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

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

#### **Note by the Secretary-General\*\***

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

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\* A/74/50.

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

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

### *Summary*

The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, S. Michael Lynk, submits his second report to the General Assembly. The report is based primarily on information provided by victims, witnesses, civil society representatives, United Nations representatives and Palestinian officials in Amman, Jordan, in connection with the mission of the Special Rapporteur to the region in June 2019. The report addresses a number of concerns pertaining to the situation of human rights in the West Bank, including East Jerusalem, and in Gaza.

## I. Introduction

1. The present report provides a brief overview of the most pressing human rights concerns in the Occupied Palestinian Territory at the time of submission, as identified by the Rapporteur in conversations and meetings with civil society. The report then presents a detailed analysis of accountability, impunity and the responsibility of the international Community to bring an end to the occupation of the Occupied Palestinian Territory and other Israeli practices amounting to violations of international humanitarian and human rights law.

2. The Special Rapporteur would like to once again highlight that despite his requests, he has not yet been granted access to the Occupied Palestinian Territory by Israel. The Special Rapporteur most recently requested access to the Occupied Palestinian Territory on 20 May, 2019. As of the writing of this report, no reply had been received. The Special Rapporteur emphasizes once again his view that an open dialogue among all parties is essential for the protection and promotion of human rights, and reminds Israel that he is ready and willing to engage. Israel's pattern of non-cooperation with the mandate is a serious concern. A full and comprehensive understanding of the situation based on first-hand access would be extremely beneficial to the work of a Special Rapporteur.

3. The report is based primarily on written submissions as well as consultations with civil society representatives, victims, witnesses, Palestinian government officials, and United Nations representatives held in Amman, Jordan during the Special Rapporteur's annual mission to the region in July 2019. The Special Rapporteur would like to note that several groups were unable to travel to Amman to meet with him due to travel restrictions imposed by the Israeli authorities. All individuals and organizations based in Gaza were consulted by video-conference as a result.

4. In the present report, the Special Rapporteur focuses on third parties' obligations under international human rights law and international humanitarian law, as set out in the mandate.<sup>1</sup> The Special Rapporteur calls upon all actors to ensure respect for international human rights law and international humanitarian law, noting that violations of these bodies of law by any actor are deplorable and will only hinder the prospects for peace.

5. The Special Rapporteur wishes to express his appreciation for the full cooperation with his mandate extended by the Government of the State of Palestine. The Special Rapporteur wishes to extend his thanks to all those who travelled to Amman to meet with him, and to those who were unable to travel but made written or oral submissions. The Rapporteur further extends his thanks once again to the Hashemite Kingdom of Jordan for its support and for the opportunity to hold meetings in Amman.

6. The Special Rapporteur emphasizes again his support for the vital work being done by Palestinian, Israeli, and international human rights organizations. This work is indispensable not only to the Rapporteur as he seeks to fulfil his mandate, but to the broader international community. The Rapporteur recalls that these organizations often face significant obstacles in carrying out their work, and the notes that these obstacles have only increased and intensified in the last year. The Rapporteur calls upon the international community to safeguard the rights of human rights organizations, and scrutinize and oppose any attempts to delegitimize or discredit the work of these organizations.

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<sup>1</sup> As specified in the mandate of the Special Rapporteur set out in resolution 1993/2.

## II. The Current Human Rights Situation

7. Since the Rapporteur's last report to the General Assembly, the human rights situation in the Occupied Palestinian Territory, particularly in Gaza, continued to be dire. Key issues raised in this mission included the continuing shrinking of civic space, pervasive lack of accountability in particular relation to the investigation and prosecution of hostilities in Gaza in 2014, home demolitions in the West Bank in particular in East Jerusalem, the ongoing use of administrative detention and detention of children, and the impact of various practices on the environment.<sup>2</sup>

8. This report cannot present a comprehensive overview of all issues of concern due to space limitations. Instead, the Rapporteur seeks to highlight here several of the most urgent concerns at the time of writing. This discussion will be followed by an in-depth analysis of third states' responsibility.

### A. Gaza

9. The land, sea and air blockade imposed on Gaza has now entered its twelfth year, severely restricting imports and exports, the movement of people in and out of Gaza, access to adequate healthcare, education, and livelihoods including agricultural land and fishing.<sup>3</sup> Restrictions of movement of humanitarian staff have particularly tightened since 2018 with Israel citing security concerns as its reason for tightening restrictions. The Gaza blockade is a denial of basic human rights and amounts to collective punishment.<sup>4</sup> The Gaza economy continues to be close to collapse, as determined by UNCTAD in July 2019.<sup>5</sup> UNRWA's uncertain financial situation and cuts to its programs have contributed to this situation. As of September 2019, the Agency managed to raise 110 million USD in June 2019, but still faces a shortfall in meeting its annual budget of 1.2 billion USD.<sup>6</sup> This shortfall is exacerbated by the fact that some countries announced that they will withhold the pledged amounts until information is clarified on alleged corruption.<sup>7</sup>

10. Despite the overall concerning humanitarian situation, there has been some noteworthy improvement in the availability of electricity supply to Gaza. The provision of 60 million USD from the Government of Qatar in October 2018, led to additional fuel provided to Gaza resulting in an immediate improvement in electricity supply. The improved supply of electricity has enabled the supply of 14-15 hours in a 24 hours period, as opposed to less than seven hours previously. Despite this improvement, the current electricity supply met less than half of Gaza's electricity demands for the first six months of 2019, and interruptions in the power supply still pose a significant obstacle to the functioning of hospitals and medical facilities.<sup>8</sup>

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<sup>2</sup> <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24817&LangID=E>.

<sup>3</sup> <https://www.un.org/unispal/humanitarian-situation-in-the-gaza-strip-fast-facts-ocha-factsheet/>.

<sup>4</sup> <https://www.ochaopt.org/content/increased-restrictions-movement-humanitarian-staff-and-out-gaza>.

<sup>5</sup> [https://unctad.org/meetings/en/SessionalDocuments/tdbex68d4\\_en.pdf](https://unctad.org/meetings/en/SessionalDocuments/tdbex68d4_en.pdf).

<sup>6</sup> <https://www.aljazeera.com/news/middleeast/2019/06/unrwa-raises-110m-cash-strapped-cuts-190625185118119.html>.

<sup>7</sup> <https://www.haaretz.com/middle-east-news/palestinians/swiss-dutch-suspend-funds-for-un-aid-agency-for-palestinians-over-graft-scandal-1.7608295>.

<sup>8</sup> <https://www.ochaopt.org/content/improvements-gaza-electricity-supply>.

### ***Demonstrations and the use of force***

11. The “Great March of Return” and related protests, have resulted to date in 207 Palestinians killed and 33,828 injured.<sup>9</sup> The Commission of Enquiry set up in the aftermath found that in all cases but two, the use of live ammunition by Israeli security forces against demonstrators was unlawful.<sup>10</sup> The Commission further found that demonstrators were shot in violation of their right to life, or of the principle of distinction under international humanitarian law.<sup>11</sup> Indeed, in the vast majority of cases the victims were situated far from the fence and Israeli forces were situated behind earth mounds with sufficient protection. Israel has demonstrated virtually no accountability for these actions despite calls by the international community and civil society for independent and transparent investigations into the incidents.<sup>12</sup>

12. Palestinians in Gaza have continued to demonstrate against the blockade and for the right to return to their homes, every Friday since March 2018. On Friday 6 September, 2019, for example, two children were killed by ISF live ammunition while demonstrating near the fence.<sup>13</sup> According to human rights organizations, of the injured, the majority sustained wounds from live fire, while others were hit directly by tear gas canisters.<sup>14</sup>

13. The Gaza health sector still struggles to cope with the massive number of injuries, a majority of them from gun-wounds. The health system in Gaza was already suffering from restrictions on people and materials, lack of electricity, shortages in certain equipment and supplies, and is severely overwhelmed to the point of collapse, by the need to treat the additional massive volume of injuries.<sup>15</sup> Gaza’s overstretched healthcare system compounded by the growing numbers of injuries from protests and demonstrations requiring urgent specialist attention, have contributed to a rise in requests for permits to leave Gaza for hospital referrals, most of these, denied.

