonged as it was in 1980 – the occupation has exponentially deepened and thickened,⁴⁶ Israel has rejected the applicability of the *Fourth Geneva Convention* since the very beginning of the occupation,⁴⁷ and both the United Nations and many respected human rights organizations have determined that Israel has repeatedly breached a number of the guaranteed protections enshrined in the *Convention*.⁴⁸

Principle 2: The Annexation of Occupied Territory

40. The annexation of occupied territory by an occupying power is not only strictly prohibited by international law,⁴⁹ it is now deemed to be a crime of aggression under the *Rome Statute of the International Criminal Court*.⁵⁰ In the context of the Israeli occupation, the Security Council has expressly endorsed the principle of the inadmissibility of the acquisition of territory by war, force and/or military conquest on at least 11 occasions.⁵¹ With respect to Israel’s two-stage annexation of East Jerusalem (in June 1967 by a Cabinet decision, and June 1980 by the Knesset), the Security Council has repeatedly stated that East Jerusalem remains occupied, and that Israel’s proclamation of sovereignty is “null and void”, it is “a flagrant violation of the *Fourth Geneva Convention*”, and it has “no legal validity”.⁵²

41. In the face of Israel’s persistent refusal to unwind its annexation of East Jerusalem, the Security Council has “strongly deplored” Israel’s contravention of UN resolutions, it has “urgently” called upon it to “rescind all such measures”, and it has demanded that Israel “desist forthwith” from any further action to alter the status of Jerusalem.⁵³ On other occasions, the Council has confirmed “in the strongest terms” that the annexation is “totally invalid”, and deplored “the failure of Israel to show any regard for the resolutions of the General Assembly and the Security Council”.⁵⁴

⁴³ UNSC Resolution 592 (8 December 1986).

⁴⁴ UNSC Resolution 478 (20 August 1980).

⁴⁵ UNSC Resolutions 471 (5 June 1980) and 476.

⁴⁶ A. Imseis, “Negotiating the Illegal” (2020), *European Journal of International Law* (forthcoming); M. Sfar, *The Wall and the Gate* (Metropolitan Books, 2018).

⁴⁷ T. Meron, “The West Bank and International Humanitarian Law on the Eve of the Fiftieth Anniversary of the Six-Day War” (2017) 111:2 *American Journal of International Law* 357.

⁴⁸ A/HRC/43/67. As well, see the Israel/Palestine country pages for Amnesty International (<https://www.amnesty.org/en/countries/middle-east-and-north-africa/israel-and-occupied-palestinian-territories/>) and Human Rights Watch (<https://www.hrw.org/middle-east/north-africa/israel/palestine>).

⁴⁹ International Court of Justice, *Wall Advisory Opinion* (2004), at para. 87, where the Court stated that the principal “No territorial acquisition resulting from the threat or use of force shall be recognized as legal” has now achieved the status of customary international law.

⁵⁰ UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, ISBN No. 92-9227-227-6, Article 8 bis, 2(a): “Any of the following acts...qualify as an act of aggression: (a)...any annexation by the use of force of the territory of another State or part therefor”.

⁵¹ See UNSC Resolution 2334: “Reaffirming the inadmissibility of the acquisition of territory by force”.

⁵² United Nations Security Council Resolutions 471, 476 and 478.

⁵³ UNSC Resolutions 252 (21 May 1968), 476 and 478.

⁵⁴ UNSC Resolutions 267 (3 July 1969). Also see Resolutions 298 (25 September 1971), and 478.

42. In reply, Israel has continued to intensify its annexation of East Jerusalem through the creation and expansion of 12 civilian settlements, the presence of 215,000 Jewish settlers, the construction of a wall separating East Jerusalem from the West Bank, and solidifying the political and infrastructure integration of East and West Jerusalem.⁵⁵ No evidence has ever been forthcoming on Israel's part that it has begun to comply, or intends to comply, with any of the Security Council's directions on East Jerusalem, with the Israeli Prime Minister proclaiming in February 2020 that the government had successfully accomplished its annexation of East Jerusalem in the face of great international opposition.⁵⁶

