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THE RIGHT OF THE PALESTINIAN PEOPLE TO SELF-DETERMINATION

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The right of people to govern themselves, or the right of people to self-determination, has for a long time been recognised as a fundamental principle of international law. Indeed, Article 1 §2 and Article 55 of the United Nations Charter codify this rule while fixing as an aim of the United Nations to develop "peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples."

It is therefore pursuant to the Charter that the United Nations General Assembly adopted, on 14 December 1960, resolution 1514 (XV) which stresses that "all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory". This resolution declares that "all peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development… [...] Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations".

Resolution 2625 (XXV), adopted by the United Nations General Assembly on 24 October 1970, confirms the "codification" of the "principle of equal rights and self-determination of peoples."

Numerous treaties or resolutions, concluded between states or under the aegis of international organisations, recall and strengthen this rule which thus appears as an essential and even imperative rule, as the International Law Commission underlines. Furthermore, the two 1966 International Covenants relating to civil and political laws and to economic, social and cultural rights recall: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

In the context of this fundamental precept of contemporary international law, the Palestinian people have been struggling to exercise their right to self-determination for a long time, in particular since the partition decided by Resolution 181 of the United Nations General Assembly of 29 November 1947.

It is therefore first of all by its struggles that the Palestinian people insisted on formal recognition by the international Community of its right, and even by Israel from the Oslo Accords in 1993 -1995. But we will see that this recognition is limited or thwarted by numerous obstacles and by violations of international law initiated by Israel to prevent its concretisation in a sovereign state (part 1). But it must be seen that the failure of the Palestinian people to realise their right to self-determination without doubt would not have been assured if several major powers had not chosen to support Israel and to safeguard its impunity. It is advisable on this subject to examine the European Union’s share of responsibility (part 2), even if this research does not aim to diminish the decisive role of the United States of America in violations of international law by Israel, and especially in the impunity of this state.

The multiple violations by Israel of the Palestinian peoples’ right to self-determination.
Before examining the violations of the Palestinian peoples’ right to self-determination, it is advisable to recall that this right was recognised explicitly for Palestinian people by the United Nations, by numerous states and other international law subjects, and even by Israel under the Oslo Accords, particularly by the Israeli-Palestinian Interim Agreements of 28 September 1995.

1.1 The recognition of the right of the Palestinian people to self-determination

The Palestinian peoples' determined struggle enabled them to extract recognition of their right to self-determination. This struggle and this result are in line with the line of the contributions which allowed the transformation of international law and the conquests of rights carried out thanks to national freedom movements. Several resolutions of the United Nations General Assembly and of other international organisations recognise very clearly the right of the Palestinian people to self-determination. It is not necessary to quote them all; it is sufficient to refer to the proceedings of the Committee on the Exercise of the Inalienable Rights of Palestinian people since 1975 and to recall the most recent resolutions of the General Assembly and of the Security Council.

As on numerous other occasions, the United Nations General Assembly reaffirmed, on 18 December 2009 (A/64/438), "the right of the Palestinian people to self-determination". But the General Assembly also clarified the right to self-determination by underlining the right of this people in an independent state, and the need to respect its territorial unity and the contiguity and integrity of its territory, including East Jerusalem.

The Security Council itself, although slower and more reticent to decide the recognition of the right to the Palestinian people to self-determination, in view of the policies of support for Israel stated by the USA and by certain European permanent members, has nevertheless adopted several resolutions in which it recognises the right of the Palestinian people to a state. Resolution 1850 (2008) adopted on 16 December 2008 is very explicit. The Security Council reiterates "its vision of a region where two democratic States, Israel and Palestine, live side by side in peace within secure and recognized borders". It welcomes "the 9 November 2008 statement from the Quartet "and calls for the obligations arising under the Roadmap and from the Annapolis agreement to be respected. It "calls on all States and international organizations to support [...] the Palestinian government that is committed to the Quartet principles and the Arab Peace Initiative and respects the commitments of the Palestinian Liberation Organization". The Security Council affirms that "lasting peace can only be based on an enduring commitment to mutual recognition, freedom from violence, incitement, and terror, and the two-State solution, building upon previous agreements and obligations".

The General Assembly and the United Nations Security Council have therefore on several occasions not only affirmed the right of the Palestinian people to self-determination, but have also given precise content to this right by asking for the creation and the recognition of an independent Palestinian state with East Jerusalem as its capital, integrity and the contiguity of the Palestinian territory on the basis of Resolution 242 of the Security Council and the opening of negotiations with the purpose of realising these rights.

Resolution 242 of 22 November 1967 is based particularly on the Charter of the United Nations, and in particular on Article 2 which prohibits "the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations". This resolution states that the fulfilment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles:
i) withdrawal of Israeli armed forces from territories occupied during the recent conflict;  
ii) termination of all claims or states of belligerency and respect for and acknowledgement of  
the sovereignty, territorial integrity and political independence of every State in the area and  
their right to live in peace within secure and recognised borders free from threats or acts of  
force."

This resolution is of capital importance for at least two reasons. On the one hand, it prohibits recourse to force and draws the consequences by calling upon Israel to withdraw from the territories occupied during the June 1967 war; on the other hand, it will serve as a basis to determine the territorial base of the Palestinian state, with the exception of arrangements agreed upon by the parties. The right to self-determination has consequently to be exerted on the Palestinian territories in the West Bank including East Jerusalem and the Gaza Strip, as they were configured before the June 1967 war.

It is also noteworthy that the General Assembly and the Security Council have on several occasions affirmed that the town of East Jerusalem is not recognised as a part of the Israeli capital (Resolution A/64/L.24). According to United Nations Resolutions, supported and reiterated by several states and international organisations, East Jerusalem is part of the Palestinian territories on which the Palestinian people have the right to exercise their self determination. As an examples, Resolution 55/50 of 1 December 2000 of the General Assembly and Resolution 478 of the Security Council of 20 August 1980 reject the so-called "Basic Law" on Jerusalem and the proclamation of Jerusalem as the capital of Israel. The Security Council even "called upon those States which had established diplomatic missions in Jerusalem to withdraw such missions...." Twenty years later the abovementioned Resolution 55/50 recalled the obligation of states to comply with Security Council Resolution 478 (1980).

This recognition of the right of the Palestinian people to self-determination and to form a sovereign state within the borders of the territories occupied in 1967, with Jerusalem as capital, is also affirmed by the European Union. We shall see that whatever the positive aspect of this recognition, this organisation does not draw all the political and legal consequences which would make it possible to oblige Israel to respect the Resolutions of the Security Council, of the United Nations General Assembly and the European Union.

1.2 Violations by Israel of the right of the Palestinian people to self-determination

For a long time the state of Israel refused any contact with the Palestinians and denied any representation to the Palestine Liberation Organisation. Despite covert contacts, the success of the secret negotiations in Oslo had to be awaited, and precisely the Israeli Prime Minister's letter dated 9 September 1993, which stated that: "the Government of Israel has decided to recognize the PLO as the representative of the Palestinian people and commence negotiations with the PLO within the Middle East peace process." "But this recognition of the PLO did not clearly express the Palestinian people's right to self-determination.

The Oslo Accords, including obviously the Interim Agreement of 28 September 1995, are as we wrote (French Directory of International Law 1995), very misery in direct references to the Palestinian people and Palestinian rights. It was only at the insistence of Arafat, and his threat not to sign the Interim Agreement in Washington, that the expression "the Palestine Liberation Organization (hereinafter "the PLO"), the representative of the Palestinian people" was introduced into the Agreement. Certainly, the Interim Agreement is considered as an
international agreement. The commitments which are entered into by the parties are those usually undertaken by the subjects of international law. The Agreement begins with an opening sentence in the purest style of negotiations with a view to realising national liberation: "The Government of the State of Israel and the Palestine Liberation Organization (hereinafter "the PLO"). Everything occurs as if the Interim Agreement and all that is called the Oslo process were a step in the liberation process, and therefore a step in the implementation of the right of the Palestinian people to self-determination.

Certainly, the setting up of a "Palestinian Authority" prefigures a kind of state and "the Palestinian Executive" with a "President" gives the appearance of a government just as the creation of an elected Palestinian "Council" resembles Parliament. These agreements make it possible to pass through a stage in the exercise of the right to self-determination not only because representative Palestinian institutions are set up but also because these institutions have jurisdiction both on the Palestinian people and on the West Bank and Gaza territories, as they were configured before the occupation of June 1967. Some of the solutions adopted by the Interim Agreement of 1995 (see article 11§2) regarding the territorial jurisdiction of the Authority, integrity and the unity of the territory express a vision in conformity with the usual exercise of the right to self-determination. The provisions of this Agreement on the "legislative" elections of the Council and on the election of the President of the Authority can be interpreted in the same sense, as favouring the exercise of the right to self-determination.

But these agreements do not only express reticence in a terminological sense with regard to the exercise of the Palestinian peoples' right to self-determination. The violations by Israel, of general international law and of conventional international law, in this case the violations of the Oslo Accords, were already rooted in the clauses of the Interim Agreement of 1995. The continuation of the military occupation, all recourse to force, colonisation and the construction of the wall on the Palestinian Occupied Territories are clearly in breach of general international law rules and of the United Nations Charter.

The difficulties and the obstacles encountered by the Palestinian people to exercise their right to self-determination, connected obviously to the power balance involved on the ground and at the international level, and also inscribed in the provisions of the Interim Agreement. Several clauses express the Israeli refusal to implement the Palestinian peoples' right to self-determination. Israel never recognised unequivocally and explicitly the right of the Palestinian people to self-determination.

Certain provisions of the Interim Agreement, expressing the Israeli positions, are clearly violations of international law. The recognition of the Palestinian competence in "the Occupied Territories", despite recognised territorial integrity, is undermined in several clauses. The Palestinian Authority can only exert jurisdiction by attribution. Israel continues to exert competence which has not been expressly transferred, thus in breach of the international law of decolonisation accepted by the United Nations. Moreover, the Israeli citizens residing in Palestine do not fall within Palestinian jurisdiction. This recalls the distressing "capitulations" that certain European states imposed on defeated states in the 19th century. This provision is all the more contrary to contemporary international law because it contains the germ of conflict and domination since all the Israeli colonies are not dismantled. From this point of view, by not putting any clear end to colonisation and by not accepting Palestinian jurisdiction on the Israeli residents, Israel violates an essential element of the Palestinian peoples' right to self-determination. The provisions of the Interim Agreement were unfortunately
implemented by Israel by multiplying the authorisations to build and extend settlements on Palestinian territory or by endorsing the settlers' individual initiatives.

The Interim agreement implies, in several articles, that the territorial questions will be settled only in the final definitive status. The Agreement stipulates therefore that there can be "exceptions" to the principle of territorial integrity: which constitutes a refusal to simply agree to restore to the Palestinian people the territories occupied in 1967, in accordance with Security Council Resolutions 242 and 338. This involves not only a violation of the Security Council Resolutions but especially a violation of the fundamental rules of international law prohibiting recourse to force and the acquisition of territories by war (Article 2 of the United Nations Charter.)

Very quickly Israel embarked upon a series of violations of the Interim Agreement thus precluding the implementation of the right to self-determination. This includes for examples unexpected and brutal military incursions into the Palestinian territories, the arrest of Palestinians and in particular of elected personalities. Several Palestinian ministers or delegates have been imprisoned. This also involves various abuses by Israeli forces regarding movement of people, withholding of customs duties, refusing permits to build houses and farms and refusing to allow exports of goods. In short, instead of implementing the Interim Agreement in good faith, in accordance with the United Nations Charter and in the Vienna Convention of 1969 on the Law of Treaties, Israel has been acting to undermine it and violate it, thus ending the self-determination process that it should have set in motion. Israel on the contrary used the limits and the serious deficiencies contained in the Agreement to put an end to it by its actions.

The result is that by its refusal to accept expressly the Palestinian peoples' right to self-determination, by its rejection of a sovereign Palestinian state as an essential consequence of the exercise of the right to self-determination and by its use of force against the Palestinian people and institutions, in particular against Gaza in December 2008 and January 2009, Israel is deliberately violating international law - which serves as the basis for the exercise of the right to self-determination - and is in breach of the Oslo Accords, including the Interim Agreement, which constitute the conventional international law governing, for an interim period, relations between the two parties.

Numerous resolutions made by international organisations and opinions of States which have called for recognition and implementation of the Palestinian peoples' right to self-determination, and in particular for the creation of a sovereign state with East Jerusalem as its capital, have thus failed. The international community appears to be impotent to enforce the most fundamental international laws. Israel, a new state, with a territory, a population and limited natural and financial resources of its own, has an army and sophisticated military equipment that the industrial powers have placed at its disposal in violation of the rules and code of good conduct that they themselves have established. Without any protest on the part of the major powers, Israel can build the nuclear bomb and provide its army and intelligence services with highly sophisticated equipment, including weapons of mass destruction. Israel can violate the most undeniable rules of international law without any fear of sanctions. Despite several acts of aggression and taking of territory by force, against the neighbouring states and against the Palestinian people, despite the non-compliance with the opinion of the International Court of Justice on the construction of the wall on Palestinian territories, despite denouncements by international human rights organisations of torture, arbitrary arrests, bombardment of civilian populations, of extra-judicial killings and of destruction of Palestinian homes, despite the overwhelming findings of the Goldstone report including with regard to war crimes, Israel can bypass the core rules of international law, without any sanction. Israel clearly enjoys impunity.
which "enables" it to violate international law, without any detrimental consequences for its interests.

The exceptional situation of Israel in the international order is explained by the conditions under which the Jewish people were oppressed in Europe, in particular between the two world wars and during the Nazi period, and by the birth of Zionism, which led to the creation of the Israeli state at the urging of the European powers, the USA and with the agreement of the USSR. As from the moment when, for these reasons, the major powers decided to create the Israeli state, it had to be assured, according to them, that the Jews would not be at risk of a recurrence of any attack or oppression. The security of "the Jewish state", conceived to achieve this objective, is therefore above all international law.

Although globally there are various conceptions of the security and respect of Jewish rights and of the safety of the Israelis and of their state, despite some disputes in particular by the European Union or some of its Member States, it is as if the policies and the measures laid down by the Israeli government have to take precedence over all other legal considerations. Israel thus acquires a special status that enables it to be apart in the international order. In this perspective, the support of the USA, as the prime global superpower, is the more critical, but also significant is the support of the European Union and its Member States. Although we have to keep in mind the essential and decisive role of the USA regarding the respect of the Palestinian peoples' right to self-determination and the establishment of peace in the Middle East compared to the roles of any other power, it is useful to clarify the policies of the European Union by showing its involvement in the violation of the Palestinian peoples' right to exercise self-determination.

2. The European Union's responsibilities with regard to the violation of the Palestinian people's right to self-determination

It can appear paradoxical to want to underline the responsibilities of the European Union (EU), and of some of its Member States, in the violation of the Palestinian peoples' right to self-determination insofar as several resolutions and statements of the bodies of this organisation distance themselves from the Israel positions, or sometimes even condemn some of its policies and measures of recourse to force, of repression and of violation of international law.

However, a more precise analysis of the resolutions of the EU and of the policies and measures actually carried out by this organisation and by some of its Member States shows serious failures in relation to the obligations of this organisation and/or of some of its Member States, both with regard to the United Nations and to the obligations of the Association Agreement concluded with Israel. It is not the intention to raise here all the failures of the organisation and of each Member State relating to the conflict between Israel and Palestine or other countries of the Middle East. We retain primarily the policies having an impact on the violation of the Palestinian peoples' right to self-determination. If the EU has to be encouraged to support the Palestinian people in their struggle to exercise their right to self-determination and to condemn all the violations of international law by Israel, it is however necessary, in a constructive spirit, to note the responsibilities and the failures of this organisation and of some of its Member States when it come to implementing both the resolutions of its own bodies and those of the Security Council. This manner of seeing is all the more necessary as the EU is a major economic and political power, with sufficient weight to be able to have an influence on the solution to the conflict and capable of obstructing, or even preventing or sanctioning, violations of international law. It is an important actor on the international stage and in addition is a member of the Quartet. We will in
turn examine the policies of the EU or of some of its most important Member States, regarding the Palestinian peoples' right to self-determination, first in the context of the United Nations and then in the context of the EU's institutions and in particular in the implementation of the Association Agreement with Israel.

2.1 the failures the EU and of certain of its Member States with regard to the UN

Everyone knows the place and the role of the Security Council in the maintenance of international peace and security. We recalled that several Council Resolutions require Israel's withdrawal from the Occupied Territories (Resolutions 242 and 338), the creation of an independent and viable Palestinian state alongside the state of Israel, an end to use of force in Gaza, respect of humanitarian law, an end to Israel's illegal actions concerning East Jerusalem (Resolutions 1397 (2002), 1515 (2003), 1850,2008), 1860 (2009)). But these resolutions have essentially remained without any effect. One of the reasons for this situation lies in the fact that these resolutions are not taken under Chapter VII of the United Nations Charter, which would make it impose political, diplomatic or military sanctions against those responsible for contraventions which undermine peace or international security.

Two Member States of the EU are permanent members of the Security Council and therefore have the capacity to propose and put on the agenda recourse to Chapter VII to discuss and adopt sanction measures against Israeli policies which undermining peace and international security. The occupation of territories, the attacks on the status of East Jerusalem, the bombardments of Palestine populations in Syria and in Lebanon, the massive violations of human rights, in contravention of the Geneva Conventions of 1949 and of the two 1966 United Nations Charters on human rights, are issues on which the Security Council has the authority to meet under Chapter VII. The EU itself has never sought, either at the diplomatic level, or within its institutions, or in the context of the United Nations, to engage its members or the international Community in a process of sanctions or threats of sanction to bring to an end the abovementioned Israeli contraventions.

Within the framework of the work of the United Nations relating to all issues regarding the right to self-determination, the EU and several of its Member States, while distancing themselves, at times, from the USA unconditional support for Israel, attempt to avoid binding sanctions or measures which they consider could vex Israel. The resolutions of the Security Council are often addressed to all the parties, including the Palestinian victims, as if the latter, in opposing the denial of their rights and in particular the contravention of their right to self-determination, were responsible for similar contraventions comparable with those of the Israeli occupant. But whatever the attraction of compromise, this EU diplomacy amounts to extending the status quo based on the use of force and on the contravention of the Palestinian peoples' right to self-determination. Placing on an equal footing the Israeli aggressor and the Palestinian victims, the European Union and certain of its Member States contribute, by a manipulation of the facts, to a breach of the principle of good faith which should govern implementation of international law, in accordance with the United Nations Charter (art. 2 §2) and with the 1969 Vienna Convention on the Law of Treaties of (Article 26).

The European Union has, however, on several occasions, acted in an active and determined way in issues relating to Serbian aggressions in Bosnia and Kosovo and during the conflict between Georgia and the Russian Federation. During the conflict in Georgia, the EU dispatched a fact-finding mission (Decision of the Council on 2 December 2008) to "investigate the origins and the
course of the conflict in Georgia, including with regard to international law, humanitarian law and human rights, and the accusations made in this context, including allegations of war crimes". (See on these issues the report drawn up by several NGOs including Amnesty International, Oxfam International, Pax Christi International, EMHRN and others: *The position of the EU on the peace process in the Middle East: principal contradiction*, September 2009). The EU has never made an equivalent effort to oblige Israel to respect the resolutions of the Security Council or of the institutions of the EU itself.

2.2 the responsibilities of the EU within the framework of its resolutions and the Association Agreement with Israel.

Several resolutions of the of the EU and its institutions, in particular the European Parliament, the Council of Ministers and the Council of the European Union, have condemned Israeli policies. Thus, resolutions Council of the EU condemned the occupation of the territories by force, the colonisation of the Palestinian territories, the construction of the partition wall, the Gaza blockade and the bombardments of this territory. (Also see EU Council Resolution of 15 June 2009 and Council Resolutions of 12/07/2004 relating to the Wall, Council conclusions of 17-18 June 2004 relating to ending the establishment of colonies etc.)

Since the 1980 European Council in Venice, the EU has been asking that the right of the Palestinian people to self-determination take practical form in the creation of a Palestinian state. In 1999, the European Council asked that the Palestinian state be created on the basis of the territories occupied in 1967. The European Council of Seville of 21 and 22 June 2002 took a similar position. In accepting to be member of the Quartet, the European Union has the responsibility to take action to give concrete expression to the creation of a sovereign Palestinian state. The principle of good faith compels the EU and the Member States to show consistency between, on the one hand, the decisions and public statements which they make, the responsibilities accepted as members of the Quartet and of the Security Council and, on the other hand, the political, diplomatic and legal actions in which they engage. The EU has never undertaken actions making it possible to give concrete expression to its declared policies on the establishment of a Palestinian state.

On the contrary, the EU has gone in a direction, with, some of its policies, which is contrary to the principle of the right of the Palestinian people to self-determination. Indeed, after the results of the general election to the Palestinian Council, which gave the majority to the Hamas movement, the EU made demands which deliberately undermined the Palestinian people's will, as if the latter could only express the interests of foreign points of view. By denying the Palestinian voters' will and by refusing the formation of a national unity government between the PLO and Hamas, the EU yielded to Israeli demands and contravened the principle and the substance of the Palestinian people’s right to self-determination.

Furthermore, the EU acts in a discriminatory manner in several areas which are sensitive for the exercise of the right to self-determination. In the context of the Quartet and also outside this context, the EU insists that Hamas recognise Israel and gives up all use of force against the occupant without making any demands of Israel in return, in particular regarding clear and complete recognition of the right of the Palestinian people to self-determination, even though this recognition is an essential precondition which has to be required of Israel.

The EU insists that the Palestinian Authority respect the law with regard to the occupier and its nationals, without requiring in return any effective action against the violence of the settlers. The
EU takes no action with regard to the discrimination constituted by the application of military law to the Palestinians. The settlers' violence remains generally unpunished. The statement of the Quartet on 26 September 2008, which "condemned the recent rise in settler violence against Palestinian civilians, urging the enforcement of the rule of law without discrimination or exception" remained without follow-up on the ground, as if the Israeli government and the settlers were ensured impunity, as a consequence of inertia or often as a consequence of the support of the USA and the European Union.

This discriminatory behaviour, incompatible with the EU's participation in and its responsibilities in the Quartet, is confirmed in several areas. One can quote, for example, the renewed calls by the European Council for the release of a corporal of the Israeli detained army militants of the Hamas and the absence of any mention of the thousands of Palestinian prisoners or any calls for the release of Palestinian ministers and delegates imprisoned by Israel. As the NGOs point out (Amnesty International, Oxfam, international Pax Christi, REMDH and others...) in their report referred to above on these questions, "only in December 2008 did the Council address the broader issue by stating that....."Palestinian prisoners should be released in greater numbers, with priority being given to minors". The NGOs which quote the statistics drawn up by Israeli organisations, point out in their report referred to above that more than 7,800 Palestinian prisoners are detained by Israel, of which more than 387 are in military administrative detention without charge or trial. According to these NGOs and to Amnesty International's 1989 annual report, "fall far short of due process and fair trial standards".

According to the facts reported by these NGOs, it can be affirmed that "the Israeli military courts do not comply with the rules of international law". (See in particular the proceedings of the United Nations Committee against torture, fourth periodic report of the Israeli government, particularly the Israeli and international NGOs’ contributions.)

This discriminatory behaviour, already in itself contrary to international law, is incompatible with the responsibilities that the EU accepted as a member of the Quartet. These discriminations are reflected finally in a cover-up of the violations of international law perpetrated by Israel and even by encouragement to persevere in the denial of the Palestinian people's right to self-determination. This interpretation is clearly corroborated by the proposals of the Ministers of Foreign Affairs of the EU to "upgrade" the EU-Israeli relations and status. This proposal is added to the "advanced status" from which Israel already benefits in the EU and which demonstrates that, despite the Council Resolutions favouring respect of international law and despite all the violations of international law signalled by the United Nations, by numerous states and human rights NGOs, the European Union is satisfied and is pleased with the behaviour of this state. Much more, the proposal to "upgrade" the Israel relations with the EU constitutes an encouragement to continue to act in the same way and to resort to force. Thus a few months after this proposal to "upgrade" the relations with Europe, Israel felt secure in its position of a state able to act above international law and decided to start, on 30 December 2008, a war against the people of Gaza. The reaction of the EU were in the usual direction of the policies of this organisation, that is, refusing to take the measures likely to stop and sanction the violence of the Israeli army, despite the horror of the massacres of civilians and destruction of the public services most essential for the population. The Goldstone report, carried out under the aegis of the United Nations, found evidence on the part of the protagonists of the conflict and particularly on the part of the Israeli army, of serious crimes that amount to war crimes and crimes against humanity. Europe supported the adoption of the report by the United Nations General Assembly without drawing any consequences with regard to reparations or other sanctions which should consequently be decided against Israel. General international law requires
various integral reparations or equivalent to rectify the violations of international law on foreign
territories. However in the case of Israeli crimes and destruction, neither the EU nor its Member
States have ever tried to put on the agenda the issue of Israeli reparations in conformity with
international law. In such cases as this, as in other circumstances, no initiative has been seriously
put forward by the EU, nor by France nor the United Kingdom, as permanent members of the
Security Council and as influential member of the Quartet, to rule on sanctions against the
aggressions perpetrated against the Palestinian people.

Apartheid against the Palestinian People

Document prepared for the first international session of the Russell Tribunal on Palestine Barcelona 1-2-3 March 2010
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I.- Introduction

This document, titled “Apartheid against the Palestinian people” aims to, from a distance- without any preconceived position- and through analysis, on one hand, of the international legal regulations and, on the other, of the national legislation and its application, both in Israel and in the Occupied Palestinian Territories, to determine the existence -or not- of a crime of apartheid against the Palestinian people.

Throughout this study, we will be able to distinguish what is understood as a crime of apartheid. We know what happened in South Africa, we suspect what might be happening in Israel and in the Occupied Palestinian Territories, but not much time has been dedicated to analysing why it arose and how was it categorized as a crime against humanity and what its legal content is.

While it is a fact that the international Community decided to typify the category of crime of
apartheid because of what was happening in South Africa, it is also true that once the original cause of its creation—the segregationist and racist South African regime—the persecution of this crime against humanity is still applicable. This can be done through the Convention against Apartheid, the Rome Statute or international customary law.

As defined in article 7 of the Statute of the International Criminal Court, apartheid is “inhumane acts committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime”. Taking as a reference the most recent definition we have, which includes all jurisprudence and international customary law on this subject, it is a question of determining, following the guidelines established in the Convention against Apartheid, if the Palestinian people are suffering similar policies and situations.

The study is not only focused on the violations of international humanitarian law that Israel is committing in the Occupied Palestinian Territories; it is centred on the analysis of international human rights law. On one hand, the reports elaborated by the experts who are part of the various conventional mechanisms established in the international human rights treaties are fundamental. Their importance lies in that they are international treaties ratified by Israel, applicable in all the territories under its jurisdiction—Israel and the Occupied Palestinian Territories—and in that they analyse the information supplied by the Israeli government itself. So the repeated condemnations by these experts cannot be qualified as one-sided or biased because even the government of Israel has recognized that they have this authority.

And if this was not enough, this report we will be able to appreciate how, in the field of the various non-treaty based mechanisms, various Special Rapporteurs have been categorically regarding the racist and segregationist policies undertaken, as a preconceived plan, by several Israeli organs and authorities. All of this is completed with other United Nations documentation, including the Advisory Opinion of the International Criminal Court on the Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory.

After analysing the international regulations, the report focuses on the legislation applicable to Israel and the Occupied Palestinian Territories and it outlines not only the discrimination suffered by the Palestinian people, but also the plan aimed to deny the respect of their dignity as human beings. This denial has a specific legal categorization: crime of apartheid.

II.- What is apartheid?

Apartheid is an Afrikaner term meaning “separateness”. It is a system establishing, through laws, policies and practices the supremacy of one human group over another, based on racial criteria. This system was developed in South Africa between 1948 and 1990, creating a legal framework institutionalizing racial segregation.

A.- Constitutive elements of the crime of apartheid

As determined by the Special Group of Experts¹ of the United Nations Commission on Human Rights, these elements are:

- The “Bantustan policy”, creating reserved areas for specific racial groups.

The regulations concerning the circulation of black Africans and Asians in the urban areas.

Demographic policy with the aim of reducing the number of black population, while favouring white immigration.

The imprisonment and ill-treatment of non-white political leaders and of non-white prisoners in general.

All these violations are committed on a large scale, and they constitute a systematic discriminatory practice regarding the most essential human rights.

B.- Where is the crime of apartheid categorized?


Even if it does not exist in South Africa any more, apartheid, as a crime against humanity, is still condemned by international legislation, because it is one of the worst forms of racial discrimination.

C.- The International Convention on the Suppression and Punishment of the Crime of Apartheid

The Convention was adopted by 91 votes in favour, 4 against (the United States of America, Portugal, the United Kingdom and South Africa) and 26 abstentions. It entered into force on the 18th of July, 1976 in accordance with article XV and is currently ratified by 107 countries. Israel has not signed or ratified this Convention.

Article II defines apartheid as those

“…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”

These acts are:

a) Denial to a member or members of a racial group or groups the right to life and liberty of person:
I. Murder of members of a racial group or groups;
II. By the infliction upon the members of a racial group or groups serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;
III. Arbitrary arrest and illegal imprisonment of the members of a racial group or groups;

b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;
c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular denying members of a racial group or groups basic human
rights and freedoms, including the right to work, the right to form recognised trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;

d) Any measures, including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;

e) Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour;

f) Persecution of organisations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.

D.- Can the people responsible for this crime be punished?

Can the people responsible for committing this crime in Israel and the Occupied Palestinian Territory be punished, even though Israel has not ratified the Convention against Apartheid? Yes. Even if Israel is under no obligation due to its non-ratification of this International Treaty on the crime of apartheid, it must still respect the regulations it contains, because the suppression and the punishment of these crimes against humanity constitutes an imperative rule generated from international customary law and therefore binds States irrespective if they have ratified the international treaties or not.

As far as the responsibility of the individual is concerned, the Nuremberg Principles state that: “The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law (Principle II)².