### ***Human rights violations by Hamas in Gaza***

14. In May 2019, Hamas forces violently suppressed economic protests in Gaza. According to reports, Hamas beat and arrested scores of Palestinians who were protesting price rises and dire living conditions across the strip. The group of activists who had organized the protests, called themselves “we want to live”, and led small protests in several locations along the Gaza strip.<sup>16</sup> This latest Hamas crackdown comes after previous suppression of demonstrations in March 2019, in which hundreds of demonstrators were subjected to beatings, arbitrary arrest and detentions, and torture and ill treatment.<sup>17</sup> These actions by Hamas are alarming and in clear violation of Palestinians’ rights to freedom of expression and association, in addition such actions deprive them of their right to freedom from arbitrary

<sup>9</sup> <https://www.ochaopt.org/data/casualties>.

<sup>10</sup> A/HRC/40/74 para 94.

<sup>11</sup> A/HRC/40/74 para 97.

<sup>12</sup> [www.un.org/sg/en/content/sg/statement/2018-03-30/statement-attributable-spokesman-secretary-general-situation-gaza](http://www.un.org/sg/en/content/sg/statement/2018-03-30/statement-attributable-spokesman-secretary-general-situation-gaza).

<sup>13</sup> [https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=24957&LangID=E&fbclid=IwAR0tnvSbr9h9wtaN7GLo\\_tS6TjbtmfmraGGcP5DgWTG8Ja9pRscMbACe-xE](https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=24957&LangID=E&fbclid=IwAR0tnvSbr9h9wtaN7GLo_tS6TjbtmfmraGGcP5DgWTG8Ja9pRscMbACe-xE).

<sup>14</sup> <https://www.mezan.org/en/post/23567/71th+Friday+of+Demonstrations+in+Gaza%2C+161+Wounded%2C+including+56+Children%2C+One+Woman+and+Six+Paramedics>.

<sup>15</sup> [http://www.emro.who.int/images/stories/palestine/documents/who\\_emergency\\_trauma\\_response\\_to\\_gaza\\_demonstrations\\_2018\\_2019.pdf?ua=1&ua=1](http://www.emro.who.int/images/stories/palestine/documents/who_emergency_trauma_response_to_gaza_demonstrations_2018_2019.pdf?ua=1&ua=1).

<sup>16</sup> <https://www.theguardian.com/world/2019/mar/21/hamas-violently-suppresses-gaza-economic-israeli-border-protests>.

<sup>17</sup> <https://www.amnesty.org/en/latest/news/2019/03/gaza-hamas-must-end-brutal-crackdown-against-protesters-and-rights-defenders/>.

detention and physical integrity. It is the duty of the Hamas to ensure that Palestinians in Gaza are free to exercise their rights without threats, intimidation or abuse.

## **B. The West Bank**

15. Against the backdrop of increased calls for the annexation of parts or all of the West Bank by Israeli Prime Minister<sup>18</sup> and senior members of the Israeli government, levels of settler violence have increased in the West Bank. Incidents of settler violence were recorded in a number of West Bank towns including in Hebron, Nablus, and Ramallah. OCHA documented seven Palestinian deaths due to settler violence in 2019.<sup>19</sup> The frequency of these attacks has particularly increased in parts of the Jordan Valley, particularly in the northern Tubas District, where a number of attacks by Israeli settlers targeted Palestinian shepherds.<sup>20</sup> Many Palestinian inhabitants have been forced to leave these areas as a result of this violence while Israeli settlements continue to expand effectively surrounding and reducing the living space for these communities.

16. In parallel, the rate of home demolitions and seizure of Palestinian-owned structures has markedly increased in 2019, in comparison to previous years. As of July 2019, a total of 362 structures were destroyed by Israeli Authorities causing the displacement of more than 481 Palestinians. This marks an increase of 64 percent when compared to the equivalent period in 2018.<sup>21</sup> The locations most affected by demolitions were Hebron, Tubas and Nablus. Israeli authorities have cited a number of reasons for the demolitions including security threats and lack of building permits including in relation to buildings in the “buffer zone” in close proximity to the separation wall. It is an Israeli policy and trend to reject building permits.

17. Israeli Security Forces have also intensified their incursions and raids into various parts of the West Bank, targeting specific Palestinian civil society organizations, and Palestinian homes, resulting in arrests and arbitrary detentions. For example, on 19 September, Israeli Security Forces, raided the Prisoner Support and Human Rights Association (Addameer) and other organizations, and seized computer equipment and other documents. The increase in these raids underlines attempts to further silence civil society organizations and human rights defenders, particularly those working on accountability issues.

### ***Palestinian Authority imposed restrictions on freedom of expression and association***

18. The Palestinian Authority has continued imposing restrictions on the right to freedom of expression, association and peaceful assembly in the West Bank. In 2018, several journalists were arrested on account of violating provisions of the 2017 cyber-crime law.<sup>22 23</sup> Despite recent amendments to the law, proceedings that were initiated prior to the amendment were allowed to continue, for example the arrest noted above, on account of violating

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<sup>18</sup> <https://www.theguardian.com/world/2019/sep/10/netanyahu-vows-annex-large-parts-occupied-west-bank-trump>.

<sup>19</sup> <https://www.ochaopt.org/data/casualties>.

<sup>20</sup> [https://www.btselem.org/settler\\_violence/20190515\\_settlers\\_and\\_military\\_attacks\\_on\\_al\\_farisiyah\\_shepherds](https://www.btselem.org/settler_violence/20190515_settlers_and_military_attacks_on_al_farisiyah_shepherds).

<sup>21</sup> <https://www.un.org/unispal/document/west-bank-demolitions-and-displacement-an-overview-july-2019-ocha-publication/>.

<sup>22</sup> A/HRC/40/39, para 60.

<sup>23</sup> The Palestinian cybercrime law, adopted by Presidential Decree No. 16 in June 2017, was amended in May 2018 by Presidential Decree No. 10, A/HRC/40/43, para 46.

provisions in the law. In one of the cases, a Palestinian journalist was arrested and charged with defamation and slander, on the basis of the law.<sup>24</sup>

### C. East Jerusalem

19. Since 2018, several measures have been taken by the Government of Israel in order to strengthen and promote its claim for sovereignty over East Jerusalem. These include legislation, increased demolition and eviction orders to Palestinian residents, increased construction of settlements and the announced plan for the extension of the Jerusalem municipality to East Jerusalem.<sup>25</sup>

20. Recent figures indicate an increased rate of demolition of Palestinian homes in East Jerusalem, as well as settlement construction and expansion. As of 30 April 2019, 111 Palestinian-owned structures had been destroyed in East Jerusalem since the beginning of the year, either directly by the Israeli authorities or demolished by their owners to avoid fines, following the issuance of demolition orders for lack of building permits. Of these, 57 percent were demolished in April.<sup>26</sup> This increase in both demolitions of Palestinian homes and construction of settlements, spearheaded by a perceived green light by the US, cannot be understood in any other way other than changing the demographic balance by reducing Palestinian presence, and strengthening the Jewish majority in East Jerusalem.<sup>27</sup>

21. On 4 October 2018, the Jerusalem municipality announced a plan to extend its control to all of Jerusalem, including East Jerusalem, and replace UNRWA's services with local municipal services. As part of this announcement, the outgoing mayor of Jerusalem Nir Barkat made an explicit commitment to dismantling UNRWA's facilities in East Jerusalem, and noted the municipality's intent to provide medical, education, and sanitation services in UNRWA's stead.<sup>28</sup> Subsequently, Israeli forces entered an UNRWA clinic in East Jerusalem and demanded to see a permit.<sup>29</sup> UNRWA has since stated that it was not notified of the Municipality's decisions and has expressed its strong opposition to Israel's attempt to change the Agency's operational area. In a statement from January 2019, UNRWA further reminded Israel of its obligation to protect the Agency's installations in areas under its authority.<sup>30</sup> As highlighted in my previous report to the General Assembly (A/73/447), Israel's extension of its laws and civil authority to occupied East Jerusalem is part of its continuing efforts to ensure that the de jure annexation of East Jerusalem is irreversible.<sup>31</sup>

22. Against this backdrop of the municipality's increased demonstration of control, over the months of June-July 2019, Israeli police intensified its incursions into the Palestinian neighbourhood of Isawiyah carrying out around 340 arrests. Most of those arrested were released shortly after their arrest. According to some sources, charges were filed against five

<sup>24</sup> A/HRC/40/39, para 60.

<sup>25</sup> Information provided by an international humanitarian organization. Also <https://www.alhaq.org/advocacy/6263.html>.

<sup>26</sup> <https://www.ochaopt.org/content/un-officials-call-immediate-halt-demolitions-east-jerusalem-and-respect-international-law>.