Principle 3: The Israeli Settlements

43. International law has strictly forbidden an occupying power from attempting to demographically transform an occupied territory through the implantation of its civilian population.⁵⁷ The purpose of this prohibition is to preserve the indigenous population's right of self-determination,⁵⁸ to halt an avaricious occupying power from advancing an impermissible annexation claim through territorial colonialization,⁵⁹ and to avert the immense human suffering which inevitably follows the process of settler implantation.⁶⁰ Since 2002, settler implantation has been determined to be a war crime under the *Rome Statute*.⁶¹

44. Beginning in 1979, the UN Security Council has stated on at least six occasions that Israel's establishment of civilian settlements in occupied territory has "no legal validity" and, more vividly, is a "flagrant violation under international law".⁶² In 1980, the Council "strongly deplored" Israel's non-cooperation and its rejection of prior resolutions on settler implantation.⁶³ In 2016, the Council determined that Israel's settlement enterprise was gravely imperilling what remained of the two-state solution, and demanded that Israel "immediately and completely cease all settlement activities".⁶⁴ Yet, by 2020, Israel has created approximately 250 thriving settlements, with more than 650,000 settlers in East Jerusalem and the West Bank, and it has continued to approve record numbers of new settlement housing unit over the past year.⁶⁵ In his 14 quarterly reports to the Security Council

⁵⁵ M. Margalit, *The City of Jerusalem: The Israeli Occupation and Municipal Subjugation of Palestinian Jerusalemites* (Sussex University Press, 2020).

⁵⁶ O. Liebermann & A. Carey, "As election looms, Netanyahu announces new construction in East Jerusalem" (CNN, 20 February 2020) "We did this then in the face of strong international opposition. We overcame every obstacle and we did it, and see what we have done in Jerusalem," Netanyahu said. "... We are connecting all parts of the united Jerusalem, the rebuilt Jerusalem. It is a source of great pride and is great news for the entire people of Israel".

⁵⁷ *Fourth Geneva Convention*, 75 UNTS 287, Article 49, para. 6.

⁵⁸ United Nations Economic and Social Council, E/CN.4/Sub.2/1993/17, at para. 202: "Policies and practices of population transfer may be aimed specifically at denying a meaningful implementation of the right to self-determination, for instance, by altering the relevant unit of self-determination through demographic manipulation, or policies which have that effect".

⁵⁹ See the International Committee of the Red Cross's 1958 commentary on Article 49, para. 6 of the *Fourth Geneva Convention*, accessed at: <http://www.icrc.org/ihl.nsf/COM/380-600056> ?OpenDocument.

⁶⁰ United Nations Economic and Social Council, E/CN.4/Sub.2/1997/23, at para. 16: "The range of rights violated by population transfer and the implantation of settlers places this phenomenon in the category of mass violations of human rights".

⁶¹ *Supra*, note 50, Article 8(2)(b)(viii).

⁶² UNSC Resolutions 446 and 465 (1 March 1980).

⁶³ UNSC Resolutions 465 and 471.

⁶⁴ UNSC Resolution 2334.

⁶⁵ Peace Now "4,948 Settlement Units Advanced at October 2020 Higher Planning Council Sessions" (15 October 2020): "These approvals officially make 2020 the highest year on record in terms of units

since 2017 as to whether Israel has been implementing the clear direction in Resolution 2334 that it absolutely halt all of its settlement activities, the UN Special Coordinator for the Middle East Peace Process has reported, on each occasion, that Israel has taken no steps to satisfy this obligation.⁶⁶

The Security Council and Accountability

45. Under the *Charter of the United Nations*, the Security Council has been given the responsibility of maintaining international peace and security.⁶⁷ With that responsibility comes the authority under Article 41⁶⁸ to apply a broad range of enforcement mechanisms, short of military action, in order to compel errant states and actors to cooperate with international law (such as the 1991 Iraqi invasion of Kuwait), to contain a perceived threat to international peace and security (such as regional nuclear proliferation), or to address the malign actions of specific international, national or sub-national actors (such as Da'esh, Al-Qaida and the Taliban).⁶⁹ Since 1966, the Security Council has established 30 sanctions regimes, and currently maintains 14 ongoing regimes. While Security Council sanctions have had a varied record in effectiveness and have been criticized on occasion for their adverse humanitarian impact,⁷⁰ the more recent history has demonstrated that – when applied with precision, purpose, unity and the flexibility to vary and escalate accountability measures – UN-led sanctions can produce meaningful changes in behaviour by states and other actors.⁷¹