Apartheid, as a crime against humanity, is subject to two principles that distinguish it from ordinary crimes:

- **Principle of universal or extraterritorial jurisdictions.** It implies the possibility of taking those responsible of crimes against humanity to trial, based exclusively on the nature of said crimes, without taking into consideration the nationality of the accused or of the victim or the place where the crime was committed. This principle features in various international treaties, among them the International Convention on the Suppression and Punishment of the Crime of Apartheid (articles IV and V) and in the internal legislation of several States, among them, Spain (article 23.4 of the Organic Law on Judiciary Power).

- **The principle of Non-Applicability of Statutory Limitations.** Crimes against humanity must be prosecuted and their authors punished, irrespective of the moment when they were committed. In other words, their trial has no time limit, unlike other crimes.

III.- International Legislation applicable in Israel and in the Occupied Palestinian Territories


Document prepared for the first international session of the Russell Tribunal on Palestine Barcelona 1-2-3 March 2010
A.- INTERNATIONAL LEGAL REGULATIONS THAT ISRAEL SHOULD APPLY

What international human rights and humanitarian legislation should Israel apply in its territory and in the Occupied Palestinian Territories? Israel declares that the international human rights treaties it signed are only applicable in Israel, because these treaties protect the citizens against the State itself in peacetime, and it does not apply to the Occupied Palestinian Territories, where the regulations of humanitarian law are still applicable. Israel also maintains that the occupation of the Gaza Strip ended on the 12th of September, 2005, when it transferred full powers to the Palestinian Authority. This means that Israel is not responsible for the well-being of the citizens of the Strip. We can ascertain why this is not truthful:

- The International Criminal Court determined that in the Occupied Palestinian Territories the legislation on human rights should also be applicable, and not only the regulations of international humanitarian law.
- As the occupying force, Israel has the duty of fulfilling the obligations established by international humanitarian law and by international human rights law. And this obligation is extensive not only to the West Bank, but also to the Gaza Strip, because “a territory is occupied if it is under the “effective control” of a State other than that of the territorial sovereign”. Therefore, “the test for determining whether a territory is occupied under international law is effective control and not the permanent physical presence of the occupying Power’s military forces in the territory in question”.

The effective control of Israel over the Gaza Strip is demonstrated through the following factors:

a) Substantial control of Gaza’s six land crossings.

b) Control through military incursions, rocket attacks and sonic booms.

c) Complete control of Gaza’s airspace and territorial waters.

d) Control of the Palestinian Population Registry: the definition of who is “Palestinian” and who is a resident of Gaza and the West Bank.

B.- HUMAN RIGHTS TREATIES RATIFIED BY ISRAEL.

The rules of international human rights law which should be applied in the Occupied Palestinian Territories and in Israel, recorded in various human rights treaties ratified by Israel, are as follows:

1 Decision of the Supreme Court of Israel in Al Bassiouni vs the Prime Minister.
7 Source: Ibid.
8 Source: Office of the UN High Commissioner for Human Rights: http://www.unhchr.ch/tbs/doc.nsf/newhvrstatusbycountry?
OpenView&Start=1&Count=250&Expand=84#84

Document prepared for the first international session of the Russell Tribunal on Palestine Barcelona 1-2-3 March 2010
• International Convention on the Elimination of All Forms of Racial Discrimination (ratified by Israel on the 03/01/1979).

• International Covenant on Civil and Political Rights (ratified by Israel on the 03/10/1991).

• International Covenant on Economic, Social and Cultural Rights (ratified by Israel on the 03/10/1991).

• Convention on the rights of the Child (ratified by Israel on the 03/10/1991).

• Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (ratified by Israel on the 03/10/1991).

• Convention on the Elimination of All Forms of Discrimination against Women (ratified by Israel on the 03/10/1991).

C.- INTERNATIONAL HUMANITARIAN LAW APPLICABLE TO THE OCCUPIED PALESTINIAN TERRITORIES

The rules of international humanitarian which should be applied in the Occupied Palestinian Territories are the following:

• Those included in the IV The Hague Convention, related to the laws and customs of war on land, in whose appendix there are the Rules of the Hague, of the 18th of October, 1907. Israel is not to party of this Convention, but the International Criminal Court ruled that the dispositions it contained were part of customary law, which, as such, was binding for all the States, with Israel obviously included.

• Those included in the IV Geneva Convention of the 12th of August, 1949, relative to the due Protection of Civilians in time of war (ratified by Israel on 06/07/1951).

• The customary regulations of international humanitarian law applicable to occupation, which, as such, are of mandatory application for Israel.

IV.- Human Rights violations in Israel and the Occupied Palestinian Territories

A.- VIOLATIONS IDENTIFIED BY THE TREATY COMMITTEES

Israel has ratified the vast majority of international treaties related to the protection and promotion of human rights. Each of these treaties has a monitoring body called a “Committee”, supervising its application and to whom States, having freely accepted the treaty, must send periodical reports in which they must detail how these rights have been incorporated into their legislations and made effective. The Committee “answers” these reports with its Concluding Observations, expressing its recommendations and worries to the State. In the specific case of Israel, the Committees, in their Concluding Observations, have condemned the constant human rights violations suffered by the Palestinian people, which, if analyzed as a whole, divulge the existence of an apartheid regime. We will now enumerate these violations, as mentioned in the most recent reports by the Committees of the aforementioned treaties.

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*Advisory Opinion of the International Criminal Court on the legal consequences of the construction of a Wall in Occupied Palestinian Territory, A/ES-10/273, of the 9th of July, 2004, paragraph 89.

Document prepared for the first international session of the Russell Tribunal on Palestine Barcelona 1-2-3 March 2010
1. Committee on the Elimination of Racial Discrimination

- In Israel:
  - Establishment of a legislation of privileges in favour of Jewish nationals in relation to the access to land and certain benefits (§ 23).
  - Denial of the right of refugees and displaced Palestinians to return and repossess their land in Israel (§ 23).
  - Exclusion of Arab Israeli citizens from certain lands controlled by the State through what is established as a criterion of social adequacy to apply for access to land through the Israel Land Administration (the condition for the applicants is that they have to be “ideal for living in a regime of small communities”) (§ 23).
  - Existence of separate "sectors" for Jews and Arabs, in particular in housing and in education, causing unequal treatments and funding that may represent racial segregation (§ 22).
    - Low level of education provision for Arab Israeli citizens, a barrier in the access to employment, something that is reflected in that their average income is considerably lower than that of the Jewish citizens (§ 24).
  - Differences in the rates of child mortality and life expectancy of the Jewish and non-Jewish population. Women and girls of minorities tend to be the most disadvantaged (§ 24).
  - Indirect Discrimination against Arabs through the psychometric examinations that are used to check aptitudes, ability and personality in access to higher education (§ 27).
  - Racial discrimination through access to public services associated to military service, like housing and education, bearing in mind that most of the Arab-Israeli citizens do not perform military service. (§ 21).
  - Lack of preservation of the cultural and religious Arab heritage, bearing in mind that there are Jewish cultural institutions dedicated to protect the Jewish heritage. There is a different level of protection for Jewish and Non-Jewish holy sites. (§ 28).
  - Lack of protection and effective legal instruments against discriminatory acts. There is no clear and resolute policy of the Attorney-General in the trial of politicians, civil servants and other public figures if they incite hatred against the Arab minority (§ 29).
  - Actions that alter the demographic composition of the Occupied Palestinian Territories(§ 14).

- In the Occupied Palestinian Territories:
  - Existence of the Wall of separation in the West Bank (§ 33).
  - Restrictions on freedom of movement imposed by the Wall and other barriers (§ 34).
  - Application of different laws for Jewish settlers and for Palestinians (§ 36).
  - Application of different criminal laws inflicting more prolonged detentions and more severe punishments to Palestinians than to Israelis for the same crimes (§ 36).
  - Unequal distribution of water resources in prejudice of Palestinians(§ 36).
  - Demolition of Palestinian houses (§ 26).
  - Persistence of violence by Jewish settlers against the Palestinian population (§ 37).

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10 Final Observations for the Committee on the Elimination of Racial Discrimination, Israel, CERD/C/ISR/CO/13, 14th of June, 2007.

Document prepared for the first international session of the Russell Tribunal on Palestine Barcelona 1-2-3 March 2010

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2. **Human Rights Committee**¹¹.

- **In Israel:**
  - Public pronouncements by prominent Israeli figures in relation to Arabs, which may represent a call to racial hatred and an invitation to discrimination, hostility and violence (§ 20).

- **Percentage law for the Israeli Arabs in the public sector and in the Civil Service.** There are no progresses in the improvement of participation, especially in relation with women (§ 23).

- **In the Occupied Palestinian Territories:**
  - A frequent use of various forms of administrative detention, restrictions in the access to a lawyer and lack of information about the motives of detention (§ 12).
  - Ambiguous wording of the regulations related to terrorism, vagueness in the definition of laws that threaten the principle of legality, like the use of probationary presumptions against the accused (§ 14).
  - Practice of "selective executions" of people that Israel suspects are terrorists, a practice used, at least in part, as an element of deterrence or punishment. (§ 15).
  - Demolition of property and family homes, some of whose members were or are considered as suspicious of participating in terrorist activities or in suicide bombings, with punitive character, at least in part (§ 16).
  - The use of local residents as “voluntary human shields” by the Israeli Defence Forces (IDF) during military operations, particularly in order to search houses and to facilitate the surrender of people that Israel has considered as terrorist suspects(§ 17).
  - The use by Israel of interrogation methods that constitute torture (§ 18).
    - Serious and unjustifiable restriction on the right to free movement of Palestinians through the establishment of a “Separation Zone” by means of a fence and, in part, of a wall, beyond the Green Line (§ 19).

3. **Economic, Social and Cultural Rights Committee**¹².

- **In Israel:**
  - Different treatment of Jews and Non-Jews, particularly the Arab and Bedouin communities, in the exercise of economic, social and cultural rights. “The excessive emphasis upon the State as a ‘Jewish State’ encourages discrimination and accords a second-class status to its non-Jewish citizens. This discriminatory attitude is apparent in the continuing lower standard of living of Israeli Arabs as a result, inter alia, of higher unemployment rates, restricted access to and participation in trade unions, lack of access to housing, water, electricity and health care and a lower level of education, despite the State party’s efforts to close the gap…” (§ 16).
  - The Israeli Law of Return which “results in practice in discriminatory treatment against non-Jews, in

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particular Palestinian refugees”. A restrictive practice regarding the reunification of Palestinian families, adopted for national security reasons (§ 18).

- Increase in the unemployment rate, specially significant in the non-Jewish sectors of the population, and over 50% in the occupied territories “as a result of the closures which have prevented Palestinians from working in Israel” (§ 20). The persisting inequality in wages of Jews and Arabs in Israel, as well as the severe underrepresentation of the Arab sector in the civil service and universities is also alarming (§ 21).

- In the Occupied Palestinian Territories:

- Deplorable living conditions of the Palestinians in the occupied territories, who - as a result of the continuing occupation and subsequent measures of closures, extended curfews, roadblocks and security checkpoints - suffer from an infringement on their enjoyment of economic, social and cultural rights enshrined in the Covenant, in particular access to work, land, water, health care, education and food (§ 19).

- Limited access to and distribution and availability of water for Palestinians in the occupied territories, as a result of inequitable management, extraction and distribution of shared water resources, which are predominantly under Israeli control (§ 25).

- Home demolitions, land confiscations and restrictions on residency rights by Israel. Adoption of policies resulting in substandard housing and living conditions, including extreme overcrowding and lack of services, of Palestinians in East Jerusalem, in particular in the old city. The continuing practice of expropriation of Palestinian properties and resources for the expansion of Israeli settlements in the occupied territories (§ 26).

4. Committee on the Rights of the Child.13

- Inequalities in the enjoyment of the economic, social and cultural rights (i.e. access to education, health care and social services) of Israeli Arabs and other minorities and Palestinian children in the Occupied Palestinian Territories (§ 26).

- Large gap between services provided to Jewish and Israeli Arab children with disabilities (§ 42).

- In Israel the investment in and the quality of education in the Israeli Arab sector is significantly lower than in the Jewish sector (§ 54).

- In the Occupied Palestinian Territories:

- Difference in the legal definition of childhood. In Israel, children are persons under 18 and in the Occupied Palestinian Territories, children are persons under 16 (§ 24).

- Detention and interrogation of children (§ 62).

- Allegations and complaints of inhuman or degrading practices and of torture and ill-treatment of Palestinian children by police officers during arrest and interrogation and in places of detention (§ 36).

- Military orders which may allow prolonged rights, access to legal assistance and family visits (§ 62).

- Serious deterioration of the health of children and of the health services for children, especially as a result of the measures imposed by the IDF, including, among others, road closures, curfews and mobility restrictions, and the destruction of Palestinian economic and health infrastructure. Delays and interference in the activities of the medical personnel, the shortages of basic medical supplies and malnutrition in children owing to the disruption of markets and the prohibitively high prices of basic foodstuffs (§ 44).

- Large-scale demolition of houses and infrastructure in the occupied Palestinian territories, which constitutes a serious violation of the right to an adequate standard of living for children in those territories (§ 50).

- Impact of terrorism on the rights of children in Israel, as well as the impact of military action on the rights of children in the Occupied Palestinian Territories and the lack of redress available to child victims of IDF in that territory (§ 58).

- Serious deterioration of access to the education of children in the occupied Palestinian territories as a result of the measures imposed by the IDF, including curfews, circulation restrictions and the destruction of school infrastructure (§ 52).

5. Committee against Torture\textsuperscript{14}.

- In Israel and the Occupied Palestinian Territories:
  - Reports of torture and ill-treatment of Palestinian minors (§ 52).
  - Administrative detention and the continued use of isolated detention, even in the case of children (§ 52).
  - Few prosecutions started against the law enforcement officials accused of torture and ill-treatment (§ 52).
  - Israeli policies of closures and demolition of houses which may amount to cruel, inhuman or degrading treatment or punishment (§ 52).
  - Few prosecutions started against the law enforcement officials accused of torture and ill-treatment (§ 52).
  - Cases of “extrajudicial killings” (§ 52).

6. Committee on the Elimination of Discrimination against Women\textsuperscript{15}.

- In Israel:
  - Low number and level of representation of women in important posts in the civil service (§ 31).
  - Arab Israeli women are in a situation of vulnerability, discrimination and inequality, especially obvious regarding education and health (§ 35). This inequality is even worse amongst the Bedouin women living in the Negev (§ 39).

- In the Occupied Palestinian Territories:
  - Restrictions on the freedom of movement, especially at Israeli checkpoints, undermining the rights of

\textsuperscript{14} Concluding Observations of the Committee against Torture: Israel, 25/09/2002, A/57/44.

\textsuperscript{15} Concluding Observation of the CEDAW Committee: Israel CEDAW/C/ISR/CO/3, of 22nd July 2005. The fourth and fifth reports now presented by Israel (CEDAW/C/ISR/4) shall be analysed in the upcoming session of the Committee.

Palestinian women, including the right of access to health-care services for pregnant women (§ 37).

B. Violations Identified by the United Nations Special Rapporteurs

“Special procedures” are the extra-conventional mechanisms for the protection of human rights established by the Commission on Human Rights (substituted in 2006 by the Human Rights Council). They are named, amongst other designations, “Special Rapporteurs”. Various special procedures have expressed concern about the human rights situation in Israel and the Occupied Palestinian Territories. Here we shall review the latest special procedure reports concerning the matter in question, namely the discrimination suffered by the Palestinian people.

1. Report of the Special Rapporteur on the Situation of Human Rights in Israel and the Palestinian Territories occupied since 1967, Mr. Richard Falk.16

- “The Special Rapporteur takes particular note of the fact that the military occupation of the Palestinian territory has gone on for more than 40 years and that it possesses characteristics of colonialism and apartheid, as has been observed by the previous Special Rapporteur” (§ 3).

- “Dangerous and non-sustainable levels of mental and physical suffering and trauma for the Palestinian people living under occupation are being reached” (§ 6).

- Checkpoints have a negative effect on the access to hospitals and medical facilities in the cities from villages and refugee camps. These adverse conditions cause various ailments, especially in children suffering from malnutrition and various traumas (§ 38).

- All movement is extremely difficult due to the combination of checkpoints, roadblocks and permit requirements. These restrictions also make access to Israel nearly impossible, for most Palestinians in the West Bank (§ 38). “Such restrictions seem excessive, and have been frequently noted, combined with a variety of intimidating and humiliating practices which discourage Palestinian movement in the West Bank...” (§ 44).

- “The regime of confinement amounts to collective punishment...” (§ 44)

- “The expansion of settlements has been particularly notable in East Jerusalem... The expansion also furthers the Israeli policy of making East Jerusalem into a place of majority Jewish residence, and is accompanied by expulsions of Palestinians. In addition, the presence of 250,000 Jews living “illegally” in East Jerusalem is being overlooked” (§ 33).

- “Palestinian land taken by Israel for settlements, for closed military zones (including almost the entire Jordan Valley), and for Israeli-declared nature preserves now renders 40 per cent of the West Bank inaccessible and unusable for residential, agricultural, commercial or municipal development” (§ 32).

- Closures and the “cantonisation” process of the territory make it practically impossible to carry out any gainful economic activity (§ 38).

- Extremely high unemployment and poverty rates. The poverty rate for the West Bank and Gaza combined is currently 59% and food insecurity affects at least 38% per cent of the overall population of the Occupied Palestinian Territory. The unemployment level in Gaza is the highest in the world: 45% of the population. 95% of the factories in Gaza are now closed due to the siege. The World Bank has suggested that that set of conditions could produce an “irreversible” economic collapse (§ 35).

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- “More than 38 per cent of the West Bank consists of settlements, outposts, military areas and Israeli nature reserves that are off limits to Palestinians. Settler roads link settlements to each other and to Israel. These roads are largely closed to Palestinian vehicles. (Israel has therefore introduced a system of “road apartheid”, which was unknown in apartheid South Africa.)” (§ 30).

- “…Settlements constitute a form of colonialism... which is contrary to international law...” (§ 32).

- Confiscation of Palestinian land to construct roads: “the road is part of Israel’s broader plan to replace territorial contiguity with “transportational contiguity” by artificially connecting Palestinian population centres through an elaborate network of alternate roads and tunnels and creating segregated road networks; one for Palestinians and another for Israeli settlers, in the West Bank” (§ 33).

- Physical barriers preventing Palestinians’ movements within the West Bank, with disastrous consequences for both personal life and the economy. These hundreds of barriers, consist of manned checkpoints and unmanned locked gates, earth mounds, concrete blocks and ditches. In addition, thousands of temporary checkpoints, known as flying checkpoints, are set up every year by Israeli army patrols on roads throughout the West Bank for periods ranging from half an hour to several hours (§ 34).

- Limitations and prohibitions on travelling for Palestinians who need permits to travel to the West Bank and East Jerusalem. “Checkpoints serve to humiliate Palestinians and create feelings of deep hostility towards Israel. In this respect they resemble the “pass laws” of apartheid South Africa, which required black South Africans to demonstrate permission to travel or reside anywhere in South Africa” (§ 35).

- Separation wall constructed on Palestinian territory which has grave consequences on the lives of the Palestinians. There is a Palestinian zone trapped between the Green Line and the wall. People living there are cut off from places of employment, schools, universities and specialised medical care. Bureaucratic procedures for obtaining these permits are “humiliating and obstructive”... Only about 18 % of those who used to work theses land in the closed zone receive permits. The regulation on the opening and closing of the gates leading to the closed zone is extremely restrictive: in 2007 only 19 of the 67 gates in the wall were open to Palestinians for use all year round on a daily basis. The IDF humiliate and ill-treat the Palestinians who use these doors. All these hardships experienced by Palestinians living within the closed zone and in the precincts of the wall have already resulted in the displacement of some 15,000 persons (§ 36 to 38).

- Demolition of houses: “Both law and fact show, however, that houses are not demolished in the course of “normal” town planning operations, but are instead demolished in a discriminatory manner to demonstrate the power of the occupier over the occupied” (§ 41).

- In both East Jerusalem and that part of the West Bank categorised as Area C, houses and structures may not be built without -extremely hard to get- permits. Due to this, Palestinians are frequently forced to build homes without permits. “In East Jerusalem house demolitions are implemented in a discriminatory manner: Arab homes are destroyed but not Jewish houses. In Area C the IDF has demolished or designated for demolition homes, schools, clinics and mosques on the ground that permits have not been obtained”. The Rapporteur concludes by stating that “this brings back memories of the practice in apartheid South Africa of destroying black villages (termed “black spots”) that were too close to white residents...” (§ 42).

- In short, “The construction of the wall, the expansion of settlements, the restrictions on freedom of movement,

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house demolitions and military incursions have had a disastrous impact on the economy, health, education, family life and standard of living of Palestinians in the West Bank... Poverty and unemployment are at their highest levels ever; health and education are undermined by military incursions, the wall and checkpoints; and the social fabric of society is threatened" (§ 43). Both in Gaza and the West Bank, “Israel’s actions constitute an unlawful collective punishment of the Palestinian people” (§ 44).

- Detainees, including minors and “administrative” detainees (people not convicted for any offence, held for renewable periods of up to six months) are systematically treated in a degrading and humiliating way. (§ 45).

3. Report of the Special Rapporteur on Adequate Housing, as a component of the right to an adequate standard of living, Mr. Miloon Kothari, Mission in the Occupied Palestinian Territories18.

- The serial destruction of households, property and patrimony is a continuous process in the Occupied Palestinian Territories. This causes untold suffering to people who have no connection with the actual violence... Israel favours illegal settlers with generous land allotments, subsidies, impunity for violent criminal activity, State-sponsored and private financing, and all manner of services at the expense of the indigenous Palestinian host population and international peace and security. Essentially, the institutions, laws and practices that Israel had developed to dispossess the Palestinians (now Israeli citizens) inside its 1948 border (the Green Line) have been applied with comparable effect in the areas occupied since 1967” (§ 7).

- A dominant feature of Israeli occupation is the confiscation of land and properties belonging privately and collectively to the Palestinians. As a consequence of these Israeli policies, most of the Palestinian population lives in refugee camps, the old quarters of the city, densely populated villages and slums. (§ 48).

- Territorial planning regulations established by Israel are discriminatory by nature. Due to these regulation, the Palestinian population suffers from acute land shortage, with the consequence of higher prices, depletion of water resources and a higher population density(§ 17).

- The occupation forces carry out punitive and violent demolitions of Palestinian houses for lack of licence and, many times, the punishment is retroactive to the establishment or public disclosure of a master plan (§ 18). The demolitions ordered either for lack of permit or another pretext have a military dimension and a gratuitously cruel nature (§ 22).

- Violation of the right to housing by the Israeli army through military bombing. Often, this bombing has no military objective, but is part of the implementation of the planned contiguity of the settler colonies by eliminating the indigenous population (§ 26).

- The settlements are an obstacle to peace (§ 35). “The active and sustained implantation of Jewish settler colonies serves the geostategic purpose of acquiring territory and natural resources and limiting the living space of the Palestinian host population”(§ 39).


- Already by 2003, more than half of Palestinian households would eat only once per day. Around 60 per cent of Palestinians were living in acute poverty (75 per cent in Gaza and 50 per cent in the West Bank). Over 50 per cent of Palestinians were completely dependent on food aid (p. 3).

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18 Report of the Special Rapporteur on Adequate Housing, as a component of the right to an adequate standard of living, Mr. Miloon Kothari, Addendum, Visit to the Occupied Palestinian Territories, E/CN.4/2003/5/Add.1, 17th June 2002.
The measures taken by Israel, for alleged security reasons, are totally disproportionate and counterproductive, as they cause hunger and malnutrition amongst the Palestinian population, women and children included, and therefore amount to the collective punishment of the Palestinian population (p. 3).

The confiscation of land reveals the presence of a covert strategy of “Bantustanisation”. “The construction of the security fence/apartheid wall is, in the opinion of many, a specific display of this Bantustanisation, as it divides the Occupied Palestinian Territories into five non-joining territorial areas without international borders and poses a threat to the future establishment of a viable Palestinian State with a normal economy that could ensure the right to food for its own population” (p. 3).

5. Report of the Special Rapporteur on the Freedom of Religion or Beliefs, Ms. Asma Jahangir. Mission to Israel and the Occupied Palestinian Territories

- The freedom of movement, including access to places of worship, is restricted, particularly for Muslims and Palestinian Christians, by means of the present system of permits, checkpoints, curfews, visas and the wall (§ 27). These restrictions appear to be disproportionate to their aim (security reasons) as well as discriminatory and arbitrary in their application (§ 33).

- There is a serious discrimination in the preservation of non-Jewish places of worship: Israel has many legal provisions to protect holy sites and places of worship, but this protection only applies to Jewish sites (§ 37).

- The indication of religious affiliation on official identity cards carries a serious risk of abuse or discrimination based on religion or belief. Moreover, the degree of mobility in Jerusalem and in the Occupied Palestinian Territory depends on one’s type of identity card (§ 40 to 43).

- In relation to persons deprived of their liberty, their religious rights are not respected. While there are places for prayer and rabbis for Jewish detainees, there are no or few religious representatives for Muslim and Christian detainees (§ 52).

- Increase in both Israel and the Occupied Palestinian Territories of religious hatred that constitutes incitement to discrimination, hostility or violence (§ 55).

6. Combined Report of the Special Rapporteurs on the Situation in Gaza

- Independent expert on the question of human rights and extreme poverty: the blockade is the primary cause of poverty in Gaza (§ 27). Poverty in Gaza is a direct consequence of systematic violations of a wide range of civil, political, economic, social and cultural rights against Gazan residents. In particular, their rights to education, food, housing and healthcare have been violated (§ 29).

- Special Rapporteur on Adequate Housing as a component on the right to an adequate standard of living, and the right to non-discrimination in this context: Overcrowding, lack of sanitation and other difficult living conditions have not only been the result of demolitions and destruction of homes in the recent military offensives, but a permanent urban condition that
- **Special Rapporteur on the right to food**: the violation of the right to food of the Gaza population is on a large scale and on a routine basis, not only due to the latest attacks; it is a long-standing tendency (§ 45).

- **Special Rapporteur on the right of everyone to enjoy the highest attainable standard of physical and mental health**: The material damages caused by the recent hostilities, the border closures resulting, the restricted entry of medical supplies and equipment and the denial of access to health care outside the borders of Gaza constitute grave violations of the right to the health (§ 63).

- **Special Rapporteur on the right to education**: The destruction of schools and restrictions on the entry of supplies necessary to guarantee access to education, as well as the prolonged deterioration of Gaza educational infrastructure, constitute violations of the right to education. (§ 72).

- **Special Rapporteur on violence against women, its causes and consequences**: the denial of safe access to pregnant women to appropriate health care and hospitals owing to the constant shelling constitutes a grave violation of human rights (§ 76). Disproportionate effects of house demolitions on women, children and the elderly (§ 78).

- **Representative of the Secretary-General on the human rights of internally displaced persons**: the occupation policies and practices that Israel has pursued since the 1967 war have infringed on the human rights of Palestinians and resulted in large-scale forced displacement of Palestinians within the Occupied Palestinian Territory, even before the Israeli military incursion into Gaza that began in December 2008. These displacements are caused by incursions and military operations, evictions and land appropriations, the expansion of illegal settlements and related infrastructure, the illegal construction of the Wall in the Occupied Palestinian Territory, the violence and harassment by the settlers, the revocation of residency rights in East Jerusalem, discriminatory denial of building permits and house demolitions. Forced displacement is also caused by a system of closures and restrictions on the right to freedom of movement through an elaborate regime of permits and checkpoints that make life unsustainable for many residents of Palestinian enclaves, forcing them to leave (§ 80).

**V.- Legislation applicable in Israel and in the Occupied Palestinian Territories**

In a system of apartheid, legislation plays a crucial role, as it lays down criteria of segregation and division of the population along racial lines, or it limits the practice of certain human rights.

**A.- DIFFERENT GROUPS AFFECTED BY THIS LEGISLATION**

Israeli legislation has different effects on the Palestinian population, depending on which of these three great groups they would be ascribed to:

- Palestinian refugees
- inhabitants of the Occupied Palestinian Territories
- Israeli Palestinians (i.e.: Palestinians with Israeli citizenships).

Legislation applied by the State of Israel to each of the groups is different, depending on the place of residence, and does not reach the entire Palestinian population.
Within the territory of the **State of Israel** and therefore Palestinians with Israeli citizenship are subject to it. Part of this legislation also affects Palestinian refugees. This is the legislation that prevents them from returning to their places of origin.

As for the Occupied Palestinian Territories, Gaza and the situation of the West Bank and East Jerusalem, their situations must be distinguished one from one another.

In **Gaza** no form of Israeli legislation is applied, neither civil nor military.

In the **West Bank**, different “zones” must be recognised. In the so-called “zone C”, representing approximately 61% of the territory of the West Bank, Israel has military and civil control as far as construction and territorial planning are concerned. Israeli legislation is applied to a lesser extent in “zone B”, where Israel has military control and the Palestinian Authority has civil control, and is not applied in “zone A”, which is under Palestinian Authority control. The lives of Palestinians living in zones B and C of the West Bank are ruled by a series of Military Orders and Regulations, which are issued and usually published by the IDF Military Commander in the West Bank and which, as such, are not subject to review by any civil legal authority. As there are no established rules of procedure in relation to those orders, their content may vary from day to day and from Commander to Commander, because the manner of their implementation is left largely to the criteria of the soldiers. The IDF also apply certain “emergency” regulations inherited from the British Mandate and reviewed by the Israeli authorities as Defence (Emergency) regulations of 1945.

With regard to **East Jerusalem**, this was the commercial and administrative centre of the West Bank until 1967, when it was annexed by Israel. In 1980, a law adopted by the Knesset (“Basic Law: Jerusalem – capital of Israel”), declared that “Jerusalem, complete and united, is the capital of Israel” and “the seat of the President of the State, the Knesset, the Government and the Supreme Court”. At present, East Jerusalem is occupied and controlled by Israel. It must be pointed out that Palestinians in the city of Jerusalem have a status inferior to the Jews. Palestinians are not citizens of the eastern part of the city, as Jews are, but they are simply residents. Israeli legislation is applied there.