<sup>27</sup> [http://www.jlac.ps/userfiles/file/Annual\\_Reports/AnRep2018.pdf](http://www.jlac.ps/userfiles/file/Annual_Reports/AnRep2018.pdf).

<sup>28</sup> <https://www.aljazeera.com/news/2018/10/jerusalem-remove-unrwa-lie-palestine-refugees-181004191311082.html>.

<sup>29</sup> <https://www.haaretz.com/israel-news/.premium-unrwa-says-israeli-inspectors-tried-to-raid-its-east-jerusalem-clinic-1.6544470>.

<sup>30</sup> <https://www.unrwa.org/newsroom/official-statements/unrwa-was-not-notified-any-decision-close-down-schools-it-operates-east>.

<sup>31</sup> A/73/447, para 37.

suspects.<sup>32</sup> The enhanced police operations and presence included use of roadblocks at roads leading to the village, close inspection of cars, nightly checkpoints inside the village and late-night house searches and arrests. Clashes broke out in the village as a result of the heightened police presence and anger of residents. Many residents were reportedly injured in these clashes, most by rubber bullets and at least one Palestinian man was killed by police in late June.<sup>33</sup>

23. Of final concern, is Israeli interference with Palestinian children's right to education in East Jerusalem. Israeli government decision 3890 announced in May 2018, includes investment of 1.85 billion shekels in infrastructure and services for East Jerusalem. According to the NGO Ir Amim however, 43.4 percent of the budget is intended to narrow the discrepancies in education between West and East Jerusalem, and is conditioned on a transition from the Palestinian matriculation system to the Israeli system.<sup>34</sup> Palestinians in East Jerusalem essentially find themselves between a rock and a hard place, having to choose what may provide their children with more opportunities in the short term even if it leads to a further erosion of the Palestinian identity and autonomy. Israel's attempt to influence schools to change the curriculum in conjunction with the municipality's intention to close down UNRWA paints a concerning picture of efforts to further diminish the Palestinian autonomy and identity in East Jerusalem.<sup>35</sup>

#### **D. Human rights of children**

24. Children constitute almost 48 percent of the Palestinian population in the West Bank and Gaza. Of these, 1.3 million children live in the West Bank and 1 million in the Gaza Strip.<sup>36</sup> Children in the West Bank and Gaza continue to suffer adverse physical and psychological affects stemming from their exposure to continuous violence including in the context of the Great March of Return and other demonstrations. According to the report of the Secretary-General on children and armed conflict, in 2018, UN verified the highest number of Palestinian children killed (59 children) and injured (2,756 children) since 2014.<sup>37</sup>

25. Children in Gaza continued to face barriers in their access to adequate health care, including through the denial or delay of applications to cross to Israel for medical treatment. The approval rate for such applications is significantly lower for Palestinian children who were injured during demonstrations in Gaza in comparison to those injured in other circumstances. In 2018, 22 percent of such applications were approved, compared to an average 75 percent approval for other cases involving children.<sup>38</sup> Israeli authorities continue to deny or delay applications for companions applying to travel with children in need of specialized health care in Israel.<sup>39</sup>

26. Children's access to education is severely restricted in the occupied West Bank and Gaza. The Secretary General's Annual Report on Children and Armed Conflict verified 118 incidents of interference with education in the occupied Palestinian Territory in 2018,

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<sup>32</sup> <https://www.haaretz.com/israel-news/.premium-340-arrests-and-only-five-indictments-police-sweep-strikes-fear-in-isawiyah-1.7761721>.

<sup>33</sup> <https://www.haaretz.com/israel-news/.premium-340-arrests-and-only-five-indictments-police-sweep-strikes-fear-in-isawiyah-1.7761721>.

<sup>34</sup> [http://www.ir-amim.org.il/sites/default/files/The%20State%20of%20Education\\_0.pdf](http://www.ir-amim.org.il/sites/default/files/The%20State%20of%20Education_0.pdf).

<sup>35</sup> <https://www.haaretz.com/israel-news/.premium-critics-five-year-plan-for-e-j-lem-focuses-on-israelization-1.6429472>.

<sup>36</sup> <https://www.unicef.org/sop/reports/children-state-palestine>.

<sup>37</sup> A/73/907-S/2019/509, para. 84.

<sup>38</sup> A/73/907-S/2019/509, para. 94.

<sup>39</sup> [http://www.emro.who.int/images/stories/palestine/documents/June2019-Monthly\\_report.pdf](http://www.emro.who.int/images/stories/palestine/documents/June2019-Monthly_report.pdf).

affecting over 23,000 children.<sup>40</sup> More than half of these incidents involved Israeli forces firing live ammunition, tear gas and sound grenades in and around schools.<sup>41</sup> In Gaza there is a serious shortage of classrooms leading to the operation of a “shift system” of classes. Students study in the 274 UNRWA schools across the Gaza Strip, of which 84 operate on a single shift basis, 177 on a double shift, and 13 schools on a triple shift, staffed by some 8,676 education personnel.<sup>42</sup>

27. Palestinian children also suffer along with their families the anxiety associated with living under threat of demolition of their homes. Accordingly, they are subjected to growing levels of stress as the numbers of eviction and demolition orders have risen, in particular in East Jerusalem.<sup>43</sup> In 2019, there have been many examples of Palestinian homes demolished by Israeli forces that resulted, among other things, in displacement of entire families and adverse effects on children’s wellbeing. For example, on 25 April, 2019, Israeli authorities demolished a home in Az Zawiyah village in Area B, on punitive grounds. This demolition resulted in the displacement of five children and their parents.<sup>44</sup> Displacement, particularly for the most vulnerable, is traumatic and has lasting consequences, and this is particularly the case for children.

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

28. Accountability – the duty to account for the exercise of power – is an indispensable cornerstone of the rule of law and a rules-based international order. No legal system, domestic or international, can acquire and sustain popular legitimacy if it cannot impose effective sanctions and provide restorative remedies when the laws it proclaims are breached. Without accountability, power trumps law, justice becomes a hollow promise and those without power are left either to suffer or to pursue irregular and even violent means outside of the legal order to achieve their own rough measure of justice.<sup>45</sup> A right without a remedy is ultimately no right at all.

29. The enemies of accountability are impunity and exceptionalism. As was stated recently at the United Nations Security Council: “International law is not a menu à la carte.”<sup>46</sup> Those who maintain that they are exempt from the directions of our international legal and diplomatic order not only defy the rule of law, but they also fail the test of political realism. For no country can sustain for long its standing and influence among the community of nations if it asserts special arguments forbidden to others.<sup>47</sup> And no international rules-based order can command the requisite compliance with its laws and directions if it allows defiance and exceptionalism to thrive unchallenged. Impunity anywhere is a danger to justice everywhere.

30. An acute problem in the modern world is not the absence of laws, but the absence of international political will. “We don’t lack law,” observed Ambassador Jonathan Allen of the

<sup>40</sup> A/73/907-S/2019/509, para.91.

<sup>41</sup> A/73/907-S/2019/509, para.91.

<sup>42</sup> <https://www.unrwa.org/activity/education-gaza-strip>.

<sup>43</sup> <https://www.streetchildren.org/wp-content/uploads/2013/01/broken-homes.pdf>.

<sup>44</sup> [https://www.ochaopt.org/sites/default/files/poc\\_report\\_23april\\_6may2019.pdf](https://www.ochaopt.org/sites/default/files/poc_report_23april_6may2019.pdf).

<sup>45</sup> Universal Declaration of Human Rights, preamble: “Whereas 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;”.

<sup>46</sup> <https://new-york-un.diplo.de/un-en/news-corner/190723-heusgen-middleeast/2238356>.

<sup>47</sup> Barber, *Fear’s Empire: War, Terrorism and Democracy*.

United Kingdom during a United Nations Security Council briefing on international humanitarian law in April 2019. “We lack enforcement and accountability.”<sup>48</sup> Far too often, accountability has been applied by the international community in a selective and partisan fashion on many serious issues, reflecting a dispiriting mixture of design and indifference, collusion and apathy. On too many occasions, defiance has been ignored and outliers have been excused or appeased. This deficit of accountability erodes popular trust in the efficacy of international law, thereby jeopardizing a precious common good.

