

**REPORT BY THE NORWEGIAN REFUGEE COUNCIL TO  
THE COMMITTEE ON THE ELIMINATION OF RACIAL  
DISCRIMINATION, ON THE OCCASION OF ISRAEL'S  
17H, 18TH AND 19TH PERIODIC REPORTS**

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NORWEGIAN  
REFUGEE COUNCIL

# Report by the Norwegian Refugee Council to the Committee on the Elimination of Racial Discrimination (CERD), on the occasion of Israel's 17<sup>h</sup>, 18<sup>th</sup> and 19<sup>th</sup> Periodic Reports

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## I. Background

1. The Norwegian Refugee Council (NRC) submits the following information ahead of the Committee on the Elimination of Racial Discrimination (CERD) 100<sup>th</sup> Session and consideration of the 17-19<sup>th</sup> Periodic Report of Israel, a State Party to International Convention on the Elimination of All Forms of Racial Discrimination since 1979; and in view of the List of Themes identified by the Committee (CERD/C/ISR/Q/17-19) to guide the dialogue with the State Party.

2. NRC began operations in occupied Palestinian territory (oPt) in 2009, and has since protected and assisted Palestinians affected by, or threatened with, displacement in Gaza and the West Bank, including East Jerusalem. NRC provides legal counseling to promote human rights and works to improve shelter, water, and sanitation facilities. NRC supports the provision of quality education, and helps communities prepare for, and respond to, emergencies.

3. NRC plays an active role in humanitarian coordination in oPt by leading the Shelter Cluster, hosting the Association for International Development Agencies (AIDA), and managing the West Bank Protection Consortium.

4. NRC provides policy analysis to a range of actors in oPt, promoting principled humanitarian assistance in accordance with international law. NRC engages international and

intergovernmental bodies, including the UN Security Council, the UN General Assembly, and its Main Committees, the Human Rights Council and its Special Procedures, and Human Rights Treaty Bodies. Having submitted information to the CERD during its 80<sup>th</sup> Session in 2012 (see submission by the Internal Displacement Monitoring Centre), promoting the protection of displaced and vulnerable peoples' human rights, NRC submits the following in view of its observations and pertinent legal analysis, assisted by prominent experts in the fields of international humanitarian and human rights law.

## **II. Applicability of the Convention to all the territories under the State party's jurisdiction or effective control, including the West Bank, including East Jerusalem, and the Gaza Strip**

5. One of the most complex contemporary debates related to the regulation of armed conflict is the relationship between international humanitarian law (IHL, or LOAC, the law of armed conflict) and international human rights law. Since human rights experts first began advocating for the complementary application of these two bodies of law, there has been a steady progression of human rights application into an area formerly subject to the exclusive regulation of LOAC. This debate has underscored the application of the law to the context of occupied Palestinian territory (oPt), and increasingly so with its prolongation since June 1967.

6. International human rights law (IHRL) and IHL are traditionally two distinct branches of law, one dealing with the protection of persons from abusive power, the other with the conduct of parties to an armed conflict. Nevertheless, developments in international and national jurisprudence and practice have led to the recognition that these two bodies of law not only share a common ideal of dignity and integrity but overlap substantially in practice. The most frequent examples are situations of occupation or non-international armed conflicts where human rights law complements the protection provided by humanitarian law.

7. The one aspect of international armed conflict that has generated the most consistent demand for complementarity is belligerent occupation.<sup>1</sup> This as a result of the substantial similarity between the exercise of military authority during belligerent occupation and the exercise of State authority during peacetime, while maintaining that occupation does not impart sovereignty, nor does it preclude the invalidity of acquisition of territory by force or war.

8. It is also as a result of the reality that advancements in human rights law regulating State authority in peacetime have not been matched by analogous advancements in the law of belligerent occupation, which has remained generally static since 1949, that has driven an interest in the complementary application of IHL and IHRL in situations of belligerent occupation, such as in oPt.

9. In the Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory<sup>2</sup> and in its judgment in the Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda),<sup>3</sup> the International Court of Justice (ICJ) examined the actions of occupying armies not only through the lens of IHL but also through that of IHRL.

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<sup>1</sup> See: International humanitarian law and the challenges of contemporary armed conflicts Document prepared by the International Committee of the Red Cross for the 32nd International Conference of the Red Cross and Red Crescent, Geneva, Switzerland, 8–10 December 2015, available at: <https://www.icrc.org/en/document/international-humanitarian-law-and-challenges-contemporary-armed-conflicts>

<sup>2</sup> See Paragraph 103 to 113, "Having determined the rules and principles of international law relevant to reply to the question posed by the General Assembly, and having ruled in particular on the applicability within the Occupied Palestinian Territory of international humanitarian law and human rights law." available at: <https://www.icj-cij.org/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>

<sup>3</sup> See Paragraph 178 to 180, "The Court thus concludes that Uganda was the occupying Power in Ituri at the relevant time. As such it was under an obligation, according to Article 43 of the Hague Regulations of 1907, to take all the measures in its power to restore, and ensure, as far as possible, public order and safety in the occupied area, while respecting, unless absolutely prevented, the laws in force in the DRC. This obligation comprised the duty to secure respect for the applicable rules of international human rights law and international humanitarian law, to protect the inhabitants of the occupied territory against acts of violence, and not to tolerate such violence by any third party." Available at: <https://www.icj-cij.org/files/case-related/116/116-20051219-JUD-01-00-EN.pdf>

10. Both decisions relied on the ICJ previous determination in its Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons.<sup>4</sup> This opinion held that the protection of the International Covenant on Civil and Political Rights (ICCPR) does not cease in times of war, except by operation of Article 4 of the Covenant whereby certain provisions may be derogated in times of national emergency. In the Wall and Armed Activities decisions, the ICJ expanded this determination to human rights conventions in general, and developed the rule on the application of human rights norms in times of war to the context of belligerent occupation.

11. In particular, it has been suggested that in a situation of stable and settled occupation where a State's armed forces have effective overall control of the territory, in jurisdictional terms the human rights obligation of the occupant in occupied territory are akin to that of a State in its territory. Consequently, views have been expressed that human rights provisions cannot be divided and tailored, and the entire corpus of relevant human rights instruments is applicable. Cognizant of this, it was argued that Israel, the occupant, must ensure sufficient resources are available in order to ensure compliance with its positive and negative human rights obligations in circumstances of stable and settled occupation.

12. The holding of the International Court of Justice in its advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory lend support to the notion that international human rights law applies in respect of acts done by a state in the exercise of its jurisdiction outside its own territory and particularly in occupied territories.