**B. Israeli Legislation**

The following Israeli legislation is clearly discriminatory, and as a whole, as we shall see, constitutive of a crime of apartheid towards the Palestinian people:

**- Law of Return (1950).** Grants every Jew, wherever he may be, the right to come (“to return”) to Israel as an **oleh** (a Jew immigrating to Israel) and become an Israeli citizen. By this law, Non-Jews are not eligible, regardless of birth, ancestry or other factors. The fact that Jews can “return”, unlike the Palestinians who left the zone during the 1948 war, is clearly discriminatory.

**- Nationality Law (1952).** While specifically not stating so, it discriminates against native Palestinians and states that Palestinian refugees are excluded from the right to citizenship in the State of Israel. So, Jews hold Israeli nationality and citizenship, whereas Palestinian citizens who remain in Israel only have citizenship, implying the deprivation of a series of rights.

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22 These zones were established in the Oslo Accords (1993), a series of agreements negotiated between the Israeli government and the Palestinian Liberation Organisation, which acted on behalf of the Palestinian population.


- Citizenship and Entry into Israel Law (2003) Temporary Order 5763 of 31st May 2003, extended to 31st July 2008. This law introduces restrictions in the granting of residence permits and Israeli citizenship to the spouses of Israeli citizens residing in the Gaza Strip or the West Bank, through family reunification.

- Absentee Property Law (1950). This law established that the properties of Palestinians who had fled from Israel during the 1948 war, or who had been displaced provisionally for reasons of security, remained under the custody of the Custodian of Absentee Property. As a result of this law, many Palestinians lost their properties in Israel.

- Status Law of Israel (1952). This law determines that most of the land of Israel be used exclusively to benefit Jews, through the World Zionist Organisation/Jewish Agency and the Jewish National Fund.

- Basic Law: Israel Lands (1960). This law prohibits the transfer of the ownership of land. Thus, land is administrated for the development of Jews, but cannot be transferred nor can it belong to others.

- Land Acquisition Law (1953). This law retroactively validated Israel’s acquisition of lands that had been confiscated from the Palestinians.

- Planning and Construction Law (1965). This law envisaged the future expansion of Jewish communities whilst also limiting and assigning very small spaces to Palestinians, many of which were declared “illegal”.

- Law on Agricultural Settlement (1967). This law prohibited the Jewish National Fund from subletting land to non-Jews.

C. Military Orders

The following legislation is applied only in the Occupied Palestinian Territories and is an example of the many Military Orders which discriminate and violate the rights of the Palestinians, and as a whole, constitute a crime of apartheid:

1. Military Orders affecting legal procedures and the detention of persons:

- Military Order Nº 29 (1967) concerning the operation of prisons. States that prisoners can be denied access to lawyers at any time and at the discretion of the Israeli Military Commander.

- Military Order Nº 378 (1970). Authorises Military Commanders to establish military courts with prosecutors, magistrates and presidents appointed by the Commander himself. These courts are authorised to diverge from legal rules (with regard to laws of evidence, etc.)

2. Military Orders concerning the ownership of land:


- Military Order Nº 59 (1967). Assigns military authorities with the “Custody of Government Property”, being able to appropriate private lands from individuals or groups by declaring them “Public Lands” or “Lands belonging to the State”.

- Military Order Nº 291 (1968). Grants Israeli military authorities the control of all disputes concerning land or water.

3. Military Orders concerning freedom of expression:
- Military Order No. 107. It concerns the use of textbooks. It sets out a list of 55 books which are not allowed to be taught in schools. This list includes books in Arabic, and history, geography, sociology and philosophy books.
- Military Order No. 50 (1967). Anything published in the West Bank, or imported into the West Bank, must be approved by the Israeli military authorities.
- Military Order No. 101 (1967). Prohibits publications with political content in all of the media.
- Military Order No. 1079. Prohibits the use of material of a political nature in videos and audio.

4. Military Orders which create a different legal system for settlers of the Occupied Palestinian Territories
- Military Order No. 783 (1979). Sets out 5 additional “Religious Council” and Municipal Courts for specific settlements in the West Bank, and states that they are all constituted and operating in accordance with the regulation set out by the Military Area Commander.
- Military Order No. 981 (1982). Establishes Rabbinical Courts in the settlements to resolve matters concerning the personal status of the settlers (divorce, adoption, inheritances etc.)

5. Other military orders of interest
- Military Order No. 224 (1967). Brings back into force the Emergency Regulations established by the British Mandate Authorities in 1945. These regulations “authorise” military forces to violate a whole series of civil rights under the pretence of an “emergency situation” in the West Bank.
- Military Order No. 92 (1967). Concerns jurisdiction regulating water supplies. This order confers all powers established in Jordanian legislation concerning water and its use to an Israeli official nominated by the Area Commander, who will have total control of all water resources. Any person or entity wishing to install any mechanism used for water extraction (such as pumps, irrigation systems etc.) must request a permit from this Israeli authority, who, once it has been conceded, may cancel it at any moment and for any reason.
- Military Order No. 5. Relates to the closure of the West Bank. It declares the West Bank a closed military area, with its entrances and exits controlled according to the conditions stipulated by the military forces.
- Military Order No. 537 (1974). Relates to Municipal Legislation. It gives ample powers to the Area Commander over municipal boundaries and services, their planning and those who execute and supervise them. It gives the Area Commander the power to dismiss mayors who have been democratically elected.
- Military Order No. 297. It establishes a system of identity cards, which are required for undertaking any commercial transaction. It gives the military authorities the right to confiscate them for any reason.

VI.- Conclusion: Is there really apartheid in Israel and in the Occupied Palestinian Territories?

Having reached this point and as a result of our analysis, we can affirm that the discrimination to which Israel is submitting the people of Palestine constitutes a crime of apartheid.
The situation of the Palestinian people is similar to that of the South African, with some added characteristics which also adjust to those established in the Convention on Apartheid. For this reason, we will make a comparison between the contents of Article II of the Convention and the laws and practices of Israel which we have analysed.

Article II of the Convention on Apartheid establishes the following:

““For the purpose of the present Convention, the term “the crime of apartheid”, which shall include similar policies and practices of racial segregation and discrimination as practised in southern Africa, shall apply to the following 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:

a) Denial to a member or members of a racial group or groups the right to life and liberty of person:

i) By murder of members of a racial group or groups;

Through “selective killings” – which actually constitute extrajudicial executions – the IDF eliminates Palestinian activists, with the aim of suffocating any any possible uprising. These killings, which are usually carried out in response to attacks against Israel carried out by Palestinian groups, affect not only the “targets”, but also many other people, such as family members or persons who at the time were nearby. Hundreds of Palestinians have met their death in these precise strikes by Israeli elite commandos and helicopters. 

ii) By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;

The restrictions on the freedom of movement, through roadblocks, closure of roads or physical barriers such as the Wall, inflict physical and mental harm on the people living in the Occupied Palestinian Territories in many different ways. They prejudice those people who must leave the Occupied Territories to receive medical treatment or pregnant women who need to get to a hospital to give birth. Many times they do not make it and are forced to give birth without the necessary medical attention. They lead to malnutrition and illnesses arising from insufficient food intake by preventing the entrance of food aid to the Occupied Palestinian Territories through the blockades. They prevent farmers from getting to their own lands, when they happen to be located between the Green Line and the Wall, thus affecting their right to health and food. The controls to which the Palestinians are subjected when they must cross these physical barriers are humiliating and degrading.

The demolition of houses and infrastructures also inflicts physical and mental harm on the people living in the Occupied Palestinian Territories, as it sentences entire families to live in poverty and overcrowded situations, or without the minimum services necessary to lead a normal life (schools, medical centres, electricity, etc.). All these actions constitute collective punishment and psychological torture.

The ill-treatment and interrogation methods constituting torture to which Palestinians – adults and children – are subjected to when they are detained and imprisoned.

iii) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups;

The practice of “administrative detentions”, without charges or trials, which can be prolonged...
for extended periods of time and which affects not only adults but also under-18s.

b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;

The closure of the Gaza border crossings, with the consequent restrictions on the movement of persons and food, and the damage caused to the food production infrastructure, effectively sentences the population to hunger and malnutrition.

c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognised trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;

The entire Israeli legal system establishes an enormous gap between Jews and Palestinian Arabs, since all legislation is designed to favour Jews and keep Palestinian Arabs in a situation of inferiority. This can be clearly seen through certain examples.

Several Israeli laws prevent Palestinian refugees from returning and recovering their land and enjoying a nationality, thus violating their right to enter and leave the country, the freedom of movement and residency and the right to a nationality. In Israel, the unequal distribution of resources for education and cultural activities for Palestinians, the restrictions on leaving and returning to Israel and the Occupied Palestinian Territories, the restrictions on family reunification for those living in the Occupied Palestinian Territories or the lack of representation in the civil service are violations of all the rights stipulated in this subsection c.

The Palestinians who reside in the Occupied Palestinian Territories and work in Israel have enormous difficulties in joining Israeli trade unions or forming their own trade unions in Israel. This violates their right to work and to form recognised trade unions. A further violation of rights is the demolition of houses and the prohibition to build new ones in the Occupied Palestinian Territories, and so are all the restrictions on the freedom of opinion and expression, prohibiting the organisation of meetings or the publication and dissemination of ideas.

d) Any measures, including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;

The Jewish and Palestinian populations are clearly separated and are allocated different physical spaces, with varying levels and quality of infrastructure, services and access to resources. In Israel, Palestinians live in crowded spaces, unable and unauthorised to refurbish or construct houses, living in villages which often are not even officially recognised. Jews occupy larger expanses of land, guaranteed by Jewish public or government-managed agencies (Jewish National Fund, Israel Land Administration), which ensure that the best land goes to this segment of the population. Another issue is that the Occupied Palestinian Territories are dominated by Jewish settlements, “islands” interrupting the continuity of the territory, where settlers enjoy the protection of Israeli authorities, with their own laws and where they enjoy scarce resources such as water, to the detriment of the Palestinian population. To all this we must add the prohibition
for Palestinians to travel to outposts, military zones and natural reserves. These settlements are linked by roads for the exclusive use by Jews. Palestinians have their movement restricted by the need for Israeli permits to undertake any type of journey. The expropriation of Palestinian property has been happening since the creation of the State of Israel, and is backed up by a series of laws and Military Orders which have stripped Palestinians of almost all their land.

e) **Exploitation of labour of the members of a racial group or groups, in particular by submitting them to forced labour;**

Although Israel has no exploitation system of labour of the Palestinian population, its policies have restructured the Palestinian workforce by suppressing Palestinian industry, establishing restrictions on exports and other measures that have increased the Occupied Palestinian Territories’ dependence on Israel and -now more than ever before- on international aid. Until the mid-1980s, Israel intensively used Palestinian labour for work connected to agriculture and construction, with appalling employment conditions and without any of the benefits enjoyed by Jewish workers. But since 1993, the number of Palestinian workers in Israel has plummetted from over 100,000 to just a few hundred. And since the construction of the wall, there are hardly any Palestinian workers employed in Israel. Since Hamas won the January 2006 elections in the Gaza Strip, no workers from this area whatsoever have access to Israel.²⁶


f) **Persecution of organisations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.**

Israel persecutes and imposes restrictions on the people who oppose this regime of segregation, who condemn the violations of human rights by the government or who criticise the actions of the IDF. It also suppresses all demonstrations in the Occupied Palestinian Territories, both by organisations and individuals, against the Wall or the discriminatory administration of land, water and infrastructures.

Having seen all these violations suffered by the Palestinian people on a day-to-day basis, we can clearly state that they are victims of a crime of apartheid.

It must also be mentioned that this crime of apartheid is not of recent execution. More than sixty years have passed since the start of discriminatory measures against the Palestinian people and they have become, gradually, a systematic practice that implies a domination of one ethnic group over another, through laws, policies and practices. It is obvious that if such a situation has been going on for more than sixty years, it is because Israel has benefited from the (active or passive) complicity of the International community. In this aspect, the institutional silence of the European Union and its member States is particularly remarkable. Silence not only in view of the serious violations of international humanitarian law and of international human rights law that were committed during the bombing of the Gaza Strip, in December 2008 and January 2009 (made evident in the sense of the votes on the Goldstone Report before the Human Rights Council and the General Assembly of the United Nations), but also in the silence and hypocrisy that impedes the European Union and its member states from denouncing this crime of apartheid and that leads them to consent the perpetuation of a policy that denies the respect of the principle of human dignity to the Palestinian people.
A case of passive complicity of the European Union in relation to the violations of international law stemming from the Israeli occupation of Palestinian territories.

By Agnès Bertrand, SOAS (University of London) / APRODEV

I. The position of the European Union on the Israeli-Palestinian conflict.

The position of the European Union in relation to the Israeli-Palestinian conflict revolves around two axes:

− Creating an independent and democratic Palestinian state that is the outcome of negotiations between the parties.
− The parties to the conflict must respect international law.

The bases of this position were laid down at the Venice Declaration in 1981. The member states of the European Community (EC) of that time established that the Israeli settlements in the occupied Palestinian territories violated the Fourth Geneva Convention. With this declaration, the EC became the first third party in the Israeli-Palestinian conflict to establish that the right to self-determination of the Palestinian people should be respected.

Even so, it would be wrong to proclaim the EU the champion or the guardian of international law in its declaratory policy. For instance, it is important to note that the requirement that parties must respect international law did decrease during the peace process in the 90s. The member states of the EU seemed more concerned by keeping the negotiations going between the parties and did not dare making a reference to international law, fearing to “offend” one or the other party. Some argue that the desire to see the parties engaged in a process of negotiation results in losing sight of the outcome of these negotiations.

The fact remains that compared to other third parties, and to the United States in particular, EU statements about the Middle East contain sparse references to international law.

Proof of this is this meaningful extract of the Commission’s Communication of 2003, “Reinvigorating Human Rights in the Mediterranean Area”, where the European Commission stated:

“There is an urgent need to place compliance with universal human rights standards and humanitarian law by all parties involved in the Israeli-Palestinian conflict as a central factor in the efforts to put the Middle-East peace process back on track.”

That same year, the EU, in its “European Security Strategy”, declared that the resolution of the Arab-Israeli conflict was a priority for the EU, that the EU and its member states were

27 Declaration by the European Council in Venice on the Situation in the Middle East, 12-13 June 1980.
committed to promoting international law on the international stage and that the framework for the conduct of international relations was the United Nations Charter.\(^{29}\)

The December 2009 declaration on the Middle East is illustrative of the desire of some member states, and of the Swedish Presidency in particular, to give international law and human rights a more visible place in the declaratory policy of the EU. The declaration reiterates the illegality of the settlements and of the building of the wall, the non-recognition of the annexation of East Jerusalem and the implementation of international humanitarian law in Gaza.

II. The European foreign policy on human rights directed toward Israel and the Palestinians.

In the early 90s, the Maastricht Treaty gives birth to the European Common Security Policy. The member states of the European Union did have to define the pillars and goals of the new Foreign Affairs decision framework of the EU. With the fall of the communist bloc, the Western liberal democracies emerged as the dominant model. A foreign policy on human rights is then established, the contours of which are still relatively undefined. It is certain that its goal is not so much to promote respect for human rights in the world as to engage its partners in a dialogue on the issue of human rights and democratic principles and the respect for them.

In the same vein, the EU implemented in 1995 the Euro-Mediterranean Partnership, also known as Barcelona Process. The idea was to promote trade between the countries of the southern shores of the Mediterranean and with European countries in order to create the conditions conducive to durable peace and lasting stability. The political pillar of the Euro-Mediterranean partnership is the promotion of human rights and democratic standards. In order to achieve this objective, the EC, in each association agreement signed with its partners, included a clause stating that the respect for human rights and democratic principles constitutes an essential element of the partnership established by the agreement. The association agreements between the EC and Israel and the EC and the PLO did not escape this rule.

- What is the commitment of the EU when it inserts such human rights clauses in its association agreements?

* A basis for the suspension of the agreement?

Theoretically, these clauses can serve as a legal basis for suspending the agreement. The decision of the European Court of Justice in Portugal v. Council has confirmed it. This ruling established that one of the central purposes of this clause was to provide a legal basis to suspend or terminate an agreement if the other party had not respected the human rights.\(^{30}\)

The origin of the human rights provision can be traced to the Yugoslav crisis of the early 90s. In 1991, the EC found it necessary to suspend its agreement with Yugoslavia in response to the serious violations of human rights carried out despite the fact that the Vienna Convention on the Law of Treaties does not make any reference to the possibility to suspend or terminate a treaty on the sole basis of human rights violations.\(^{31}\)


Nevertheless, the possibility of suspension on account of these reasons remains theoretical. The EU resorts to the suspension based on the human rights provision only in exceptional cases. Until now, most of the times, the cases of suspension have been directed to ACP (Africa-Caribbean-Pacific) states, and only in case of gross violations of the principles of democracy and of the rule of law, such as coup d’état, overthrowing of governments and election irregularities.32

The Commission and member states are absolutely clear on the fact that the human rights clauses do not entitle to an automatic suspension of the association agreements in cases of human rights violation by its partner.33 The political and legal arguments are mixed. The agreements themselves state that in case of failure to comply with one of the provisions of the agreement, the parties must adopt the measures which least disturb its functioning (Article 25.2 in the case of the Association Agreement between the EU and Israel). In addition, representatives of the EU and its member states are intent on stressing that imposing sanctions against one of its partners could be counterproductive. A practice concerning the Mediterranean states has developed amongst them. If the EU should suspend an association agreement with one of its Mediterranean partners on the basis of the human rights clause, then it should do so with all of them since not one of them has a satisfactory “record of achievements” on human rights.

A basis for consolidating relations?

Firstly, if the human rights provision is the basis for pursuing a dialogue on human rights with its partners, we can say, *a minima*, that this clause serves to raise the issue of respect for human rights without making it an unacceptable interference in the domestic affairs of its partner. Moreover, by making the human rights provision an essential element of the agreement, the EU allows itself to address the issue of respect for the human rights in the same manner as the other aspects of the Association Agreement.

If the barriers separating these issues disappear, the respect for human rights and democratic principles becomes the condition for rapprochement. This assertion is supported by the role assigned to the “human rights” component of the European Neighbourhood Policy (ENP). The ENP launched in 2004 is the new framework for EU relations with countries located on its periphery. The ENP is based on the assumption that the EU and its neighbours share the values codified in the Universal Declaration of Human Rights, the Organization for Security and Cooperation in Europe and the standards issued by the European Council.34 Therefore, the consolidation of their relations and the prospect of closer economic integration depend on the

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33 “The principal rationale for the clause is to form a positive basis for advancing human rights in third countries through dialogue and persuasion. In other words, the preference is to use positive action rather than penalties” in Furthering Democracy and Human Rights Across the Globe. European Communities, 2007, p. 9.

“The most effective way of achieving change is therefore a positive and constructive partnership with governments, based on dialogue, support and encouragement. This should aim to improve mutual understanding and respect, and promote sustainable reform […] All avenues for progress are explored before the EU resorts to sanctions. […] In many cases, the basis for a dialogue on human rights and democracy is the ‘essential elements’ clause included in all third country Community agreements since 1992”. “The European Union’s Role in Promoting Human Rights and Democratization in Third Countries”, Commission Communication, 8 May 2001, COM (2001) 252 final. “The principal rationale for the clause is to form a positive basis for advancing human rights in third countries through dialogue and persuasion. In other words, the preference is to use positive action rather than penalties” in Furthering Democracy and Human Rights Across the Globe. European Communities, 2007, p. 9.

expression of a commitment to respect democratic principles and human rights. The human rights dimension of the ENP is thus subject to a system of positive requirements in which the reforms and progress on human rights and democracy identified in each Action Plan are expected to be evaluated annually and be the condition for closer relations and an extension of the privileges with the EU. Thus, the deepening of relations without regard to the systematic violations of human rights by its partner is for the EU a violation of the commitments initially made, not only at the time of the proposal of the Action Plan but also, and above all, at the time of the signing of the Association Agreement. (The action plan does not have the value of treaty).

III. How to evaluate the complicity of the EU?

In its ruling on the wall, the International Court of Justice stated legal obligations falling to the international community in connection with the construction of the wall. Besides the obligation included in Article 1 of the Fourth Geneva Convention, these duties had already been set out by the United Nations Law International Commission (UN ILC) in article 41 of its draft on the responsibility of the states.

This paper will not give rise to an extensive analysis of the contents of these obligations nor to a criticism of the methodology of the UNIC to establish the obligations of third countries to an aggravated violation of the international law. We will only say, firstly, that of the three requirements set by the Commission, only the obligations not to aid and assist and not recognize are customary obligations. Moreover, to make use only of these bonds to assess the “complicity of the EU” in relation to the violations of international law emanating from the Israeli occupation of occupied territories is not necessarily adapted, for several reasons.

First, it is clear that the “Israeli-Palestinian conflict” does not consist of a series of violations of human rights and international law but rather of a process intended to destroy the opportunities for the Palestinian people to exercise its right to self-determination. Others have even established that it was an apartheid system. Reducing the obligations of third parties to two negative obligations is limited because it does not take into account the variety of positive and/or negative acts by third parties that may lead to the consolidation or perpetuation of this system or process.


37 Common Article 1 of the Geneva Convention reiterated in the 1977 Protocols: “The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances”.

38 “Article 41. Particular consequences of a serious breach of an obligation under this chapter

1. States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40.

2. No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation.

3. This article is without prejudice to the other consequences referred to in this part and to such further consequences that a breach to which this chapter applies may entail under international law”.


40 Occupation, colonialism, apartheid?: A re-assessment of Israel’s practices in the occupied Palestinian Territories under international law, (Middle-East Project for the Human Sciences, Research Council of South Africa), (May 2009). Coconi L., Apartheid against the Palestinian people, (Catalan Coordination Committee for a just and sustainable peace in the Middle East, “Amb Catalunya al Cor”), (August 2009).
Moreover, to make use only of the obligations imposed by the Commission is limited because it does not take into account the degree of relationship between the third parties and the parties to the conflict and therefore the degree of “exposure” of each third party to the violations of international law. In our case, the relations between the EU, Israel and the Palestinians – taken separately – are highly developed. The European Community and its member states have always been the top backers of the Palestinian Authority and the first donor of humanitarian and development aid. Besides signing an association agreement with the EC, Israel participates in the Seventh Framework Programme for Research and Development and in other community programmes such as Galileo, “Competitiveness and Innovation Programme” etc. ... Israel and the European Community are about to sign an agreement on civil aviation and Europol is poised to sign a cooperation agreement with Israel. The European Community is Israel’s largest trading partner.

The “complicity” of the EU can then be assessed and established by looking at several aspects. The persistent silence of the EU or the lack of response to some violations of human rights, when it would be in its own interest to take action, given that its political or financial interests are at stake, may send the signal that the illegal practice in question is tolerated. This is especially accentuated when taking into account its previous commitments and more particularly the insertion of the human rights clause in its agreements.

In addition, with Israel, the EU is facing a partner whose interpretation of international law and human rights differ from the EU’s. These differences of interpretation will necessarily come into play when implementing agreements between the EU and Israel. The way member states of the EU react, allowing or not Israel to enforce these agreements according to Israel’s own interpretation, is crucial not only because this can jeopardize the integrity of their own legal system and their previous commitment to base their relationships with their partner on respect for human rights but because it is an indicator of tolerance to this interpretation and therefore also to the violations of the law stemming from it.

The following sections will provide examples in which we find these cases.

IV. EU-Israel bilateral relations.

The violation of the association agreement, or how a violation of international law has ended up at the centre of the implementation of a trade agreement.

In 1995, the EC and Israel signed an association agreement. This agreement stipulates that preferential treatment is given only to products “produced or substantially modified” in the territory of member states and the territory of the State of Israel (Protocol 4 of the Association Agreement between the EC and Israel). Israel regards the settlements in occupied territories as its own territory. Therefore, shortly after signing the agreement, several Palestinian and European NGOs did point out to the European Commission and member states that Israel exported products from the settlements, and that these products, upon their arrival in the common market, benefited from a preferential customs tariff because they arrived with an Israeli certificate of origin EUR1.

Although the exports of the colonies represent a fairly insignificant amount, this problem became a real controversial issue between Israel and the EU. Each year, the same issue was raised before

41 The volume of settlement products coming directly from the colonies and exported to the European market is estimated at 100 million Euros per year, and the total customs duty payable on these products is estimated at 7 million per year. G. Harpaz, “The Effectiveness of Europe’s Economic and ‘Soft’ Power Instruments in its Relations with the State of Israel” (2005) 7 Cambridge Yearbook on European Legal Studies 159-185, p. 183.
the Council of the Association with Israel and each year, both parties agreed that they must find a “technical solution”.

In 2004, they agreed on a technical arrangement according to which the certificates of origin for Israeli products exported to the European market would henceforth include the postcode of the place from which they originated. This arrangement was a compromise. On one hand, Israel could still extend the application of the Agreement to the occupied territories, and on the other, the European customs officers could tax the products from the colonies.

This arrangement raises several issues.

Firstly, as soon as it came into force, Israel created a fund to compensate the loss of earnings of the exporters from the colonies. In 2006, the Israeli government had allocated this fund 30 million shekels. This initiative constitutes an illegal subsidy and therefore a violation of the Association Agreement (Article 6.1). No protest has been raised by the EU or by its member states.

Secondly, the arrangement, as it has been conceived, does not allow all the products coming from the colonies to be taxed. In November 2008, the British government announced it had taken steps to oppose the exports of the colonies arriving in Europe labelled “Made in West Bank”. In fact, the British had discovered a discrepancy between the amounts of the above mentioned compensation fund and the total fees collected by the European customs. They suspected that some products from the settlements were exported carrying labels from a city located in Israel. They then conducted an investigation and found virtually no cases of fraud. It would appear indeed that a number of settlement products are not taxed. However, it is not due to a fraud related to the requirements of the technical arrangement but rather to the inability of European customs to verify all certificates of origin from Israel. The European customs officers employ private agents to verify the licenses of products arriving to the European ports and airports. Customs have a pre-established list of products known to come from the colonies, and each time an agent reports the arrival of such a product, the certificate of origin is checked and taxed accordingly. The problem would appear to be then that some settlement products not yet detected—and not added to this list—manage to pass through the cracks.

Moreover, and from a more theoretical perspective, with this arrangement, even if the EU manages to maintain its stance — that settlements are not part of Israel and that settlement products cannot be regarded as Israeli — Israel does not need to recognize in any official document that the products from the colonies are not Israeli products, and can thus maintain the connection between its own territory and its colonies.

Finally, many believe that these products, in fact, are themselves illegal and therefore should not even be allowed to make their way into the European market. The problem has never before been posed in these terms among the European policymakers. It is nevertheless true that a thorough research on the issue would be most appropriate. It is quite possible that some European laws could qualify these products as illegal, allowing consequently an effective and legal boycott of these products.

A general problem.

It is important to point out that although the problem of the violation of the Association Agreement has attracted a great amount of political attention, the problem of the Israeli


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extension to its settlements of its international agreements is not restricted to the Association Agreement.

The same issue was raised in 2005 in connection with the Fifth and Sixth Framework Programme for Research and Development. Pressed by parliamentary questions, the Commission admitted the participation of entities based in the settlements. The Commission then took precautionary measures to prevent the same thing happening with the Seventh Framework Programme and established a “filter system” to prevent the participation of colony-based entities. However, according to a report from the Euro-Mediterranean Human Rights Network, the system put in place does not constitute an efficient filter fully preventing the participation of colony-based entities. For example, a company registered in Israel but whose premises are located in the colonies could participate without any problem; on the other hand, the arrangement does not extend to companies affiliated with the Ministry of Industry and Research in Israel.44

Finally, no precaution was taken to avoid such a problem arising when Israel entered the “Competitiveness and Innovation Programme”, nor on the occasion of the loans granted by the European Investment Bank.

As mentioned before, Israel and the EU are about to sign a civil aviation agreement. If no prior precautions are taken, such as the inclusion of a clause restricting the territory of the State of Israel to the borders of 67, the same kind of problems may arise again.

The cooperation agreement Europol-Israel.

This agreement requires a particular section, as the problems arising from its implementation are not only territorial.

In April 2008, the Council gave the green light for Europol to negotiate a cooperation agreement with Israel.

The legality of obtaining personal data is one of the principles governing the collection and storage of data by Europol.45 If Israel could exchange personal data with Europol — and consequently with the police and security agencies of member states— such a principle could be undermined. It is known, for instance, that Israel conditions the granting of permits to patients needing to undergo medical treatment outside Gaza to the issuance of specific information; or that Israel takes prisoners arrested in the occupied territories into its own territory for questioning (sometimes under torture), in violation of Article 49 of the Fourth Geneva Convention.

V. The destruction of infrastructures financed by the EU and its member states.

A recent report published by EUNIDA, the association of cooperation and development agencies, has estimated that the infrastructure financed by the European Community and its member states destroyed by Israel since year 2000 amounted to 56,35 million Euros. The damage suffered during Operation Cast Lead has been estimated at around 12,35 million.46

The EU Commission and its member states have no intention to claim damages for the destruction of infrastructure. They usually hide behind the same argument, that these facilities


45 Article 5 (a) of the Council of Europe 108 Convention: “Personal data undergoing automatic processing shall be obtained and processed fairly and lawfully”.

were given to the Palestinian Authority (PA) and therefore, only the PA has an interest in taking action. Even so, no legal support has been offered to the Palestinian Authority to demand reparations.

The fact remains that this infrastructure has been financed by European funds and that its construction was part of the broader objective of the EU and its member states — to help build a Palestinian state. The failure of the EU to act and tackle the destruction of its projects, and thus the shattering of the objectives of its policy, are tantamount to a tacit silence at the violations of international law that have brought Israel to destroy these buildings.

VI. The release of oil and the siege of Gaza.

The supply of industrial fuel to the power station in Gaza is an example illustrating very well how the illegal Israeli practices may dictate how the European humanitarian policy is run.

In 2007, Israel began to impose a siege on the Gaza population. The EC pays for the industrial fuel that powers the Gaza power plant through PEGASE, the funding mechanism for Palestinian aid.