31. The 52-year-old Israeli occupation of the Palestinian territory – Gaza and the West Bank, including East Jerusalem – is a bitter illustration of the absence of international accountability in the face of the systemic violations of Palestinian rights under human rights and humanitarian law. Accountability is the key to opening the titanium cage that is the permanent occupation, and its principled application is the best path to a just and durable settlement. Israel, a relatively small country in terms of geography and population and with a particular dependence on the international community for both economic trade and investment and diplomatic cooperation, could not have sustained such a prolonged and repressive occupation in clear violation of international law without the active support and malign neglect of many in the industrialized world. While the international community has issued numerous resolutions and declarations critical of the unending Israeli occupation and its steady designs for annexation, these criticisms have rarely been matched with any meaningful consequences. In a comment that aptly applies to the wider world, Miguel Moratinos, the former European Special Representative for the Middle East, said with respect to the Israeli occupation: “We Europeans excel at declarations. It compensates for our scarcity of action.”<sup>49</sup>

32. This next part of the report reviews the obligations of the international community to bring serious human rights violations to an end and to closely regulate belligerent occupations, and examines the international community’s duty to ensure that its directions are obeyed by its fellow members. Later the report assesses the impunity enjoyed by Israel. And lastly the report discusses the various accountability measures that the international community has adopted and applied in select conflicts and zones of human rights violations, and considers which of these could be meaningfully applied to bring an end to the Israeli occupation.

## **A. The Legal Responsibilities of the International Community**

33. Since 1945, the community of nations has codified an impressive body of international law which establishes the responsibility of states to live by, and enforce, a rules-based international order. The promise of accountability – the mobilization of collective will and effective countermeasures to defend justice – is at the heart of this international order. The Special Rapporteur has identified three significant sources for the legal obligations that require the international community to marshal its political authority to compel Israel to completely end its illegal occupation and to remove its barriers to the fulfilment of Palestinian self-determination. They are:

- i. Common Article 1 of the four Geneva Conventions of 1949;
- ii. The 2001 Articles on State Responsibility for Internationally Wrongful Acts; and

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<sup>48</sup> <https://www.gov.uk/government/speeches/international-humanitarian-law-we-lack-enforcement-and-accountability>

<sup>49</sup> <https://www.haaretz.com/1.5138721>.

iii. Article 25 of the Charter of the United Nations.

***Common Article 1 of the Geneva Conventions of 1949***

34. The Fourth Geneva Convention of 1949 applies in full to the Israeli occupation of the Palestinian territory. This was first declared by the United Nations Security Council in 1967 within days of the occupation,<sup>50</sup> and this has been reconfirmed by the Security Council many times since, most recently in 2016.<sup>51</sup> Other primary institutions of the United Nations, including the General Assembly,<sup>52</sup> the Human Rights Council<sup>53</sup> and the International Court of Justice<sup>54</sup> have endorsed this view. Although Israel has ratified the Conventions<sup>55</sup> and the Security Council has called upon Israel to abide scrupulously by them,<sup>56</sup> it denies that the Fourth Geneva Convention applies to the conflict or that it is the occupying power of the Palestinian territory.<sup>57</sup> However, its position has found little support within the international community or among international law scholars.

35. Common Article 1 of the four Geneva Conventions proclaims that: “The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.”<sup>58</sup>

36. This solemn obligation is central to the enforcement of the rights guaranteed in the four Geneva Conventions and in international humanitarian law. Contemporary legal scholars have stated that Common Article 1 has acquired a ‘quasi-constitutional nature’,<sup>59</sup> an elevated legal status which requires states to not only obey the Conventions themselves, but to take all steps within their capacity to insist that other states meet their obligations under international humanitarian law.<sup>60</sup> Common Article 1 is also reflective of customary international law, giving it a universal standing.<sup>61</sup>

37. The authoritative commentary on the four Geneva Conventions was issued by the International Committee of the Red Cross (ICRC) in 2016.<sup>62</sup> On Common Article 1, the ICRC Commentary noted that the obligation to ‘ensure respect’ is not a “loose pledge but a commitment vested with legal force.”<sup>63</sup> In interpreting this provision, the International Court of Justice stated that the term “undertake” is “not merely hortatory or purposive,” nor is it meant to simply introduce subsequent obligations; rather, it is itself intended to “accept an obligation.”<sup>64</sup> The ICRC Commentary further explains: “By committing themselves to ‘respect and to ensure respect’ for the Conventions, States have also recognized the

<sup>50</sup> UN Security Council Resolution 237.

<sup>51</sup> UN Security Council Resolution 2334.

<sup>52</sup> UNGA Res. 73/97.

<sup>53</sup> UN HRC Res. 40/23.

<sup>54</sup> <https://www.icj-cij.org/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>, para. 101.

<sup>55</sup> Israel, 6 July 1951.

<sup>56</sup> UNSC Resolution 446.

<sup>57</sup> <https://www.icrc.org/en/international-review/article/icrc-israel-status-territories>.

<sup>58</sup> <https://www.icrc.org/en/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm>.

<sup>59</sup> Boisson de Chazournes & Condorelli, “Common Article 1 of the Geneva Conventions: Its implications on International and Non-International Armed Conflicts”, 68.

<sup>60</sup> <https://www.icrc.org/en/international-review/article/common-article-1>.

<sup>61</sup> <https://www.icj-cij.org/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>, supra, note 14, at para. 158.

<sup>62</sup> <https://ihl.databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=72239588>  
AFA66200C1257F7D00367DBD, paras. 118-191.

<sup>63</sup> Ibid, para. 170.

<sup>64</sup> <https://www.icj-cij.org/en/case/91/judgments>, para. 162.

importance of adopting all reasonable measures to prevent violations from happening in the first place.”<sup>65</sup> And when violations of the Conventions have occurred, the High Contracting Parties will only satisfy their legal obligations under Common Article 1 “...as long as they have done everything reasonably in their power to bring the violations to an end.”<sup>66</sup>

38. The ICRC Commentary emphasizes that the obligations in the Conventions are of such fundamental importance to our international civilization that they are *erga omnes partes*: obligations owed towards all other High Contracting Parties, at all times.<sup>67</sup> Regarding Common Article 1, this creates two primary interdependent obligations: (i) every individual High Contracting Party (HCP) is duty-bound to all other HCPs to respect all of its own obligations under the Conventions (a negative duty not to violate); and (ii) all HCPs bear a duty, individually and collectively, to ensure that every other HCP is respecting all of its obligations under the Conventions (a positive duty to compel others to comply).<sup>68</sup>

39. What nature of violations of international humanitarian law would trigger the obligations by other HCPs to ensure respect? Common Article 1 must be read broadly and purposively.<sup>69</sup> Political considerations, such as domestic inertia or the unwillingness to confront an ally, are insufficient reasons to abstain from fulfilling the obligations to ensure accountability. As Dr. Theo Boutruche and Professor Marco Sassoli have stated:

“By definition, the existence of a legal duty in the form of the obligation to ensure respect requires an objective assessment and prevents a State from using mere political considerations to claim that no steps can be taken under that obligation. The fact that the fulfilment of an international obligation can prove to be politically difficult cannot serve as a ground to refuse to take any measure in the implementation of that obligation”.<sup>70</sup>

40. While states have an obligation to ensure respect for the Conventions “in all circumstances” and with respect to all violations, it is abundantly clear that serious violations and grave breaches of the Conventions trigger a particularly compelling international onus on all other HCPs to use all available means to bring these violations and breaches to an end.<sup>71</sup> Serious violations and grave breaches under international humanitarian law would include: wilful killing; extensive destruction and appropriation of property; collective punishment; unlawful deportation, transfer, and unlawful confinement; launching indiscriminate attacks affecting the civilian population; the transfer by the occupying power of parts of its own civilian population in the occupied territory; and practices of racial separateness and discrimination.<sup>72</sup> All of these grave breaches have been either substantively alleged or actually established during Israel’s conduct of the occupation.<sup>73</sup>

41. The International Court of Justice, in its 2004 Wall Advisory Opinion, has expressly stated that the HCPs bear a responsibility to ensure that Israel, the occupying power, fulfils its obligations under the Fourth Geneva Convention.<sup>74</sup>

<sup>65</sup> Supra, note 62, at para. 121.

<sup>66</sup> Ibid, para. 164.

<sup>67</sup> Ibid, at para. 119.

<sup>68</sup> Ibid, at paras. 153-73.

<sup>69</sup> Geiss, “The Obligation to Respect and to Ensure Respect for the Convention”, in A. Clapham et al (eds.) *The 1949 Geneva Conventions: A Commentary*, chap. 6, at 113.