13. Economic, social, and cultural rights are a potential area of mutual reinforcement, especially in situations of occupation, as the enjoyment of economic, social, and cultural rights have been curtailed in oPt, with severely disrupted functioning institutions, in all parts of the West Bank, including East Jerusalem, areas directly administered by the Israeli Military Commander and areas delegated to the nominal control of the Palestinian Authority, as well as in the Gaza Strip, over which Israel maintains effective control; restricting mobility and thus access to work, land, health care, education, and food and water.

14. While IHL gives rather detailed guidance on these issues, such as obligations with regard to education, health care, the supply of relief and food, additional detailed guidance can be found in jurisprudence and other more practical principles that have been elaborated, for instance in the general comments of the Committee on Economic, Social and Cultural Rights. As such, IHRL may fill a gap in protection when the occupying power continues, over time, to exercise government-like functions.

15. Civil and political instruments with no jurisdiction clause have also been found to apply in a broader range of situations. The International Court of Justice has held that the obligation to ensure public order and public life imposed on an Occupying Power under Article 43 of the Hague Regulations comprises 'the duty to secure respect for the applicable rules of international human rights law and international humanitarian law.' However, the precise content of the obligations imposed under international human rights law, and the determination of whether they have been adhered to, is necessarily context-dependent.

16. A relevant factor in this regard is the prevailing security situation, including any resistance to the occupation. Furthermore, elements such as the length of time since the establishment of the occupation may affect the content of the human rights obligations. A prolonged occupation leads to higher expectations with regard to the fulfillment of the content of this obligation than during the initial stages of occupation. NRC had commissioned in this regard legal expert advice on the

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<sup>4</sup> See Paragraph 25, available at: <https://www.icj-cij.org/files/case-related/95/095-19960708-ADV-01-00-EN.pdf>

occupier's legislative power over an occupied territory under IHL,<sup>5</sup> non-renunciation of rights under IHL,<sup>6</sup> and the conduct of prolonged occupation in the occupied Palestinian territory.<sup>7</sup>

17. We urge the Committee to conclude that human rights law, simultaneously applicable, should guide the Occupying Power in exercising obligations not limited to the minimum defined by IHL, but also encompassing the complementary rights and privileges codified by human rights treaties. This position had been confirmed by considerable international practice and jurisprudence, particularly that of the ICJ in its 2004 advisory opinion on the Wall in the Occupied Palestinian Territory and in its 2005 decision in the case of the Democratic Republic of the Congo v. Uganda.<sup>8</sup>

### **III. Impact of the new Basic Law: Israel – The Nation-State of the Jewish People (2018) on [...] Palestinians living in the occupied Palestinian territory**

18. 'Israel – The Nation-State of the Jewish People' is a quasi-constitutional Basic Law,<sup>9</sup> which means that it takes precedence over ordinary Knesset (the Israeli Parliament) legislation. Adopted in July 2018, it proclaims that the Jewish people alone have the right to self-determination in Israel.

19. One prominent concern about the new Basic Law – based on the use of the term "Land of Israel" – is that it may be applied to East Jerusalem and the West Bank to justify the protection of Israeli settlements and other Israeli measures intended to transfer its nationals into occupied territory, in violation of Article 49 of the Fourth Geneva Convention,<sup>10</sup> meant to safeguard against transfer of portions of the occupant population to occupied territory for political and racial reasons further expanding settlements and the acquisition of territory in breach of Article 2(4) of the UN Charter.<sup>11</sup> Article 7 of the Basic Law states that: "the state views the development of Jewish settlements as a national value and will act to encourage and promote its establishment and consolidation."

20. In addition to encouraging Jewish settlements throughout the country, the Basic Law proclaims that the land of Israel (*Eretz Israel*) is the historical homeland of the Jewish people and that the State of Israel is the nation-State of the Jewish people "in which it exercises its natural, cultural, religious and historical right for self-determination", a right that is "exclusive to the Jewish people." This provision, due to its vague wording could be viewed as an endorsement to develop Jewish settlements, including in oPt, in direct violation of international law. This concern is further compounded by the reference in Article 1(a) to the Land of Israel, where the State of Israel is established, without any definition of its boundaries.

21. Article 3 of the Law states that Jerusalem, complete and united, is the capital of Israel. This is in violation of numerous United Nations Security Council and General Assembly resolutions, which consider that all legislative and administrative measures and actions taken by Israel, which tend to

<sup>5</sup> <https://www.nrc.no/resources/legal-opinions/expert-opinion-on-the-occupiers-legislative-power-over-an-occupied-territory-under-ihl-in-light-of-israels-on-going-occupation/>

<sup>6</sup> <https://www.nrc.no/resources/legal-opinions/expert-opinion-on-the-non-renunciation-of-rights-under-international-humanitarian-law/>

<sup>7</sup> <https://www.nrc.no/resources/legal-opinions/expert-opinion-relating-to-the-conduct-of-prolonged-occupation-in-the-occupied-palestinian-territory/>

<sup>8</sup> Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), decision of 19 December 2005

<sup>9</sup> <https://knesset.gov.il/laws/special/eng/BasicLawNationState.pdf>

<sup>10</sup> "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies." See ICRC Commentary of 1958: "It is intended to prevent a practice adopted during the Second World War by certain Powers, which transferred portions of their own population to occupied territory for political and racial reasons or in order, as they claimed, to colonize those territories. Such transfers worsened the economic situation of the native population and endangered their separate existence as a race. The paragraph provides protected persons with a valuable safeguard. It should be noted, however, that in this paragraph the meaning of the words "transfer" and "deport" is rather different from that in which they are used in the other paragraphs of Article 49, since they do not refer to the movement of protected persons but to that of nationals of the occupying Power." Available at: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=523BA38706C71588C12563CD0042C407>

<sup>11</sup> The principles of Art. 2, along with the principles contained in the purposes of Art. 1, have been further developed, in particular in the Friendly-Relations-Declaration of 1970 that further elaborates on these principles, namely that States shall refrain from the threat or use of force, on the peaceful settlement of disputes, on the duty of cooperation, on the principles of equal rights and self-determination of peoples, and on the sovereign equality of States.

change the legal status of Jerusalem are invalid and cannot change that status, and constitute a flagrant violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War.

22. This Basic Law should be read against the backdrop of seemingly disparate acts of legislation in recent years, which, taken together, amount to a concerted effort to undermine demands for equality for the Palestinian citizens of Israel and to preempt political challenges to coalition in power for the last decade or so.

23. One immediate dimension is the formalization of the informal disenfranchisement of Palestinian citizens of Israel. However, turning decades-long de facto racial discrimination, at the core of Israel State building, into de jure discrimination, is not the only - perhaps not even the most significant - driver of this legislative reform.