Restrictions were imposed on the fuel release. In October 2007, Israel only allowed the arrival of half the quantity needed by the plant to operate at full capacity. In January 2008, it had exhausted its reserves and could only operate at 30% of its capacity. At present, the total amount of industrial fuel allowed to enter Gaza is 2,2 million litres per week, that is, 75% of what it needs to operate at 100% (2,9 million litres).

We often hear that the EU, when providing its aid to Palestine, takes the place of Israel and fulfils its obligations as an occupying power. In this specific case, and adding to this, there is the fact that the aid to the Palestinians is blocked by the enforcement of a collective punishment imposed on the civilian population.

However, this is not the only instance in which Israel prevents European aid to reach Palestinians in Gaza. According to the latest report by CIDSE, the European association of Catholic development and humanitarian operations NGOs and agencies, since Operation Cast Lead, ECHO (European Community Humanitarian Office) and other donors have been unable to continue, or to give support to, some emergency projects due to the lack of rebuilding materials. Moreover, the shortage of cash caused by the siege prevents the more impoverished Palestinians, the Palestinian Authority employees and the pensioners to obtain in due time the EU assistance disbursed through PEGASE.

VII. The place of human rights in the dialogue between the EU and Israel.

As previously stated, with the inclusion of the human rights clause, the European Community and its member states wanted to make human rights an essential element of their dealings with Israel. As the above examples have shown, even when the EU is directly confronted with the


50 “The EU’s aid to the Palestinian Occupied Territories (II), the deepening crisis in Gaza”, CIDSE, June 2009.
violations of international law committed by Israel because its interests are at stake, the EU fails to respond, and its silence leads to a tacit agreement on its part that contradicts the principles contained in its statements.

In fact, the same phenomenon is noticeable in relation to the conduct of the dialogue on human rights with Israel. When the EU and Israel developed their Action Plan within the framework of the ENP, they failed to agree on the creation of a sub-committee of human rights, in spite of the fact that such a sub-committee had been established with other EU partners such as Morocco and Jordan. In order to adopt a “balanced” attitude, the EU did then decide not to establish such a sub-committee with the Palestinian Authority, thereby reducing the EU’s previous ambitions of promoting human rights with the parties to the conflict.

Since February 2007, the issue of human rights is addressed with Israel in an “informal working group”. No written record is produced after these meetings. In the EU, the establishment of this working group is considered a small victory, since the issue of human rights is very difficult to address when dealing with Israel.

Finally, in the Action Plan, the status of Israel as the occupying power and its responsibilities towards the Palestinian population stemming from international humanitarian law and human rights are mentioned nowhere. Instead, the Plan of Action calls on Israel to minimize the impact on the civilian population of its counter-terrorist and security measures and to preserve as much as possible the properties, institutions and infrastructure.

Conclusion.

The EU recurring silence and inaction in front of the violations of international law to which it is directly confronted contribute to send a message of tolerance to an illegal situation that perpetuates itself. Furthermore, the EU undermines its initial commitment to place human rights at the centre of its relationships with Israel.

The EU’s decision to deepen its relations with Israel in December 2008 draws on the same message. It takes such a decision while the Gaza population is besieged and while, generally, the prospect of the creation of a Palestinian state, to which the EU itself has devoted substantial efforts, is very restricted.

Without a true strategy that would put human rights and international law at its centre, the EU will perpetuate an attitude in which it constantly adjusts its policies to the crisis stemming from the Israeli-Palestinian conflict and, as a result, helps the perpetuation of an occupation, not to say of an apartheid system.

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JERUSALEM AND THE EU

By Ghada Karmi, author and physician, Palestine

Jerusalem’s significance for the three major monotheistic religions places it in a position of exceptional importance. The EU, as a collective of Christian states, even if nominally, with large Muslim minorities, is especially responsible for trying to maintain the harmony and peace of this unique city. Moreover, the EU’s membership of the Quartet, places an additional onus on it to work towards ending the Israeli-Palestinian conflict, which is played out so vividly in the struggle for Jerusalem

Background: Israel’s colonisation of East Jerusalem

Ever since Israel acquired the eastern half of Jerusalem in the 1967 Arab-Israeli war, it has pursued a policy of aggressive colonisation. This has aimed to transform the previously Arab city into a Jewish one, and to consolidate Israel’s held there. This colonisation has progressed on several fronts:

1. Political colonisation – establishing Jerusalem as the capital of Israel. This process started in 1950 when the Israeli government declared West Jerusalem to be its capital. It moved its offices and other administration there and built the Knesset on the site of what had been the Palestinian village of Lifta. In 1967, Israel annexed the eastern half of the city, and has been mounting a ceaseless effort to persuade the international community of Jerusalem’s status as Israel’s capital and persuading foreign states to move their embassies there. So far, this pressure has been resisted, although efforts by US Congressmen on behalf of Israel aiming to move the US embassy to Jerusalem are ongoing.

2. Physical colonisation – accomplished through the building of three rings of Jewish settlements around the eastern half of Jerusalem, in addition to settlements within the Old City and the Arab neighbourhoods of Jerusalem. This has also taken the form of evicting Arabs from their homes and replacing them with Jewish settlers. As a result, there are today 190,000 Jewish settlers in Jerusalem. A policy of Arab house demolition, (400 houses were bulldozed in 2004, and 1000 are currently under demolition orders), has also released more space for Jewish settlers. In the last year the spotlight has been on Sheikh Jarrah, a traditionally Arab neighbourhood, where Jewish settlers, protected by Israeli police, have been taking over Arab houses.

3. Demographic change – in order to transform Jerusalem into a Jewish city, several judaising policies have been introduced, all acting to denude Jerusalem of its Arab population. Thus, a Jewish settler population now amounting to 190,000 settlers, has been imported into the city. At the same time; many Arabs have lost their residency rights, either by withdrawal of their permits or other device in a complex weave of bureaucratic and Byzantine Israeli rules. In addition, discriminatory policies against Arabs with regard to house building permits have
meant that they either have to move out or build “illegally”. The demolition of such Arab homes has decreased the Arab population further. Today, and as a result of these policies, the Jewish-Arab population ratio of Jerusalem is 70-30 percent, where in 1967, it was nearly 100 percent Arab.

4. Archaeological exploration – since 1967, Israeli archaeologists have carried out extensive excavations in the Old City and in the adjoining village of Silwan with the aim of finding evidence of a historical Jewish presence. This task has now been assigned to fundamentalist Jewish religious organisations with an avowed policy of making Jerusalem exclusively Jewish. Many reports have indicated that these digs endanger the ancient foundations of the Islamic historical buildings in the old city. Latterly, a system of underground tunnels is being opened up to connect Silwan with the Old City, and also between different parts of the Old City. This activity has resulted in the destruction of historical material from various Islamic and pre-Islamic periods. Currently, the ancient Islamic Mamilla cemetery is the site chosen for a “Museum of Tolerance” to be erected. This will result in the destruction of historic tombs.

5. Expansion – settlement building has expropriated a large area of the adjoining West Bank. The largest Jerusalem settlement, Maale Adumim, has been expanded virtually to the Jordan Valley, and threatens to cut the West Bank in half. The barrier wall, which encircles eastern Jerusalem, has also annexed considerable areas of Palestinian land to Israel.

6. Societal effects – Israel restricts the movement of Palestinians in and out of Jerusalem. In addition, the discrimination against Arabs in Jerusalem has created a feeling of siege and isolation from the West Bank and Gaza. The inability of Palestinians outside Jerusalem to enter the city, except in a minority of cases, has severed these Palestinians from what had been the major centre of Palestinian life. They cannot worship at their holy shrines in Jerusalem. All this has had damaging societal effects, threatening to fragment Palestinian society and identity. These unquantifiable effects of Israel’s rule over the Palestinians are none the less serious and long-lasting.

**EU Policy on Jerusalem**

EU policy on Jerusalem has been characterised by a basic contradiction. On the one hand, the formal EU position on the Israeli practices listed above is that they are all illegal. Thus, the EU does not accept:

1. Israel’s annexation of the city
2. The settlements established there
3. The separation wall
4. The demographic changes Israel has created.
5. Discrimination against the Arab population in housing permits, municipal services, residency rights and other social and political discrimination.

Several EU reports have raised these issues and openly criticised Israel’s policy on Jerusalem. On the other hand, the EU has failed to put any meaningful pressure on Israel to halt any of its activities, and has maintained a close and favoured relationship with Israel.

**Contradictions in EU policy towards Israel**
The EU has at various times issued opinions, reports and declarations critical of Israel’s activities in East Jerusalem on the grounds that they conflict with EU official policy. However, these criticisms have rarely if ever resulted in sanction or meaningful pressure against Israel to enforce its compliance with international norms. The EU has also made good the damage wreaked by Israel on Palestinian buildings and infrastructure, often paid for by the EU, without at any time requesting compensation from Israel.

On the contrary, and despite Israeli violations, the EU has maintained a strong relationship with Israel and affords Israel exceptional advantages. On those occasions when Israel has been censured by one or more member state, efforts have soon been exerted to dilute or neutralise the censure. The EU has at various times issued opinions, reports and declarations critical of Israel’s activities in East Jerusalem on the grounds that they conflict with EU official policy. However, these criticisms have rarely if ever resulted in sanction or meaningful pressure against Israel to enforce its compliance with international norms. The failure to take punitive action against Israel to enforce either UN resolutions or the EU’s own charter of human rights promotes a state of Israeli exceptionalism, supported in practice by many western governments, many of them European states.

Some case studies

1. The EU Council meeting on foreign affairs on 8 December 2009:
   - Reiterated that the EU does not recognise any changes made by Israel in the occupied territories, including Jerusalem, and that settlement building, the separation wall, house demolitions are all illegal under international law, obstruct peacemaking and the two-state solution. It urged Israel to stop all settlement activity, and to open the Gaza crossings.
   - Called for Jerusalem to be the capital of two states. Originally the Swedish presidency had asked that East Jerusalem should be the capital of the Palestinian state and implied that the EU would recognise this state: negotiations should lead to the establishment of a Palestinian state in the West Bank and Gaza, with East Jerusalem as capital. However, lobbying by Germany, France and Italy led to the proposal being watered down.

2. EU Heads of Mission in Jerusalem produce regular reports, many of them critical of Israel’s conduct in Jerusalem. But these are kept confidential and are unpublished because of Israeli pressure. Such a report, drawn up on 15 December 2008, was leaked to The Guardian on 9 March 2009. It accused Israel of trying to annex East Jerusalem through a combination of Arab house demolitions, settlement building and discriminatory housing policies. Israel was undermining the Palestinian Authority and obstructing peacemaking, and aiming to cut Jerusalem off from the West Bank. The report expressed concern over the growth of settlements in the Old City with 35 new units in the Muslim Quarter and 3500 units for Maale Adumim.

3. Another report, on 23 November 2009, spoke strongly against Israel’s policy of changing Jerusalem’s demography and its attempts to sever Jerusalem from the West Bank. Israel, the report said, was helping right-wing religious organisations such as El Ad and Ateret Cohanim to plant Jewish settlers in the Muslim Quarter. Israel was promoting archaeology for ideological motives, which distorted the character and identity of Jerusalem. The report recommended countermeasures against this by urging EU officials to strengthen the PA presence in the city, to host PA officials and for EU officials to refrain from visiting Israeli offices in East Jerusalem.
4. A 2005 British report on Jerusalem had levelled much the same criticisms that Israel was trying to annex East Jerusalem through settlement building, and the separation wall. It was presented to the EU Council of Ministers on 25 November 2005, but was suppressed and remains unpublished.

Examples of EU cooperation and favourable dealings with Israel

As if none of the above had happened, the EU has cultivated a close relationship with Israel, which is highly advantageous to the Jewish state.

Political and trade ties

1. The EU-Israel Association Agreement 1995 and ratified in 2000. This allows for integration of Israel into the European economy. It ensures a free flow of trade in manufactured and agricultural goods, with easing of tariffs and cooperation. The Agreement has provided Israel with far reaching political and economic advantages; institutional political dialogue at the most senior levels in the EU and agricultural exports from Israel to the EU exempt from tariffs. The EU Framework Agreement allows the European Investment Bank to provide Israel with loans and institutionalises its relationship with Israel.

2. The EU is Israel’s largest export market and the second largest source of imports (after the US). Israel is already part of the Euro-Med Partnership.

3. Relations with Israel were due to be upgraded on 27 January 2010, but the upgrade was delayed because of Israel’s war on Gaza, December 2008-February 2009. However, the consensus is that the EU will be unlikely to impose any sanction on Israel.

4. On 12 December 2009, the EU announced its strong commitment to a partnership with Israel in the areas of mutual trade, investment, and economic, social, financial, civil, scientific, cultural and social cooperation. The objective is to integrate Israel into European policies and programmes “tailor-made” to reflect Israel’s interests and priorities and level of development. Israel will receive 14 m. Euros over the next seven years in financial cooperation.

5. Italy’s prime minister proposed on 1 February 2010 that Israel should become a member state of the EU.

Scientific cooperation

There is extensive and far-reaching collaboration between Israel and the EU in the field of science and technology which has existed for many years. Israel has access to generous EU research funds and facilities. Numerous joint programmes integrate Israeli scientists into European universities and technological institutes. Scholarships are open to Israeli scholars in many areas.

It is not difficult to see why. Israel’s scientific and technological wealth makes it a valued economic, scientific and technological partner. Israel’s expertise in, the natural sciences, research and development, is formidable. In its eight universities, together with the Weitzman and Technion research institutes, and in fields ranging from mathematics and computing through sub-particle physics to molecular biology and neuroscience, Israel ranks amongst

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world leaders. It spends a higher proportion of GDP (4.7%) on R&D than any other country including the US (2.6%). Israel’s universities, institutes and companies are rich in lucrative patents; Israel is an inventor and exporter of high technology products and know-how – including military technology. In an increasingly globalised economy, scientific research, whether publicly or privately financed, has become international. Israel’s science and technology are central drivers of this powerful knowledge economy. This pre-eminence is a matter of huge national pride and international prestige. It is here that Israel’s participation in the ERA becomes so important, not just to Israel but also to an EU increasingly committed to neo-liberalism.

The European Research Area (ERA) 53

The European research system was originally limited to the EU nation-state members. This was later expanded to become the ERA, primarily to include other European countries such as Norway and Iceland.

The ERA is funded through the transfer of a proportion of the national research and development (R&D) budgets of EU member states to the European Commission’s Research Directorate. Research is funded from this budget through five-year Framework Programmes. These aim to build a ‘European identity’ in research, to aid in wealth creation and quality of life, and to strengthen research in less well-developed EU nations. The Framework programme funds multinational R&D programmes involving universities, research institutes and small and medium enterprises. The current programme (FP7) began in 2007 and is scheduled to spend €50.5 billion over its five-year life.

During the 4th Framework Programme, Israel was added to the ERA. Over the past decade Israel has been included in some 1700 R&D collaborations, and between now and 2013, the Israeli government is to contribute €440 million per year, so that it can participate in the Framework Programmes.

All Israel’s eight universities, from Bar-Ilan to Tel-Aviv, as well as technical institutes, and many companies are active collaborators with European partners. To take the case of Britain, there are currently 27 active projects at Imperial College and 21 at University College in London; Oxford and Cambridge have participated in 101 projects each with Israeli partner institutes over the past decade, mostly in nanotechnology, molecular neuroscience, and information technology. Others have focused on water management and fishery stocks. This has gone on while gross water allocation inequality and severe restriction on fishing rights is meted out to Palestinians on a daily basis.

Currently, the Commission is considering new steps to deepen its cooperation on scientific research with Israel, despite admitting that previous funds earmarked for that purpose have gone to firms based in illegal settlements in the Palestinian territories. While this is in breach of the European directive which forbids trade with the illegal settlements, there are no signs that Europe is going to pursue the matter. An unpublished document prepared by EU diplomats reveals that because much of the joint research will relate to security issues, Israel has requested a formal assurance that any information it gives to Brussels will be treated confidentially. An IPS report says that the EU Commission’s spokesman for enterprise and industry acknowledged that the joint research with Israel will have a so-called anti-terrorist

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53 I am indebted for much of the information in this section to Steven and Hilary Rose’s paper in Race and Class Document prepared for the first international session of the Russell Tribunal on Palestine Barcelona 1-2-3 March 2010
dimension, but it was not aimed at the military, he said, as the Commission was mindful of the ethical dimension, with human rights at the forefront.

In 2006 the Greens tried to block participation for any state in breach of the European Convention on Human Rights in the European Parliament debate on the research budget for the seventh Framework programme. They did not name Israel as such, but instead sought the reaffirmation of the Convention, mindful however of, Israel’s continual breaches of international humanitarian law. Clearly, such breaches call into question the appropriateness of Europe-Israel trade agreements and its presence in the European Research Area.

The Greens did not succeed. The Research Commissioner and many EU parliamentarians wanted to include Israel because of its A-rated natural science and engineering researchers, which they thought would lead to innovation and wealth creation. The calibre of Israeli research was so important that it took precedence over human rights. Since then scientific cooperation with Israel has only deepened. Last year the EU offered the Hebrew University access to the EU EURAXESS programme, which permits Israeli researchers access to a European-wide network of researchers’ mobility and research facilities. This opens up the EU database of job opportunities for Israeli researchers.

**Conclusion**

An anomaly exists at the heart of EU dealings with Israel. How is it that a country geographically located squarely in the Middle East has managed to persuade Europeans that it is actually part of Europe? Israel’s footballers play in the UEFA cup, its singers compete in Eurovision song contests and its research scientists participate in the European Research Area.

This ambivalence towards Israel has resulted in effective outright complicity with its human rights abuses against the Palestinians and its breaches of international law. So long as that situation continues, it is unlikely that Israel’s conduct will change. In that sense, the EU has become an accessory to Israeli misbehaviour and a fellow perpetrator of illegal acts against international law and the Palestinian people.

_Ghada Karmi_

_March 2010_
The Compliance by the European Union of its International Obligations in connection with the Construction by Israel of the Wall in Occupied Palestinian Territory

By François Dubuisson, Assistant Professor, Center of International Law of the Free University of Brussels (ULB)

In its Advisory Opinion rendered in the case concerning the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory54 (hereafter « the Advisory Opinion »), the International Court of Justice arrived at clear conclusions with respect to the illegality of the construction by Israel of the "Wall" in the occupied Palestinian territory and the associated regime. In fact, the Wall was found to be in violation of international humanitarian law, of different instruments regarding human rights, as well as of the principle of peoples' right to self-determination. The Court drew a series of legal conclusions regarding both the State of Israel and third Parties. Israel is under an obligation to cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, to dismantle forthwith the structure therein situated, and to make reparation for all damage caused by the construction of the wall.

With respect to third party States and the United Nations, the Court concluded that they were under the following obligations:

- “All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction;

- All States parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 have in addition the obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention;

- The United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated regime, taking due account of the present Advisory Opinion”.

As can be noted, the implementation by States of the Advisory Opinion is essentially based on obligations identified by the International Court of Justice55.

54 I.C.J., Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion (9 July 2004) (http://www.icj-cij.org)
55 See R. O'Keefe, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory : A Commentary, 37 BELGIAN REV. INT'L. (R.B.D.L.), 142-146 (2004); V. Lowe, The significance of the Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory : A Legal Analysis, in Implementing the ICJ Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory
Following the rendering of the Advisory Opinion, the General Assembly adopted, with a large majority, a resolution by which it “acknowledges the advisory opinion of the International Court of Justice of 9 July 2004”. Furthermore, the General Assembly, “calls on all States Members of the United Nations, to comply with their legal obligations as mentioned in the advisory opinion”. This element of the resolution is fundamental, as it indicates that States which voted in favour—including the EU Members States, acknowledge to be bound by the obligations attributed to them in the Advisory Opinion.

The Opinion of the ICJ and United Nations General Assembly resolution ES10/15 thus, as a legal consequence of Israel's unlawful construction of the wall in the Occupied Palestinian Territory, stipulate the following international obligations for States Members of the European Union:

- the obligation not to recognize the illegal situation resulting from the construction of the wall;
- the obligation not to render aid or assistance in maintaining the situation created by such construction;
- the obligation to ensure compliance by Israel with international humanitarian law as embodied in the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949;
- the obligation to ensure an end to restrictions on the exercise by the Palestinian people of its right to self-determination resulting from the construction of the wall;
- the obligation to consider, within the United Nations, what further action is required to bring to an end the illegal situation resulting from the construction of the wall.

While the first two obligations constitute a duty to refrain (an obligation not to act), the last three imply that States must actively “ensure” compliance by Israel with international law. Later in this report, we shall consider fulfilment of these obligations by, respectively, the EU and its Member States.

I. The compliance by the European Union with its obligations to refrain resulting from the illegal character of the construction of the wall in Occupied Palestinian Territory

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56 150 against 6 (US, Israel, Australia, Palau, Micronesia, Marshall Islands), with 10 abstentions.
58 Emphasis added.
59 See P. Bekker, « The ICJ’s Advisory Opinion regarding Israel’s West Bank Barrier and the Primacy of International Law », in Implementing the ICJ Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory — The role of Governments, intergovernmental organizations and civil society, op. cit., 64-70; M. Hmoud, The significance of the Advisory Opinion rendered by the ICJ on the legal consequences of the construction of a Wall in the Occupied Palestinian Territory, in Implementing the ICJ Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory — The role of Governments, intergovernmental organizations and civil society, op. cit., 53-60.
As has already been indicated, the EU and its Member States have a duty to refrain consisting of two distinct obligations: not to recognize the illegal situation resulting from the construction of the wall (A); and not to render aid or assistance in maintaining this situation (B).

A. The compliance by the European Union and its Members States with their obligation not to recognize the illegal situation resulting from the construction of the wall

The unlawfulness of the wall construction implies that States accord no legal effect to the situation arising from its construction. This obligation arises from the fact that, as the ICJ observed, “the route chosen for the wall gives expression in loco to the illegal measures taken by Israel with regard to Jerusalem and the settlements, as deplored by the Security Council” and that the building of the wall “thus severely impedes the exercise by the Palestinian people of its right to self-determination”60 as it breaches humanitarian international law and the International Covenant on Civil and Political Rights61. According to the International Law Commission, this obligation “not only refers to the formal recognition of these situations, but also prohibits acts which would imply such recognition”62.

Any consideration of compliance with this obligation requires an analysis of the positions adopted by the EU and its Member States vis-à-vis the construction of the wall by Israel. In this respect, no declarations or acts by the EU and its Member States appear to reflect any legal recognition of the illegal situation resulting from construction of the wall. As already mentioned, the EU Member States voted in favour of United Nations General Assembly resolution ES10/15, which takes note of the Opinion of the ICJ, and have since, within the EU, adopted several declarations reaffirming the unlawfulness of the construction of the wall by Israel.

Thus, the Council of the European Union, during the summit held in Brussels in June 2005, stated:

“The European Council, while recognising the right of Israel to protect its citizens from attacks, remains concerned by the continuing construction of the separation barrier in the occupied Palestinian territory, including in and around East Jerusalem, which is contrary to the relevant provisions of international law. […] The European Council reiterates the importance it attaches to compliance with international law by the parties. In particular, no party should undertake unilateral measures or prejudge questions relating to final status. The European Union will not recognise any change to the 1967 borders other than those negotiated between the parties. A just, lasting and comprehensive settlement of the conflict must be based on United Nations Security Council Resolutions 242, 338 and 1515, the terms of reference of the Madrid Conference and the principle of land-for-peace.63”

In the same way, Foreign Affairs Council’s conclusions of 8 december 2009 has reiterated that “settlements, the separation barrier where built on occupied land, demolition of homes and

60 Advisory opinion, § 122.
61 Advisory opinion, § 137.
evictions are illegal under international law, constitute an obstacle to peace and threaten to make a two-state solution impossible”\(^{64}\).

Accordingly, we may conclude that the EU and its Member States have fulfilled their obligation not to recognize and validate the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory.

B. The compliance by the European Union and its Members States with their obligation not to render aid or assistance in maintaining the illegal situation resulting from the construction of the wall

Since the construction of the wall by Israel gives rise to an illegal situation, third States may not render any aid or assistance in maintaining this situation. This obligation “deals with conduct “after the fact” which assists the responsible State in maintaining a situation” which is maintained in violation of international law\(^ {65}\). This would, for example, be the case if States rendered financial aid or technical assistance to Israel in connection with work on construction of the wall. To our knowledge, no aid of this sort is provided to Israel by the EU or its Member States; hence, they may be considered to be in compliance with their international obligations in this regard.

II. The compliance by the European Union and its Members States with the obligation to ensure compliance by Israel with international law

The second set of obligations relates to the duty of States to ensure the compliance by Israel with international humanitarian law and the right to self-determination. The Opinion of the ICJ stresses that these obligations must be fulfilled by States, whether individually or collectively, \(inter \ alia\), within the United Nations.

The obligation to require compliance with international humanitarian law originates from common article 1 of the Geneva Conventions\(^ {66}\), that provides that “the High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances”. According to the \textit{Commentary} to the Conventions of Geneva, “in the event of a Power failing to fulfil its obligations, the other Contracting Parties (neutral, allied or enemy) may, and should, endeavour to bring it back to an attitude of respect for the Convention”.\(^ {67}\) This implies that States “\textit{should do everything in their power to ensure that the humanitarian principles underlying the Conventions are applied universally}”.\(^ {68}\)

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\(^{64}\) Council conclusions on the Middle East Peace Process, 2985th Foreign Affairs Council meeting, Brussels, 8 December 2009

\(^{65}\) International Law Commission, \textit{op. cit.}, 115


\(^{68}\) \textit{Ibid} (emphasis added).
The obligation to guard over the implementation of the Palestinian people’s right to self-determination derives, according to the Court, from its *erga omnes* character, and from the principle set forth by the General Assembly Resolution 2625 (XXV), according to which “every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples”.

The difficulty of to implement this two obligations lies in the fact that they constitute obligations of means, consisting in using a due diligence to obtain the compliance with the relevant international obligation. Measures that can be adopted to induce a State to comply with its obligations are not defined and depend on the means available to States in the particular circumstances of each case. So, if the Court indicates in its Advisory Opinion that “the United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated régime”, it does not determine the nature of such “further action”.

Regarding the obligation to ensure respect for humanitarian law, the measures that could contribute to its implementation referred to by the authors are varied with respect to their coercive impact, and go from public condemnations to countermeasures, passing by retaliatory measures (interruption of diplomatic relations, not renewing benefits, …) or even bringing the matter to the Security Council. In addition there are several measures inherent to international humanitarian law, such as the convening of a Conference of the High Contracting Parties, the constitution of an international fact-finding Commission or the repression of grave breaches of humanitarian law. As far as the implementation of the right to self-determination of the Palestinian people is concerned, the obligation is limited, according to the text of the aforementioned Resolution 2625, to a “duty to promote” this right “through joint and separate action”.

It must be concluded that the exact impact of the obligation to act imposed on States by the Advisory Opinion remains very vague as to the precise measures that need to be adopted in order to comply. It is therefore far from easy to establish the minimum expected of States in order to comply with their obligation to "ensure" respect for humanitarian law or to "promote" the right to self-determination. However, since these are genuine obligations, we may consider that States are required, while respecting international law, to take any reasonable measures which may effectively encourage the State concerned to comply with international law. Furthermore, States are required to refrain from acts which would run counter to the objective of encouraging respect for humanitarian law and the right to self-determination.

Israel has not, until now, put an end to the construction of the wall, which has been ongoing since 2004. This means that the measures taken so far have proved ineffective. In the following

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69 Advisory Opinion, para. 156. See M. Chemiller-Gendreau, « Responsibility of Governments and intergovernmental organizations in upholding international law » in Implementing the ICJ Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory — The role of Governments, intergovernmental organizations and civil society, *op. cit.*, 71.

70 See N. Levrat, *op. cit.*, 275-281.

71 See P. Weckel, *op. cit.*, 1036.


73 See L. Boisson de Chazournes & L. Condorelli, *op. cit.*, 77 ; N. Levrat, *op. cit.*, 281-293.

74 See A. Imseis, *op. cit.*, 114-117.
paragraphs, we will first examine the actions effectively carried out by the EU and its Members States in order to comply with the obligations imposed on them by the Advisory Opinion (1). Subsequently, we will briefly set out the other measures available to the EU to ensure respect by Israel of its international obligations (2). Finally, we shall consider whether the EU and its Member States have adopted measures likely to run counter to the objective of ensuring compliance by Israel with international humanitarian law and the right to self-determination of the Palestinian people (3). Combining these three elements will allow us to evaluate how the EU and its Member States have fulfilled their obligations in ensuring Israel's compliance with humanitarian law and promotion of the right to self-determination.

1. Actions taken by the EU and its Members States to ensure compliance by Israel with international law in connection with the building of the wall

The first measure to be taken by EU States was the vote in favour of United Nations General Assembly resolution ES 10/15 of 20 July 2004. This resolution provides two specific measures: the demand addressed to the Secretary-General to create a registry of the damages suffered by the Palestinian people, and the invitation to Switzerland, in its quality of depositary of the Geneva Conventions, to report on the means to ensure the compliance with humanitarian law in this case.

The Registry has been created in December 2006 by resolution ES-10/17, for which the EU Member States have voted. As stated in the preamble to the resolution, this action was taken in conformity with the Opinion of the ICJ, particularly paragraph 153, and the principles of humanitarian law and human rights. By June 2009, some 1,500 complaints had been registered. However, in the absence of any cooperation by Israel, effective reparation for the Palestinian populations affected by the construction of the wall is likely to remain a pious intention.

The second demand, addressed to Switzerland, led to the publication by the latter of a report in July 2005. The report contains the results from the consultations with the Member States in relation to the means available to ensure Israel's respect of the 4th Geneva Convention, and in particular in relations to the construction of the wall. Without going into detail, the Swiss report did not produce any precise recommendation for the adoption of specific measures to ensure compliance by Israel with humanitarian law, due to a lack of consensus among States.

Apart from support for measures under resolution ES10/15, EU policy has been restricted to reiterating condemnation of the construction of the wall in several declarations concerning the Middle East peace process.