46. Israel's defiance – the Security Council's term⁷² – of the direction of the international community is a serious challenge to the rules-based international order. The resolutions and decisions of the Security Council, along with those of the General Assembly, are the bedrock of the international legal consensus on the Israeli occupation of Palestine. As a solemn condition in joining the United Nations, member states commit themselves to accepting and carrying out the decisions and directions of the Security Council.⁷³ If the rule of law matters, then so does accountability. If the Security Council is to speak with authority, then the disobedience of Council directions must have consequences.

47. Similarly, the Security Council's inertia in meaningfully responding to Israel's non-compliance with its resolutions and directions – particularly on the three fundamental principles it has so frequently endorsed – is also a body blow to the efficacy of international law.⁷⁴ In his memoirs, Kofi Annan was disturbed by Israel's "prolonged and sometimes brutal

of settlement plans promoted since Peace Now began recording in 2012." Accessed at: <https://peacenow.org.il/en/4948-settlement-units-advanced-at-october-2020-higher-planning-council-sessions>.

⁶⁶ See, for example: N. Mladenov, "Security Council Briefing on the Situation in the Middle East" (29 September 2020, accessed at: https://unsc.unmissions.org/sites/default/files/security_council_briefing_-_29_september_2020_2334_3.pdf).

⁶⁷ *Charter of the United Nations*, Article 24(1).

⁶⁸ *Ibid*, Article 41.

⁶⁹ L. Van Den Herik, *Research Handbook on UN Sanctions and International Law* (Edward Elgar Publishers, 2017).

⁷⁰ J. Farrall, *United Nations Sanctions and the Rule of Law* (Cambridge University Press, 2007).

⁷¹ E. Carisch et al, *The Evolution of UN Sanctions: From a Tool of Warfare to a Tool of Peace, Security and Human Rights* (Springer, 2017).

⁷² UNSC Resolutions 608 (14 January 1988), 636 (6 July 1989) and 641 (30 August 1989).

⁷³ *Charter of the United Nations*, Article 25.

⁷⁴ In 2020, retired American Ambassador Peter Mulrean observed that: "The [international community's] words were never matched by action, however, especially because the United States ensured through pressure on other countries and through the United Nations Security Council veto that Israel was never meaningfully punished by or even harshly criticized in that potentially

occupation”, and he lamented the timidity of the Security Council’s response: “Even when the Council took positions, it did not establish mechanisms to enforce its will”.⁷⁵ He also identified a leading source for the Council’s paralysis: the “unhealthy possessiveness of the Middle East peace process” by the United States.⁷⁶ Since 1973, the United States has cast 31 vetoes at the Security Council against draft resolutions critical of the Israeli occupation; in each case, it has been the only Council member casting a negative vote. No other permanent member of the Security Council has vetoed a Security Council resolution critical of the Israeli occupation.⁷⁷

B. Private Corporations and the Israeli Settlements

Introduction

48. In 2011, the United Nations Human Rights Council unanimously adopted the UN Guiding Principles on Business and Human Rights (UNGPs).⁷⁸ The UNGPs are a set of non-binding norms to influence corporate decision-making in integrating human rights principles into their daily business operations. The Principles are intended to apply to all commercial and corporate sectors, and to all geographic regions. They are part of a larger global initiative – including major statements by the International Committee of the Red Cross⁷⁹ and the Organization for Economic Development and Cooperation⁸⁰ – to mainstream a responsive and vibrant human rights culture within the corporate world. The UNGPs have set out three pillars as part of its “Protect, Respect and Remedy” framework to advance human rights practices and compliance:

- The duty of states to protect human rights, including against abuses by corporations;
- The corporate responsibility to respect human rights, including by acting with due diligence to avoid violating the rights of others; and
- The need for greater access to effective remedies for victims of business-related abuses.