24. Over the past three years, the Israeli Knesset has either enacted or considered a number of statutes that extend Israeli law to the West Bank or lay the foundation for some form of future annexation, and it would appear that the law was adopted with a view of formally annexing occupied Palestinian territory (in part or full), while dismissing the possibility of granting Palestinians annexed along with it equal and full civil and political rights. With the Nation-State Law, an apparent barrier to extensive acquisition of territory has been removed. The Israeli legislator can consider the de jure annexation of the West Bank, and negate the possibility of Palestinian self-determination.

24. In November 2018 the Special Rapporteur in the field of cultural rights; Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967; Special Rapporteur on minority issues; and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, wrote<sup>12</sup> to the Government of Israel to express concern over the adoption of the law, "which appear to be discriminatory in nature and in practice against non-Jewish citizens and other minorities" and had reiterated that International humanitarian law applies to the entirety of oPt, as reaffirmed in the ICJ Advisory Opinion of 2004, UN Security Council Resolution 2334 (2016), and in numerous UN General Assembly and Human Rights Council resolutions,<sup>13</sup> the negation of Palestinian self-determination, and the transfer of the population of Israel into the territory it occupies, prohibited under article 49 of the Fourth Geneva Convention, are serious breaches of peremptory norms of international law.

25. the experts further held that In light of the provisions of the Law, Article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination should be invoked, calling on Israel to "take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations, which have the effect of creating or perpetuating racial discrimination whenever it exists."

26. Currently, there are fourteen petitions before the Israeli High Court of Justice (HCJ), seeking remedy in the form of an HCJ ruling instructing the State to amend specific provisions of the Law or annual it altogether. The petitions have been unified, with a Court decision<sup>14</sup> of 16 June 2019 ordering the State to respond by 17 November 2019.

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<sup>12</sup> <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=24098>

<sup>13</sup> See, inter alia: <https://www.un.org/unispal/document/right-of-the-palestinian-people-to-self-determination-ga-resolution-a-res-73-158/>; <https://www.un.org/unispal/document/applicability-of-the-geneva-convention-relative-to-the-protection-of-civilian-persons-in-time-of-war-of-12-august-1949-to-the-occupied-palestinian-territory-including-east-jerusalem-and-the-other-2/>;

<https://www.un.org/unispal/document/human-rights-situation-in-opt-including-east-jerusalem-hrc-40th-session-resolution/>;

<https://www.un.org/unispal/document/right-of-palestinian-people-to-self-determination-human-rights-council-40th-session-resolution/>

<sup>14</sup> <https://supremedecisions.court.gov.il/Home/Download?path=HebrewVerdicts\18\550\055\v07&fileName=18055550.V07&type=2> (available in Hebrew only)

26. We urge the Committee to express concern about Basic Law: Israel the Nation-State of the Jewish People, currently under judicial review, which has raised concerns regarding compliance with peremptory norms of international law, including the law of occupation, insofar as it applies to the Occupied Palestinian Territory.

#### **IV. Impact of the discriminatory planning and zoning policies in the West Bank on the rights of Palestinian and Bedouin communities. Measures to guarantee Palestinian and Bedouin rights to property, access to land, housing and natural resources, especially water resources**

##### **a. The Applicable Norms and Rules**

27. According to the 1995 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip,<sup>15</sup> nominal civil powers and responsibilities, including planning and zoning, in Areas A and B, were transferred to the Palestinian Authority, whereas Area C remained under Israeli control, including regarding planning and construction, with a view of transferring such powers to the Palestinian Authority, which has failed to materialize since its conclusion some 25 years ago.<sup>16</sup> Areas A and B make up roughly 38 percent of the West Bank; Area C corresponds to approximately 62 percent of the West Bank.

28. Three main systems of law are applicable to spatial planning in Area C. First, international law consisting of treaty law, and customary law binds Israeli policy and activities in the area. Among those international norms, the primary rules to consider are those of the law of belligerent occupation. Pursuant to the 1907 Hague Regulations and the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, Israel has the status and duties of an Occupying Power.

29. Second, the domestic law applicable in the territory before it was occupied continues to apply, except if it has been revised by the Occupying Power, which is only lawful in certain circumstances discussed hereafter. Before 1967, the West Bank was under Jordanian rule, and consequently, Jordanian laws were in force in the territory. All those laws remain in force if they were not abrogated before the occupation started and if they are not contrary to international law. This includes the 1966 Towns, Villages, and Buildings Planning Law.<sup>17</sup>

30. Finally, the Occupying Power exercises a limited legislative power with regard to the territory it occupies and may enact or abolish laws under certain conditions set out by the law of belligerent occupation. In conformity with its legal obligations as an Occupying Power, the Israeli military commander issued, in June 1967, proclamations stating that the prevailing law would remain in force (i.e., Jordanian Law and British Mandate regulations), subject to changes made by military orders and proclamations. Israel, however, revised through military orders the existing Jordanian laws. In particular, Military Order No. 418 adopted in 1971, and amended numerous times since then, revised the 1966 Towns, Villages, and Buildings Planning Law.<sup>18</sup>

31. The main principle underlying the law of belligerent occupation is that occupation does not transfer any title of sovereignty to the occupant on the occupied territory. Furthermore, LOAC does not confer power on an occupant. Rather, it regulates the occupant's use of power. The

<sup>15</sup> <https://mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/the%20israeli-palestinian%20interim%20agreement.aspx>

<sup>16</sup> Article 27(2) to Annex III (Protocol Concerning Civil Affairs) reads: "In Area C, powers and responsibilities related to the sphere of Planning and Zoning will be transferred gradually to Palestinian jurisdiction that will cover West Bank and Gaza Strip territory except for the issues that will be negotiated in the permanent status negotiations, during the further redeployment phases, to be completed within 18 months from the date of the inauguration of the Council." Available at:

<https://mfa.gov.il/MFA/ForeignPolicy/Peace/Guide/Pages/THE%20ISRAELI-PALESTINIAN%20INTERIM%20AGREEMENT%20-%20Annex%20III.aspx#app-27>

<sup>17</sup> *Towns, Villages, and Building Planning Law (Temporary Law)*, Law No. 79 of 1966.

<sup>18</sup> Available, in Hebrew, at: [https://www.aka.idf.il/SIP\\_STORAGE/FILES/1/60641.pdf](https://www.aka.idf.il/SIP_STORAGE/FILES/1/60641.pdf)

occupant's powers arise from the actual control of the area. This principle is entrenched in Article 43 of the 1907 Hague Regulation<sup>19</sup> that imposes a duty on the occupant to respect, unless absolutely prevented, existing law, emphasizing the *de facto* nature of the occupant's authority.<sup>20</sup>

32. The obligation is twofold: an obligation to restore public order and to ensure that public order and civil life are guaranteed. It seems reasonable to contend that the second duty is particularly important as the occupation is prolonged over time and when the occupant is moving away from combat-like situations to issues related to the changing needs and the normal life of the civilian population.