<sup>70</sup> <https://www.nrc.no/globalassets/pdf/legal-opinions/eo-common-article-1-ihl---boutruche---sassoli---8-nov-2016.pdf>

<sup>71</sup> Reinforced by Article 146 of IVGC and Article 86 of Additional Protocol 1, 1977.

<sup>72</sup> Articles 33, 49 and 147 of IVGC, and Article 85 of Additional Protocol 1.

<sup>73</sup> Human Rights Watch, Amnesty International, Al-Haq, Al Mezan, B’Tselem and Gisha, among others.

<sup>74</sup> <https://www.icj-cij.org/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>, para. 159.

42. Taken together, the special place of international humanitarian law within international law, the direction of the International Court of Justice that the responsibilities under the Geneva Conventions on the international community are lawful obligations rather than moral sentiments, and the emphasis in the ICRC Commentary that the Conventions are invested with binding obligations cumulatively place a substantive legal duty on all HCPs to take all measures within their power to bring the Israeli occupation and its multiple violations of the law to a swift and complete end. While the occasional declarations by the HCPs regarding the humanitarian principles applicable to the occupation and the conflict are welcomed,<sup>75</sup> much more is required and needed to satisfy the obligation to ensure respect for the Conventions.

***The 2001 Articles on State Responsibility for Internationally Wrongful Acts***

43. In August 2001, at the end of a five-decade-long codification process, the International Law Commission adopted the Articles on Responsibility of States for Internationally Wrongful Acts (“The Articles”).<sup>76</sup> The United Nations General Assembly accepted the Articles in December 2001.<sup>77</sup> A basic norm of international law is that all states are to obey international law at all times, consistent with their obligations under our rules-based international order. The Articles establish, as a foundational principle, that all states assume a legal responsibility to ensure that other states respect international law at all times. As such, all states bear the responsibility to not recognize as lawful any situation created by a serious breach of an obligation by another state arising from a peremptory norm of general international law. The Articles are widely considered to reflect customary international law on state responsibility.<sup>78</sup>

44. Article 40 of the ARS states:

“1. This chapter applies to the international responsibility which is entailed by a serious breach by a State of an obligation arising under a peremptory norm of general international law. 2. A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible State to fulfil the obligation.”

45. A peremptory norm (a *jus cogens* norm) of general international law is a lawful obligation which is accepted by the international community as a norm from which no derogation (or exception) is permitted.<sup>79</sup> According to the substantive commentary on the Articles issued by the United Nations in 2008,<sup>80</sup> peremptory norms of law would include respect for the basic rules of international humanitarian law and the right to self-determination, as well as the prohibitions against racial discrimination, apartheid, genocide, annexation, aggression and torture.<sup>81</sup> A ‘systematic’ violation mentioned in Article 40(2) is one that is carried out in an “organized and deliberate manner”, while a ‘gross’ violation “denotes violations of a flagrant nature, amounting to a direct and outright assault on the values protected by the rule.”<sup>82</sup>

<sup>75</sup> The Conference of the High Contracting Parties has issued statements and declarations on the humanitarian principles applicable to the Israeli occupation of Palestinian territory in 1999, 2001 and 2014. <https://unispal.un.org/UNISPAL.NSF/0/E7B8432A312475D385257DB100568AE8>

<sup>76</sup> <https://www.refworld.org/pdfid/3ddb8f804.pdf>.

<sup>77</sup> UNGA Res. 56/83.

<sup>78</sup> Crawford, *State Responsibility: The General Part*, at 43.

<sup>79</sup> <https://treaties.un.org/doc/publication/unts/volume%201155/volume-1155-i-18232-english.pdf>, Article 53.

<sup>80</sup> [http://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001.pdf](http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf).

<sup>81</sup> *Ibid*, Commentary on Article 40.

<sup>82</sup> *Ibid*.

46. Article 41 of the ASR states:

“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”.

47. As per Article 41 of the ASR, States assume three basic obligations as part of their responsibility to ensure that other states uphold international law: (i) they cannot recognize as lawful situations those created by serious breaches as understood by Article 40; (ii) they cannot offer aid or assistance in maintaining any situation involving serious breaches; and (iii) they have a positive duty to cooperate with each other in bringing these serious breaches to an end.<sup>83</sup> The purpose for these special third party responsibilities is to counteract the challenge that these serious breaches pose to the legal, political and moral order of the international community as a whole.

48. The obligation of non-recognition of an unlawful situation resulting from a serious breach of a peremptory norm is to prevent the validation of an illegal *fait accompli* from crystallizing into a law-creating fact over time.<sup>84</sup> It is grounded in the legal principle *ex injuria jus non oritur*: legal rights cannot derive from an unlawful act. According to the Articles, states are prohibited from offering recognition to a transgressing state which would allow it to acquire, among other acts, sovereign title to annexed territory, lawful condonation for its practices of racial discrimination or apartheid, or legal acceptance for its denial of self-determination through its sustained defiance and the passage of time.<sup>85</sup>

49. The obligation not to provide aid or assistance to maintaining a serious breach of international law is based on the principles of interdependence and solidarity that underlie the Charter of the United Nations and other lawful duties inherent in our rules-based international order.<sup>86</sup> This obligation requires states to individually refuse to offer any form of support to the transgressing state in its continuation of the serious breach. States that knowingly provide assistance to the transgressing state which aids in the ongoing breach will themselves become responsible for the adverse effects of their assistance.<sup>87</sup> The Security Council has directed the international community to apply this principle with respect to the Israeli settlements.<sup>88</sup>

50. The obligation of cooperation creates a positive duty on all states to jointly partake in lawful actions on behalf of the international community to bring an end to the serious breaches of the transgressing state.<sup>89</sup> Without detailing the forms of cooperation that may be required, the obligation nevertheless establishes the duty to take collective action where serious breaches have occurred. This builds upon the obligation of cooperation found in the Declaration on Friendly Relations and Cooperation, adopted by the United Nations in October 1970.<sup>90</sup>

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<sup>83</sup> Ibid, Commentary on Article 41.

<sup>84</sup> Dawidowicz, “The Obligation of Non-Recognition of an Unlawful Situation”, in Crawford, *The Law of International Responsibility*, chap. 46.

<sup>85</sup> Supra, note 80, Commentary on Article 41, [http://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001.pdf](http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf).

<sup>86</sup> Jorgensen, “The Obligation of Non-Assistance to the Responsible State”, in Crawford, supra, note 84, chap. 47.

<sup>87</sup> Supra, note 80, Commentary on Article 41.

<sup>88</sup> UNSC Res. 465, para. 7.

<sup>89</sup> Jorgensen, “The Obligation of Cooperation”, in Crawford, supra, note 84, chap. 48.

<sup>90</sup> Annex to UNGA Res. 2625 (XXV).

### *Article 25 of the Charter of the United Nations*

51. Article 25 of the Charter of the United Nations provides that:

“The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.”

The prevailing view respecting the scope of Article 25 is that resolutions adopted by the Security Council that ‘decide’, rather than simply ‘recommend’, are binding decisions on all United Nations members, and they must be obeyed and implemented.<sup>91</sup> This binding authority of Security Council decisions follows the fact that all states, in agreeing to become members of the United Nations, have consented to being bound by the terms of the United Nations Charter.<sup>92</sup>

52. The leading judicial interpretation of the meaning and scope of Article 25 was provided by the International Court of Justice in its 1971 Namibia Advisory Opinion. In its commentary on Article 25, the ICJ ruled on three significant issues. First, it dismissed the argument advanced by apartheid South Africa that Article 25 is limited only to those occasions when a Security Council resolution specifically mentions Chapter VII (the chapter of the Charter which addresses enforcement mechanisms to address threats or breaches to the peace).<sup>93</sup> This finding confirmed that the Security Council is entitled to issue legally binding decisions outside of Chapter VII, thus ensuring its effectiveness to compel obedience to a variety of Security Council resolutions addressing a range of crises, violations to international law and non-compliance with previous United Nations decisions.