49. The UNGPs are not law, and most international human rights treaties do not contain specific obligations respecting corporations.⁸¹ Nonetheless, a number of states have extended criminal and/or civil liability to corporations domiciled within their jurisdictions through their domestic laws, many of which reflect international human rights standards.⁸² Some states have also issued national guidance policies and advisories to corporations regarding their compliance with human rights standards internationally. The rich body of modern international human rights legal instruments – regarding labour rights, environmental rights and the rights of vulnerable groups such as minorities, women, children and persons with

influential forum.” Accessed at: <https://www.justsecurity.org/69925/trumps-deal-of-the-century-is-bibis-dream-come-true/>.

⁷⁵ *Supra*, note 38, p. 256.

⁷⁶ *Ibid*, p. 290.

⁷⁷ <https://research.un.org/en/docs/sc/quick>.

⁷⁸ A/HRC/17/31.

⁷⁹ <https://www.icrc.org/en/doc/resources/documents/misc/business-ihl-150806.htm>.

⁸⁰ <https://www.oecd.org/corporate/mne/responsible-business-conduct-matters.htm>.

⁸¹ Note that there are advanced negotiations for a legally-binding international treaty on business and human rights: https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/OEIGWG_RevisedDraft_LBI.pdf.

⁸² UNGPs, commentary on Principle 12.

disabilities, among other guarantees – is the North Star for directing corporations on how to satisfy their human rights responsibilities.

50. Among the relevant principles found in the UNGP with respect to corporate activity in the Israeli settlements and the occupation are the following:

- Principle 7: States should assist businesses which are involved in conflict-affected areas to identify, prevent and mitigate human rights risks, and should deny access to businesses involved in gross human rights abuses;
- Principle 11: Businesses should avoid infringing the human rights of others and should address human rights impacts with which they are involved;
- Principle 12: The responsibility to respect human rights refers to internationally recognized human rights, which would include the International Bill of Rights and fundamental labour standards, but would also encompass all other UN human rights instruments;
- Principle 13: The responsibility to respect human rights requires businesses to avoid causing or contributing to adverse human rights impacts, and to prevent or mitigate human rights impacts that are directly linked to their business relationships; and
- Principle 23: In all contexts, businesses should comply with all applicable internationally recognized human rights, and treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue.

51. In addition to international human rights law, businesses are also expected to incorporate the tenets of international humanitarian law (IHL) and international criminal law (ICL) in their operational responsibilities⁸³ IHL applies to conflict-affected areas and occupied territories, and requires that states and individuals adhere to the gold-standard humanitarian legal obligations found primarily in the *Geneva Conventions of 1949* and its legal offspring. While companies operating in a conflict-zone or in an occupation could contribute to the economic and social well-being of the affected population, its activities, conversely, could become complicit in the commission of human rights and humanitarian abuses or assisting the occupying power to sustain its alien rule once it has become apparent that it is governing in violation of the laws of occupation.

52. As for ICL, its focus is on individuals (rather than states or other institutional actors) who commit, instigate, order, plan or are complicit in prohibited activity under the *Rome Statute*, such as war crimes and crimes against humanity. Individual corporate decision-makers could be liable under ICL. Serious IHL and ICL issues can arise in occupations where the occupying power is engaged in the transfer of parts of its civilian population into the occupied territory. The UNGP require companies in conflict zones and occupations to employ an enhanced due diligence, or “heightened care”, to ensure that their operations are compliant with their legal responsibilities. However, there are some circumstances where no amount of enhanced due diligence will avoid corporate complicity in human rights violations in a conflict area or an occupation.

Corporations and the Israeli Settlements

53. The Israeli settlements are a profound breach of international law, as determined by the leading deliberative and judicial organs of the United Nations, including the Security

⁸³ For valuable commentary, see: D. Hughes, *Differentiating the Corporation: Accountability and International Humanitarian Law*, 41(1) *Mich. J. Int’l L.* (2020); and M. Farah, *Business and Human Rights in Occupied Territory* (Al-Haq, 2019).