33. When fulfilling its duty to restore and ensure public order and civil life, the occupant must respect its obligations under IHRL. This is particularly relevant because public order is restored and ensured through law enforcement operations that are governed by human rights norms. As recalled earlier, IHRL continues to apply in times of armed conflict, including in situations of occupation, save cases of derogation or suspension for derogable rights under certain conditions.

34. In restoring and ensuring public order and civil life, the occupant must respect the laws in force in the occupied territory at the beginning of the occupation. Consequently, Article 43 bars also an Occupying Power from extending its legislation over the occupied territory. While the first obligation called for the adoption of positive measures, this obligation is a negative one, prohibiting the occupant from suspending or repealing local legislation.

35. Article 43 also constitutes the legal parameter governing potential changes to institutions by the occupant. Considering the general principle set by Article 43 prohibiting changes to local legislation, this principle prevents the occupant from abolishing existing local administrative institutions because local institutions of the occupied country are established by and operate under the law. Institutions and the constitutional order are only one aspect of 'the laws in force in the country.'

36. First the amendments adopted by the Israeli authorities to the 1966 Jordanian Law through Military Order 418 and its successive revisions, especially pertaining to planning authorities in the local and district level did not meet in 1971, nor does it now after the various amendments to this order, the requirements set under the obligation to respect local laws. This is particularly true given the nature of spatial planning that inevitably involves long-term consequences, going beyond the duration of the occupation, while an Occupying Power may only introduce changes for the duration of the occupation.

37. It has been established<sup>21</sup> that beyond the unlawfulness of the changes made to the local legislation, the current planning and building regime leads to spatial planning that fails to meet the needs of the Palestinian inhabitants, which is contrary to the occupying power's obligations under international law.

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<sup>19</sup> <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/ART/195-200053?OpenDocument>

<sup>20</sup> <https://www.nrc.no/resources/legal-opinions/expert-opinion-on-the-occupiers-legislative-power-over-an-occupied-territory-under-ihl-in-light-of-israels-on-going-occupation/>

<sup>21</sup> See, for example, the Report of the Special Rapporteur on adequate housing Mission to Israel and the Occupied Palestinian Territory of 2012: "Throughout her visit the Special Rapporteur witnessed a development model that systematically excludes, discriminates against and displaces minorities in Israel and which has been replicated in the occupied territory since 1967. In very different legal and geographical contexts, from Galilee and the Negev to the West Bank, she received multiple similar complaints from Palestinians, notably concerning a lack of or discriminatory planning, which seriously hampers the urban and rural development of these communities. As a consequence, a disproportionate number of members of such communities live and sometimes work in structures that are —unauthorized or —illegal and liable to eviction and demolition." Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/190/00/PDF/G1219000.pdf?OpenElement>



## **b. The Spatial Planning Regime**

38. Planning and all decisions on construction permit requests by Palestinians in Area C are made by the Israeli Civil Administration's Higher Planning Council, comprised exclusively of Israeli officials attached to the Military Commander of Occupied Territory (General of Command – Central Command). Modifications to Jordanian law introduced by Israel in 1971 eliminated Palestinian community participation in the planning of what has become Area C. Two types of plans can be applied to Palestinian villages in Area C: Special Partial Outline Plans prepared by the Israeli civil administration and the Regional Outline Plans from the British Mandate period. Special Partial Outline Plans cover less than 1 percent of Area C land; that land, in practice, is the only part of Area C where Palestinian construction is allowed, and much of the area is built up already. Mandatory Regional Outline Plans are applied to those villages without Israeli special plans. Approved by the British Mandate government of Palestine in the 1940s, such plans designate most of Area C as an agricultural zone, and are no longer adequate to deal with current Palestinian planning needs, including a contemporary infrastructure of roads, water conduction and a power grid.

39. About 70 percent of Area C has been allocated for Israeli settlements, military zones, nature reserves, State land, and the Seam Zone around the Separation Wall, so possibilities for Palestinians to build are severely restricted. In practice, as Palestinian construction is only permitted in approximately 1 percent of Area C many residents are forced to build without a permit to meet their housing, livelihood and community needs, putting these persons at risk of destruction of property and forcible transfer. The absence of appropriate spatial plans has led to a particularly low rate of approval of building permits applied for by Palestinians residing in Area C. In 2014, 9 were approved out of 440 requested (2.04 % approval rate), in 2015, 7 approved out of 385 requested (1.81% approval rate), with similar rates for 2016-2018. By September 2019 the overall number of applications has gone down to 67 for the period January-September 2019, of which 7 were approved (1% approval rate).<sup>22</sup>

40. The obligation for Israel to transfer back the authority in planning and building to a formal representation of the protected persons as per the model of the local and district planning committees in accordance with the Jordanian Law stems from the fact that the changes made to this law were unlawful *per se* under the obligation to respect local laws under Article 43 of the 1907 Hague Regulations. Not only such changes were not justified under this provision but the nature of planning under occupation in general and the centralization of powers into the hands of the Higher Planning Council as a result of Order 418 render such changes unlawful. Finally, the current regime of planning and building and its related policies have significant humanitarian consequences on the Palestinian population, as discussed in detail below.

41. It is of paramount importance to stress that, on the other hand, Order 418 created a separate planning framework for the settlements. The order establishes that the commander of the area is permitted to appoint a Special Local Planning Committee (SLPC), with virtually all settlements now have SLPCs. In addition, the Israeli Civil Administration has established a separate sub-committee – the settlement sub-committee - responsible for planning in Israeli settlements, sitting as District Planning Committee.<sup>23</sup>

42. As stated earlier, the general principle of Article 43 prohibits changes to local legislation, including abolishing existing local administrative institutions because local institutions of the occupied country are established by and operate under the law. Consequently, this rule

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<sup>22</sup> Judea and Samaria Central Planning Committee, retrieved from <http://iplan.gov.il/Mechozi/yosh/Pages/yosh.aspx> (available in Hebrew only).

<sup>23</sup> <http://mavat.moin.gov.il/MavatPS/Forms/SV7.aspx?tid=720&did=7&fid=10&cid=700> (available in Hebrew only).

prevents Israel from abolishing existing institutions under the Jordanian Law, except under certain circumstances. Although changes related to the composition of the planning institutions could have been allowed, these should only be limited to the provisions related to the representatives of the Jordanian Government. It is clear that the amendments go far beyond this aspect and significantly affect the planning and building system established by this law.