75 A/RES/ES-10/17 15 December 2006.
76 Article 3 of the Regulations concerning the Laws and Customs of War on Land. 18 October 1907, and article 29 of the 4th Geneva Convention of 1949.
80 See a.o. Conclusions of the Foreign Affairs Council on the Middle-East peace process, 8 December 2009, 17281/09, § 6 ; Conclusions of the Foreign Affairs Council on the Middle-East peace process, 23 April 2007, 8768/07, § 7 ; Conclusions of the General Affairs and External Relations Council on the Middle-East, 22 January
2. Failure to take other measures available to the EU and its Member States which may help ensure compliance by Israel with its international obligations.

Since the aforementioned EU policy, basically consisting of condemnatory statements, has proved ineffective, there is a need to see whether there might be other reasonable measures which might have been more effective in persuading Israel to comply with the provisions of international law.

The "sanctions" available to States wishing to signal their disapproval of a serious violation of human rights include retaliatory measures, which can be defined as unfriendly actions which are legal in themselves and are taken as a reaction to an unfriendly or illegal action. In the present case, these measures could consist of curtailing of commercial benefits. In particular, there is the possibility of the suspension or the termination of the Association Agreement entered into by the European Union with Israel, which provides Parties with a number of economic and customs advantages. Such a measure would hardly give rise to any legal difficulties, since article 82 authorizes each of the Parties to “denounce the Agreement by notifying the other Party”. In that case, the Agreement “shall cease to apply six months after the date of such notification”.

Denunciation of the Association Agreement is also logical since article 2 provides that “relations between the Parties, as well as all the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles, which guides their internal and international policy and constitutes an essential element of this Agreement” while the preamble highlights “the importance which the Parties attach […] to the principles of the United Charter”. The fact that an ICJ decision finds Israel responsible of multiple violations of human rights and humanitarian law and the persistent refusal by this State to end such violations makes it difficult to justify failure by the EU to make continued application of the Agreement dependent on respect for international law.

We observe that measures are available to the EU under international law, but that it makes a political choice - officially in order to promote the negotiation process - not to apply them. The
continuation of the peace process is in this respect frequently invoked to tolerate the
continuation of violations of international obligations\(^84\), of which the Court has highlighted the
\textit{erga omnes} character.\(^85\) This strategy has been severely criticised by a group of eight human rights
experts and special rapporteurs for the UN, in a declaration published in August 2005:

« In large measure it seems that the ICJ’s Opinion has been ignored in favour of negotiations
conducted in terms of the Road Map process. The exact nature of these negotiations is
unclear but it seems that they are not premised on compliance with the Opinion of the ICJ.
They seem to accept the continued presence of some settlements, which were found by the
ICJ to be unlawful, and by necessary implication the continued existence of some parts of the
wall in Palestinian territory. In short, there seems to be an incompatibility between the Road
Map negotiations and the Court’s Opinion […]\(^86\).»

It is therefore essential that the EU, \textit{inter alia} within the Quartet, promote a negotiation process
based on immediate compliance by Israel with its international obligations, particularly by halting
the construction of the wall in the Occupied Palestinian Territory, which, as noted by the ICJ,
encourages the unlawful establishment of settlements and entails a “risk of further alterations to
the demographic composition of the Occupied Palestinian Territory”\(^87\). By failing to insist that
any peace process be premised on prior compliance by Israel with its international obligations,
the EU is failing in its duty to ensure respect for humanitarian law and to promote the right to
self-determination of the Palestinian people.

3. The adoption by the EU of measures running counter to the objective of compliance
by Israel with international law

Since the ICJ rendered its Opinion, the EU has not considered any retaliation against Israel but
has, on the contrary, actually granted it additional political and economic advantages. On 8
December 2008, the Council of the EU decided to upgrade its bilateral relations with Israel, with
a view to strengthening the structures for political dialogue with that State.\(^88\) This upgrading of
relations includes an annual summit meeting at the level of Heads of State; three meetings at the
level of Ministers of Foreign Affairs; an invitation to Israeli experts to attend meetings of
working groups dealing with issues such as the Middle East peace process, human rights or
counter-terrorism; an invitation to Israel to align itself with the EU’s positions on joint foreign
and security policy; and efforts to normalize the status of Israel within the institutional system of
the United Nations. Quite paradoxically, the Council’s decision stresses “that building-up must be

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\(^84\) On that point, voy. M. KOHEN, «The Advisory Opinion provides the legal framework for the Israeli-Palestinian
conflict», in Implementing the ICJ Advisory Opinion on the Legal Consequences of the Construction of a Wall in
the Occupied Palestinian Territory — The role of Governments, intergovernmental organizations and civil society,

\(^85\) Advisory Opinion, §§ 155-157.

\(^86\) Un Experts Mark Anniversary of ICJ "Wall Opinion": Call on Israel to Halt Construction of the Wall,
HR/05/092, 4 August 2005, Special Rapporteur on adequate housing as a component of the right to an
adequate standard of living Mr. Miloon Kothari, Special Rapporteur on violence against women, its causes and
consequences Ms. Yakin Erturk, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health Mr. Paul Hunt, Special Rapporteur on contemporary forms of racism, racial
discrimination, xenophobia and related intolerance Mr. Doudou Diène, Chairperson, Rapporteur, Working Group on
arbitrary detention Ms. Leila Zerrougui, Special Rapporteur on trafficking in persons, especially in women and children
Ms. Sigma Huda.

\(^87\) Advisory Opinion, § 122.

\(^88\) Conclusions du Conseil – Renforcement des relations bilatérales de l’Union européenne avec ses partenaires
méditerranéens, 2915e session, 8-9 décembre 2008.
based on the shared values of both parties, and particularly on democracy, respect for human
righmetal law, the rule of law and fundamental freedoms, good governance and international
humanitarian law”, whereas, at the same summit meeting, the Council condemned Israel's
settlement policy as being "contrary to international law and a hindrance to the creation of a
viable Palestinian State". An agreement which gives Israel a privileged status with respect to the
EU, supposedly based on respect for human rights and international humanitarian law, in parallel
with a determination that the State seriously violates these rights and has no intention of ending
such violations, appears to be clearly inconsistent with the obligation of the EU and its Member
States to ensure respect for the fourth Geneva Convention and to promote the right of the
Palestinian people to self-determination. Since the government set up by B. Netanyahu came into
function, it seems that the implementation of the upgrade of the relations with Israel was slowed
down by the European authorities. But in the absence of an official decision to suspend or
postpone the decision to upgrade Europe's bilateral relationship with Israel, the latter remains in
its principle and continues to be a problem regarding international engagements of the EU and
its Member States.

Conclusions

This report allows us to draw the following conclusions concerning the international
responsibility of the EU and its Member States with respect to the construction of the Wall by
Israel in the Occupied Palestinian Territory:

- the international obligations of the EU and its Member States:

In accordance with the relevant principles of international law as applied in the Opinion of the
ICJ of 9 July 2004 and reflected in United Nations General Assembly resolution ES 10/15, the
EU and its Member States are obliged not to recognize the unlawful situation resulting from
construction of the wall nor to render aid or assistance in maintaining the situation created by
such construction. They are also obliged to ensure compliance by Israel with international
humanitarian law and an end to restrictions on the exercise by the Palestinian people of its right
to self-determination. There is, finally, an obligation to consider, within the United Nations, what
further action is required to put an end to the unlawful situation resulting from the construction
of the wall.

- the international responsibility of the EU and its Member States pursuant to these obligations:

1. Following their repeated declarations condemning the construction of the wall as unlawful, the
EU and its Member States have fulfilled their obligation not to recognize and validate the
unlawful situation resulting from the construction of the wall in the Occupied Palestinian
Territory;

2. There are no grounds to conclude that the EU and its Member States have failed in their
obligation not to render aid or assistance in maintaining the situation created by the construction
of the wall;

3. By failing to take effective measures to encourage Israel's compliance with international law,
such as suspension of the Association Agreement, the EU and its Member States are violating
their obligation to ensure respect for international humanitarian law and to promote the right of
the Palestinian people to self-determination;

Document prepared for the first international session of the Russell Tribunal on Palestine Barcelona 1-2-3 March 2010
4. By promoting within the Quartet a peace process which does not require that Israel immediately halt construction of the Wall, and instead allows construction to continue, the EU and its Member States are violating their obligation to ensure respect for international humanitarian law and to promote the right of the Palestinian people to self-determination;

5. By according additional advantages to Israel under an upgrade agreement, supposedly based on respect for international humanitarian law, when such law is in fact violated seriously and persistently by that State, the EU and its Member States are violating their obligation to ensure respect for international humanitarian law and to promote the right of the Palestinian people to self-determination.
1.0 Israeli Sponsored Illegal Settlements in the West Bank of Palestine

1.1 The issue of settlements, and continued settlement expansion and their effect on the indigenous Palestinian population is one of the principal obstacles to the attainment of lasting peace in the Middle East. The settlements have long since been declared illegal by, inter alia, the International Court of Justice, the High Contracting Parties of the Fourth Geneva Convention, the United Nations and the European Union. Israeli settlement policy ranges from active promotion to removal by force and violence.

1.2 In order to understand the ideology underpinning the settlement enterprise in the context of Israel’s belligerent occupation of the Palestinian Territories, it is
necessary to briefly examine the historical and political make-up of the land collectively known as Israel and the Occupied Palestinian Territories. Following the collapse of the Ottoman Empire after World War One, these lands were subject to the British Mandate for Palestine, formally approved by the League of Nations in 1922 and endorsing the earlier Balfour Declaration of 1917, in which the British Government “viewed with favour” the establishment in Palestine of a national home for the Jewish people. Following this, and against the backdrop of increased Jewish immigration and rising violence, the United Nations assumed control over the area. On 29th November 1947, the U.N. adopted General Assembly Resolution 181 which proposed to divide the British Mandate for Palestine into two states: one Arab and one Jewish, with the city of Jerusalem placed under a Corpus Seperatum to be administered by the U.N. in order to preserve the inimitable religious and spiritual status of the city among the world’s principal monotheistic religions. The Jewish State was to traverse some 56% of the land with the remainder to the proposed Arab State. Following the partition plan, Israel declared its independence and the Arab-Israeli war ensured which culminated in the 1949 Armistice Agreement which established the Green Line, a demarcation international border between Israel and the then Jordanian controlled West Bank. Referring to the Green Line, Article III, Paragraph 2 of the Agreement provides, “No element …… of the military or paramilitary forces of either party ….. shall advance beyond or pass over for any purpose whatsoever, the armistice demarcation lines …..”

1.3 Notwithstanding this injunction in relation to the Green Line, following the 1967 armed conflict, Israeli forces proceeded beyond the Green Line and occupied all the territories which had constituted Palestine under the British Mandate, including the West Bank. As part of its push into the Palestinian Territories, Israel has stolen thousands of dunams of land from the Palestinians and has established thereon dozens of settlements in which hundreds of thousands of Israeli civilians now live. Palestinians, having been expelled from their land, are refused re-entry. The settlements constitute a continuing violation of their human rights.

2.0 Commencement and Progress of the Illegal Settlements

2.1 During the 1967 war, Israel occupied East Jerusalem and the West Bank, the Gaza Strip, the Golan Heights and the Sinai Peninsula. It immediately began establishing settlements in these areas, particularly East Jerusalem. More than four decades later the settlements have grown dramatically. Settlements dominate and percolate many areas of the Palestinian West Bank. According to the B’Tselem’s 2008 Annual Report, there were some 121 settlements in the West Bank, excluding East Jerusalem. In addition to this, there were also 12 large settlements and other small settlement points in East Jerusalem and a further 100 outposts in the West Bank. The Israeli Central Bureau of Statistics estimated that the 2008 population of the settlements, including those in East Jerusalem, approached half a million people. The settlement enterprise is supported and sustained through an intricate and sophisticated bypass road network system in the occupied territories that is not designed to serve the infrastructural needs of the local Palestinian population. Taken together, the settlement enterprise and their accompanying road network system amount to unconcealed policies of land
appropriation and confiscation. In other words, a land grab. In this activity, as in many others, Israel is in breach of many facets of International Law.

2.2 Article 49 of the Geneva Convention expressly provides:

“... the occupying power shall not deport or transfer parts of its own civilian population into the territory it occupies”.

Further, Article 147 of the Convention provides that the extensive appropriation of property constitutes a grave breach of the Convention. Moreover, such practices constitute a breach of Article 8 of the Rome Statute of the International Criminal Court which criminalises grave breaches of the Geneva Conventions of 1949 and categorises such breaches as “war crimes”. Although Israel is not a signatory to the Rome State, arguendo, such a Statute is reflective of customary International Law. The Hague Regulations also prohibit an occupying power from undertaking permanent changes in the occupied area unless these are due to military needs in the narrow sense of the term, or unless they are undertaken for the benefit of the local population.

2.3 Israel occupied the West Bank as a belligerent occupant and is therefore obliged to leave in place the existing laws and judicial institutions. This it did not do. Rather, it superimposed a system of military orders and military courts. Israel’s military administration has issued over 2,000 orders of a legislative effect that substantially displaced the significance and practical effect of previous law. Israel’s occupation has impaired judicial autonomy, including the seizure of the power to appoint and remove Judges. Israeli military authorities have trampled upon the jurisdiction of Palestinian courts on many issues, including the right to move any trial or hearing to a military court. Within the military courts, its orders always take precedence over Israeli and International Law. Israeli military courts have repeatedly refused to apply International Laws and conventions.

2.4 The issue of settlements has been adjudicated upon by the International Court of Justice in its ruling on the legal consequences of the construction of a wall in the occupied Palestinian Territory. The Court concluded that the settlements established by Israel in the occupied Palestinian Territory are in breach of International Law. It further ruled that the construction of the Wall and its associated regime create a “fait accompli” on the ground that could well become permanent. The Court also considered the applicable provisions of International Humanitarian Law and Human Rights Instruments relevant to the destruction and requisition of property, restrictions on freedom of movement of inhabitants of the Occupied Palestinian Territory, impediments to the exercise by those concerned of the right to work, to health, to education and to an adequate standard of living. The construction of the Wall and the settlements regime cannot be justified by military exigencies or by the requirements of national security or public order. The Court therefore found that there was a breach by Israel of several of its obligations under the applicable provisions of International Humanitarian Law and Human Rights Instruments. It also made reference to the risk of the situation being considered tantamount to de facto annexation.
Israel continues to defy the Court’s ruling and the aforementioned Conventions.

2.5 The presence of the settlers is actively encouraged and funded and protected by successive Israeli governments. Jews from both inside Israel and worldwide are encouraged onto the land by various incentives; subsidies, preferential low interest rate loans, grants, low property prices, lower taxes, quality utilities, high quality schools, park lands and leisure facilities. A by-product of the settlements is the phenomenon of settler violence. Settler violence against the Palestinian population is aided and abetted by the Israeli military. Many settlers are armed and permitted to mistreat, perpetrate violence upon and even kill, Palestinians without sanction.

2.6 Israel has now all but dropped the pretence that the settlements are necessitated for reasons of security. In the immediate aftermath of Israel’s agreement to return Sinai to Egypt, (after pressure from the United States), the World Zionist Organisation, fearful of similar pressure being exerted over the Occupied Palestinian Territories, produced a report which, inter alia, openly stated that Israel was in a “race against time and must concentrate on establishing facts on the ground ….. There mustn’t even be a shadow of a doubt about our intention to keep the territories of Judea and Samaria for good”. The report also spells out strategies for how to settle the land, referring to techniques used in 1948 and since applied to the Palestinian community within Israel itself; geographically dissecting and fragmenting yet more of their land, paralysing them politically and socially, thus ensuring their dependence on the Jewish economy. The Israeli government has applied most aspects of Israeli law to the settlers and the settlements, thus effectively purporting to annex them. Local government in the settlements has been established in a manner similar to that which pertains inside Israel itself. The areas of jurisdiction of the Jewish local authorities are defined as “closed military zones” in the military Orders passed to give purported validity to the settlements. Israeli citizens, Jews from throughout the world and tourists all have access to these areas without the need for a permit, whereas Palestinians are forbidden to enter these areas with authorisation from the Israeli military.

3.0 Effect of the Settlements on the Palestinian Population

3.1 The consequences of the settlements and the Wall upon the Palestinian population are incalculable. Through a sophisticated road network system, the settlements separate Palestinian land and communities and are consequently segregationist in nature. The settlements fracture Palestinian territorial integrity and secure for the first time through the assistance of a well developed road network system, Israeli territorial contiguity with the settlements. In eroding the Green Line, the settlement project has resulted in an incontiguous Palestine. This is a deliberate and calculated attempted destruction of the Palestinians’ right to self-determination and a workable, contiguous Palestinian State. The settlements also ensure the existence of two separate legal systems in the West Bank which are divided along ethnic lines. The Jewish settlers are extra-territorially subject to Israeli Civilian Law while the Palestinians are subject to Israeli Military Law. In its 2008 Annual Report, B’Tselem states that “The existence of the settlements has caused grave and prolonged infringement of the human rights of
Palestinians. Among the rights infringed are the right to self-determination, the right to equality, the right to property, the right to freedom of movement and the right to an adequate standard of living”.

Additionally, in the 6th Sir David Williams Lecture, given on the 16th November 2006, Lord Bingham of Cornhill, former Lord Chief Justice of England, in his lecture entitled “The Rule of Law” stated as follows at page17/18 stated “The preamble to the United Declaration of Human Rights 1948 recites that “it is essential if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the Rule of Law”

3.2 For Israel, the belligerent occupier of the Palestinian Territory, the benefits of expanding and deepening the settlements are considerable. Israel has acquired, illegally, large tracts of extra territory, including farmland and quarries, and, more importantly, the water underneath it. The decision to locate settlement blocks along the ridge of the West Bank was a strategic one: they embrace the territories aquifers and enable Israel to prevent the Palestinians from drilling wells on their own land. Similarly, settlements along the Jordan Valley brings the aquifer there within Israel’s grasp. Israel now controls 80% of the West Bank’s water sources and diverts most of that supply to its own citizens, inside Israel and the settlements with only a fifth of the West Bank’s water available to its Palestinian population. In controlling the aquifers, Israel ensures that each settler is supplied with nearly 1,500 cubic metres of water per year, whereas each Palestinian receives just 83 cubic metres. More than 200,000 rural Palestinians, the majority living in Area C under Israeli control, having no running water at all, are forced to buy water from Israeli tanker trucks. In a further effort to undermine the Palestinian population in the West Bank, Israel has also systematically destroyed wells in the villages and routinely forbids Palestinians from collecting rainwater.

3.3 Israel continues to take forcibly expel Palestinians from their land in complete disregard to their right and title to same and their entitlement to fair procedures and natural justice. In many instances, Palestinian residents are unaware that their land has been registered in the name of the Israeli State. For many, by the time they learn of this fact, it is too late to invoke the inadequate appeal process available to them. The Israeli Supreme Court has sanctioned the mechanism used to unilaterally take control of Palestinian land and in so doing attempts to mask the illegality of what is being done.

3.4 Israel, in its capacity as the Occupying Power in the Occupied Territories, has defined obligations and responsibilities under International Law pertaining to the provision of the right to water. Specifically, reference is made to Article 56 of the Fourth Geneva Convention, which imposes on the occupying state a duty of “ensuring and maintaining, with the cooperation of national and local authorities ….. public health and hygiene in the Occupied Territory”. Similarly, Article 43 of the Regulations attached to the Hague Convention Respecting the Laws and Customs of War 1907 recognise the occupying State’s duty to ensure “public order and safety”. It is clear from these provisions that not only are water rights included within their compass but are central to their realisation. Israel exercises its control over water in the West Bank pursuant to Military Order 92 issued on the 15th of August 1967 which purports to grant
complete authority over all water related issues in the Occupied Territories to the Israeli army. This was followed by Military Order 158 of the 19th of November 1967 which purported to stipulate that Palestinians cannot construct water installations without obtaining a permit. Military Order 291 of the 19th of December 1968 purportedly annulled all water related arrangements which existed prior to Israel entering into occupation.

3.5 The right to water can neither be understated nor overstated. According to the World Health Organisation in its 2003 publication, The Right To Water “water is the essence of life. Without water, human beings cannot live for more than a few days. It plays a vital role in nearly every function of the body, protecting the immune system – the body’s natural defence system – and helping remove waste matter”. In addition to this, water is of course necessary for many aspects of personal, domestic and economic life. As a direct consequence of the belligerent occupation of the Palestinian Territory by Israel and its policies employer there, the provision of water and the realisation of basic rights have been seriously undermined to a very significant extent. According to Amnesty International in their 2009 report Thirsting for Justice: Palestinian Access to Water Restricted “Palestinian water consumption barely reaches 70 litres a day per person – well below the World Health Organisation’s recommended daily minimum of 100 litres per capita. In contrast, Israeli daily per capita consumption is four times as much”. Israel continues its policies in wilful disregard of its obligations under International Law and in particular its responsibilities under the Fourth Geneva Convention, specifically Articles 85 and 89 which explicitly guarantee the right to water. The continued repudiation of the right to water in the West Bank has had inestimable ramifications for its citizens and their well-being. The World Bank in its 2009 report on the Assessment of Restrictions on Palestinian Water Sector Development has outlined the catastrophic effects upon which the continued illegal occupation has had on the water and sanitation conditions in both the West Bank and the Gaza Strip.

3.6 The Oslo 2 Agreement, concluded in 1995, contained provisions on both water and sewage that recognised undefined Palestinian water rights, and returned some West Bank water resources and services to the Palestinian authorities. The Agreement also provided that water and sewage was to be managed and maintained in the following way:

(i) Existing levels of resource utilisation was to be maintained;

(ii) The deterioration of water quality and water resources was to be prevented;

(iii) Water was to be managed sustainably;

(iv) Water resources were to be adjusted according to climatological and hydrological conditions;

(v) Necessary measures were to be taken to prevent any harm to water resources;
(vi) Domestic, agriculture, urban and industrial was to be treated appropriately;

(vii) An extra 28.6 mcm/year was to be made available to the Palestinians;

(viii) A joint water committee was to be established to deal with all water and sewage related issues in the West Bank.

Notwithstanding the aforesaid provisions, Israel has failed to honour or comply with same and continues to exercise unilateral control over the West Bank’s water sources to the manifest detriment of the Palestinian population. Through a sophisticated system of permit authorisation, movement and access restrictions, over-extraction of water and de facto control of borders and peoples, Israel perpetuates the ongoing water and sanitation crisis for the Palestinian residents. Settler-owned swimming pools, well watered lawns and large irrigated farms stand in stark contrast next to Palestinian villages whose residents live adjacent to open sewers and struggle to meet even their basic and essential domestic water needs. In parts of the West Bank, Israeli settlers use up to twenty times more water per capita than neighbouring Palestinian communities.

3.7 Israel continues to be in illegal occupation of the West Bank and East Jerusalem, in wilful defiance of International Law and numerous U.N. resolutions. In an effort to justify its abuses of International Law, Israel has constructed and maintained a legal fiction (alleged security needs) which it has employed to carry out theft of Palestinian land and the exploitation of its natural resources on a grand scale. In so doing, Israel has ghettoised and dehumanised the Palestinian population in the West Bank and, in the words of Harvard scholar, Sara Roy, has stolen from the native population;

“its most critical resources, namely land, water and labour and the capacity and potential for developing those resources. Not only are Palestinians exploited economically, they are deprived of their livelihood and developmental potential, national identity and sovereignty. The result is the deliberate, systematic and progressive dismemberment of the indigenous economy by the dominant one”.

3.8 The plight of the Palestinian population imprisoned in the West Bank is aggravated by the checkpoint and permit regime operated by the Israeli military. The checkpoints and restriction of movement imposed upon the population deprive them of their dignity, space, mobility, connection, relaxation and leisure. Deliberate and endless waiting at checkpoints amounts to cruelty and a breach of human rights. Time is a precious fundamental human resource. Every day Israel’s closure policy robs 3.5 million human beings of that precious resource and in so doing, steals from them the right and ability to plan their lives.

4.0 General Principles of EU Law

4.1 The European Union is a principal actor on the global economic, political and legal front. As an intergovernmental organization, the composition of which is
made up of some twenty-seven sovereign independent states, International Law is of central significance to the Union's aims and objectives. Indeed, the core tenets of International Law and the upholding and adherence to same are not only a cardinal feature of the EU's identity but are also central to the EU's conduct in the area of external relations. This is explicitly stated in the Treaty of the European Union (TEU), which clearly defines and delineates the powers, competencies and values of the Union.

4.2 Respect for International Law, democratic principles and human rights are constitutional priorities, which underpin the conduct of the EU. Accordingly, reference is made to Article 2 of the TEU, which states:

"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail"

Additionally, such underpinning functional and constitutional duties are reiterated in Article 3(5) of the TEU, which states:

"In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter"

Accordingly, the central position of International Law within the EU is unequivocally enunciated in the aforesaid articles and thus, human rights, democratic principles and the adherence to same are intrinsically linked to the EU's external relations. Moreover, the numerous agreements and treaties the Union has concluded with numerous countries, including Israel, which expressly stipulate such values, evidence the importance of such international norms. Furthermore, the EU's obligation to respect International Law in the exercise of its power has been expressly stated by the European Court of Justice. In the case of Anklagenmyndigheden v Peter Michael Poulsen and Diva Navigation Corp (Case C-286/90 (1992) ECR 1-6048) the ECJ unequivocally stated, “As a preliminary point, it must be observed, first, that the European Community must respect international law in the exercise of its powers” While this case related to a fisheries issue, the dicta as espoused by the ECJ is nonetheless of immense significance.

4.3 Moreover, the foundation of the EU's external actions and external competencies are clearly demarcated by Article 21 of the TEU. It asserts:
“The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law”

Accordingly, the pivotal position in which human rights, democratic principles, human dignity and the importance of International Law occupy within the EU’s composition can neither be understated nor overstated and the significance of same is self-evident.

4.4 In light of the explicit treaty based duties incumbent on the European Union, which demarcate the Union’s obligations in respect of human rights and democratic principles, it is clear that all actions of the EU, internal and external, must be in accordance with and within the boundaries of the spirit and wording of the above-mentioned Articles.

4.5 The EU’s role in relation to the ongoing situation in the Occupied Palestinian Territories is one of dysfunctional failure. Through a myriad of Agreements including the European Neighbourhood Policy and the legally binding EU-Israel Association Agreement and the tangible benefits which Israel derive from same, the EU has not only ignored its own treaty-based duties and international law obligations which pertain to its external relations policies but has also facilitated the ongoing human rights violations in the Occupied Palestinian Territories, including the unlawful settlement enterprise which continues to grossly hamper peace and infringe numerous human rights. Through its association with Israel, including through the EU-Israel Association Agreement and the duties it assumes from same, the EU has done next to nothing to ensure Israel desist from its ongoing human rights abuses subsuming the settlement enterprise. Accordingly, the EU in overtly circumventing its obligations and is thus culpable of passive and institutional collusion.

5.0 The EU – Israel Association Agreement

5.1. The primary legal nexus between the European Union and Israel is the EU-Israel Association Agreement, which came into force in June 2000. The principal tenets of the Agreement are the liberalization of services, the free movement of capital and competition rules, regular political dialogue, the strengthening of economic acquaintances and an overall preferential treatment of goods and services between both entities. Of cardinal importance is Article 2 of the said Agreement, which defines the basis upon which the Agreement is configured upon and also the crucial importance which is attached to respect for human rights and democratic principles. Article 2 states:

“Relations between the Parties, as well as all the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles, which guides their internal and international policy and constitutes an essential element of this Agreement”
Implicit within the meaning of respect for human rights and democratic principles and thereby forming an essential element of the Agreement is the faithful observance and adherence to Customary International Law, International Humanitarian Law and International Human rights law. The mandatory nature and wording of Article 2 is such that the basis of the Agreement itself shall be based on the positive and ongoing promotion, protection and vindication of all aspects of human rights and democratic principles.

5.2. It is manifest and incontestable that the actions of the Israeli State constitute a gross, calculated and continuing breach of the rights of the resident Palestinian populations in the West Bank, Gaza and East Jerusalem. Such violations have been referred to above.

5.3. By reason of Israel’s ongoing abuses of humanitarian and human rights law in the Occupied Palestinian Territories, Article 2 of the said Agreement has been indisputably breached. The depth, level and intensity of such breaches are such, that they constitute a case of “special urgency” pursuant to Article 79 (2) of the Association Agreement. This Article stipulates:

“If either Party considers that the other Party has failed to fulfill an obligation under the Agreement, it may take appropriate measures. Before so doing, except in cases of special urgency, it shall supply the Association Council with all relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties”

5.4. The present situation in the Occupied Palestinian Territories not only amounts to a “special urgency” within the meaning of the above-listed provision, but that of an emergency, which warrants immediate and authoritative intervention.

5.5. As a party to the Agreement, the European Union and its member states have assumed the responsibility of ensuring the execution of the Agreement. Further, in its role as guardian of the Treaties pursuant to Article 17 (1) of the TEU the European Commission is mandated to ensure the application of the Treaties and the general interests of the Union including the observance of International Law, Humanitarian Law and Human Rights Law. It is evident that through the Agreement’s ongoing subsistence, despite the above-mentioned irrefutable breaches, the Commission, rather than ensuring its application has permitted through its inaction the ongoing human rights abuses in the Occupied Palestinian Territories by Israel.

6.0 Options for Further Action

6.1 The European Union which includes the Council, the Parliament and the Commission, at an absolute minimum, should immediately take the following action:

1. Suspend the EU- Israel Association Agreement.
2. Suspend all assistance, including technical, financial, trade, social and cultural assistance either under the Association Agreement or otherwise.

3. Educate the public in all Member States to a real appreciation of the situation persisting for the Palestinian people in the West Bank and Gaza and of the obligations of the Union and of the Member States of the Union to take positive action to enforce the provisions of the current European Treaties in regard to the enforcement of human rights and the establishment of democratic principles.

6.2 All Member States in their individual capacity have corresponding obligations to take all necessary and appropriate steps to ensure that human rights and democratic principles are established and positively promoted by the Union of which they are Members.
The Israeli Settlement Project and the Plundering of WB Natural Resources

By Adv. Michael Sfard

1. The Israeli settlement project: definitions and figures -
   i. Settlements;
   ii. Outposts;
   iii. Industrial zones;

2. The international law prohibition on transfer of population from the occupying power to the occupied territory – the rule and its rationale.