53. Second, the ICJ Namibia Advisory Opinion laid out a viable legal test to determine when the language of a Security Council resolution constituted a ‘decision’, and was therefore binding on United Nations members. It stated that the language of a UNSC resolution had to be carefully analyzed to assess its legally binding nature, including:

- the terms of the resolution to be interpreted;
- the discussions leading to it;
- the Charter provisions invoked; and
- all other relevant circumstances.<sup>94</sup>

The ICJ, in the Namibia Advisory Opinion, had reviewed the language of UNSC Resolution 276 (1970) dealing with apartheid South Africa’s expired mandate over Namibia.<sup>95</sup> The ICJ ruled that paragraphs 2 and 5 of the Resolution were both legally binding on all State members of the United Nations “which are thus under obligation to accept and carry them out.”<sup>96</sup>

- Paragraph 2 of Resolution 276 “Declares” that the continued presence of South Africa in Namibia was illegal; and
- Paragraph 5 of Resolution 276 ‘Calls upon all States’ to refrain from dealings with South Africa that are inconsistent with paragraph 2.

The Special Rapporteur adopts the position that language in a Security Council resolution which makes a declaration, or which demands an action from a member state, or which

<sup>91</sup> Simma, *The Charter of the United Nations: A Commentary*, at 454.

<sup>92</sup> Owada, “Problems of Interaction Between the International and Domestic Legal Orders”.

<sup>93</sup> <https://www.icj-cij.org/files/case-related/53/053-19710621-ADV-01-00-EN.pdf>, at para. 113.

<sup>94</sup> *Ibid.*, para.114.

<sup>95</sup> <http://unscr.com/en/resolutions/276>.

<sup>96</sup> *Supra*, note 93, para.115.

pronounces on the illegality of a situation, is likely to be a ‘decision’ within the meaning of Article 25.

54. And third, the ICJ Namibia Advisory Opinion spoke expressly to the issue of legal responsibility of the international community. It stated that, when the Security Council adopts a decision under Article 25 of the Charter, it is legally binding on all.<sup>97</sup> The ICJ then elaborated upon the international community’s duty of accountability when a competent organ of the United Nations had issued a binding decision on the illegality of a situation. It ruled that: “such a situation cannot remain without consequences”, and that the members of the United Nations would have “...an obligation...to bring that situation to an end.” It continued: “this decision entails a legal consequence, namely that of putting an end to an illegal situation. (I.C.J. Reports 1951, p. 82)”<sup>98</sup>

55. Recent debates at the United Nations Security Council on the binding nature of Council resolutions indicate that some leading Council members accept that such resolutions create legal obligations on UN members. During a special session of the UN Security Council in July 2019 devoted to the Middle East, the German Ambassador specifically addressed the binding nature of the resolutions adopted by the Council on the Israeli occupation of the Palestinian territory, with particular reference to Resolution 2334:

“We believe in the UN and the UNSC resolutions. For us, UNSC resolutions are binding international law. ...As I said, we believe in the force of international law, not in the force of the strongest... So for us, 2334 – just to name the latest of UNSC resolutions – is binding law and international consensus.”<sup>99</sup>

56. Speaking after the German Ambassador, the Ambassador of the United Kingdom expressed her agreement with this view about the binding nature of Security Council resolutions:

“I just wanted to pick up on something the German Representative said about international law. We share his view. The Security Council’s responsible for maintaining international peace and security and we all agree that the Arab-Israeli conflict is such a threat to international peace and security. So, it’s right that we’ve passed resolutions and we are bound by those resolutions. And we all have a responsibility, Mr. President, to implement them, just as we do in other areas. Indeed, this is the very basis of the Council’s work”.<sup>100</sup>

57. In the view of the Special Rapporteur, all United Nations Security Council resolutions which pronounce on the illegality of the Israeli settlements, the illegality of the Israeli annexation of East Jerusalem, and the failure by Israel to fully comply with its legal obligations under international law, or which make declarations on any aspect of Israel’s occupation are binding decisions that must be complied with by Israel. Its failure to honour any of these decisions places the onus on all other member states to enforce these obligations within the bounds of the Charter.

## **B. The Lack of Accountability in the Conduct of the Israeli Occupation**

58. Israel has occupied the Palestinian territory for more than 52 years, the longest belligerent occupation in the modern world. Above all else, the occupation has been

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<sup>97</sup> Ibid, para.116.

<sup>98</sup> Ibid, para.117.

<sup>99</sup> <https://new-york-un.diplo.de/un-en/news-corner/190723-heusgen-middleeast/2238356>.

<sup>100</sup> <https://www.gov.uk/government/speeches/political-progress-and-economic-opportunities-in-israel-and-the-occupied-palestinian-territories>.

characterized by two defining features. First, the conduct of the Israeli occupation has been marked by numerous, intentional and serious violations of international law, including humanitarian and human rights law. The annexation of occupied territory, whether de jure or de facto, is illegal.<sup>101</sup> The creation of civilian settlements in occupied territory is a grave breach of the Fourth Geneva Convention<sup>102</sup> and a war crime under the Rome Statute.<sup>103</sup> The location, permanence and continued existence of the Separation Wall in the occupied Palestinian territory has been found to be a violation of international law.<sup>104</sup> United Nations reports have stated that war crimes may have been committed by Israel during its various military operations in Gaza.<sup>105</sup> Multiple and systematic human rights violations have been credibly documented by the United Nations and by international, Israeli and Palestinian human rights defenders.<sup>106</sup> The Special Rapporteur has determined previously that the occupation itself has become illegal, given its flagrant violations of the foundational principles of the modern laws of occupation.<sup>107</sup>

59. And second, the international community has demonstrated great unwillingness to impose any meaningful accountability on Israel for its permanent occupation and its serious violations of international law. In the face of the volumes of United Nations resolutions insisting that Israel unwind its occupation, end its settlement enterprise, undo its annexation of East Jerusalem, respect all of its human rights obligations, investigate purported war crimes, facilitate the return of Palestinian refugees and remove its obstruction to the full realization of Palestinian self-determination, Israel has remained profoundly resistant to international direction. Israel has rightly assessed that the international community – particularly the Western industrial nations – has lacked the political will to compel an end to its impunity. As a result, it has rarely faced meaningful consequences for its truculent behaviour. As the Israeli journalist Gideon Levy has written: “No country is as dependent on the support of the international community as Israel, yet Israel allows itself to defy the world as few dare.”<sup>108</sup>

#### ***United Nations Security Council Resolutions***

60. Throughout its occupation, Israel has acted in direct defiance of a number of United Nations Security Council resolutions and decisions.

61. East Jerusalem: In August 1980, the Security Council declared, in Resolution 478, that Israel’s 1980 de jure annexation of East Jerusalem was “null and void” and “must be rescinded forthwith.” The Security Council “decided 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.” In December 2016, the Security Council reaffirmed Resolution 478 in Resolution 2334. Yet, almost four decades later, Israel remains in violation of the decision of the Security Council, and its occupation and annexation of East Jerusalem has only become more entrenched.

62. Settlements: The Security Council affirmed in Resolutions 446 (1979), 452 (1979), 465 (1980) and 2334 (2016) that the Israeli settlements constitute “a flagrant violation under

<sup>101</sup> A/73/447, paras. 24-59.

<sup>102</sup> IVGC, Article 49(6); Additional Protocol 1, Article 85(4)(a).

<sup>103</sup> <https://www.icc-cpi.int/resource-library/Documents/RS-Eng.pdf>, Article 8(2)(b)(viii).

<sup>104</sup> <https://www.icj-cij.org/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>, supra, note 74, para. 142.

<sup>105</sup> A/HRC/12/48 (2009); A/HRC/29/CRP.4 (2015); A/HRC/40/74 (2019).

<sup>106</sup> A/HRC/40/43.

<sup>107</sup> A/72/556.