43. The full participation through representation of local representatives appears to be a prerequisite for the system to adequately address the needs of the local population. More so when considering the nature of planning and its long term impact on the social and economic development, as well as the type of relationships between the Occupying Power and the occupied people.

44. As underlined above, Order 418 created a separated regime for planning and building processes regarding settlers, where the latter are represented in the planning institutions and decision-making processes, in addition to benefiting from more favorable conditions to obtain permits. The fact that on the contrary, Palestinians do not enjoy the same regime may suggest that there is a discriminatory practice in this regard. This would constitute inadmissible discrimination, independently of the fact that Israeli settlements are unlawful as such. While IHL only addresses nondiscrimination between protected persons (settlers being of Israeli nationality, they do not fall under the category of protected persons), human rights law prohibits discrimination and applies to all persons under the jurisdiction of Israel, including residents of Area C, as stressed earlier.

### ***c. Destruction of Property, Forcible Transfer and Acquisition of Territory***

45. The possibility to construct housing and livelihood-related structures on their lands, access natural resources, including water, and establish community infrastructure including schools and medical clinics, is an essential aspect of family rights (article 27 of Geneva Convention IV) and private and municipal property the Occupying Power has to respect under Article 46 of the Hague Regulations. If, for whatever reason, the planning needs of the population in the part of the West Bank under its exclusive control cannot be satisfied by the present system, it must be changed, and such a change is possible while safeguarding the security interests of the occupying forces. It cannot possibly be claimed that the only way to protect this security interest and to maintain an orderly government in Area C is for Israel to take for all practical purposes alone all decisions in matters of planning and building.

46. As stated earlier, the powers of the occupant must be exercised in respecting the specific prohibitions set out under IHL. Pursuant to Article 53 of Geneva Convention IV, “[a]ny destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations”. Among the categories of demolitions carried out by the Israeli authorities are structures, including residential, livelihood-related and water and sanitation facilities, that may be demolished because building permit was not secured prior to their construction. Such demolitions are labeled “administrative demolitions”<sup>120</sup>. As explained earlier, the current planning and building system is characterized by a very high rate of rejection of building permit applications by Palestinians, leading the latter to build without permit and exposing themselves to “stop work” orders and demolition orders. Destruction of structures built without a permit may be considered to violate Article 53 if the lack of permit is due to a system that is contrary to the legislative powers of the occupant.

47. The 2019 Humanitarian Needs Overview (HNO)<sup>24</sup> published by UNOCHA concurrently points at violations of international humanitarian and human rights law as severe threats against Palestinians, highlighting the coercive environment in the West Bank, particularly in Area C and East Jerusalem, where access to essential services including WASH, healthcare, education, energy, and housing is severely restricted, leading to forcible transfer.

48. Taken together, measures adopted by Israel amount to a policy designed to create a coercive environment, which would permanently change the demographic structure of oPt in favour of Israeli territorial interests; thus, amounting to the *de facto* annexation of significant parts of Palestinian territory, in violation of the principle of the provisional character of occupation.

49. During the period 1 January 2009 and 1 November 2019,<sup>25</sup> the Israeli Military Commander destroyed 6,279 residential, water and sanitation and livelihood-related structures owned or inhabited by Palestinians, adversely affecting 111,436 persons. Of the structures destroyed or seized during this period, 1,058 were provided as internationally funded humanitarian assistance, representing a 17% share of all structures destroyed. East Jerusalem has been particularly affected, with 1,240 destroyed structures over the last ten years (representing 20% of destroyed structures, with the remainder across Area C) affecting 8,611 persons. According to the *European Union Six-Month Report on Demolitions and Confiscations of EU funded Structures in the West Bank, including East Jerusalem*<sup>26</sup>, between 2009 and 2018, some 480 EU and EU Member States funded structures worth over 1.45 million Euro were destroyed or seized.

50. The continued policy of destruction of property, including those structures provided as humanitarian assistance, is aimed at discouraging both donor States from committing aid to Palestinians and humanitarian organizations from delivering that aid in an effective and timely manner. Against the accumulated and entrenched needs of Palestinians, there has been a steady decline in all forms of financial assistance to Palestinian people in past years,<sup>27</sup> and humanitarian organizations are compelled to invest significant resources to ensure the intended beneficiaries to retain the aid they are provided with. The intentional obstruction of humanitarian assistance has forced humanitarian organizations to conduct responses at decreased visibility and standards, and at times utilize protective diplomatic presence to facilitate the delivery of relief items.

51. The consequence of denying humanitarian assistance is a deterioration in the living conditions of the affected communities and households across Area C and East Jerusalem, making them prone to forcible transfer; and while the reasons given by the Israeli Military Commander for the obstruction of humanitarian assistance may be of a legalistic character, (for example the claim that such assistance constitutes interference in the administration of occupied territory) the denial of humanitarian assistance in most circumstances constitutes an abuse of rights, and a violation of international humanitarian law.

52. These practices and policies persist despite being in direct violation of international law which obliges the Occupying Power to provide for the wellbeing of the protected population as a primary duty and to, *inter alia*, agree to relief schemes on behalf of the occupied population and to facilitate them by all means at its disposal. Obstruction of aid continued unabated also following a June 2016 letter from the UN Coordinator for Humanitarian Aid and Development Activities for the occupied Palestinian territory to the Israeli Coordinator of Government Activities in the Territories (COGAT), asserting that the *"inability of humanitarian agencies to deliver relief items to the affected households, creates a coercive environment that potentially pressures them to leave their current sites against their will. If that scenario materializes, the United Nations is concerned that it may amount to forcible transfers, which are considered a grave breach of international humanitarian*

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<sup>24</sup> <https://www.ochaopt.org/hrp-2019>

<sup>25</sup> <https://www.ochaopt.org/data/demolition>

<sup>26</sup> [https://eeas.europa.eu/sites/eeas/files/six-months\\_report\\_on\\_demolitions\\_of\\_eu\\_funded\\_structures\\_in\\_the\\_west\\_bank\\_including\\_east\\_jerusalem\\_july-december\\_2018.pdf](https://eeas.europa.eu/sites/eeas/files/six-months_report_on_demolitions_of_eu_funded_structures_in_the_west_bank_including_east_jerusalem_july-december_2018.pdf)

<sup>27</sup> See Financial Tracking Service (FTS) oPt at <https://fts.unocha.org/appeals/529/summary>

law.” The letter adds that Israel, as the Occupying Power, is “required to facilitate and protect the rapid, unimpeded and impartial delivery of relief to civilians in need, and to assist personnel to the fullest extent practicable in carrying out their relief mission; relief items should not be requisitioned, confiscated, expropriated or interfered with in any other way.”