3. The ever-growing nature of Israeli settlements: construction, planning and violence.

4. Separate laws - applying Israeli law to settlers:
   i. The "enclave law" technique;
   ii. Extra-territorial application of Israeli law;

5. Israeli Quarries in the WB – data.

6. International legal protection of natural resources in occupied territories:
   i. Humanitarian law: The duty to safeguard the capital of public property; the principle of continuity;
   ii. Human Rights law: The permanent sovereignty of peoples over their natural wealth and resources;
The Gaza Blockade and Operation ‘Cast Lead’ in Gaza.  
Some health-related material relevant to Fourth Geneva Convention violations etc.

By Dr Derek Summerfield, Honorary senior lecturer at London’s Institute of Psychiatry

Besieging a population into destitution

As far back as 2003 a UN Rapporteur concluded that Gaza and the West Bank were “on the brink of a humanitarian catastrophe”. The World Bank estimated then that 60% of the population were subsisting at poverty level, a tripling in only three years. Half a million people were completely dependent on food aid and Amnesty International expressed concern that the Israeli Defence Force was hampering distribution in Gaza. Over half of all households were only eating one meal a day. A study by Johns Hopkins and Al Quds’ universities in Gaza found that 20% of children under 5 years old were anaemic, 9.3% acutely malnourished and a further 13.2% chronically malnourished. The doctors I met on a professional visit in 2004 pointed to a rising prevalence of anaemia in pregnant women and low birth rate babies.

In 2006 John Dugard, UN Special Rapporteur in the Occupied Palestinian Territory, told a session of the UN Human Rights Council that “Gaza is a prison and Israel seems to have thrown away the key”. He repeated earlier accusations that Israel was breaking international humanitarian law with security measures which amounted to “collective punishment” of the entire Gaza population. “What Israel chooses to describe as collateral damage to the civilian population is in fact indiscriminate killing prohibited by international law”, he said. He cited Israel’s destruction in June 2006 of the only domestic power plant in Gaza, causing power cuts, and Israeli tanks and bulldozers had destroyed houses, schools and farmland. (Between 2000 – 2004, Israel had destroyed 2,370 housing units in the Gaza strip, leaving 22,800 people homeless by UNRWA calculations).

Mr Dugard noted that besides Israel, the US, Canada and the EU should also be blamed as they have “contributed substantially to the humanitarian crisis by withdrawing funding not only from the Palestinian authority but also the Palestinian people”. He noted that if the international community could not recognise what was happening in Occupied Palestinian Territories, “they must not be surprised if the people of the planet disbelieve that they are seriously committed to the promotion of human rights”.

Israel began restricting fuel imports in October 2007. This caused periodic disruptions to Gaza’s main electricity supply. Power cuts and shortages of fuel for back up generators meant that Gaza’s three sewage plants had been unable to secure the 14 days uninterrupted power supplies required to treat sewage. Gaza’s sewage treatment body had less than 40% of the fuel it needed for much of that year, and estimated that it had been releasing 50-70 million litres of raw or poorly treated sewage into the sea every day during 2008. Aid agencies say that water pumping stations had struggled with power and fuel shortages, and in 2008 15% of the population had access to water four to six hours per week, 25% had water every four days and 60% every second day. 70% of agricultural water wells require diesel for their pumps and many farmers lost crops due to lack of irrigation. One poultry farmer had to slaughter 165,000 chicks because he did not have the fuel for the incubators to keep them alive.
There were regular restrictions on construction materials, particularly cement, and spare parts for machinery. Israel said many of these items were considered “dual use” and could be used for weapons manufacture – for example water pipes, fertiliser, cement. UNRWA said that a lack of construction material had prevented the provision of accommodation for 38,000 people living in inadequate conditions. Factories making construction materials were obliged to shut down so that the construction and maintenance of roads, water and sanitation infrastructure, medical facilities, schools and housing projects had largely been halted. Lack of paper and printing material meant school books were distributed four months late for the 2007/8 school year, according to UNRWA.

The closures devastated the private sector of Gaza’s economy. Nothing, apart from a small number of trucks of strawberries and flowers were exported after June 2007. Combined with a lack of raw materials and agricultural imports like fertilizer, approximately 95% of Gaza’s industrial facilities were closed or operating at minimal levels. 25,000 tonnes of potatoes and 10,000 tonnes of other crops perished or were sold off at a fraction of their value as a result. Before the closure, Gaza’s exports were worth US$ 500,000 per day.

By late 2007 the WFP was warning that less than half of Gaza’s food import needs were being met. Basics including wheat grain, vegetable oil, dairy products and baby milk were in short supply. Few families could afford meat. Anaemia rates were rising sharply and UNRWA noted that “we are seeing evidence of stunting of children, their growth is slowing, because our ration is only 61% of what people should have”. Giacaman et al from the Institute of Community and Public Health, Bir Zeit University, noted in the 2009 Lancet Series on Palestine that the rate of stunting in children under 5 years of age had risen from 7.2% in 1996 to 10.2% in 2006, using WHO Child Health Standards. Stunting during childhood is an indicator of chronic malnutrition, and is associated with increased disease burden and death, included compromised intellectual development and educational performance, and chronic diseases in adulthood.

By early 2008, the United Nations Relief and Works Agency (UNRWA) had almost depleted the stock of emergency food it had previously built up. Only 32 truckloads of goods had been allowed to enter Gaza since Israel imposed total closure on 18 January, whereas up to 250 trucks were entering daily before June 2007 and even that was insufficient. On 30 January UNRWA warned that unless something changed, the daily ration that it would distribute to 860,000 refugees in Gaza would lack a protein component; the canned meat that was the only source of protein in food parcels was being held up by Israel, and stocks inside Gaza were exhausted. The World Food Programme (WFP), then feeding another 340,000 Gazans, had been allowed by Israel to bring through 9 trucks of food aid in the previous 2 weeks; in the 7 months before that, the WFP had been bringing in 15 trucks per day.

In 2007/8 the Gazan population had been receiving, on average, on less than a fifth of the volume of imported supplies they had received in 2005. Only basic humanitarian items were allowed in, and virtually no export permitted, paralysing the economy. At times even basic supplies like flour and cooking oil were blocked from entry to Gaza. A joint survey by three UN agencies in May 2008 found that all Gazan retailers had run out of flour, rice, sugar, dairy products, milk power and vegetable oil on three occasions in 2007.

In 2008 between half and three quarters of the Gazan population were relying on food aid from UNRWA for their staple foods. The ration provided about two thirds of daily nutritional needs and needed supplement by dairy produce, meat, fish and fresh fruit and vegetables bought on the open market, if available. Increasingly impoverished Gazans had great difficulty and pain for these extra items. The UN survey found that more than half Gazan households had sold their
disposable assets and were relying on credit to buy food, with three quarters of Gazans buying less food than in the past.

In February 2008, under pressure from the US and Israel, Egypt dispatched additional border guards armed with water cannons and electric cattle prods to regain control of their border with Gaza. This followed desperate shopping by Gazans in Egyptian border towns as a result of the blocking by Israel of food that UN and other relief agencies were seeking to deliver.

Since the middle of 2007, movement in and out of the Gaza strip has been effectively prohibited. In totality these measures have comprised a state of seige, and throughout history besiegers have used hunger as a weapon.

As a result of all these measures, according to the UN, the economy has suffered “irreversible damage” and that 37% of breadwinners were now unemployed, with an average of 8.6 dependents per employed person. Poverty rates in 2007 were 52% in Gaza (and 19% in West Bank) and are still increasing. When food aid and remittances were excluded, the rates rose to 79% in Gaza and 46% in West Bank.

According to the Commissioner General of UNRWA in 2008, “Gaza is on the threshold of becoming the first territory to be intentionally reduced to a state of abject destitution, with the knowledge, acquiescence and - some would say – encouragement of the international community”.

When Israel limited commercial shipments of food into Gaza in 2006, a senior government adviser Dov Weisglass, explained that “the idea is to put the Palestinians on a diet but not to make them die of hunger”.

In September 2007 the Israeli government declared Gaza “a hostile entity”, and then Prime Minister Olmert said that “we will not allow them to lead a pleasant life”.

In January 2008 Israel’s Supreme Court dismissed the challenge by human rights organisations to the policy of restricting fuel supply.

In his Comment for the 2009 Lancet Series on Health in the Occupied Palestinian Territory, ex-US President Jimmy Carter wrote that Israel had “consistently violated” its commitment in the 1978 Camp David Accords “to withdraw its political and military forces from Palestinian territory and grant the Palestinians full autonomy over their own affairs…There has been no withdrawal from the West Bank and Palestinians here and in the Gaza Strip have been increasingly strangled. Therefore the conflict within the occupied Palestinian territory has not abated and, by any objective measure, has worsened since I left office”.

Measures by Israel to control and impede economic activity, and freedom of movement in and out of Gaza, has represented consistent and visible policy maintained over several years, yet evoking no criticism from the EU. Taken in conjunction with the staggering damage inflicted in Operation ‘Cast Lead’, Israeli policy appears to have centred on the de-development of Gaza. The World Bank has described Gaza as “starkly transforming from a potential trade route to a walled hub of humanitarian donations”. More than US$9 billion in international aid has not provided development because Palestinians lack basic security and rights
We should note that Article 55 of the 4th Geneva Convention (1949) specifically demands that “to the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should in particular bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate”.

Access to medical care

The apartheid Wall, on which construction began in 2002, continues in violation of the ruling of the International Court of Justice. It has been destroying the coherence of the Palestinian health system. By 2004 it was evident that the Wall would isolate around 97 primary health clinics and 11 hospitals from the populations they served. Qalqilya hospital, which primarily served refugees, saw a 40% fall in follow up appointments because patients could not enter the city. By 2004 there had been at least 87 documented cases (including 30 children) in which denial of access to medical treatment had led directly to deaths, including those of babies born while women were held up in checkpoints. Outside some villages Israeli Defence Force checkpoints closed at 7pm and not even an ambulance could pass after this time. As a consequence, for example, a man in a now fenced-in village near Qalqilya approached the gate with his seriously ill daughter in his arms, begging the soldiers on duty to let him pass so he could take her to hospital. The soldiers refused, and a Palestinian doctor summoned from the other side was also refused access to the child. The doctor was obliged to attempt a physical examination, and to give the girl an injection, through the wire.

Since the blockade Gazan hospitals have lacked heating because of power cuts, and spare parts for diagnostic machines, ventilators, incubators. Patients have been dying unnecessarily: cancer patients cut off from chemotherapy regimens, kidney patients from dialysis treatments etc. By early 2008, supplies of 107 classes of basic medicine were depleted and 97 medications on the verge of depletion.

According to the Palestinian International Campaign to End the Siege on Gaza, 90 patients had died between June 2007 and February 2008 as a direct result of Israel’s siege, which denied them access to medical treatment.

The data collated by Physicians for Human Rights-Israel (PHRI) is noteworthy. In a report in April 2008, PHRI noted that prior to June 2007 about 400 patients left Gaza for Egypt via Rafah each month, and an additional monthly average of 650 requested permits for exit via Erez to medical centres in Israel, the West Bank, East Jerusalem and Jordan. In June 2007 Egypt closed the Rafah crossing and as a consequence the number of applications to exit Gaza via Israeli-controlled Erez doubled. Yet PHRI witnessed a drastic decline in the number of permits that were granted by the Israeli authorities. Most requests were being denied on the grounds of “security provisions” issued by the Israeli General Security Service GSS, who had assumed an increasingly prominent role. Many patients were thus trapped in Gaza.

From June 2007 Israel maintained a life/limb distinction regarding applications, refusing to recognise the right of patients not in a life threatening condition to exit Gaza. The result was the amputation of limbs and loss of eyesight that could have been prevented. From September 2007 even life threatening cases were denied and the number of access-related deaths rose. The success rate of applications supported by PHRI fell from 67% to 7%. PHRI also noted drastic deterioration in the policy being applied by the Israeli High Court of Justice (HCJ) in response to
appeals. In November 2007 the HCJ ruled that “even evil people should not be denied life saving care”. By April 2008 WHO had registered 32 deaths directly related to denial of access to care.

On 30 January 2008 the HCJ declared that the occupation of the Gaza Strip had ended and that Israel had very little responsibility to its residents, in effect granting legitimacy to Israeli government policy to impose collective measures against the civilian population of Gaza. In March, during a petition for a cancer patient Mustafa Hilu, not only was the petition rejected, but the judge, Justice Melzer, wondered why the patient had not submitted a letter of thanks to Israel following care given to him previously.

PHRI collected data to indicate that in at least 30 cases since July 2007, the Israeli Secret Service had called patients – many of them with exit permits, obtained after many obstacles and delays – to interrogation at Erez crossing. In the course of the interrogation they were asked to provide information about relatives and acquaintances, or asked to collaborate and provide information on a regular basis as a condition for being allowed to exit Gaza to obtain life-saving medical treatment. If they refused or could not provide the information, they were turned back to Gaza. A petition submitted by PHRI to the HCJ on this issue was rejected after the judges refused to discuss the topic.

PHRI said that 200 patients had died while waiting for permits in 2007/8.

In April 2008, PHRI were demanding that the government of Israel ensured access to all patients needing medical care unavailable in Gaza to medical centres outside Gaza as a matter of policy; that the GSS desisted immediately from conditioning the exit of patients from Gaza on agreement to inform on others; that as occupying power Israel recognised its responsibility in international law for the welfare of the Gazan population; that international players used political means as well as leverage connected to their own provision of aid to Gaza to pressure Israel to recognise its responsibilities for the Occupied Territories as a whole and to end its siege on Gaza.

PHRI described the Gazan health system as “collapsing” under the pressure of shortage of equipment and spare parts, fuel and trained staff. According to the WHO, Gazan health authorities said in April 2008 that 85 urgently needed drugs and 52 items of medical supplies (e.g. swabs) were out of stock. Medical institutions had largely been unable to afford spare parts for equipment and the UN said that by December 2007, the majority of diagnostic equipment, such as X-ray machines and MRI scanners, in municipal facilities were no longer functioning. Medical staff were unable to exit Gaza for training and PHR gave an example of a new radiotherapy facility that could not be used as there were no trained staff to use it. Fuel shortages affected hospitals, with ambulances running out of fuel at points in early 2008, and backup generators – needed during power cuts- running low on fuel and spare parts.

The 2009 Amnesty International report on the Gaza attack entitled “Operation Cast Lead: 22 Days of Death and Destruction” concludes that “after Israeli ground forces took positions inside Gaza on 3 January 2009 they routinely prevented ambulances and other vehicles from reaching the wounded or from collecting bodies anywhere near their positions. Requests by the Palestinian ambulance services to be allowed passage to rescue the wounded and the dead in any area in Gaza which had been taken over by Israeli forces were consistently denied by the Israeli army. The ICRC estimated that the average time required to evacuate injured people was between two and ten hours, and in some cases several days”. On 6 January the UN Office for the Coordination of Humanitarian Affairs
(OCHA) reported “over the last twenty-four hours the Palestinian Red Cross Society has not received Israeli approval for any of its coordination requests to reach those killed or injured”. As a result many of the wounded, who were never more than fifteen minutes away from a hospital, died needlessly.

On 7 January, three PRCS ambulances escorted by an ICRC vehicle were finally allowed to evacuate fourteen wounded civilians, mostly children, from a house in the Al-Zaytoun area, in Southeast Gaza. All were members of the Al-Sammouni family who had been trapped in the house for three days. After the house was shelled on 5 January, tens of family members were killed or injured. All the surviving children and elderly people were wounded and had no food or water. Israeli forces did not allow the ambulance to approach the house so the paramedics had to walk 1.5 kilometres and transport the wounded, along with three other bodies, on a donkey cart from the house to the ambulance. The four small children next to their dead mothers were said by ICRC to be too weak to stand up on their own. In all there were at least twelve corpses lying on mattresses. The ICRC had been seeking access to the areas since the 4 January.

Amnesty gives several other examples of injured civilians who called out to Israeli soldiers in nearby buildings but were not answered. Ambulances were not allowed to come to their rescue and as a result one young man Ibrahim Shurrab, 18, died from loss of blood. His initial injury had not been serious but he bled to death. The father who watched Ibrahim and his other son bleed to death was unable to receive any help until eventually on the following day an ambulance was allowed to get through – some twenty two hours after they had been shot.

The Fourth Geneva Convention relative to the Protection of Civilian persons in Time of War of 12 August 1949 obliges states to respect and protect the wounded, to allow the removal from besieged areas of the wounded or sick, and the passage of medical personnel to such areas. The deliberate obstruction of medical personnel to prevent the wounded receiving medical attention may constitute “wilfully causing great suffering or serious injury to body or health”, a grave breach of the Fourth Geneva Convention, and a war crime.

Torture and medical complicity

Torture continues to be state policy in Israel, institutionalised over many years in the interrogation of Palestinian men, but also children. This practice violates Article 2 of the Convention against Torture (CAT). Imprisonment of children violates the UN Convention on the Rights of the Child. The 2008 UAT report to the UN Committee against Torture concludes that torture and ill-treatment is widespread and systematic, involving complicity by agents of the State at all levels, and that the State was unwilling or unable to fulfil its treaty obligations under CAT.

Since 2000 more than 500 complaints of torture have been registered, but none have been investigated by the Israeli State Attorney.

The number of Palestinians held in Israeli prisons and detention facilities has steadily increased from 737 in 2001 to over 8,000 by the end of 2008. Children too are detained and held for indefinite periods, frequently without access to lawyers or parents.

Furthermore, it has been evident for many years that Israeli doctors serving in security units “form part of a system in which detainees are tortured, ill treated and humiliated in ways that
place prison medical practice in conflict with medical ethics” (Amnesty International 1996). More recently, the 2007 report “Ticking Bombs” by the Public Committee Against Torture in Israel (PCATI) provided a graphic demonstration of the extent to which Israeli doctors continued to form an integral and everyday part of the running of interrogation suites whose output was torture. Israeli doctors might see detainees before, during and after interrogations accompanied by torture, did not take a proper history of their injuries (they knew how they had arisen), made no protest on behalf of these men, and returned them to their interrogators. The Israeli Medical Association appears to have been in collusion with the status quo in Israel regarding torture for many years, and thus in violation of the World Medical Association’s Declaration of Tokyo (to which they are a signatory) which forbids any involvement, however indirect, of physicians with torture and mandates them to challenge and speak out whenever they encounter it.

Harm to medical personnel

A PHRI report in 2002, following the invasion of the West Bank, noted that “we believed that the Israeli Medical Association might be able to curb the appalling deterioration in the attitude of Israeli military forces towards Palestinian health and rescue services. Yet despite severe injury to medical personnel and to the ability of physicians to act in safety to advance their patients’ interests; despite Israeli shells that had fallen on Palestinian hospitals; despite the killing of medical personnel on duty – the IMA has chosen to remain silent”. A 2003 report by PHRI and B’Tselem, the Israeli Information Centre for Human Rights in the Occupied Territories, referenced below, gave a comprehensive account of the abuse of Palestinian medical personnel by the Israeli Security Forces in breach of international law. It described the unwarranted delaying of medical teams at checkpoints, the humiliation and attacks they were subjected to by the Israeli defence force, and the illegal use of Palestinian ambulances by IDF soldiers.

The 2009 Amnesty International report on the Gaza attack entitled “Operation Cast Lead: 22 Days of Death and Destruction” devoted seven pages to descriptions of attacks and obstruction of medical workers, the firing on ambulances, and the prevention of access to medical care for the wounded. Amnesty noted that clearly marked ambulances flashing emergency lights, and paramedics wearing recognisable fluorescent vests, were repeatedly fired upon as they attempted to rescue the wounded and collect the dead. Such attacks intensified after Israeli ground forces took positions inside Gaza on 3 January 2009. Amnesty noted that ambulance crews risked their lives every day to carry out their mission.

Amongst the instances given by Amnesty are the killing by missiles of three paramedics as they walked towards two wounded men on 4 January (as well as a 12 year old boy who was showing them the way), and the missile attack on another ambulance crew in North Gaza on 4 January, in which the driver told Amnesty International: “we came about fifteen minutes after the missile strike. None of those lying in the road had any weapons; they were just civilians, all young men; their bodies were scattered, not together. The paramedics picked up the first injured man and put him in the ambulance; then they picked up a second man, transferring him from the stretcher to the ambulance when the shell hit the ambulance. Arafa Abd al-Dayem fell, badly injured, and the patient had his head and legs blown off”. The head of the tank shell went straight through the ambulance and lodged in the engine. The shell was a flechette shell, which on explosion fired several thousand small but deadly metal darts over a large area. The two paramedics were both seriously wounded and one of them died later that day. The driver also sustained a head wound. On 12th January, a 32 year old doctor was killed while attempting to rescue three residents in an
apartment building in Jabalia, Northern Gaza. Dr Issa Abd Al-Rahim Saleh and a paramedic went up the stairs, both wearing red fluorescent medical jackets. They found two dead women and a wounded man, whom they placed on the stretcher and began to take downstairs. The stairs of the buildings were well lit by a window running down the length of the building. A shell or missile struck Dr Saleh, cutting off his head and killing the wounded man on the stretcher. The paramedic was seriously injured.

Palestinian Red Crescent Society (PRCS) report for 2009

PRCS has recorded a total of 455 violations by Israeli Occupation Forces against PRCS medical teams in 2009. These included direct shooting incidents, verbal and physical abuse, as well as impeding PRCS access to the sick and wounded in breach of international humanitarian law.

15 shooting incidents and attacks against PRCS ambulances and their teams were recorded in the West Bank and the Gaza Strip. Furthermore, a PRCS volunteer in the Gaza Strip died in the course of duty, while 10 others were injured and 22 ambulances sustained damage.

Moreover, PRCS recorded 440 incidents where its ambulances were delayed or denied access, including 289 such incidents on checkpoints leading to Jerusalem and 132 incidents in the Gaza Strip during Operation ‘Cast Lead’. Another five similar incidents were reported at Al Alami gate (Allenby bridge/Jericho), while 2 incidents were reported in Ramallah and 2 others in Nablus and Qalqilya.

The biggest single violation committed by Israeli Occupation Forces against PRCS in 2009 was the targeting of PRCS Al Noor City in Tal Al Hawa/Gaza. White phosphorous bombs rained on the City, severely damaging medical facilities in the compound which includes Al Quds Hospital, the EMS station, the Administrative building and warehouses.

PRCS affirms that these practices constitute a crying violation of international humanitarian law, mainly the 4th Geneva Convention of 1949 on the protection of civilians in times of war and the 1st Additional Protocol which legally apply to the Occupied Territories, and which guarantee the respect and protection of the personnel engaged in the search for, removal and transporting of and caring for wounded and sick civilians and for providing them with first aid, as well as the respect of the life and dignity of civilians under military occupation.

Such practices also violate article 20 of the 4th Geneva Convention which guarantees the respect and protection of the personnel engaged in the search for, removal and transporting of and caring for wounded and sick civilians, and article 63 which affirms that National Red Cross and Red Crescent Societies shall be able to pursue their activities subject to temporary and exceptional measures imposed for urgent reasons of security by the Occupying Power.

Furthermore, Articles 12 and 15 of the 1st Protocol Additional to the Geneva Conventions stipulate that “Medical units shall be respected and protected at all times and shall not be the object of attack” and that they “shall have access to any place where their services are essential”.

Document prepared for the first international session of the Russell Tribunal on Palestine Barcelona 1-2-3 March 2010
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2008/11/25

UAT report: Torture and ill-treatment in Israel and the oPt

In its 2008 Annual Report, the United Against Torture Coalition (UAT Coalition), a coalition of 14 Palestinian and Israeli human rights organisations, has undertaken an in-depth and critical analysis of Israel’s compliance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

The report examines the continued and systemic use of torture by the State of Israel, in both Israel and in the occupied Palestinian territory (oPt).

In accordance with the mandate of the UAT Coalition, the Annual Report focuses on violations against Palestinians, in both the oPt and Israel. The Annual Report is based on material submitted by the UAT Coalition to the United Nations Committee against Torture (the Committee) in September 2008, pending the Committee’s periodical review of Israel’s compliance with CAT, scheduled for May 2009.

The Annual Report draws upon the considerable experience of the UAT Coalition membership including more than 80 pages of affidavit material, extracts of which are interspersed throughout.

In preparing the Annual Report, the UAT Coalition examined the use of torture and ill-treatment by the Israeli authorities Against Palestinians from the point of arrest, through interrogation and detention as well as the use of coerced confessions in the military courts. The Annual Report also considers:

- The use of torture and ill-treatment in non-conventional circumstances,
including house demolitions, the Gaza siege and the coercion by the Israeli Security Agency (ISA) of medical patients attempting to exit Gaza in order to access necessary medical treatment.

- The continued use of incommunicado detention and lack of prompt access to lawyers for Palestinians detainees.
- The discriminatory nature in which laws and practices are applied to Palestinian detainees compared to Israeli citizens.
- The impunity with which ISA interrogators, police officers and members of the Israeli army torture and abuse Palestinian detainees, including children as young as 12.
- A legislative exemption that allows the ISA to interrogate Palestinian detainees without audio visual recordings as is required in other investigations.
- The failure of the State of Israel to clearly prohibit the use of torture and ill-treatment in its domestic legislation as recommended by the UN Committee.

The UAT Coalition concludes in its Annual Report that the use of torture and ill-treatment by Israeli authorities against Palestinians is both widespread and systematic. The State is either unwilling or unable to fulfill its treaty obligations under CAT.

The UAT Coalition has observed and recorded evidence of acts, omissions and complicity by agents of the State at all levels, including the army, the intelligence service, the police, the judiciary and other branches of government. The UAT Coalition is of the view that until this culture of impunity is addressed the situation is unlikely to improve.

Contact a DCI-Palestine if you wish to receive a hard copy of the report or read it online in English, Arabic or Hebrew.

Source: UAT

APPENDIX

This is a to-be-published academic paper which provides a snapshot of post-‘Cast Lead’ Gaza in 2009. It is based on epidemiological fieldwork conducted under the aegis of the Institute of Community and Public Health, Bir Zeit University, Ramallah. An extensive reference list follows the paper.

Escalating humanitarian crisis and social suffering in the Gaza Strip?
Living conditions, human security and health following the Israeli army attack on the Gaza Strip of December 28-2008- January 18 2009

INTRODUCTION

The three week Israeli Defence Force’s devastating bombing campaign of the Gaza Strip from December 28, 2008 to January 18-2009 was launched at the height of midday activities with schoolchildren returning home from the morning shift (Rabbani, 2009). The Israeli air force, army and navy were all part of this attack (UN Fact Finding Mission on Gaza conflict, September 2009). Without warning (Amnesty International, 2009), the attack targeted an overcrowded 139 square miles piece of land with indiscriminate acts of violence directed against an already subjugated, destitute, and helpless 1.5 million Gaza Palestinians.

Described by the Israeli press as the harshest Israeli military assault on the Strip since the territory was captured during the 1967 War (Haaretz, 2008), the attack was planned several
months before with long term preparation, information gathering and secret discussions while misleading the public (Haaretz, 2009). Contrary to Israel’s allegations that Hamas violated the six-month truce, and justifying the attacks, the truce was violated on November 4, when the Israeli army entered the Strip and killed six members of Hamas (Siegman, 2009).

The scale and intensity of the attacks were unprecedented (Amnesty International, 2009). By the end of the campaign, some 1400 Gazans had been killed, including many civilians, over 400 children and 100 women, and at least 5380 had been injured, including some 1800 children and 800 women (WHO Feb 09). There were 3 Israeli civilian fatalities, and 182 were injured during the period (World Bank, Jun2 2009). Reports indicate that the population suffered severe psychological injury, stress, and grief on a broad scale, making the task of mental health care workers daunting in the aftermath (Bulletin of the World Health Organization, 2009).

The immediate effects of the war on the Gaza Strip have been disseminated by media outlets and various humanitarian agency reports, revealing the extent of atrocities. For example, the International Committee of the Red Cross discovered shocking scenes when allowed to enter the Gaza Strip for the first time, including finding small children next to their mothers’ corpses; and the Israeli English daily Haaretz revealed astonishing stories of how Israeli soldiers vandalized Gaza homes.

The war against the Gaza Strip was described as pointless and leading to a moral defeat for Israel (The Observer, 2009); having succeeded in punishing the Palestinians but not in making Israel more secure (Mearshmeir, 2009); and ending in utter failure for Israel (Haaretz Jan 22 09). As early as December 29, 2008, as the attacks were beginning, Richard Falk, the United Nations Special Rapporteur for Human Rights in the oPt maintained that the attacks entailed severe and massive violations of international humanitarian law, with violations including the collective punishment of the 1.5 million people who live in the Strip for actions of a few militants; targeting civilians, and the disproportionate military response. Testimonies by Israeli soldiers soon substantiated charges that the assault entailed grave violations of international law (Bisharat, 2009). By September 2009, the United Nations Fact-Finding Mission, led by Judge Richard Goldstone, found evidence of war crimes and crimes against humanity committed during the assault on the people of Gaza, and called for holding Israel accountable before international law (UN Fact Finding Mission on Gaza conflict, September 2009).

The incapacitation of the Gaza Strip began with Israeli military occupation in 1967, which has devastated its economy and people. While economic restrictions preceded the Hamas electoral victory of January 2006, since then the siege and blockade have intensified over time (Roy, June 2 2009). The siege and blockade are part of a policy of isolation forbidding most Gazans from leaving or exporting anything to the outside world, and importing a narrowly-restricted number of basic humanitarian goods.

In December of 2009, a consortium of 16 international humanitarian, development and human rights groups published a report indicating that there has been no rebuilding and no recovery in the Gaza Strip (Amnesty International UK and 15 other international organizations, 2009). Over $4 billion had been pledged in March 2009 by the international community to help reconstruction and support the economy, but little of this money had been spent, because of the Israeli governments has continued a blockade and siege policy. This policy has prevented the importing of construction materials, including cement, glass and iron bars, leaving the Gaza Strip to rot in ruins.