<sup>108</sup> <https://www.haaretz.com/opinion/premium-netanyahu-s-right-the-occupation-can-actually-go-on-forever-1.5441982>.

international law.” In Resolution 2334, the Council, echoing its earlier demands, stated that Israel must “immediately and completely cease all settlement activities in the occupied Palestinian territory, including East Jerusalem, and that it must fully respect all of its legal obligations in this regard.” Earlier, in 2013, the independent international fact-finding mission appointed by the Human Rights Council to investigate the Israeli settlements had found that:

“Despite all pertinent United Nations resolutions declaring that the existence of the settlements is illegal and calling for their cessation, the planning and growth of the settlements continues of existing as well as of new structures”.<sup>109</sup>

In each of his three most recent quarterly reports to the Security Council in 2019 on the implementation of Resolution 2334, the UN Special Coordinator for the Middle East Peace Process has stated that, with respect to the Council’s direction to Israel to cease all settlement activity: “No steps were taken to that effect during the reporting period.” Rather, as the Special Coordinator pointed out previously, the Israeli government has continued to announce significant settlement housing unit plans and construction starts.<sup>110</sup> In 1979, when the Security Council demanded a complete end to the Israeli settlement enterprise in Resolution 446, there were 80,000 Israeli settlers; today, there are 650,000 settlers, an increase of more than 800 percent.<sup>111</sup>

63. Annexation: The Security Council has affirmed the legal principle on at least eight occasions, most recently in Resolution 2334, that the acquisition of territory by force is inadmissible. Although the Security Council has denounced Israel’s annexation of East Jerusalem (1980) and the Syrian Golan Heights (1981) as unlawful, Israel has neither reversed these de jure annexations nor has its political leadership been impeded from intensifying its de facto annexation of the West Bank through ongoing land confiscation and its burgeoning settlement enterprise. Moreover, Israel’s political leadership continues to regularly express its support to formally annex parts or all of the West Bank.<sup>112</sup> In September 2019, Prime Minister Netanyahu announced that, if returned to office, his government would annex the Jordan Valley and ‘other vital areas’.<sup>113</sup>

64. Occupation and Non-Compliance: In 1980, the Security Council, in Resolution 476, reaffirmed “the overriding necessity to end the prolonged occupation of Arab territories occupied by Israel since 1967.” In the same resolution, the Council: “strongly deplore[d] the continued refusal of Israel, the occupying Power, to comply with the relevant resolutions of the Security Council and the General Assembly.” Two months later, in Resolution 478, the Council noted that Israel had not complied with resolution 476, and expressed “its determination to examine practical ways and means, in accordance with the relevant provisions of the Charter of the United Nations, to secure the full implementation of its resolution 476 (1980), in the event of non-compliance by Israel.” Almost four decades later, Israel’s defiance of the Security Council remains unchecked, no means have been adopted to stem the ongoing violations of international law, and the ineffectiveness of diplomatic pleas and warnings to end the occupation are glaringly self-evident.

<sup>109</sup> A/HRC/22/63, para. 100.

<sup>110</sup> <https://unsco.unmissions.org/security-council-briefing-situation-middle-east-reporting-unscr-2334-delivered-un-special-2>; <https://unsco.unmissions.org/security-council-briefing-situation-middle-east-reporting-unscr-2334-delivered-un-special-2>; <https://unsco.unmissions.org/briefing-security-council-implementation-scr-2334-delivered-un-special-coordinator-nickolay-mladenov>.

<sup>111</sup> <https://peacenow.org.il/en/settlements-watch/settlements-data/population>.

<sup>112</sup> A/73/447, para. 58.

<sup>113</sup> <https://www.timesofisrael.com/netanyahu-after-jordan-valley-and-settlements-ill-annex-other-vital-areas/>.

### *Calls by the United Nations for Accountability*

65. In a variety of forums, the United Nations has frequently called upon the international community to ensure accountability and to end impunity with respect to the Israeli occupation.

66. In four major independent reports commissioned by the Human Rights Council since 2009, the constant theme has been the serious violations of human rights and humanitarian laws by Israel, the necessity to ensure Israeli accountability and the prevailing culture of exceptionalism.<sup>114</sup> The report into the 2008-2009 Gaza conflict stated that: “justice and respect for the rule of law are the indispensable basis for peace. The prolonged situation of impunity has created a justice crisis in the Occupied Palestinian Territory that warrants action”.<sup>115</sup> The 2013 report into the implications of the Israeli settlements called upon Israel “to ensure full accountability for all violations...and to put an end to the policy of impunity”.<sup>116</sup> The report into the 2014 Gaza conflict expressed concern that: “impunity prevails across the board for violations of international humanitarian law and international human rights law allegedly committed by Israeli forces...Israel must break with its recent lamentable track record in holding wrongdoers accountable...”<sup>117</sup> And the 2019 report into the 2018 Gaza protests found that: “To date, the Government of Israel has consistently failed to meaningfully investigate and prosecute commanders and soldiers for crimes and violations...Scarce accountability measures arising out of Operations Cast Lead (2008-09) and Protective Edge (2014)...cast doubt over the State’s willingness to scrutinize the actions of military and civilian leadership...”<sup>118</sup>

67. The United Nations General Assembly and the Human Rights Council have both accentuated the necessity for accountability by Israel, the occupying power, in recent years. In a resolution with respect to the Israeli settlements, the General Assembly called for: “the consideration of measures of accountability, in accordance with international law, in the light of continued non-compliance [by Israel] with the demands for a complete and immediate cessation of all settlement activities.”<sup>119</sup> Similarly, the Human Rights Council, in March 2019, expressed its alarm and called for: “the need for States to investigate and prosecute grave breaches of the Geneva Conventions of 1949 and other serious violations of international humanitarian law, to end impunity, to uphold their obligations to ensure respect and to promote international accountability.”<sup>120</sup>

68. Impunity and the lack of accountability by Israel in its conduct of the occupation has also been addressed at the level of the UN Security General. In 2016, the then Secretary General, Ban Ki-Moon, stated that:

“The lack of any significant movement towards a political resolution and ongoing violations of international human rights and humanitarian law are exacerbated by the lack of accountability for previous violations... Tackling impunity must be the highest priority.”<sup>121</sup>

69. The lack of accountability has also been a central concern of the United Nations High Commissioner for Human Rights. In a comprehensive report on accountability issued in June

<sup>114</sup> [http://www.alhaq.org/cached\\_uploads/download/alhaq\\_files/publications/International.Commissions.Report.pdf](http://www.alhaq.org/cached_uploads/download/alhaq_files/publications/International.Commissions.Report.pdf).

<sup>115</sup> A/HRC/12/48, para. 1958.

<sup>116</sup> A/HRC/22/63, para. 114.

<sup>117</sup> A/HRC/29/CRP.4, para. 76.

<sup>118</sup> A/HRC/40/74, para. 111.

<sup>119</sup> A/73/98.

<sup>120</sup> A/HRC/40/L.25.

<sup>121</sup> A/71/364, para. 6.

2017,<sup>122</sup> the then High Commissioner, Zeid Al-Hussain, reviewed 551 recommendations issued since 2009 by relevant Human Rights Council mechanisms to determine the degree of compliance and cooperation by Israel with respect to the human rights situation in the Occupied Palestinian Territory. Of the 178 recommendations issued regarding accountability and access to justice, Israel had implemented two recommendations, partially implemented eight, and had not implemented 168 (90 percent) of the recommendations. A similarly sparse record of compliance by Israel regarding the implementation of recommendations on arrest and detention of Palestinians (91 percent not implemented, and eight percent only partially implemented), settlements (100 percent not implemented) and freedom of movement (97 percent not implemented). In total, Israel had fully implemented less than half of one percent of the human rights recommendations presented to it. In his conclusions, the High Commissioner reminded the international community that: “all stakeholders must recognize that compliance with international law is a sine qua non condition for peace.”<sup>123</sup>

70. In a March 2019 report on accountability,<sup>124</sup> the present High Commissioner, Michelle Bachelet, detailed the long pattern of impunity through Israel’s occupation, including:

- Gaza 2014 - where she noted that the Israeli Military Advocate General had closed a number of cases without any criminal investigation, despite serious allegations and *prima facie* evidence of international law violations;
- Gaza 2018-2019 - where she noted the excessive use of force by Israeli security forces that killed and wounded a high number of Palestinian demonstrators outside the context of hostilities;
- Human Rights Defenders - where she pointed to a prevailing atmosphere of intimidation, threats and arrests of human rights defenders and civil society actors by Israel.

The High Commissioner’s March 2019 report spoke to the international community’s responsibility to take measures to prompt States to act in compliance with international humanitarian law. She concluded her report by observing that the: “...lack of accountability compromises chances for sustainable peace and security” and urged that addressing impunity should be given the “highest priority.”<sup>125</sup>

71. The paradox of accountability is as striking as it is tragic. With its eyes wide open, the international community has on countless occasions either voted for resolutions in United Nations forums or accepted public reports from independent commissions of inquiry and from senior United Nations officials which have recognized the acute lack of accountability coupled with the abundant impunity that has characterized Israel’s conduct of the five-decade-long occupation. Yet, with its eyes wide shut, the international community has displayed an extraordinary lethargy when it comes to enforcing what its own laws and decisions, its binding humanitarian obligations and its political precedents would compel it to do. Are we simply to accept that, with this occupation, international law is closer to power than it is to justice?

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<sup>122</sup> A/HRC/35/19.