53. A similar letter co-signed by the ambassadors of Spain, Italy, Switzerland, Belgium, Sweden, Germany, Ireland, and Norway was sent to COGAT in July 2016, stating serious concern that “humanitarian assistance which is delivered under humanitarian principles be confiscated.” The ambassadors demanded both the release of seized aid and assurances that “measures be taken to in order to prevent the recurrence of similar incidents in the future.” Israel, however, did not heed to the plea, and in October 2017, eight EU Member States (Belgium, France, Spain, Sweden, Luxembourg, Italy, Ireland, and Denmark) wrote in official protest to Israel, demanding compensation for seized and destroyed structures. In the letter, the eight MSs stressed that if Israel does not unconditionally return the equipment it seized, they would demand compensation.

54. As outlined above, the creation of a coercive environment - characterized by unlawful planning practices, wanton and extensive destruction of property and obstruction of humanitarian relief - can result in mass or individual forcible transfers. Israel, through a variety of mechanisms, creates such a coercive environment for many Palestinian communities, rendering their choice to relocate from affected areas devoid of genuine consent. Such mechanisms, employed by Israel, create “push factors” which encourage non-consensual displacement and include, *inter alia*: revocation of residency rights; the adoption of an unlawful alteration to the laws already in place in establishing a discriminatory zoning and planning régime; land confiscation and denial or restriction of use; destruction and seizure of property; restrictions on movement and access; denial of access to essential services (including by obstructing humanitarian agencies from providing those essential services in lieu of the Occupying Power); impediments to family unification; and impunity for settler violence and excessive use of force by security forces.

55. It should also be noted that such policies and practices should be seen in view of repeated public statements by Israeli officials, primary and secondary legislation and legislative initiatives designed to promote the annexation of territory, strictly prohibited in modern international law. That prohibition has acquired the status of a *jus cogens* norm in international law, accepted as a fundamental principle of law by the international community, for which no exception or derogation is permitted. The Special Rapporteur on the Situation of human rights in oPt devoted his 2018 report<sup>28</sup> to explore the trends of the *de jure* annexation of East Jerusalem by Israel and its *de facto* annexation of the West Bank, their incompatibility with international legal norms and their foreclosing of the right to self-determination by the Palestinian people.

56. In the report, the Rapporteur proposes that the following factors should be employed to assess whether a State engaging in *de facto* annexation has crossed the tipping point in illegal annexation: (a) Effective control. The State is in effective control of territory that it forcibly acquired from another State; (b) Exercises of sovereignty. The State has taken active measures that are consistent with permanency and a sovereign claim over parts or all of the territory or through prohibited changes to local legislation, including the application of its domestic laws to the territory, demographic transformation and/or population transfer, the prolonged duration of the occupation and/or the granting of citizenship; (c) Expressions of intent. This would include statements by leading political leaders and State institutions indicating, or advocating for, the permanent annexation of parts or all of the occupied territory; (d) International law and direction. The State has refused to accept the application of international law, including the laws of occupation, to the territory and is failing to comply with the direction of the international community with respect to the present and future status of the territory.

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<sup>28</sup> <https://undocs.org/A/73/447>

57. The Rapporteur concludes that the Israeli Civil Administration has imposed a highly restrictive planning regime that makes permit application approval for Palestinian residential and commercial construction virtually impossible, while Israeli settlers enjoy the same full range of legal rights and economic freedoms as Israelis living in Israel, Palestinians in Area C lack essential community infrastructure and are faced with a strangled economy, ubiquitous military checkpoints, limited access to their natural resources and a steady rejection of almost all of their submitted spatial plans and building permits. That, he asserts, is part and parcel of the “probative evidence that Israel has effectively annexed a significant part of the West Bank and is treating that territory as its own.” While Israel has not yet declared formal sovereignty over any parts of the West Bank, the Special Rapporteur submits that the “strict prohibition against annexation under international law applies not only to a formal declaration, but also to those acts of territorial appropriation by Israel that have been a cumulative part of its efforts to stake a future claim of formal sovereignty over the occupied Palestinian territory.”

58.

**(a)** We call on the Committee to reiterate obligations and absolute prohibitions around settlement establishment and expansion, destruction of property, obstruction of humanitarian assistance, and forcible transfer. This should include demanding all plans to construct settlements in the West Bank including East Jerusalem, and forcibly transfer its Palestinian inhabitants are rescinded forthwith, and intentions to formalize the acquisition of occupied territory are abandoned;

**(b)** We urge the Committee to impress upon Israel that it must comply with all relevant resolutions of the Security Council and the General Assembly with respect to East Jerusalem and the West Bank and relinquish any claim of sovereignty over the territory;

**(c)** We further suggest the Committee concludes in favor of Palestinian efforts to assume spatial planning powers and responsibilities in Area C of the West Bank, and remind Israel of its longstanding commitment to transfer powers and responsibilities in the sphere of planning and zoning (including initiating, preparing, amending and abrogating planning schemes, issuing building permits and supervising and monitoring building activities) to Palestinian jurisdiction;

**(d)** We implore the Committee to reiterate the imperative nature of humanitarian assistance schemes in oPt, and assert that those are carried out in full compliance with international Humanitarian Law and humanitarian principles, including the right of Palestinians to receive such assistance unhindered, and the right of Third States and impartial humanitarian organizations to provide assistance in a timely, unimpeded and effective manner, free from undue obstruction, and impress upon Israel the duty to facilitate effective aid schemes and halt the destruction, and seizure of international assistance;

**(e)** The Committee should remind Israel that where it is unwilling or unable to plan or provide for the protected population, it has the obligation to facilitate impartial aid provided by international donors and humanitarian organizations. The Committee should additionally remind Israel that unlawful, capacious or arbitrary delay or denial of humanitarian assistance would be viewed as wrongful obstruction of humanitarian assistance.

## **V. Impact of the long-standing blockade of the Gaza strip imposed by the State party on Palestinians' freedom of movement and access to basic and life-saving services, as well as on civilian reconstruction efforts**

### **a. The Applicable Norms and Rules**

59. Israel, through proclamation of government and the subsequent ruling of the High Court of Justice<sup>29</sup>, holds that due to the withdrawal from the Gaza Strip in 2005, it had lost effective control of the Strip, and is no longer the Occupying Power, and consequently no longer bound by the duty to provide for the welfare of the population. However, the withdrawal was not as complete as it should have been in order to terminate Israel's duties as an Occupying Power. Israel continues to control the border crossings (including to a significant degree the Rafah crossing to Egypt, under the terms of the Agreement on Movement and Access<sup>30</sup>). It also controls the territorial sea adjacent to the Gaza Strip and has declared a maritime blockade and limits to the fishing zone, thereby restricting economic activity in that area. It also keeps complete control of the airspace of the Gaza Strip through continuous surveillance. Israel regulates the local monetary market based on the Israeli currency and controls taxes and customs duties, effectively steering the economy of the Strip.