Council,⁸⁴ the General Assembly,⁸⁵ the Human Rights Council⁸⁶ and the International Court of Justice.⁸⁷ Other influential international bodies – including the European Union,⁸⁸ the International Committee of the Red Cross⁸⁹ and the High Contracting Parties to the *Fourth Geneva Convention*⁹⁰ – concur. More seriously, the settlements are a presumptive war crime under the *Rome Statute*.⁹¹

54. 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. Above all, the settlements serve the broader goal of the Israeli government of staking an impermissible sovereignty claim over parts of the occupied territory while simultaneously denying Palestinian self-determination.⁹² The Israeli settlements, and the corresponding shrinking space for Palestinians, have created a “coercive environment” in the Occupied Palestinian Territory, according to the United Nations.⁹³

55. The United Nations Conference on Trade and Development has found that the territorial restrictions imposed by the settlements – the separate road systems for settlers and Palestinians; the hundreds of road blocks, checkpoints and obstructions throughout the West Bank; settler violence; and regular area closures and curfews – have created a shattered economic space in the Occupied Territory. This has resulted in a highly dependent and captive Palestinian economy, mounting impoverishment, daily impositions and indignities, and an accelerating trend towards economic de-development.⁹⁴ In 2018, a leaked memo by EU diplomats in Jerusalem highlighted the “systematic legal discrimination” imposed by the Israeli occupation and its settlement enterprise against the Palestinian people.⁹⁵

56. Corporate and business activities contribute significantly to the economic viability of the Israel settlement enterprise.⁹⁶ It is private corporations that, through tenders issued by the

⁸⁴ UNSC Resolution 2334.

⁸⁵ A/Res/71/97 (December 2016).

⁸⁶ A/HRC/43.L37 (22 June 2020).

⁸⁷ *Supra*, note 49, at para. 120.

⁸⁸ Council of the EU, *Council Conclusions on the Middle East Peace Process* (18 January 2016).

⁸⁹ P. Maurer, “Challenges to International Humanitarian Law: Israel’s Occupation Policy” (2012), 94 *International Review of the Red Cross* 1503.

⁹⁰ Conference of High Contracting Parties to the Fourth Geneva Convention, 17 December 2014, accessed at: <https://unispal.un.org/UNISPAL.NSF/0/E7B8432A312475D385257DB100568AE8>.

⁹¹ G. Poissonier & E David, “Israeli Settlements in the West Bank: A War Crime?” (2020), 17 *La Revue des droits de l’homme*. Also see: <https://www.amnestyusa.org/lets-be-clear-israels-long-running-settlement-policy-constitutes-a-war-crime/>.

⁹² UNHCHR, *Israeli Settlements in the Occupied Palestinian Territory* (30 January 2020), A/HRC/43/67. Also see UNHCR, *International Fact-Finding Mission on Israeli Settlements in the Occupied Palestinian Territory* (31 January 2013), A/HRC/22/63.

⁹³ <https://www.un.org/unispal/document/ocha-2019-humanitarian-needs-overview/>.

⁹⁴ United Nations Conference on Trade and Development, *The Economic Costs of the Israeli Occupation for the Palestinian People: Cumulative Fiscal Costs* (Geneva, 2019).

⁹⁵ A. Rettman, “No EU cost for Israeli ‘apartheid’ in West Bank”, EUobserver, 1 February 2018.

⁹⁶ Paras. 52-54 are informed by the comprehensive overviews of the corporate dimensions of the Israeli settlement economy provided by Amnesty International, *Think Twice* (2019); Amnesty International, *Destination Occupation* (2019); M. Farah, *supra*, note (55); Profundo and 11.11.11, *Doing Business with the Occupation* (2018); Human Rights Watch, *Bankrolling Abuse* (2018); Human Rights Watch,

