

The UN and the Question of Israeli apartheid

Although a substantial body of findings by prominent human rights experts has confirmed that Israel's illegal occupation of the Palestinian territory of Gaza and the West Bank, including East Jerusalem, is part of a regime of apartheid as defined in international law, **the United Nations (UN) has failed for decades to investigate Israel's perpetration of the crime of apartheid.**

Apartheid is defined in the International Convention for the Suppression and Punishment of the Crime of Apartheid and the Rome Statute of the International Criminal Court (ICC) as *institutionalized regime of racial domination and systematic oppression that commits inhumane acts similar to those committed in Southern Africa in the past, with the aim of maintaining that regime.*

Since its admission as a member of the UN in 1949, Israel has enjoyed impunity for its flagrant violations of international humanitarian law (IHL) and Palestinian human rights. This impunity is predominantly due to the diplomatic, economic and military protection provided by powerful states of the Global North, in particular former colonial powers and states which, like Israel, were established by means of settler-colonialism and the ethnic cleansing of indigenous nations.

A well-known example of this protection is the persistent obstruction of international measures, including targeted sanctions, that could give effect to UN resolutions about Israel's settlements, wall and annexation of occupied territory. The latter have been declared illegal and condemned in scores of UN resolutions, but effective accountability measures have been frequently blocked by the U.S. and, less frequently, by European states, Canada and Australia.

Another important example of shielding Israel from accountability is the UN's acceptance of the position that Israel's continuing presence in the occupied Palestinian territory (OPT) composed of the Gaza Strip and the West Bank, including East Jerusalem, constitutes a *temporary* "belligerent occupation" subject to the rules of IHL, i.e., the only internationally recognized regime whereby a State can be lawfully present in territory seized in war.

Based on this position, Israel is treated by the UN and its powerful Members as a peaceful State and lawful "occupying power" that is in "a situation of armed conflict/war" with the Palestinian people (!)¹ and is ready to negotiate and implement in good faith a political solution which will terminate its presence and control of the OPT and enable sovereign Palestinian statehood there. Israel's flagrant violations of IHL and human rights are being criticized and condemned, **but its regime over Palestinians in the OPT *per se* has never been investigated for its lawfulness or declared illegal by the UN.**

Independent experts of international law, as well as civil society, have for many years raised to the UN and its Members the need to acknowledge that Israel maintains an illegal and criminal regime over the Palestinian people.

UN Special Rapporteur Michael Lynk, for instance, demonstrated in great detail in 2017 that **Israel's regime in the OPT constitutes "illegal occupation", because it contradicts all of the core principles of lawful "belligerent occupation":** i) the prohibition of annexation, and respect of the right to self-determination of the sovereign

¹ Palestinians were not a party to the war of 1967 that resulted in Israel's seizure of the Palestinian West Bank, including East Jerusalem, and the Gaza Strip – as well as the Syrian Golan Heights. The parties to that war were Israel, Egypt, Syria and Jordan.

population; ii) temporariness (to be distinguished from indefiniteness); and, iii) the duty to act in the best interest of the occupied population).²

Since 2007, when UN Special Rapporteur John Dugard first alerted the United Nations that Israel's occupation shows many of the features of colonialism and apartheid,³ expert findings about Israeli apartheid have, among others, been presented in: subsequent reports of UN Special Rapporteurs on Human Rights in the OPT;⁴ a study by the largest coalition in Palestinian civil society, the BDS National Committee (BNC);⁵ an in-depth study sponsored by the Human Sciences Research Council of South Africa (2009);⁶ a subsequent analysis published in the European Journal of International Law (EJIL, 2013)⁷; findings of the Russell Tribunal on Palestine (2011);⁸ a study commissioned by the UN Economic and Social Commission for Western Asia (ESCWA, 2017)⁹; and in periodical reviews of Israel by the UN Committee on the Elimination of Racial Discrimination (2007, 2012, 2020).¹⁰

Acknowledgement of the illegality of Israel's regime over the Palestinian people and **investigation of Israeli apartheid by the UN** and its Members are necessary steps for achieving freedom, justice and equality for the Palestinian people. The myth of the existence - or possibility - of genuine negotiations with Israeli governments that are unwilling to abandon apartheid has enabled Israel to continue its longstanding practice of *de facto* and *de jure* annexation of occupied Palestinian territory, and of forcible displacement, segregation and exile of the Palestinian people.

Israeli apartheid against the Indigenous people of Palestine, however, will not be addressed by the international community unless **States of the Global South**, that have emerged from the struggle against racist colonial domination, carry the above findings and calls of independent experts and civil society into the official forums of the UN and its Members, similar to the leading role they assumed in the UN for the eradication of apartheid in Southern Africa.