60. Furthermore, it makes military incursions into and from time to time launches attacks against targets within the Gaza Strip. Access Restricted Areas (ARAs) are declared within the Gaza Strip near the 1949 Armistice-Line and enforced by Israeli armed forces, on numerous occasions through resorting to the use of lethal force. The extent of Israeli control exercised over Gaza is at a minimum equivalent to a *de facto* control, which according to Article 42 of the Hague Regulations, is constitutive for an occupation.<sup>31</sup>

61. Irrespective of Israeli argumentation, the law of belligerent occupation, as it is formulated in the Fourth Geneva Convention and reflected in customary law, contains safeguards against an Occupying Power trying to evade its duties by changing the status of the territory. The case regulated in Article 47<sup>32</sup> is the contrary of what happened to the Gaza Strip, namely annexation, but the purpose of Article 47 is not limited to the changes mentioned explicitly as not depriving the population of the protections provided by the law of occupation. Consequently, a withdrawal which does not give back to the ousted sovereign its complete powers of government which would enable the authorities of the territory to provide themselves for the welfare of the population is subject to that broad purpose defining invalid (in the sense of not affecting the protection of the population) status changes. Thus, the change in status – which Israel may have tried to achieve by its withdrawal – could not deprive the population of the benefits of the law of occupation.

62. When Israel unilaterally evacuated troops and settlements from the Gaza Strip, it did not leave in place a local governing body to which full authority has been transferred. In any case, the International Court of Justice, in its Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, regards the transfer of powers and responsibilities by Israel under various agreements with the Palestine Liberation Organization (PLO) as having “done nothing” to alter the character of Israel as an Occupying Power.

63. According to numerous experts<sup>33</sup>, the fact that Israel styled itself as no longer being the Occupying Power in the Gaza Strip should not result in the inapplicability of occupation law in that territory since the situation on the ground proved that the area was still under effective Israeli

<sup>29</sup> [http://elyon1.court.gov.il/Files\\_ENG/07/320/091/n25/07091320.n25.pdf](http://elyon1.court.gov.il/Files_ENG/07/320/091/n25/07091320.n25.pdf)

<sup>30</sup> <http://www.mfa.gov.il/mfa/foreignpolicy/peace/mfadocuments/pages/agreed%20documents%20on%20movement%20and%20access%20from%20and%20to%20gaza%2015-nov-2005.aspx>

<sup>31</sup> <https://www.icrc.org/eng/assets/files/publications/icrc-002-4094.pdf>

<sup>32</sup> “Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.”

<sup>33</sup> <https://www.icrc.org/eng/assets/files/publications/icrc-002-4094.pdf>

control. Taking into account the reluctance of States to admit that they occupy or continue to occupy foreign territory, the experts thought that such declarations could represent only a rebuttable presumption that occupation law would not apply anymore and should, in any case, be substantiated by drastic changes in the prevailing situation.

64. While there are certain obligations that Israel as the Occupying Power cannot practically be expected to undertake following its partial withdrawal, such as that of ensuring law and order and the functioning of the education system in Gaza. However, this should in no way be interpreted as undermining the occupied classification of the Gaza Strip. Accordingly, Israel, as the Occupying Power, holds primary responsibility under IHL to provide for the welfare of the occupied population of Gaza. The use of security justification to deny essential materials to the occupied population, the severance of Gaza from the remainder of occupied Palestinian territory and the exuberant limitation on the movement of persons in and out the Gaza Strip is not consonant with IHL obligations. Furthermore, Israel's Supreme Court in *Jaber al Bassouini Ahmed et al V Prime Minister and Minister of Defense*<sup>34</sup> confirmed that Israel is obliged to supply fuel and electricity to the Gaza Strip. Only an occupier bears the responsibility of supplying commodities such as fuel and electricity.

65. As demonstrated by the ruling, Israel has a duty to ensure the welfare of the occupied population, to the extent possible. This duty may not extend to the daily maintenance of law and order, but it certainly extends to other overarching aspects of civil welfare, particularly those that are under Israel's direct or effective control, such as supply of electricity, water, sewage and sanitation infrastructure, as well as the general economic and social development needs of the Gaza Strip.<sup>35</sup> Furthermore, Israel must not resort to any measure that undermines guarantees set out by both IHL and IHRL in Gaza, such as the right to medical treatment, access to primary education, and movement between the West Bank and Gaza. Israel, as the Occupying Power, must also respect the obligation to agree and facilitate the delivery of humanitarian assistance.

66. With regard to the human rights obligations of Israel in the occupied Palestinian territory, Israel is bound by those human rights treaties that it ratified. The ICJ concluded that the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child are applicable.<sup>36</sup> The ICJ also noted that Israel's obligations under ICESCR include "an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities".<sup>37</sup>

67. Israel had suggested on numerous occasions – including in submission to treaty bodies and in the Universal Periodic Review conducted by the Human Rights Council – that its human rights obligations do not extend extraterritorially to occupied Palestinian territory. However, the unwavering position of United Nations human rights treaty bodies corresponds to that of the ICJ, namely that as a State-party to international human rights instruments, Israel continues to bear responsibility for implementing its human rights treaty obligations in the occupied Palestinian territory, to the extent that it continues to exercise jurisdiction in that territory, including the Gaza Strip.<sup>38</sup>

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<sup>34</sup> "not only are the respondents allowing the transfer essential goods to the civilian population in the Gaza Strip, but they also regard this as a humanitarian obligation for which they are liable pursuant to international law [...]."

[http://elyon1.court.gov.il/Files\\_ENG/07/320/091/n25/07091320.n25.pdf](http://elyon1.court.gov.il/Files_ENG/07/320/091/n25/07091320.n25.pdf)

<sup>35</sup> See: <https://www.diakonia.se/globalassets/blocks-ihl-site/ihl-file-list/ihl-expert-opinions/cutting-off-electricity-and-water-supply-for-the-gaza-strip-limits-under-international-law.-dr.-iur.-prof-michael-bothe.pdf>

<sup>36</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, I.C.J. Reports 2004, paras. 111-113.

<sup>37</sup> *Ibid.*

<sup>38</sup> CCPR/C/ISR/CO/4. See also CCPR/C/ISR/CO/3: "The Committee therefore reiterates and underscores that, contrary to the State party's position, in the current circumstances, the provisions of the Covenant apply to the benefit of the population of the occupied territories, including in the Gaza Strip, with regard to all conduct by the State party's authorities or agents in those territories affecting the enjoyment of rights enshrined in the Covenant."