<sup>123</sup> A/HRC/35/19, para 81.

<sup>124</sup> A/HRC/40/43.

<sup>125</sup> A/HRC/40/43.

### C. Countermeasures as the Remedy for Impunity

72. Countermeasures are a legitimate, effective and commonly used tool of international politics and diplomacy to compel recalcitrant states and organizations to comply with international law and to cease the significant harm they are inflicting on others.<sup>126</sup> The use of countermeasures is meant to respond to a prior intentionally wrongful act, and not as a form of punishment or reprisal for wrongful conduct. They must be targeted against the offending state, they should be reversible upon a significant reform in state behaviour, they must respect the Charter of the United Nations (including all humanitarian and human rights obligations), and they must be proportionate and effective.<sup>127</sup> In the case of a serious violation by a state or an organization of an obligation owed to the international community, other states have not only the power but the obligation to initiate countermeasures. Serious violations would include contraventions of the peremptory norms of international law, including grave breaches of international humanitarian law, many of which are widespread in the Occupied Palestinian Territory.

73. Among the commonly employed countermeasures in the modern world would include: (i) diplomatic demarches and public statements; (ii) diplomatic sanctions; (iii) trade sanctions; (iv) the reduction or suspension of cooperation and aid; (v) financial and economic sanctions; (vi) flight bans; (vii) arms embargos; and (viii) travel restrictions. Countermeasures have been applied in recent years to promote democracy and human rights, advance the rule of law, oppose annexation and aggression, combat terrorism, address threats to international peace and security, rectify serious humanitarian crises, protect vulnerable minorities and end conflicts and civil wars.

74. Scholars have identified three principal purposes of countermeasures and sanctions: (i) to coerce a change in the targeted state's or organization's behaviour; (ii) to constrain a targeted state or organization from engaging in a prohibited activity; and (iii) to signal and/or stigmatize a targeted state or organization regarding its violations of international laws or norms. Countermeasures and sanctions have been found to be the most effective in the following instances:<sup>128</sup>

- **Targeted at friends and close trading partners.** These states have more to lose than those with limited or adversarial relations. This reflects the willingness of states in a broad alliance to bow to pressure from allies because of the importance of the larger relationship.
- **Democracies are more responsive to countermeasures than autocrats.** Democratic leaders have to pay more attention to domestic public opinion and independent domestic institutions, which often value good international relations.
- **Sanctions with maximum impact work best.** If the goal is to change policies of behaviour, high economic costs imposed by the countermeasures or sanctions work best. Minor sanctions may work well as initial signals, but they have to escalate swiftly if they do not modify the targeted behaviour.
- **Significant international cooperation is important, but is not always a guarantee of success.** Cooperation from an international organization in

<sup>126</sup> Articles 49-54, [http://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001.pdf](http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf).

<sup>127</sup> Generally: Farrall, *United Nations Sanctions and the Rule of Law*.

<sup>128</sup> Hufbauer et al, *Economic Sanctions Reconsidered (3rd ed.)* (Peterson Institute for International Economics, 2007).

which the alliance of countries and the targeted state are members increases the chances of success.

- **Choosing the appropriate countermeasures is key.** Not just any sanction will do. Understanding the susceptible pressure points of the targeted state or organization is key to success.
- **The purposes of the sanctions should be well-articulated.** This enables stronger public support, clarifies what countermeasures should be used, and explains when success has been achieved or changes have to be made.

75. The International Committee of the Red Cross, in its 2016 commentary on the Geneva Conventions, has listed a series of non-exhaustive measures that may be taken individually and/or collectively by the High Contracting Parties to ensure respect for international humanitarian law:<sup>129</sup>

- Addressing questions of compliance within the context of a diplomatic dialogue;
- Exerting diplomatic pressure by means of confidential protests or public denunciations;
- Conditioning joint operations on a coalition partner's compliance with its obligations under the Conventions and/or planning operations jointly in order to prevent such violations;
- Intervening directly with commanders in case of violations, for example an imminent unlawful attack against civilians, by a coalition partner;
- Referring, where applicable, a situation to the International Humanitarian Fact-Finding Commission;
- Requesting a meeting of the High Contracting Parties;
- Applying measures of retorsion, such as the halting of ongoing negotiations or refusing to ratify agreements already signed, the non-renewal of trade privileges, and the reduction or suspension of voluntary public aid;
- Adopting lawful countermeasures such as arms embargoes, trade and financial restrictions, flight bans and the reduction or suspension of aid and cooperation agreements;
- Conditioning, limiting or refusing arms transfers;
- Referring the issue to a competent international organization, e.g. the UN Security Council or General Assembly;
- Referring, where possible, a specific issue to the International Court of Justice or another body for the settlement of disputes;
- Resorting to penal measures to repress violations of humanitarian law; and
- Supporting national and international efforts to bring suspected perpetrators of serious violations of international humanitarian law to justice.

76. Much more can be said about the range of appropriate countermeasures that the international community has at its disposal to ensure accountability and an end to impunity respecting the Israeli occupation. The Special Rapporteur reserves the opportunity to expand

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<sup>129</sup> [https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=72239588\\_AFA66200C1257F7D00367DBD](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=72239588_AFA66200C1257F7D00367DBD), at para. 181.

upon this issue in a future report. Suffice it to say for now that the international community possesses a great deal of power to ensure a positive, durable and just solution to the occupation. Indeed, this occupation will not end without the international community acting decisively in support of international law and its common values to compel Israel to fulfil its obligations. As Hagai El-Ad, the executive director of B'Tselem, a leading Israeli human rights organization, stated to the UN Security Council in 2016: "Israel will not cease being an oppressor simply by waking up one day and realizing the brutality of its policies... We need your help."<sup>130</sup>

#### IV. Conclusion

77. No occupation in the modern world has been conducted with the international community so alert to its many grave breaches of international law, so knowledgeable about the occupier's obvious and well-signalled intent to annex and establish permanent sovereignty, so well-informed about the scale of suffering and dispossession endured by the protected population under occupation, and yet so unwilling to act upon the overwhelming evidence before it to employ the tangible and plentiful legal and political tools at its disposal to end the injustice.

78. An international community that took its legal responsibilities to challenge and end internationally wrongful acts seriously would have long ago concluded that Israel, the occupying power, was not sincere about seeking to end the occupation. It would have drawn the necessary lessons from the many unfulfilled Security Council and General Assembly resolutions, the inordinate length of the occupation, the innumerable 'facts on the ground' and the aimless rounds of negotiations. It would have determined that the status quo of this 'occu'annexation' is endlessly sustainable without decisive international intervention because of the grossly asymmetrical balance of power on the ground. It would accept that its duty is not to oversee the management of the occupation, but to end it. Such an international community would take the prudent and necessary steps to collectively construct a list of effective countermeasures which would be appropriate and proportional to the circumstances. Should the occupying power remain unmoved, it would apply and escalate the range of its targeted countermeasures until compliance had been achieved. The international community would realize that bold measures and the determination to enforce accountability in these circumstances would greatly improve the chances that the next obstinate occupier would not likely want to test its resolve.

#### V. Recommendations

79. **The Special Rapporteur recommends that the Government of Israel should fully comply with its obligations under international law and that it should completely end its 52 years of occupation within a reasonable time period and enable the realization of Palestinian self-determination.**

80. **The Rapporteur recommends to the international community:**

(a) **In line with Common Article 1 of the Geneva Conventions, the Articles of Responsibility of States and Article 25 of the Charter of the United Nations, take all measures necessary, including countermeasures and sanctions, to ensure respect by Israel, and all other relevant parties, of their obligations under international law to end the occupation;**

<sup>130</sup> [https://www.btselem.org/settlements/20181018\\_security\\_council\\_address](https://www.btselem.org/settlements/20181018_security_council_address).

(b) **Seek to hold Israel to the international standards by which all states are required to obey;**

(c) **Ensure full accountability of Israeli political and military officials who are responsible for grave breaches of international law in the Occupied Palestinian Territory;**

(d) **Adopt the recommendation of the then High Commissioner for Human Rights, issued in June 2017. The General Assembly should make use of its powers under Article 96(a) of the Charter of the United Nations to seek an advisory opinion from the International Court of Justice on Israel's legal obligation to end the occupation and the international community's legal obligations and powers to ensure accountability and bring an end to impunity.**

(e) **Commission a United Nations study on the legality of the Israeli annexation and continued occupation of the Palestinian territory.**

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