Every week, 10 or so officers from the Coordinator of Government activities in the Territories of
the Israeli army decide even about food products which can be brought into the Gaza Strip. Various food items have been prohibited entry, such as tinned meat, tomato paste, pasta, clothing, shoes, and notebooks. The policy is subject to change, and there is no list of permitted and prohibited items (Haaretz 15/6/2009).

The Consortium’s and other reports demonstrate the impact of the blockade on an already devastated ordinary people. The report also deems the blockade an act of collective punishment which violates international law, which is destroying the hopes of Gazans for social and economic development, and the key foundations for a just and sustainable peace. Thus an escalating and large scale, man-made, humanitarian crisis continues in the Strip because of the massive destruction legacy of the operation, and the continued border blockade coming in the way of reconstruction. The Egyptian government has colluded with Israel in imposing its own restrictions, including of humanitarian aid, at the Rafah crossing.

This paper focuses on the consequences on imprisoned Palestinians who have little control over their lives (FAFO, 2009) of the Israeli assault of the Gaza Strip. Utilizing the results of a living and health conditions survey conducted in the Strip during the middle of June-middle of July 2009, and other relevant reports, the paper aims to reveal the human insecurity and social suffering of ordinary people who live in the ruined and un-reconstructed Strip, and in the context of pre-existing and continued closures and siege; their views regarding their health and quality of life; and the most pressing needs as people express them.

METHODOLOGY

A cross-sectional survey was designed to assess the post war consequences of the attacks on the Gaza Strip on population living conditions, health and human security, and to identify longer term health and health promoting needs. The sampling frame was obtained from the Palestinian Central Bureau of Statistics based on its 2007 census, and included all Palestinian households living in the Gaza Strip in the aftermath of the December 08 January 09 attacks.

The instrument was composed of three parts: a roster, which included demographic, socio-economic and health information on all members of the household; a household questionnaire, which included information on housing characteristics, amenities, access to basic services, and other variables related to events taking place during and after the attacks; and a quality of life/distress questionnaire focusing on adults 18 years or over. A total of 3102 households were visited with 3017 household questionnaires completed. There were some difficulties faced in completing the information gathering process. The results below reflect the initial analysis of the data.

RESULTS

Demographic and socio-economic characteristics of the study population

There were 18,838 people living in 3017 households, with the average family size to 6.24 persons. The population under 30 years of age comprised 74.1% of the total. 2.5% were 65 years old or over. 61% were refugees and the rest original inhabitants. The large majority (82.3%) lived in urban areas, 2.6% in rural areas, and 15.1% in refugee camps.

Of all adults who are not of school age (>18 years old), 24.9% had up to primary schooling, 55.8% up to secondary schooling, and 19.3% post secondary schooling. Excluding students, housewives, retired and imprisoned people, 52.3% of those over 10 years old were working full time at the time of the survey, 16.9% part time with varied hours, and 30.7% were unemployed. People between 15-29 years comprised 63.7% of the total unemployed.

Displacement

Almost a third were reported as having to find shelter outside their residence during the war. Weighted for the Strip population, 462,732 persons left their homes for shelter during the war, and 22,729 persons or 4.8% of the displaced were reported as not living in their original residence and remained displaced at the time of the survey.

HOUSEHOLDS

Basic Characteristics
The survey covered 3017 households, with 81.6% located in urban, 2.8% in rural, and 15.5% in refugee camp locales. 68.9% have to purchase water for drinking and cooking, and the rest receive water tanks from the municipality. People in the Strip are aware that the public network water is below acceptable standards required for human use, and so must resort to purchasing water to maintain their health.

Re Standard of Living index, rural areas were the most deprived of the entire Strip, more so than camps.

**Outcomes of war**

*Financial and food insecurity*

Of the total number of households 12.2% reported a decrease in income after the attack, mostly due to reduction in income from work. 19.6% of families reporting income reduction due to agricultural damage, 7.8% due to loss or damage of animal wealth, 15.1% due to the loss or damage of household projects, 14.8% due to the scarcity of production materials such as fertilizers and other supplies, 8.1% due to inability to reach the workplace, and 34.9% due to the loss of work altogether.

Among those who reported reduced family expenditure after the war, a high of 91.9% (14,573 families weighted for Gaza) reported a reduction in the purchasing of food, 89.2% clothing, 36.9% in educational expenses, 53.3% in residential expenses and equipment, 46.6% in health expenditures.

*Property destruction*

1.3% of households reported complete destruction of homes (2957 homes weighted for all of Gaza), 9.3% partial destruction (21,288 weighted for Gaza), and 29.3% minor damages (67,324) total 39.9% of households. Total number of homes damaged scaled to all Gaza =115,832 homes.

22.3% of those reporting commercial project damaged reported complete repair, 24.1% partial, and 53.6% no repair at all since the war on Gaza.

Only 3.9% of those reporting damage to crops and agricultural products reported complete repair, 6.6% partially, and 89.5% none at all. 7.1% of those reporting damage of animal products/animals reported partial repair, and 92.9% not at all.

**Rural areas have been the hardest hit**

There were other types of destruction. 15.2% reported complete, partial or minor damage to schools where the children of the family study, 6.9% to the clinic the family usually attends, 6.9% to the commercial stores the family uses, 10.2% to the roads leading to home, 9.1% to universities attended by children at home; and 3.1% to gardens and public recreation places children visit. Of the total reporting destruction, 50% reported complete or partial repair of schools, with 50% not at all; 69.2% complete or partial repair of clinics.

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Introduction

My opening remarks will focus on what I am going to talk about (and what I am not). I am
taking as read that the Panel are fully aware of the serious human rights issues arising from
Operation Cast Lead (as set out in full in the UN report from Richard Goldstone) and that there
is no need for me to expand on these. I will concentrate on two aspects of the EU-Association
Agreement. These are, one, the position within international law and two, the position within
EU Law.

**International Law**

I will explain how the relevant international law imposes on all states clear international
obligations in respect of Israel’s blockade of Gaza and the breaches of international law during
and after Operation Case Lead. These obligations mirror those helpfully set out in paragraph 159
of the Opinion of the ICJ in The Wall (July 2004). I will explain how important compliance with
these obligations is and how these obligations are being breached by EU States. I will discuss
how the justiciability of these breaches might be a matter for Domestic Courts in each EU State’s
jurisdiction.

**EU Law**

I will explain how given the position in international law the conditionality clause of the EU-
Israel Association Agreement is in play and is being breached. A brief outline will be given as to
the main breaches. Finally given the past and continuing breaches of the Association Agreement
I address the question as to whether an individual or organisation may, in present circumstances,
take the matter to a Court of First Instance and if so under what legal provisions.
Military Operations in Gaza Dec ’08 – Jan ’09:

Issues Relating to Weapons Used During that Operation by Colonel Desmond Travers

Part 1

“The Mission recommends that the General Assembly should promote an urgent discussion on the future legality of the use of certain weapons referred to in this Report and in particular white phosphorus, flechettes and heavy metal such as tungsten. In such discussion the General Assembly should draw inter alia on the expertise of the International Committee of the Red Cross (ICRC). The Mission further recommends that the Government of Israel should undertake a moratorium on the use of such weapons in the light of human suffering and damage they caused in the Gaza Strip.”

[Paragraph 1971(d) of the Report*]

Introduction

The Report90 of the United Nations Fact Finding Mission (FFM) to Gaza, which has become

known as The Goldstone Report, after Justice Richard Goldstone, has been in the public domain for almost six months. In that time, the Report has had an impact worldwide and is still debated to this day. The Report is not without controversy. Much of this controversy has been in the form of refutations of the Report’s findings or by abuse of one kind or another. The broad trust of such criticisms seem to be devoted to a presumption of bias by the mission and by the calling into question of the integrity of it’s work. The Report’s integrity stands and I do not intend to defend it before the Russell Tribunal on Palestine.

Objective
My purpose, therefore, is to highlight aspects of the Report relating to the use of certain weapons and to advance, by producing further evidence, the recommended discussion outlined in the banner headline to this Part of the paper (above). The need to highlight such matters is apparent especially where there are ongoing consequences, post-report, that ought to be addressed as matters of concern.

[* Will be referred to as “the Report” throughout this paper.]

Approach
Concerns regarding such weapons have implications beyond the incidents in Gaza. As these weapons are in the armouries and arsenals of many armies and are in use in campaigns elsewhere, there is a need for this Tribunal to give consideration to the wider implications of the continued acceptance of such weapons, even in conventional warfare. There is also the need to give consideration to the international monitoring mechanisms on conventional weapons in order to proscribe weapons hitherto deemed acceptable and to make recommendations for future monitoring mechanisms which may prevent oversights occurring in the future. It must, however, be borne in mind that the greater preponderance of the weapons and munitions that were used in Gaza were conventional weapons whose use in combat operations, against legitimate targets, are accepted under the Conventions. These weapons will not form part of this paper except where their use has been called into question in the Report. The reason for this is that such weapons have not, so far as is known, left a legacy of ongoing destruction or hazard above the ordinary. A broad exception will be made in considerations of the ongoing deterioration of the environment. Further, their use, or misuse, has already been dealt with in the Report and no further comment seems necessary here.

In addition to the use of conventional weapons and the infrastructural damage that they brought in their wake, mention must be made of destructions wrought by equipments that are not weapons per se. This refers to the destruction by bulldozers of factories, houses, other habitations and livelihoods. This destruction, effected in the closing days of Operation Cast Lead (OCL), was a sub-operation of OCL nicknamed by the IDF as “for the day after”. Destruction was also inflicted on the agricultural infrastructure.

Use of these weapons has resulted in alleged consequences. During these attacks, fruit trees, agricultural land and wells – some three hundred and five wells – were destroyed. Consequences to the environment in some areas of Gaza have been set in motion. Such consequences have been further assured by, for example, the refusal to permit entry into Gaza of water pumps – a necessity in the repair of those agricultural wells. The land served by the wells is drying out. Lands bulldozed for various reasons have had their chemical nature so altered in recent times that they have, in some circumstances, rejected re-planting. Some two hundred square kilometres of agricultural land has been removed from productive use or damaged.

It is further alleged that the use of the weapons and the ensuing blockade have together subjected these lands to a cocktail of assaults: coastal salination, sewage saturation (as a
consequence of the attacks on the sewage plant south of Gaza city), nitrification of the soil
(the UNEP report confirms this), drying out (especially along the buffer zone and in areas
affected by the destruction of wells) and chemical and munition debris hazards (to domestic
animals, humans and ultimately the food chain).

Purpose
The purpose, therefore, of this submission is to highlight the consequences of the over use of
certain weapons and to question their continued use; to alert the Tribunal to toxicities which
remain in Gaza as a consequence of the discharge of such weapons; to raise the issue of the
need for monitoring for such toxicities known or suspected to have been deposited.

Format
This submission will discuss the issue under the following headings:

- White Phosphorous (WP),
- Tungsten Shrapnel and DIME munitions,
- Flechettes,
- Other weapons (and environmental hazards from weapons used or suspected of use).
- Quis custodiet?

Part 2
White Phosphorus (WP)
“The Mission therefore believes that serious consideration should be given to banning
the use of white phosphorus as an obscurant.”

[Paragraph 901 of the
Report]
“... you learn that white phosphorus is not used and you’re taught that it’s not
humane...”
[IDF Soldier’s testimony in “Breaking the Silence”, P. 28]

General
During OCL, one of the sights flashed onto TV screens around the world was of White
Phosphorous (WP) artillery shells air bursting over the city of Gaza. These scenes were
captured by telephoto lenses from the Gaza Israeli border. WP shells were certainly in most, if
not all, cases discharged by 155mm artillery self-propelled (SP) guns. Each shell is designed
to discharge it’s cargo of WP impregnated felt ‘wedges’ in a fan-like pattern over an area to
be screened usually forward of advancing troops.

Employment in Gaza
Some three thousand five hundred (3500) shells are known to have been fired in the vicinity
of Gaza city. In most cases, the Report found no tactical or operational reason for such an act
as there were no Israeli troops in need of screening in those areas of the city at time of firing.
However, there are soldiers’ accounts of the use of WP in order to initiate improvised
explosive devices (IED’s or ‘booby traps’) in houses suspected of containing them. Others
were fired on, or near, the buffer zone and may have been, unlike those fired over Gaza, used
to obscure the troops entering Gaza during the commencement of the ground offensive of
OCL.

Each shell or, to be more precise, ‘container shell’ jettisons one hundred and sixteen (116)
wedges into the air, usually by the initiation of a small detonation, over a designated target
area. The dispersion of wedges and of the container shell may be assumed to be in an area of 125m radius from point of initiation (that is ‘air burst’).

Therefore four hundred thousand plus WP wedges were discharged over the city and its environs

**WP – The Chemical**

WP is a very efficient obscurant when used for such and an equally efficient illuminant when used for that purpose. It is, however, a highly volatile and toxic material. It is, first and foremost, a pyrophoric material in that it does not need an initiator – a fuse or a flame – to ignite it. It will burn once it is exposed to oxygen and will continue to do so until deprived of such or until its energy is expended. Munitions, post-WW 11, which were dumped (legally) into the Irish Sea subsequently, over half a century later\(^{91}\), washed ashore onto an Irish beach and caught fire. WP therefore may lie dormant in an oxygen deprived environment for an indefinite period. For this reason WP is stored under water.

WP wedges were known to be active twenty one and twenty four days after being dropped over Gaza and did cause injury. Wedges fired into Gaza, which landed in drains, sewers or indeed in rooftop water tanks may still be active.

The fumes from WP wedges are sweet smelling - similar in odour to almonds or garlic, according to witnesses - and seem to attract the interest of children. They are also known to be toxic and have nauseated medical teams who were treating wound victims in Gaza. These fumes constitute a respiratory hazard. Medical precautions in the treatment of victims specifically mention such hazards.

“...Prolonged exposure to phosphorus can cause systemic intoxication; signs and symptoms include irritation of the eyes and the respiratory tract; skin and eye burns; abdominal pain, nausea, and jaundice; anaemia, cachexia, pain, and loosening of the teeth, excessive salivation and pain and swelling of the jaw and necrosis of bone, involving typically the maxilla and mandible also known as ‘phossy jaw’, a form of osteomyelitis.....”\(^{92}\)

**Treatment and Other Consequences**

WP coming in contact with flesh will burn literally to the bone or until it is deprived of oxygen. Moreover, relatively light burns of as little as 10% of the body area can prove fatal as WP attacks the central nervous system. Patients treated with light burns in Gaza returned to hospital days later with complications. Twelve people are reported to have died in Gaza as a direct consequence of being burned by WP. The Chief Medical Officer of the Israeli Defence Force (IDF) states:

“... kidney failure and infections are characteristic long-term outcomes...A wound caused by explosive ordnance containing phosphorus is potentially extremely dangerous to tissue..”\(^{93}\)

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\(^{91}\) Lt Col Raymond Lane, Chief Instructor Ordnance School, Irish Defence Forces presentation to the FFM, Geneva.


\(^{93}\) “Identification of Explosive White Phosphorus Injury and its Treatment”, by Dr. Gil Hirshorn, Colonel, Head of Trauma Unit, HQ of Chief Military Medical Officer, Ref Cast Lead SH9 01293409. As quoted in “Rain of Fire: Israel’s Unlawful Use of White Phosphorus in Gaza”, Published by Human Rights Watch, © 2009, P.11 (From the Hebrew. Translation available)
Simon Kuttab, professor of chemistry and dean of the science faculty at Birzeit University in Ramallah, said that the degree and seriousness of the burns it can cause makes it a significant hazard for civilians caught in its path, particularly as Gaza's hospitals are ill-equipped to treat them.

“… Gaza's climate and humidity could also serve to increase the lethality of [WP] because, after being exposed to air, it oxidises rapidly to phosphorus pentoxide, while also producing phosphoric acid and becomes spontaneously flammable.”

**155mm WP Container Shells**
In addition to the hazards arising from the use of WP, the container shells themselves have hazards associated with them. A container shell weighs 37 kg. Several people were killed when a container shell crashed through a house.
More recently, a group of scientists based in Italy, carried out tests on a number of sites in Gaza where WP container shells impacted and conducted tests on the container shell debris found at them. These findings are to be found at the website: www.newweapons.org
In summary, the findings from their researches, which involved an examination of thirty-five metals from four impact sites, indicate the presence of carcinogenic and toxic agents. These results prompt the need for further investigation.

**Discussion**
In this more environmentally conscious era the use of WP which constitutes a hazard when used, even in artillery ranges, should be reviewed. Wedges that fall into wet or marshy areas may subsequently become active when the season changes. A wild animal, such as a deer or mountain goat, may stumble over such a wedge and initiate it losing a limb and suffering great agony before death. The Irish Defence Force authorities saw fit to withdraw all WP munitions from its arsenals in the 1970’s. It is now time for other forces to consider doing the same.
WP is certainly the most efficient chemical agent for the production of obscuration or smoke screens. Nevertheless, it is not the only chemical that can be used for this purpose – red phosphorous and titanium tetrachloride come readily to mind. The suggestion that it is an indispensable agent is therefore invalid.
The delivery means, especially by air burst, may further exacerbate the hazards of WP.

**Part 3**
**Tungsten Micro-Shrapnel and DIME**
“The Mission also observes, however, that there remain a high risk of harming civilians when using these weapons in built-up areas and that concerns have been expressed that DIME weapons could have a particularly adverse impact on the enjoyment to the right to health of survivor, which could go beyond the impact generally associated with being affected by anti-personnel weapons in an armed conflict.”

[Paragraph 910 of the Report]
General

Air-to-surface missile attacks were a common feature of OCL. More often than not, the launch platform for such attacks was an Unarmed Aviation Vehicle (UAV or ‘drone’). The FFM investigated two sites where death and injury occurred as a consequence of the use of these missiles: the police academy graduation ceremony and the Makadmah Mosque.

Pieces of shrapnel of 4x4x4mm and of 2x4x4mm measurement were retrieved from both sites. These pieces of ‘micro-shrapnel’ were analysed and found to be a tungsten-alloy metal.

Human Rights Watch (HRW) also reported other sites in which this type of attack occurred and also analysed samples of shrapnel from them. The analyses established that the micro-shrapnel was of tungsten-alloy.

“… Samples of missile parts and metal cubes taken from two of the attack sites had been analysed by the Institute for Energy Technology (IFE) in Oslo, Norway. The IFE reported that the cube was a metal alloy consisting primarily of tungsten, along with traces of nickel and iron.

Amnesty International report that forty-eight Gazans were killed as a consequence of UAV missile attacks.

The development of missiles to meet counter-insurgency roles may have given rise to their adaptation as an anti-personnel weapon. The missile(s) suspected of having been adapted for such purposes is the Spike or Helfire anti-armour family of missiles:

“…To provide the [Helfire] series with an anti-personnel/anti-material capability, a scheme was developed to optimise fragment lethality against a broad range of targets…. Developed to meet an urgent operational requirement, it involved fitting a steel fragmentation sleeve around the main charge of the warhead.

Hazards to Health

Tungsten, a heavy metal, has been proven to be highly carcinogenic when introduced into living tissue in laboratory conditions.

“The high-dose .. implanted rats developed extremely aggressive tumors surrounding the [tungsten] pellets within 4-5 months after implantation. The low-dose implanted rats.. and nickel-implanted rats.. also developed tumors surrounding the pellets but at a slower rate. Rats implanted with tantalum.. an inert control metal, did not develop tumors. Tumor yield was 100% in both the low- and high-dose.. groups.

The tumors,… rapidly metastasized to the lung and necessitated euthanasia of the animal. Significant hematologic changes, indicative of polycythemia, were also observed in the high-dose ..implanted rats. These changes were apparent as early as 1

96 Samples from Makadmah Mosque provided by the writer to Lt Col R. Lane and analysed in a Dublin laboratory.

97 “Human Rights Watch reports missile attacks on Gazan civilians” Doug Richardson in Jane’s Missiles and Rockets, 3 Aug 2009

98 Janes Defence Systems

Document prepared for the first international session of the Russell Tribunal on Palestine Barcelona 1-2-3 March 2010

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month post implantation in the high-dose .. rats, well before any overt signs of tumor development. These results point out the need for further studies investigating the health effects of tungsten and tungsten-based alloys”.

**Consideration**

While death occurred to many as a consequence of these missile attacks, there are survivors. The FFM met some of them including a young man who has a piece of this shrapnel embedded in his spine. The shrapnel cannot be removed, as the procedure would endanger him further. He may also be at risk by the very presence of the shrapnel in his system.

Tungsten, a heavy metal, is known to be carcinogenic as indeed are many other heavy metals. Others injured by tungsten micro-shrapnel have had the shrapnel removed but the corpus of work on the carcinogenic effects if any, post-removal or treatment, are not known. There is a requirement to subject this aspect to research and to monitor survivors in this category.

**DIME**

**(Dense Inert Metal Explosive)**

**General**

Dense Inert Metal Explosive (DIME) is an explosive in which a heavy metal, usually of tungsten alloy in powder form, is mixed with it. The purpose of such a mix is to enhance the lethality of the explosive. Its effect, thus optimized, is achieved over a more precisely defined area from point of detonation. In other words, it is more efficient in a more restricted area: ideal therefore for an attack against personnel and lightly protected equipment.

The nature of certain injuries and death among victims in Gaza gives rise to suspicions that DIME munitions were used. Expert witnesses to the FFM raised such suspicions more than once. References to the use of DIME in Gaza are also reported in professional journals. In the case of suspected DIME attacks in Gaza, it seems that while the energy of the explosive is evenly distributed, the energies nevertheless seem to have been optimized in order to attack a target a given height above ground level. Adult victims therefore suffered from severed limbs, usually above the knee. Children were cut in half. The specific nature of the severing of limbs has been described which has lead Dr Mads Gilbert to believe that DIME was used. It prompted Lt Col Raymond Lane to discuss the DIME issue before the FFM though he was unable to confirm its use.

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Considerations

DIME by virtue of the metal used in the explosive mix, in this case tungsten, presents the same hazards to human life and especially to the injured as does tungsten in micro-shrapnel form. In addition, however, the nature of the composition of the tungsten is such that if embedded in tissue it may be undetectable and therefore beyond further treatment. Even if detectable it may be beyond guarantees of complete removal. The risks of the development of carcinogens prevail.

Doctors who gave evidence to the FFM instanced circumstances of being overwhelmed by the amount and variety of injuries they had to deal with. In such circumstances, the likelihood of a DIME injury victim receiving the kind of treatment appropriate for the removal of all metallic powders, if such treatment indeed exists, remains problematical.

It has long been practice in the development of conventional weapons to produce means not to kill but not incapacitate. The argument, in justification of such means, is that combatants, so injured, impose a logistic and medical burden on enemy resources thereby contributing to the achievement of the war effort. An injured soldier imposes a burden on five other soldiers in the battlefield; a dead soldier, none. DIME may be in such a category of weapon.

Part 4

Flechettes

“Flechettes are known to bend, break or “tumble” on impact with human flesh. Such performances are often part of the flechettes design characteristic and are marketed as such. “Tumbling” in particular is adjudged to be a further determination of the projectiles “incapacitation” effect.”

[Paragraph 905 of the Report]

General

The flechettes most commonly encountered in Gaza are dart-like objects of 40mm length, 2-4 mm in diameter and of approximately 13.5 grm weight. They are made of a composite metal alloy. They are fired in salvo, most usually from a tank shell, each salvo comprising 8,000 such darts or flechettes. When such a shell is fired from a tank the shell travels a short distance from the muzzle of the gun, usually less than 100 metres and then arms or jettisons the flechettes forward at high velocity. They disperse to form a cone which widens as they travel creating a ‘zone of risk’ 150m wide at the maximum effective distance of travel of 300m.

The purpose of such a munition being used by a tank is to clear an area, usually of underbrush, forward of it so that a would-be infiltrator with an anti-tank gun may be killed, injured or deterred from approaching the tank. Being an area weapon, it is indiscriminate The use of such a weapon against unarmed civilians in Gaza was considered unacceptable by the FFM.
**Flechette use in Gaza**

Flechettes were commonly fired from Merkava tanks. Flechette-delivering missiles were also used in at least one incident. Several incidents of unarmed civilians, women and children, being hit by them, were reported.

**Discussion**

Flechettes, by virtue of a combination of their weight, dimensions and their velocity are unstable in flight. This is further enhanced by the salvo effect as the air turbulence of the passage of flechettes in close proximity to each other, creates further instabilities. These cumulative instabilities may only be manifested on impact especially when such impacts are onto tissue. Such instabilities may be acceptable and in accordance with the Conventions in weapon development.

Flechettes on entering tissue are likely to ‘tumble’, bend, and then tumble or travel off true) or break.

Any or all of these impact effects contribute considerably to increasing the incapacitation of the victim. Where a number of such impacts occur against one target or victim a treatment complication and a treatment overload may occur. Where such effects are inbuilt into the design of the flechette then a concern about their use under the Conventions arises. The question is: are such instabilities on impact inbuilt into the design?

A United States report formerly classified as “Secret” may shed some light on this question. The abstract sets out the purpose of the research, which is to determine whether hits with a series of flechettes, “which tumble within a soldier” will incapacitate that soldier. The report then goes on to advance a formula involving; the weight of the flechette, its velocity and design as a means of producing precisely such effects. Optimum velocities are then discussed as achieving “relatively quick tumbling occurs ... for flechettes with striking velocities greater than 3000 fps”. When such velocities were applied “grosser wounds” were observed.

The report goes on to suggest that the flechette’s weight should not exceed 13 grains, “else the tumbling will occur too late after entrance.

The report goes on to produce the result of trials using various hypothetical scenarios in which an enemy soldier is likely to be engaged, whether in attack or defense, in winter uniform, or nude. The research and trials using gelatin and goats (emphasizing the usefulness of angora goats for this) test the firing of flechettes that tumble on impact with those that do not, in order to gauge the relative increase in incapacitation of one as opposed to the other.

A series of tables and graphs are then produced in which the values of ‘tumbling’ are shown against various parts of the anatomy and through various thicknesses of apparel. These levels of incapacitation are compared with tests using flechettes and metal ‘shrapnel’ in order to reveal the increase in such incapacitation when using a ‘tumbling’ flechette. This shows a substantial increase in all cases but one. The increases suggest an incremental ‘value’ without additional ‘costs’ in the use of such devices in battle.

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103 http://www.guarian.co.uk/graphic/0,,2274464,00.html


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The report’s purpose seems clearly to produce recommendations for the development of a flechette that achieves the optimum incapacitation by tumbling on impact.

**Recommendations**

While X-rays of flechette wounds in Gaza are to hand, there is no evidence in them to suggest that tumbling occurred. Nor is there evidence that the flechettes used in Gaza were specifically designed to tumble.

Nevertheless, the investigation of such incidents in Gaza has given rise to the whole issue of tumbling in the design consideration. There is enough evidence to suggest that tumbling is inbuilt into the design criteria in some flechettes and the delivery systems that are part of achieving that end.

Where tumbling is built into the design the question that arises is: is such criteria in breach of the Conventions. The Conventions regarding weapons which are designed to optimise their incapacitating effect may be considered to be found in various provisions, some of which are as follows:

“1.2.2.2 General prohibitions or restrictions on weapons, means and methods of warfare under customary international law

………..

Prohibition to use means and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering”. 105

The Martens Clause makes provision for weapons, not hitherto covered, under existing provisions, which may be considered contrary to this Clause if it is determined to contravene the principles of humanity or the dictates of public conscience. [Emphasis mine]

**Part 5**

**Other Weapons**

“In view of the allegations and reports about long-term environmental damage that may have been created by certain munitions or debris from munitions, the Mission recommends that a programme of environmental monitoring should take place under the auspices of the United Nations, for as long as deemed necessary. The programme should include the Gaza Strip and areas within Southern Israel close to impact sites. The environmental monitoring programme should be in accordance with the recommendations of an independent body, and samples and analyses should be analysed by one or more independent expert institutions. Such recommendations, at least at the outset, should include measurement mechanisms which address the fears of the population of Gaza and southern Israel at this time and should at a minimum be in a position to determine the presence of heavy metals of all varieties, white phosphorus, tungsten micro-shrapnel and granules and such other chemicals as may be revealed by

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the investigation. “

[Paragraph 1975 (e) of the Report]

General

The Report makes reference to other weapons suspected to have been used in Gaza. It makes reference to weapons previously mentioned in this paper and in particular to depleted uranium (DU) in this regard. It refers to the receipt of a submission which alleged that the analyses of an ambulance which was operating in the Beit Lahia area of Gaza showing unusually high levels of non-depleted uranium and niobium in its air filter. The question of hazards from DU has long been controversial in the scientific world and current literature and thinking on the subject would have to be applied. Nevertheless this paper accepts the views and concerns in existing UN publications on the matter as a guide and suggests that further discussion is required.

In addition, the use of ‘bunker-buster’ or deep penetrator munitions to destroy the tunnels along the “Philadelphia Corridor” (the border between Gaza and Egypt) seems unlikely to have been achieved without munitions with hardened warheads. Such warheads typically are comprised of metal alloys and compounds that leave tracing in the soils and elsewhere of toxicities, which are hazardous in many and various ways.

If such munitions were used then there may be implications for the environment generally. This is especially significant in the case of Gaza whose environment, in many respects, was vulnerable prior to the invasion. The bombardments which occurred may then have affected the soils, the water (including sea-water) and the air. Some of the destruction to the arable land could be permanent. Elsewhere it could be degrading to permanent.

Such munitions may have produced dusts, which are also hazardous. Because of the prevailing winds in the Levant, which are westerly, it may be necessary to consider a monitoring programme outside of Gaza and into Southern Israel itself.

One of the secondary effects of the bombardment has been the damage to the water-table which serves Gaza. This damage has a run-on effect north into the territories of coastal Israel and south into coastal Egypt.

Consideration

There is an urgent necessity to apply the recommendations of the Report with regard to monitoring of the environment, not alone in the territories of Gaza, but also in territories contiguous to it in Israel and Egypt. Such monitoring must have regard to the totality of the environment on land, on sea and in the air in order to produce data of relevance for the future.

It has been argued, that some of the extreme consequence of not doing so, will be seen in

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106 In “XII. The use of certain weapons “, Sub-section “E. Allegations regarding the use of depleted uranium and non-depleted uranium munitions by the Israeli Armed Forces”, Paragraphs 911 and 912 of the Report.