68. In relation to Gaza, the Occupying Power must allow the free passage and guarantee the protection of all relief supplies, given it is reasonably satisfied that these consignments are to be used for the relief of the needy population. Furthermore, it may not divert these supplies from their intended destination or recipient, nor may it confiscate them or make of any other use outside that for which they were intended. It is authorized to impose certain, limited restrictions on humanitarian assistance actors, their activities and the supplies they intend to distribute in the territory it controls. As a general rule, any restrictions or control measures must be temporary, exceptional, and based on valid grounds, not arbitrary, capricious, or unlawful denial. These may include urgent and imperative security needs and the need to serve the interests of the local population.

### **b. The Siege of Gaza**

69. The maritime blockade of Gaza was the subject of intense legal scrutiny by a UN independent panel, Israel and Turkey<sup>39</sup>, among others (following the interception of a flotilla headed to Gaza), while the closure on land, and the severance of Gaza from the West Bank, including East Jerusalem, has to date been the subject of lesser legal discussion. The restrictions imposed by Israel on goods entering Gaza by land, and the maritime blockade over the waters off Gaza could be seen to constitute a single "siege", continuously in force at least since 2007, despite the changing descriptions given to it by Israel.

70. The siege was intended as a form of economic and political warfare and is not restricted to items that could be utilized in active hostilities directed at Israel, but also includes ordinary consumer goods with no military application<sup>40</sup>. As such, it has a disproportionate and punitive impact on the civilian population and has aggravated the humanitarian crisis in Gaza. It amounts to the collective punishment of civilians in Gaza, in breach of Article 33 of the Fourth Geneva Convention<sup>41</sup>, as noted on numerous occasions by the High Commissioner for Human Rights, the Human Rights Council, and the ICRC<sup>42</sup>.

71. Israel on its part argues that there is no evidence that suggests the maritime blockade and the accompanying land closure are contrary to international law. Moreover, Israel had repeatedly argued in relation to the land closure that the right of the nationals of one State to cross the borders into another State with which they are at war is not unlimited. A State may, Israel argues, restrict the freedom of movement of persons beyond its borders in order to protect national security and public order. This has been the argument most recently presented in relation to the use of lethal force to suppress a march on the outskirts of Gaza.

72. However, it could be argued that Israel is the Occupying Power in Gaza, and cannot blockade the borders of territory it occupies and must ensure contiguity and freedom of movement within and outside occupied territory, to the maximum extent possible. This obligation stems from the 'conservationist principle of IHL, found in Article 43 of the Hague Regulations and Article 64 of the Fourth Geneva Convention. The Occupying Power is not entitled to bring about changes in the status and intrinsic characteristics of the occupied territory.

73. In the Declaration of Principles<sup>43</sup>, Israel accepted the principle of Gaza and the West Bank as a single territorial unit. The practical significance of this principle was embodied in arrangements regarding safe passage between Gaza and the West Bank within the framework of the Interim

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<sup>39</sup> [http://www.un.org/News/dh/infocus/middle\\_east/Gaza\\_Flotilla\\_Panel\\_Report.pdf](http://www.un.org/News/dh/infocus/middle_east/Gaza_Flotilla_Panel_Report.pdf)

<sup>40</sup> <http://www.cogat.mod.gov.il/en/services/Documents/List%20of%20Dual%20Use%20Items%20Requiring%20a%20Transfer%20License.pdf>

<sup>41</sup> "No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. Pillage is prohibited. Reprisals against protected persons and their property are prohibited."

<sup>42</sup> See for example: Report of the United Nations Fact finding Committee on the Gaza Conflict, (2009) UN Doc. A/HRC/12/48; United Nations Security Council (UNSC) Res 1860 (8 January 2009) S/RES/1860; Human Rights Council Resolution S-9/1 (12 January 2009) A/HRC/S-9/L.1.

<sup>43</sup> <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/declaration%20of%20principles.aspx>



Agreement, and the Safe Passage Protocol<sup>44</sup>. However, these arrangements have not been implemented.

74. The imposition of a siege over territories under belligerent occupation could be seen as a legal nullity. If that argument is made authoritatively, by way of an expert opinion, the enforcement of such a closure, as well as any other act or practice linked thereto, could be seen as unlawful. It would form the basis for approaching the terms of land closure and the movement of goods and persons to and from Gaza and the West Bank, towards ending the closure of Gaza, within the framework of UN Security Council Resolution 1860<sup>45</sup> and the revival of the safe passage protocol between the West Bank and the Gaza Strip.

75.

**(a)** We urge the Committee to recall that the West Bank, including East Jerusalem, and the Gaza Strip together constitute a single self-determination unit, and that Israel is bound by a normative requirement to maintain the territorial integrity of a future Palestinian State and prevent the irreversible severance of Gaza from the remainder of Palestinian territory;

**(b)** Remind Israel that in the Declaration of Principles, it had accepted the principle of Gaza and the West Bank as a single territorial unit. The practical significance of this principle was embodied in arrangements regarding safe passage between Gaza and the West Bank within the framework of the Interim Agreement and the Safe Passage Protocol, and Israel should implement those forthwith;

**(c)** Recall that the restrictions imposed by Israel on persons and goods entering and exiting Gaza by land, and the maritime and air blockade Gaza constitute a single "siege", continuously in force at least since 2007, and intended as a form of economic and political warfare. As such, it has a disproportionate and punitive impact on the civilian population and has aggravated the humanitarian crisis in Gaza. It amounts to the collective punishment of civilians in Gaza, in breach of Article 33 of the Fourth Geneva Convention;

**(d)** Further recall that by preventing Palestinians at-large from freely choosing their place of residence, be it the West Bank or Gaza, and from changing their place of residence at will, Israel is imposing a collective measure of assigned residence without due consideration for its lawful purpose and execution. Inhibiting Palestinians from choosing their place of residence would thus amount to a form of collective punishment, and remind Israel that as the Occupying Power in Gaza it must ensure contiguity and freedom of movement within and outside occupied territory, to the maximum extent possible;

**(e)** The Committee should further impress upon Israel that the siege on Gaza remains a major impediment to the delivery of humanitarian aid, is disproportionate to Israel's security requirements, prevents efficient humanitarian access to those in need in Gaza and fails to meet the requirements for facilitating humanitarian assistance mandated under international law.

<sup>44</sup><http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/protocol%20concerning%20safe%20passage%20between%20the%20west.aspx>

<sup>45</sup> <https://unispal.un.org/DPA/DPR/unispal.nsf/0/96514396E8389A2C852575390051D574>