This is because powerful governments of the Global North have once more demonstrated their determination to tolerate the crime of apartheid when it is committed against a people of the Global South by a State aligned with their geopolitical interests. The alarming findings of Israeli apartheid have gone ignored in the capitals of the

² Report of the UN Special Rapporteur on Human Rights in the OPT Michael Lynk, A/72/43106 (23 October 2017).

³ UN Special Rapporteur John Dugard, Human Rights Situation in Palestine and other Occupied Arab Territories, A/HRC/4/17 (29 January 2007), at: <https://unispal.un.org/DPA/DPR/unispal.nsf/1ce874ab1832a53e852570bb006dfaf6/b59fe224d4a4587d8525728b00697daa?OpenDocument>

⁴ UN Special Rapporteur Richard Falk, Report to the Human Rights Council, A/HRC/16/72 (10 January 2011), at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/A72012A31C1116FC8525782C00547DD4> and Report A/HRC/25/67 (13 January 2014), at: <https://www.refworld.org/docid/531439c44.html>

⁵ United Against Apartheid, Colonialism and Occupation: Dignity & Justice for the Palestinian People (2008), at: <https://www.bdsmovement.net/news/united-against-apartheid-colonialism-and-occupation-dignity-justice-palestinian-people>

⁶ *Occupation, Colonialism, Apartheid?*, Human Sciences Research Council of South Africa, (2009), at: <http://www.hlrn.org/img/documents/HSRC%20study%20-%20Occupation,%20Colonialism,%20Apartheid%20-%20full.pdf>

⁷ John Dugard and John Reynolds, "Apartheid, International Law, and the Occupied Palestinian Territory", EJIL 24 (2013), 867–913, at: <http://www.ejil.org/pdfs/24/3/2421.pdf>

⁸ Russell Tribunal on Palestine, Cape Town Session (2011), at: <http://www.russelltribunalonpalestine.com/en/sessions/south-africa/south-africa-session-%E2%80%94-full-findings>

⁹ UNESCWA, "Israeli Practices toward the Palestinian People and the Question of Apartheid" (March 2017), subsequently removed from UNESCWA's website upon instruction of the UN Secretary General. Available at: https://electronicintifada.net/sites/default/files/2017-03/un_apartheid_report_15_march_english_final_.pdf

¹⁰ CERD, Concluding Observations – Israel; see for example, CERD/C/ISR/CO/14-16 (9 March 2012), at: <https://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.ISR.CO.14-16.pdf>

Global North, while bullying and political pressure have prevented the study and debate, let alone punishment, of Israeli apartheid by relevant UN organs, such as the General Assembly and Human Rights Council.

One among many disturbing examples of this Global North repression is the aforementioned study, “Israeli Practices towards the Palestinian People and the Question of Apartheid”, which was commissioned and published by ESCWA in March 2017 and then quickly removed from the official ESCWA website two days after its publication, upon instruction by the UN Secretary General.

Equally disturbing are the false, defamatory and intimidating accusations of antisemitism and of “destruction of the Jewish state,” which are hurled by pro-Israel government officials, parliamentarians, political parties and media against anyone criticizing Israeli apartheid or calling for targeted sanctions, such as military embargoes, to end it. This is particularly prevalent in North America, Europe and Australia, where political and cultural elites, often connected to the military/security-industrial complex, collude with the relentless efforts of Israel’s extreme-right government to undermine freedom of expression and suppress legitimate opposition to its illegal and criminal policies, including apartheid.

With international law rarely working in favour of the nations of the Global South, the struggle of the people of Southern Africa against apartheid, and the international anti-apartheid movement that supported their struggle, represent a major political success of decolonized nations and the human rights movement. For Palestinians, re-connecting to that struggle and building on it are of strategic necessity for escaping the current deadlock of oppression and impunity.

Whereas the UN Security Council remains blocked, primarily but not only due to the veto power of the United States, **the General Assembly, with its organs and mechanisms, offers ample opportunities for tabling Israel’s apartheid on the agenda of an unwilling international community for investigation, and for examination of the international measures required for its eradication, including targeted and lawful sanctions.**

Tabling Israeli apartheid in the General Assembly requires mobilizing the necessary support from States, groups and organizations representing the Global South in the United Nations as well as from progressive parliamentarians, political parties, civil society organizations, unions and movements in the Global North. Eradicating apartheid in Palestine and everywhere is a legal and moral responsibility for all who care about freedom, justice, equality and the international rule of law.