108 “Environmental Assessment of the Gaza Strip following the escalation of hostilities in December 2008 - January 2009”
years to come as the evidence of the weapons’ after-effects emerge. Some such evidences, it has been suggested, will be in the degradation in human reproductive health and in mutations and associated foetal and birth deformities.  

Part 6

“Quis custodiet... “

General

All of the weapons discussed in this paper, with the exception of uranium and depleted uranium, have been in use in many armies throughout the world for almost a century. White phosphorus, flechettes and tungsten have been seen in one form or another since the Great War, 1914-18. Their use at present and as demonstrated in Gaza, shows use that is likely to have been developed and little changed since the Cold War period.

The question that arises is: how can such weapons, long in service, be deemed, now, to be unacceptable, especially when one of them at least – WP – has not been considered to be a ‘weapon’ per se? In order to suggest an answer to this question it is necessary to offer a mélange of possibilities, as follows;

The development of conventional weapons in the Cold War era was not seen perhaps as needing the constraints of the Conventions when the concerns of the time were focused on nuclear war and it’s consequences especially ‘mutually assured destruction’. Nevertheless, it was noticeable that when some conventional weapons were produced by one belligerent, there was a rush by the other to replicate or ‘up-replicate’ it. The Conventions were often set aside in the race to produce an equivalent or an antidote.

Recent years have seen the rise of a number of developments that have brought, hitherto acceptable, weapons into the limelight. The first is the rise of political ideological conflicts where the public found themselves in confrontation with the forces of the state and became victims of contextually repressive weaponry. The weapons and tactics put in place for war contingencies, were often all that was available to the state and were inappropriate for public order issues.

Such public were articulate and intolerant of measures that they might have considered acceptable when inflicted in an earlier era. A human rights consideration developed and has today evolved to be the global influence of our time. Demands were made for citizens’ rights and the proper behavior of organizations and institutions in ensuring or maintaining those rights.

In more recent times, the latest development in ensuring the public’s rights has been legislations and provisions with regard to a citizens’ health and safety. When applied to armed forces on operations it may translate into risk aversion procedures, which may have negative consequences for others.

The development of issues and protections related to the person seem now to have superseded considerations of national security and together with the other influences mentioned here has given rise to a greater awareness of hazards and dangers which may now be considered


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unacceptable. The weapons mentioned in this paper, it is argued, now fall into this category.

The Conventions

The Geneva Conventions and all their modifications, additions and formulations with regard to the control as to the type of weapons that may be developed for combat are complete and thorough. They seem to embrace every conceivable aspect of weapons development and yet there is a possibility that these provisions may not be formulated to bring some weapons into question. This then remains the first challenge in pursuing the purpose of this paper.

A question arises as to why the existing monitoring mechanisms were unable to regulate or control the development of such weapons. In answering this question it seems likely that an examination will have to be undertaken in pursuit of such enquiries. That said, it seems evident that the responsibility of each nation producer of weapons to regulate itself will not be fulfilled.

A second consideration is the need to review all existing conventional weapons in armouries worldwide in the fore-going context.

The third consideration is to make recommendations to enhance the monitoring mechanisms that apply to the Conventions with regard to the development of weapons in the future in order to prevent recurrences of this nature.
Since 1948 Israel has persistently violated all peremptory norms of international law and has continually demonstrated an attitude of flagrant contempt for its international obligations.

**Respect for the principle of the Palestinian people’s right to self-determination**

This right, won by colonised peoples through a hard-fought struggle, is the cornerstone of international law. For 60 years Israel has prevented the Palestinian people from exercising the right of self-determination, although the right of peoples to self-determination is a principle enshrined in Article 1, paragraph 2, of the UN Charter, which states that one of the purposes of the United Nations is: “To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples…”.

United Nations General Assembly (hereinafter UNGA) resolution 1514 (XV) of 14 December 1960 on the granting of independence to colonial countries and peoples draws attention to this obligation and declares that the *subjection of peoples to alien subjugation, domination and exploitation* is prohibited.

The right of peoples to self-determination is also reaffirmed as an inalienable principle in the *Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States of 24 October 1970* (UNGA resolution 2625 (XXV)).

In its resolution 2649 of 30 November 1970, the UNGA recognises the applicability of resolution 1514 (XV) to the Palestinian case by noting that the Palestinians are a people under “colonial and alien domination” and are thus entitled to benefit from the principles set forth in resolution 1514 (XV). It “condemns those Governments that deny the right to self-determination of peoples recognized as being entitled to it, especially of the peoples of southern Africa and Palestine”.

More recently, the International Court of Justice, in the Advisory Opinion concerning the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, stated that Israel has breached the right of the Palestinian people to self-determination. Furthermore, it affirms that the right of peoples to self-determination has acquired an *erga omnes* character.

It also notes that, pursuant to Article 1, paragraph 3, of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, the States parties to the two Covenants are required to promote the realisation of the right to self-determination. It thus reaffirms the obligations incumbent on the State of Israel, which is bound by a number of human rights treaties notwithstanding the fact that the State of Israel appears to dispute their applicability to the Palestinian territories on the ground that the international instruments in question afford protection only in peacetime and not in time of war. This argument was rebutted by the Court, which firmly concludes that human rights treaties are applicable, in addition, to international humanitarian law. The State of Israel is therefore bound to fulfil its human rights obligations in the Occupied Palestinian Territory under the instruments that it has ratified. This position was endorsed by the United Nations Human Rights Committee, which stated that the provisions of both Covenants were applicable to the inhabitants of the Occupied Palestinian Territory.

A direct corollary of the right of the Palestinian people to self-determination is the prohibition of the acquisition of territory by force. Thus, the denial of the Palestinian people’s right to self-determination by the State of Israel also breaches the principle of the inadmissibility of the acquisition of territory by force, as stated unequivocally in Article 2, paragraph 4, of the UN Charter:

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

In June 1967, after the Six-Day War, the Israeli armed forces occupied all the territories constituting historic Palestine. Today, the State of Israel still occupies the West Bank, the Gaza Strip and East Jerusalem. On 22 November 1967, the United Nations Security Council
(hereinafter UNSC) adopted resolution 242, which restates the principle of the inadmissibility of the acquisition of territory by force, sets forth the principles that must be fulfilled to bring about a just peace in the Middle East, and calls for “the withdrawal of Israel armed forces from territories occupied in the recent conflict”. Israel is bound to implement Security Council resolutions by Article 25 of the United Nations Charter, which requires Member States “to accept and carry out the decisions of the Security Council”. Israel has to date violated and continues to violate more than 30 Security Council resolutions.

The relationship between the two principles (self-determination and the inadmissibility of the acquisition of territory by force) is clearly discernible in UNGA resolution 31/20 of 24 November 1976, which considers that the evacuation of the territory occupied by Israel in 1967 is a perquisite for the exercise of the right of the Palestinian people to self-determination. Furthermore, the GA recognises the “right of resistance” of peoples under colonial rule with a view to recovering their legitimate rights. This explicit recognition of the “right to resistance” may be clearly inferred from resolution 2649 of 30 November 1970, in which the General Assembly:

1. Affirms the legitimacy of the struggle of peoples under colonial and alien domination recognized as being entitled to the right of self-determination to restore to themselves that right by any means at their disposal;

2. Recognizes the right of peoples under colonial and alien domination in the legitimate exercise of their right to self-determination to seek and receive all kinds of moral and material assistance, in accordance with the resolutions of the United Nations and the spirit of the Charter of the United Nations.”

Moreover, as noted earlier, the aforementioned resolution contains a direct reference to the Palestinian case.

The legitimacy of the right to resistance is confirmed in Article 1, paragraph 4, of the Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts (hereinafter Protocol I), which stipulates that:

“The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.”

Settlements and the plundering of natural resources

The development and expansion of settlements constitute an ongoing and illegal impediment to the effective exercise by the Palestinians of their right to self-determination. Since 1967 Israel has been pursuing an unrelenting policy of colonisation of Palestinian territory, with almost 150 settlements in the West Bank and East Jerusalem. More than 38% of the West Bank now consists of settlements, and their number continued to increase even during the periods when the so-called “peace process” was under way. Thus, the number of settlements has increased by 63% since 1993 notwithstanding the launching of the Oslo peace process.

The colonisation of the Palestinian territories occupied since 1967 has been a mainstay of the policy of all Israeli Governments irrespective of their political orientation and persuasion. The pursuit by the Israeli authorities of an intensive colonisation policy in the West Bank and East Jerusalem violates numerous provisions of international law and, in particular, a number of principles of international humanitarian law.

Although Israel disputes the applicability of principles of international humanitarian law to the Palestinian territories, there is no longer any doubt whatsoever that the Fourth Geneva Convention “relative to the Protection of Civilian Persons in Time of War”, adopted on 12 August 1949, is applicable to the Occupied Palestinian Territory (hereinafter Fourth
Convention). On the one hand, the State of Israel is bound by the Convention, which it ratified on 6 July 1951; on the other hand, Palestine made a unilateral declaration in 1982 in which it undertook to apply the Convention. Israel disputes the applicability of the Fourth Convention on the ground that Palestine is not the territory of a High Contracting Party within the meaning of the Convention. But this position does not stand up to an analysis of the articles concerning the scope of the principles enshrined in the Fourth Convention. Thus, the Palestinians benefit under Article 4 of the Fourth Convention from the protection afforded by the humanitarian instrument, according to which:

“Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.”

The UNGA and the UNSC have reaffirmed this view on a number of occasions and have consistently and repeatedly called on Israel to apply the Fourth Convention. For instance, on 5 November 2009 the General Assembly, in resolution 64/10 endorsing the conclusions of the GOLDSTONE report, clearly reiterates this view:

“the relevant rules and principles of international law, including international humanitarian and human rights law, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, which is applicable to the Occupied Palestinian Territory, including East Jerusalem.”

The same is true of the International Committee of the Red Cross, which has supported and endorsed the positions of the UNSC and the UNGA on several occasions.

It should further be noted that while the State of Israel has ratified the four Geneva Conventions of 1949, it has not ratified Protocol I. It is nonetheless required to comply with its provisions inasmuch as the principles enshrined in the two Protocols form part of customary international law. They must thus be respected by all parties to an armed conflict.

Pursuant to Article 49 (para. 6) of the Fourth Convention, settlements are illegal. They breach the principles set forth in this article, which stipulates that:

“the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.”

These practices, which are designed to bring about a drastic change in the demographic status of the Palestinian population, have been repeatedly condemned by the UNSC and the UNGA. For instance, on 8 December 1972 the UNGA issued a reminder of the prohibition of any action that changes the physical character or demographic composition of the occupied Arab territories. A similar view has been expressed on many occasions by the UNSC. Thus, in resolution 446 (22 March 1979), the Security Council reiterates that the establishment of settlements in the occupied Arab territories has “no legal validity” and calls on Israel, the occupying power, to withdraw from the occupied territories.

Furthermore, the policy of establishing settlements in Palestinian territory violates the right of the Palestinian people to sovereignty over their natural resources. The issue of control over natural resources must be viewed in conjunction with respect for the right to self-determination of the Palestinian people. It constitutes a collective right that is a key component of the right of the Palestinian people to self-determination. Issues relating to sovereignty over natural resources as a direct corollary of the right of peoples to self-determination have given rise to heated debate in the United Nations. In its resolution 3281 (XXIX) of 12 December 1974 (Charter of Economic Rights and Duties of States), the General Assembly reiterates that all forms of occupation and associated appropriation of natural resources are prohibited. It calls for the restitution of such resources and, where appropriate, compensation.

The two components of this resolution (condemnation and compensation) have been endorsed in a number of UNGA resolutions concerning the case of Palestine. For example, paragraph 2 of resolution 3175 of 17 December 1973, referring to the prohibition of the exploitation of
resources by an occupying power, reaffirms that “all measures undertaken by Israel to exploit the human and natural resources of the occupied Arab territories are illegal and calls upon Israel to halt such measures forthwith.” The Palestinian people’s right to compensation has also been addressed in a number of General Assembly resolutions which call for “full compensation for the exploitation, depletion, loss of and damages to the natural resources of the Palestinian territories”.

**The annexation of East Jerusalem**

Jerusalem seems to be one of the thorniest issues in the struggle of the Palestinian people to recover their right to self-determination. The city of Jerusalem originally enjoyed a separate international status defined as follows by UNGA resolution 181 of 29 November 1947:

“The City of Jerusalem shall be established as a corpus separatum under a special international regime and shall be administered by the United Nations. The Trusteeship Council shall be designated to discharge the responsibilities of the Administering Authority on behalf of the United Nations.”

The international status of Jerusalem established by UNGA resolution 181 was undermined by the policy of territorial expansion pursued by the State of Israel. As early as 1948, Israel seized the eastern part of the city after the first Israeli-Arab war (1948-1949), an act that led to a division of the city, with the new Jewish State occupying the western part of the Holy City. This action was condemned by the UNGA, which reiterates the need for an international regime for the Holy City and states that the Jerusalem area “should be accorded special and separate treatment from the rest of Palestine and should be placed under effective United Nations control”.

The Israel decision to extend its sovereignty by decree (Decree 2064 of 28 June 1967) to the entire territory of Jerusalem after the Six-Day War in June 1967 was vigorously condemned by the UNSC. In its resolution 298 (25 September 1971), the UNSC “confirms in the clearest possible terms that all legislative and administrative actions taken by Israel to change the status of the City of Jerusalem, including expropriation of land and properties, transfer of populations and legislation aimed at the incorporation of the occupied section, are totally invalid”.

Notwithstanding the UNSC warnings to the State of Israel to refrain from taking any legislative or administrative action to change the political or physical status of the City of Jerusalem, the Israeli authorities went one step further on 30 July 1980 when they adopted the basic law, turning Jerusalem into the “undivided and reunified capital of the State of Israel”. Faced with this situation, the UNSC adopted resolution 478 of 20 August 1978 in which it:

“2. Affirms that the enactment of the ‘basic law’ by Israel constitutes a violation of international law (…)"

5. Decides not to recognize the ‘basic law’ and such other actions by Israel that, as a result of this law, seek to alter the character and status of Jerusalem and calls upon:

(a) All Member States to accept this decision;
(b) Those States that have established diplomatic missions at Jerusalem to withdraw such missions from the Holy City.”

Today the State of Israel is pursuing the illegal annexation of East Jerusalem actively and with impunity through its policy of Judaisation, reflected in the process of increased and sustained colonisation, the transfer of the population of Israel to East Jerusalem, the expulsion of Palestinian residents on various pretexts and the destruction of their homes. Day by day, these practices are reducing the prospects of making Jerusalem the capital of two states. The European Union has never recognised the annexation of East Jerusalem by Israel, and its member states have therefore established their accredited diplomatic missions in Tel Aviv.

Since 1967 the UNSC resolutions dealing with the status of Jerusalem have consistently reiterated their condemnation of the annexation by the Israeli authorities of the Holy City.

**The Gaza blockade and operation “Cast Lead”**

As part of their policy of aggression against the Palestinian people, the Israeli authorities have
treated the Gaza Strip as “a hostile entity” for more than three years and subjected it to an economic and humanitarian blockade. Some clarifications regarding the legal status of the Gaza Strip in terms of the principles of international law should first be provided. The evacuation of the settlers and Israeli military from the Gaza Strip in 2005 was presented by the Israeli political and military leadership as a step that would terminate the occupation of the territory. Thus, former Israeli Prime Minister Ariel SHARON stated before the UNGA on 15 September 2005 that the Gaza Strip was now a free and sovereign territory, so that Israel’s obligations vis-à-vis the territory as an occupying power had ceased. However, the key criterion that enables one to determine under international law whether a territory is occupied is the exercise of effective control over the territory, which does not necessarily involve a military presence. It may be asserted without the shadow of a doubt, in the light of a whole series of considerations, that Israel is still an occupying power that exercises effective control over the Gaza Strip. The following list of points may be invoked in support of our conclusion:

(a) Israel still controls the six access routes to the Gaza Strip;

(b) Israel still controls the Gaza Strip by means of military incursions;

(c) Israel has banned the inhabitants from accessing some parts of the Gaza Strip. In these areas, the army has been ordered to fire on anyone failing to respect the ban;

(d) Israel still has total control over the Gaza Strip’s airspace;

(e) Israel still controls the Gaza Strip’s territorial waters;

(f) Israel controls the Palestinians’ civil status records: the status of the inhabitants of the Gaza Strip is determined by the Israeli army.

All these points confirm that the Gaza Strip is still an occupied territory in terms of the provisions of international humanitarian law and international human rights law. Israel remains an occupying power and the inhabitants of the Gaza Strip continue to enjoy the protection of the Fourth Convention. All acts undertaken by the State of Israel in the Gaza Strip must therefore be assessed in the light of the provisions of these two branches of international law. It follows that the blockade and siege of the Gaza Strip in force for more than three years breach the international obligations of the State of Israel. This practice is comparable in many ways to collective punishment, which is prohibited by Article 33 of the Fourth Convention. Moreover, as an occupying power, Israel is required to do its utmost to prevent the humanitarian crises that the Gaza Strip has been suffering as a result of the blockade. At least, this is what may be inferred from Article 55 of the Fourth Convention.

The blockade of the Gaza Strip has led to all kinds of shortages that are attributable to the actions of the Israeli military leadership. The measures taken by Israel (closure of crossing points, reduction of supplies of fuel and electricity, suspension of banking activity, the food crisis, endemic unemployment, etc.) constitute manifest violations of international human rights law, especially the provisions of the International Covenant on Economic Social and Cultural Rights, such as the right to life (art. 6), the right to adequate food (art. 11), the right to the highest attainable standard of physical and mental health (art. 12), the right to education (art. 13), etc. Moreover, the blockade of the Gaza Strip has increased the risks of child malnutrition. The rights of children to decent living conditions and to health are among the principles set forth in Article 24 of the Convention on the Rights of the Child, which the State of Israel has ratified. During the “Cast Lead” military offensive launched against the Gaza Strip from 27 December 2008 to 18 January 2009, which the ICRC bluntly described as the “epicentre of a massive earthquake” on witnessing the vast scale of the human and material devastation wrought by the
22-day operation, Israel deliberately committed violations of the law of armed conflict, starting
with the most elementary principle of distinguishing between civilians and combatants. It is a
peremptory requirement of international humanitarian law that the parties to a conflict must
distinguish between civilians and combatants during military operations. Indiscriminate attacks
are prohibited. The GOLDSTONE report notes that the Israeli armed forces targeted the civilian
population of the Gaza Strip in flagrant breach of the most elementary rules of international
humanitarian law. Attacks against civilians violate the principles set forth in Articles 48 and 51 of
Protocol I. The members of the GOLDSTONE Mission had no hesitation in stating that:
“the Mission finds that the conduct of the Israeli armed forces constitute grave breaches
of the Fourth Geneva Convention in respect of wilful killings and wilfully causing great
suffering to protected persons and as such give rise to individual criminal responsibility.
It also finds that the direct targeting and arbitrary killing of Palestinian civilians is a
violation of the right to life.”
The Israeli organisation “Breaking the Silence” collected testimony from soldiers who took part
in the military operation and who confirm the conclusions of the GOLDSTONE report. They
testify to the fact that deliberate attacks were undertaken against Palestinian civilians during
Operation “Cast Lead”. Moreover, the soldiers involved were submitted to pressure by the
Military Rabbinate, which took the form of dehumanisation of the Arabs and depiction of the
conflict as a holy war against a demonic enemy.
Another distinction to be respected in any international conflict is that between a military object
and a civilian object.
According to the GOLDSTONE report, the Israeli army deliberately targeted civilians objects
during the military operations. Such conduct constitutes a violation of the rule of customary
international law according to which attacks must be strictly limited to military objects. The aerial
bombardments, the navy attacks and the ground incursions resulted in the destruction of civilian
homes (no fewer than 21,000 dwellings were destroyed), civilian hospitals and official institutions
in breach of the provisions of Article 53 of the Fourth Convention and Article 51 of Protocol I.
Judge Richard GOLDSTONE has no hesitation in stating that “acts of illegal and blind
destruction that are not justified by necessity constitute war crimes”.
- Refusal to evacuate or to provide assistance to the wounded
The GOLDSTONE report also notes that the Israeli armed forces systematically refused to
evacuate wounded Palestinians and denied them access to ambulances. Yet Article 56 of the
Fourth Convention strictly prohibits any form of interference with the work of humanitarian and
medical personnel in conflict areas.
- The use of Palestinian civilians as human shields and the detention of persons in Israel
The use of Palestinian civilians by Israel as human shields during Operation Cast Lead was
condemned by the members of the GOLDSTONE Mission. The Mission’s report describes
situations in which:
“Israeli forces coerced Palestinian civilian men at gun point to take part in house
searches during the military operations(…).The Mission concludes that this practice
amounts to the use of Palestinian civilians as human shields and is therefore prohibited
by international humanitarian law. It puts the right to life of the civilians at risk in an
arbitrary and unlawful manner and constitutes cruel and inhuman treatment. The use of
human shields also is a war crime.”
A number of international instruments prohibit the use of non-combatants as human shields.
The Fourth Convention, for instance, explicitly prohibits such practices. Article 28 stipulates that:
“The presence of a protected person may not be used to render certain points or areas immune
from military operations.” Protocol I (Article 51, para. 7) uses even more explicit terms to
prohibit the use of civilians as human shields.
Furthermore, the Mission notes that during some military operations large numbers of

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Palestinian civilians were detained, some in the Gaza Strip and others in detention centres in Israel:

“For the facts gathered, the Mission finds that there were numerous violations of international humanitarian law and human rights law committed in the context of these detentions. Civilians, including women and children, were detained in degrading conditions, deprived of food, water and access to sanitary facilities, and exposed to the elements in January without any shelter. The men were handcuffed, blindfolded and repeatedly made to strip, sometimes naked, at different stages of their detention.”

This finding leads it to conclude that:

“the treatment of these civilians constitutes the infliction of a collective penalty on those persons and amounts to measures of intimidation and terror. Such acts are grave breaches of the Geneva Conventions and constitute a war crime.”

Most of the Palestinian detainees were incarcerated in Israel, a practice that breaches Article 76 of the Fourth Convention. It should be noted that the same article prohibits the ill-treatment of detainees.

In May 2009 the United Nations Committee against Torture expressed concern about the conditions of detention of Palestinian prisoners in Israeli jails. The Committee noted that some Israel practices violate the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

- The delivery of humanitarian assistance

The Mission’s report also mentions the difficulties encountered by humanitarian agencies in supplying the civilian Palestinian population with basic necessities and means of subsistence. It notes in this connection that Israel’s deliberate restrictions on the passage of humanitarian assistance breached its obligations under the Fourth Convention and, in particular, Article 23 thereof.

- Closure of border crossings

Furthermore, all the Gaza Strip’s border crossings remained closed during the conflict, so that the inhabitants were unable to flee from the conflict zone. The inhabitants of the Gaza Strip, confined to a territory encompassing only 360 square kilometres, were compelled by the Israeli army to remain in the area and were denied the opportunity to seek safety and shelter from the military operations. According to the Universal Declaration of Human Rights, everyone has the right to leave any country, including his or her own, and to return to his or her country (art. 13, para. 2) and everyone has the right to seek asylum (art. 14, para. 1). The freedom to leave any country, including one’s own, is also enshrined in the International Covenant on Civil and Political Rights (art. 12, para. 2). This did not prevent the State of Israel from keeping the Gaza Strip’s border crossings closed throughout the conflict.

In the light of all the foregoing points regarding Israeli army practices during Operation “Cast Lead”, we may cite, in conclusion, Professor John DUGARD, former United Nations Special Rapporteur on the situation of human rights in the Occupied Palestinian Territory, including East Jerusalem, who notes that:

“It is highly arguable that Israel has violated the most fundamental rules of international humanitarian law, which constitute war crimes in terms of article 147 of the Fourth Geneva Convention and article 85 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I). These crimes include direct attacks against civilians and civilian objects, and attacks which fail to distinguish between military targets and civilians and civilian objects (articles 48, 51 (4) and 52 (1) of Protocol I); the excessive use of force arising from disproportionate attacks on civilians and civilian objects (articles 51 (4) and 51 (5) of Protocol I); and the spreading of terror among the civilian population (article 33 of the Fourth Geneva Convention and article 51 (2) of Protocol I).”
Looking at all the actions undertaken by the Israeli military forces in the Gaza Strip during Operation “Cast Lead”, the Fact-Finding Mission led by Judge GOLDSTONE raises the question of whether such acts might constitute crimes against humanity. It presents its comment in the following terms:

“Finally, the Mission considered whether the series of acts that deprive Palestinians in the Gaza Strip of their means of sustenance, employment, housing and water, that deny their freedom of movement and their right to leave and enter their own country, that limit their access a court of law and an effective remedy, could amount to persecution, a crime against humanity. From the facts available to it, the Mission is of the view that some of the actions of the Government of Israel might justify a competent court finding that crimes against humanity have been committed.”

The construction of the Wall in the occupied West Bank

At the request of the UNGA, the International Court of Justice issued an opinion on the legality of the Wall under construction in the Occupied Palestinian Territory. In its Advisory Opinion issued on 9 July 2004, the ICJ undertakes a detailed examination of the violations of international law to which I have just referred. Its opinion regarding the illegality of the Wall in the Occupied Palestinian Territory is unequivocal:

- By constructing the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, and by adopting its associated regime, Israel, the occupying power, has violated the international obligations incumbent upon it;
- Israel must put an end to the violation of its international obligations flowing from the construction of the Wall. It must cease construction of the Wall and dismantle those parts of the Wall situated within the Occupied Palestinian Territory;
- It must provide reparations for the damage caused by the construction of the Wall;
- States are under an obligation not to recognize the illegal situation resulting from the construction of the Wall and not to render aid or assistance in maintaining the situation created by such construction.

In its Opinion, the ICJ states that the construction of the Wall in the Occupied Palestinian Territory “severs the territorial sphere over which the Palestinian people are entitled to exercise their right of self-determination and constitutes a violation of the legal principle prohibiting the acquisition of territory by the use of force”. In addition, it fears that the route of the Wall will prejudge the future frontier between Israel and Palestine. It considers that the “construction of the wall and its associated regime create a ‘fait accompli’ on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to de facto annexation”. It expresses concern about the route of the Wall, which lies beyond the 1967 green line. Moreover, the construction of the Wall violates international obligations incurred in treaties ratified by Israel. Mention may be made of the following:

- According to the ICJ, “the construction of the wall has led to the destruction or requisition of properties under conditions which contravene the requirements of Articles 46 and 52 of the Hague Regulations of 1907 and of Article 53 of the Fourth Geneva Convention”. Such destruction cannot be justified by military necessity or national security;
- The construction of the Wall has imposed major restrictions on the freedom of movement of the inhabitants of the Occupied Palestinian Territory, in violation of Article 12 of the International Covenant on Civil and Political Rights, according to which: “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.” The restrictions on freedom of movement lead to violations of other rights enjoyed by the Palestinians under Protocol I, such as: the right to
health, to employment, to education, to an adequate standard of living, etc. It should be stressed that the restrictions on freedom of movement are applicable not only to the area adjoining the route of the Wall. In the West Bank permanent barriers impede Palestinian's everyday movements. In 2009, there were no fewer than 634 barriers impeding the freedom of movement of Palestinians. Israel argues that the checkpoints are necessary to guarantee its security. But it should be noted that most of the checkpoints are located beyond the green line in the West Bank.

The ICJ also analyses the legal obligations incumbent on third-party states. It emphasises that the construction flagrantly violates obligations flowing from the Fourth Convention and notes that, pursuant to Article 1 of the Convention: “The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.” Every state party is required to ensure respect for the Convention, whether or not it is a party to a conflict. It classifies the international obligations violated by Israel through its construction of the Wall as obligations erga omnes. Such obligations “are by their very nature the concern of all States and, in view of the importance of the rights involved, all States can be held to have a legal interest in their protection”. The ICJ further considers that “the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an erga omnes character”.

On 20 July 2004 the General Assembly adopted resolution ES-10/15 in which it demanded compliance by Israel with the Advisory Opinion of the International Court of Justice.

**The European Union-Israel Association Agreement**

It was in the context of the Barcelona process (November 1995), aimed at fostering relations between the European Union and partners countries in the Mediterranean area, that the European Union-Israel Association Agreement was signed in 1995. On ratification by the Knesset, the national parliaments of member states and the European Parliament, it entered into force in June 2000. The Agreement provides for the gradual liberalisation of trade between Israel and the European Union, especially in agricultural produce and services, and the free movement of capital. Such agreements also seek to encourage cooperation between each partner country and the European Union in the social and cultural fields. However, some clauses of the Agreement seem to have been overlooked by the State of Israel, primarily the principles set forth in Articles 2 and 83 of the Association Agreement.

- **Article 2: the human rights and democratic principles clause**

Article 2 of the Association Agreement states that relations resulting from the partnership shall be based on respect for human rights and democratic principles. Yet one cannot help noting that, while the European Union generally condemns the violations of international law perpetrated by Israel in the Palestinian territories, it draws no legal consequences in terms of the principles set forth in Article 2. The persistent violation of human rights in the Occupied Palestinian Territory constitutes a manifest breach of Article 2 of the Association Agreement. This being the case, the European Union is under an obligation to suspend the EU-Israel Agreement for as long as Israel continues to violate human rights. The possibility of suspending association agreement was raised in 2002 in a resolution before the European Parliament calling for the freezing of the Agreement in response to the manifest violation of Article 2. Moreover, provision has been made for association agreement monitoring procedures. Pursuant to Article 79, the Council of Ministers of the European Union may take appropriate measures in the event of non-respect of association agreements. Far from complying with the European Parliament resolution referred to above or with the monitoring procedures envisaged by the Association Agreement, the European Union is currently considering the possibility of enhancing its partnership with Israel.
- Article 83: the territorial scope of the Association Agreement

The territorial scope of the Association Agreement is limited, pursuant to the principles set forth in Article 83, to the State of Israel within its 1967 borders. Yet Israel violates the legal provisions of Article 83 by exporting settlement products bearing Israeli labels to the European Union with a view to benefiting from the trade advantages offered by the Association Agreement, in particular the reduced customs duties imposed on Israeli products entering the territory of the European Union.