Israeli government agencies which administer the settlement enterprise, construct the settlements, and build and maintain the roads and utility infrastructure which services them. Businesses operating in the settlements and the industrial parks – in particular, manufacturing and service industries, and wineries – provide jobs and commercial activity that economically sustain the settlements, while paying taxes to settlement municipalities. Private security companies guard many of the settlements, while they and high-tech businesses supply surveillance and identification equipment. Banks and financial institutions facilitate the fiscal infrastructure to arrange residential mortgages and to lend capital to businesses operating in the settlements. Law firms offer legal services to the settlements, settlers and settlement businesses. Real estate firms coordinate the sale and purchase of residential and commercial properties in the settlements. Agricultural corporations grow a range of foodstuffs for domestic and export markets, utilizing large-scale farming and modern technology. Domestic and international tourism is an emerging sector for the settlements, along with hotels and accommodation rentals. Retail store chains operate in the settlements. Transportation companies link the settlements to each other and to communities within Israel. Extraction companies exploit the Occupied Territory's natural resources, including minerals and water. Equipment companies supply the heavy machinery needed to construct residential and commercial building structures. Waste management companies service both municipalities and industrial enterprises in the settlements. The construction and maintenance of the Separation Wall through occupied territory solidifies an illegal situation.

57. Many of the corporations and businesses supplying commercial services in, or to, the settlement economy are Israeli companies. However, a number of international corporations also contribute to, and profit from, the settlement economy. International banks and financial institutions underwrite loans to, or invest in, businesses with operations in the settlements. Other companies sell goods and services to the settlements, such as construction heavy machinery and solar power technology, or excavate non-renewable natural resources. Major international transportation companies have participated in the building of the Jerusalem light rail system (which connects a number of the illegal East Jerusalem settlements to West Jerusalem) and the high-speed rail connection between Tel Aviv and Jerusalem (which passes through parts of the occupied territory). Major international accommodation booking companies advertise housing rentals in the Israeli settlements. Israeli settlements goods and services, including manufactured goods, wines and foodstuffs, are exported in quantity to the international market.

58. Without this extensive corporate involvement, the settlements – the engine of the occupation – would be an unsustainable economic burden for the Israeli government. These businesses – domestic and international – benefit greatly from Israel's illegal confiscation of Palestinian land and natural resources, from Israel's discriminatory two-tier system of rights, benefits and opportunities between the settlements and Palestinian people, and from Palestinian impoverishment (and the resulting employment of low-cost Palestinian labour in the settlements) that is the inevitable consequence of a settlement implantation enterprise.⁹⁷ The question becomes: can companies become, or remain, involved with the Israeli settlements and still honour their human rights commitments?

Occupation, Inc. (2016); and Diakonia, *The Unsettling Business of Settlement Business* (2015). Also see the work of Who Profits: <https://www.whoprofits.org/>.

⁹⁷ Y. Ronen, "Responsibility of Businesses involved in the Israeli Settlements in the West Bank", https://www.researchgate.net/publication/314590025_Responsibility_of_Businesses_Involved_in_the_Israeli_Settlements_in_the_West_Bank.

Enhanced Due Diligence or Complete Corporate Abstinence?

59. In 2014, the United Nations Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises issued a detailed statement on the implications of the UN Guiding Principles in the context of the Israeli settlements.⁹⁸ It pointed to the illegality of the settlements, and the wide ranges of human rights abuses associated with them. In its conclusion, the Working Group issued a cautionary yellow light to corporate involvement in the Israeli settlements, stating that:

“Business enterprises doing business, or seeking to do business, in or connected to the Israeli settlements in the OPT need to be able to demonstrate that they neither support the continuation of an international illegality nor are complicit in human rights abuses; that they can effectively prevent or mitigate human rights risks; and are able to account for their efforts in this regard”.

60. In 2018, the UN Office of the High Commissioner for Human Rights (OHCHR) released an interim report regarding its progress towards creating a database of businesses involved in the Israeli settlements.⁹⁹ In its conclusion, the OHCHR expressed considerable doubt as to whether a company could engage commercially with the Israeli settlements and, at the same time, comply with its human rights responsibilities:

“...considering the weight of the international legal consensus concerning the illegal nature of the settlements themselves, and the systemic and pervasive nature of the negative human rights impact caused by them, it is difficult to imagine a scenario in which a company could engage in listed activities in a way that is consistent with the Guiding Principles and international law”.

61. In 2019, Amnesty International published a substantive study on the human rights and legal implications of companies doing business with the Israeli settlements.¹⁰⁰ It concluded that, given their grave human rights consequences, only a complete red light abstinence would suffice:

“A company cannot meet its responsibility to respect human rights and the standards of international humanitarian law while doing business with the settlements. This is because the settlements have been established and developed in breach of the international law rules governing what states can and cannot do in a situation of military occupation. As such, they constitute war crimes and give rise to systematic, widespread and serious human rights violations”.

62. The Special Rapporteur takes the view that any form of corporate involvement – whether Israeli or international, whether direct or indirect, whether intentional or incidental – with the Israeli settlements is wholly incompatible with human rights obligations, with the UNGP and with any purposive definition of enhanced due diligence. Three reasons inform this view. First, the Israeli settlements are a flagrant violation and a grave breach of the *Fourth Geneva Convention* and a presumptive war crime under the *Rome Statute*. These are among the most serious of contraventions under international human rights, humanitarian and criminal law. Second, corporations and businesses operating in, or benefiting from, the settlements provide the indispensable economic oxygen for their growth. Whatever positive benefits are cited by companies in defending their engagement with the settlements – often, the employment of Palestinian labour, or the payment of local taxes¹⁰¹ – are far outweighed on the human rights ledger by the scale of gross violations inherent in the settlement

⁹⁸ <https://www.ohchr.org/Documents/Issues/Business/OPTStatement6June2014.pdf>.

⁹⁹ A/HRC/37/39, para. 41.

¹⁰⁰ *Supra*, note 96, p. 25.

¹⁰¹ M. Abdullah & L de Leeuw, *Violations Set in Stone* (Somo & Al-Haq, 2020).

enterprise. And third, the settlements are the primary political instrument – the pervasive ‘facts on the ground’ – employed by the Israeli government to advance its *de facto* and *de jure* annexation claims and to deny Palestinian self-determination. Annexation is a crime of aggression¹⁰² and self-determination is the *primus inter pares* of human rights.¹⁰³

63. Under present conditions, the only form of corporate engagement in the Occupied Palestinian Territory which could comply with the human rights responsibilities of businesses would have to: (i) directly benefit the protected population under occupation, (ii) withhold any benefits to, or involvement with, the Israeli settlements, and (iii) contribute to the inherent sovereignty claim of the Palestinian people over their territory.

The UNHRC Database

64. In February 2020, the Office of the High Commissioner for Human Rights released the Database of business enterprises involved in certain activities related to the Israeli settlements,¹⁰⁴ pursuant to the request of the Human Rights Council in 2016.¹⁰⁵ Databases of business activities had been previously commissioned by the United Nations respecting other conflict zones, including the Democratic Republic of Congo¹⁰⁶ and Myanmar.¹⁰⁷ The Special Rapporteur welcomes the release of the Database, as it provides an important spotlight on corporate activity – both Israeli and international – in the settlements, and advances public and corporate understanding of the adverse human rights environment sustained by the settlements.¹⁰⁸ At the same time, the Special Rapporteur recognizes that the Database had a restrictive mandate (it did not seek to cover all businesses activity related to the settlements which may raise human rights concerns), it was interpreted narrowly (a number of companies with important supply relationships with the settlements and/or the occupation were not included) and it did not contain an adjudicative mechanism.¹⁰⁹ These concerns must be addressed while enhancing the Database’s ability to be a living tool.

IV. Conclusions

65. In 1970, the Security Council was faced with an international crisis that has striking similarities to the Occupied Palestinian Territory: the prolonged rule of Apartheid South Africa over Namibia.¹¹⁰ Like Palestine, Namibia was ruled through an UN-supervised trust relationship - in one case an occupation; in the other case, a mandate - by an alien power that was exploiting its position and advancing an illegal claim of sovereignty. Like Palestine, South Africa’s rule over Namibia was aided by the extensive presence of regional and international businesses. And like Palestine, the alien power in Namibia was defying the long-standing directions of the Security Council to end its abusive rule and open the path to

¹⁰² *Supra*, note 50.

¹⁰³ Self-determination is the very first human right cited in both the *International Covenant on Economic Social and Cultural Rights* (1966) and the *International Covenant on Civil and Political Rights* (1966).

¹⁰⁴ A/HRC/43/71.

¹⁰⁵ A/HRC/31/36.

¹⁰⁶ S/2003/1027.

¹⁰⁷ A/HRC/42/CRP.3.

¹⁰⁸ V. Azarova, “Business and Human Rights in Occupied Territory” (2018) 3(2) *Business and Human Rights Journal* 187.

¹⁰⁹ <https://www.haaretz.com/israel-news/.premium-why-the-un-s-settlement-database-doesn-t-go-far-enough-1.8589282>.

¹¹⁰ J. Dugard, *Confronting Apartheid: A Personal History of South Africa, Namibia and Palestine* (Jacana Media, 2018).

independence. In response, the Security Council authorized a comprehensive set of sanctions and counter-measures to bring an end to South Africa's rule over Namibia. These accountability measures – found, among other places, in UNSC Resolution 283¹¹¹ and the International Court of Justice's 1971 *Advisory Opinion on Namibia*¹¹² – laid the basis for the international community's actions against South Africa's illegal rule and Namibia's eventual independence in 1990.

66. Without the comprehensive accountability measures developed and applied by the United Nations Security Council against South Africa, Namibia's independence would never have occurred when it did. And without the development and application of comprehensive accountability measures by the international community against the Israeli occupation, it will continue well into the future. This occupation will not die of old age. Nor will it crumble from pleas to respect the United Nations which do not promise the inevitability of adverse consequences if disobeyed. Rights under international law are self-evident, but they are not self-executing.

67. In 1980, the Council called upon all states “not to provide Israel with any assistance to be used specifically in connection with settlements in the occupied territories” and for Israel “to end the prolonged occupation”.¹¹³ Forty years later, it is well past time for the Council to lead the international community by drawing from its own precedents respecting Namibia and other modern sanctions regimes to honour its directions to end assistance to the settlements and to end the occupation. As the International Court of Justice stated in its *Namibia Advisory Opinion*:

“It would be an untenable interpretation to maintain that, once such a declaration had been made by the Security Council on behalf of member States, these Members would be free to act in disregard of such illegality or even to recognize violations of law resulting from it”.¹¹⁴

V. Recommendations

68. The Special Rapporteur recommends that the Government of Israel should fully comply with its obligations under international law and that it should completely end its 53 years of occupation with all deliberate speed and enable the realization of Palestinian self-determination.

69. The Rapporteur recommends that the United Nations Security Council, or, if it fails to act, the General Assembly under a Uniting for Peace resolution, adopt resolutions directing the following:

(a) Call upon all States maintaining diplomatic or consular relations with Israel to issue a formal declaration to the Government of Israel to the effect that they do not recognize any authority of Israel with regard to the Occupied Palestinian Territory, and that they consider Israel's continued presence in the Territory to be illegal;

(b) Request all States to refrain from any relations — including diplomatic, consular, trade and other agreements — with Israel implying any recognition of the

¹¹¹ UNSC Resolution 283 (29 July 1970).

¹¹² *Advisory Opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia*, International Court of Justice (21 June 1971).

¹¹³ UNSC Resolutions 465 and 471.

¹¹⁴ *Supra*, note 112, p. 52.

authority of the Government of Israel over any part of the Occupied Palestinian Territory;

(c) Call upon all States to ensure that all corporate enterprises regulated by them cease any and all investment, commercial, operational and trade dealings of any sort with respect to the Israeli settlements, Israeli industrial enterprise zones or with companies regulated by the Government of Israel operating in the Occupied Palestinian Territory;

(d) Request all States to undertake without delay a detailed study and review of all bilateral treaties between themselves and Israel to identify whether these treaties contain provisions by which they might apply to the Israeli settlements in the Occupied Palestinian Territory;

(e) Call upon all States to discourage the promotion of tourism and emigration to the Israeli settlements;

(f) Call upon all States not to permit the entry of any goods and services produced in or originating from, in whole or in part, the Israeli settlements or Israeli-regulated commercial enterprises in the Occupied Palestinian Territory; and

(g) Request all States to report to the Secretary-General on measures they have taken on an annual basis in order to give effect to the provisions set forth by the Security Council or General Assembly.

70. The Rapporteur recommends that the United Nations Security Council should ensure that the Database becomes a living tool, that it clarifies and broadens its mandate, and that it provide the Database with sufficient resources so that its spotlight can properly identify the scope of all business involvement with the settlements and the occupation.
