Recognizing Israel's Practice of Apartheid and Reconstituting the UN Centre against Apartheid

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Introduction

Since its inception, the United Nations (UN) has been concerned with the issue of racial discrimination as an impediment to its essential purposes of maintaining peace and security, forward development and human rights. At its very first session, the UN General Assembly adopted a resolution declaring that "it is in the higher interests of humanity to put an immediate end to religious and so-called racial persecution and discrimination." That early resolution implored "Governments and responsible authorities to conform both to the letter and to the spirit of the Charter of the United Nations, and to take the most prompt and energetic steps to that end."[1]

Racial discrimination became one of the main items on the United Nations agenda in the aftermath of World War II, especially after the 21 March 1960 Sharpeville massacre in South Africa sensitized world opinion to the perils of that country's apartheid system of racial discrimination, and in the context of African nations' decolonization and independence struggles.

In 1963, the Assembly adopted the Declaration on the Elimination of All Forms of Racial Discrimination, which led to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and, in 1965,[2] the first treaty concluded to assign human rights obligations to states. In 1966, the General Assembly adopted the two Human Rights Covenants, codifying most of the Universal Declaration of Human Rights (1948), [3] with their common over-riding self-determination and non-discrimination principles of implementation. [4] Two years after ICERD entered into force, the UN declared the International Year for Action to Combat Racial Discrimination in 1971, and the subsequent three Decades for Action to Combat Racism and Racial Discrimination, starting in 1973.

The United Nations then organized four world conferences against racial discrimination, in 1978, 1983, 2001 and 2009. The International Year of Mobilization against Racism, Racial Discrimination, Xenophobia and Related Intolerance also began in 2001. Nonetheless, the phenomenon persists, with a virulent resurgence across the globe in the 21st Century. One of these manifestations especially embodies attributes of the most-egregious forms of racial discrimination the past century, institutionalized in racist state ideology, laws and institutions targeting a distinct people.

Israel, a state created, in part, through a UN process, has embodied and maintained an apartheid regime over the Palestinian people as a whole, in violation of its obligations as a state under international law, including binding treaties such as ICERD, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and International Covenant on Civil and Political Rights (ICCPR). For example, ICERD's Article 3 enshrines the obligation that "States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction."[5] The Committee on Elimination of Racial Discrimination (CERD), overseeing compliance with ICERD, has repeatedly found the state party of Israel to be in contravention of ICERD, in particular, its Article 3 obligations to combat apartheid.

The State of Israel has repeatedly dismissed and defied CERD findings and recommendations for reform toward compliance with its ICERD obligations has forced such recognition in the UN's highest human rights policy organ, the Human Rights Council, as well as its most-authoritative body, the General Assembly, and for all states to apply effective measures. Such measures include, but are not limited to the General Assembly reconstituting the UN Special Committee against Apartheid (UNSCAA) and the UN Centre against Apartheid (UNCAA) consistent with the purposes and functions of those bodies precedent in

relation to the former practice of this crime of state in the Union of South Africa and that country's occupation of Namibia (former Southwest Africa).

Following multiple forewarnings and mounting evidence, the UN Human Rights Council and General Assembly have surpassed any rationale to delay recognising and declaring as apartheid Israel's system of laws, organisations and policies creating and maintaining institutionalized, material racial domination, oppression and dispossession of the Palestinian people as a whole, with the express purpose and effect of eliminating Palestine as a people and nation. This system constitutes the serious crime of apartheid under Article 3 of ICERD and it definition in the International Convention on the Suppression and Punishment of the Crime of Apartheid (Apartheid Convention).[6]

The Precedent

The UN General Assembly had established the UNSCAA (originally called the Special Committee on the Policies of Apartheid of the Government of the Republic of South Africa) to keep the racial policies of the South African Government under review when the Assembly is not in session and to report either to the General Assembly or to the Security Council, throughout the year.[7] It began its work in April 1963 by promoting the international campaign against apartheid under the auspices of the United Nations. Its primary concern was to press for effective international sanctions against the South African regime, arrange assistance to the victims of apartheid and to the liberation movements, and to ensure constant public awareness about the inhumanity of apartheid and the resistance of the people, in order to secure widest support for popular action.

The UNCAA initiated or assisted anti-apartheid movements and other bodies to organize, public campaigns or such effective measures by states aimed at South Africa until it ended its apartheid regimes both within its jurisdiction and territory of effective control. These included arms and oil embargoes; sports, cultural and consumer boycotts; and other "people's sanctions"; ending loans to, or investments in South Africa; and calling for the release of political prisoners held by apartheid South Africa. The UNCAA also organized scores of conferences, seminars, hearings and other events around the world to promote concerted action by governments and the public.

The Special Committee elected a series of African ambassadors to the UN as its chairman. South African political leader Enuga Sreenivasulu Reddy served from 1963–1984 first as Principal Secretary of the Committee and later as Director of the Centre against Apartheid.

As determined by the Security Council[8] and numerous General Assembly resolutions. Such practical measures are needed to be taken with the commitment, intention and *erga omnes* obligation of ending Israel's apartheid regime over the indigenous Palestinian people, as constitutive of Israel's *raison d'État* to erase and replace Palestine. It is well to remind that the UN bears permanent responsibility to Palestine "until the question [of Palestine] is resolved in all its aspects in a satisfactory manner in accordance with international legitimacy."[9] Only by remedying Israeli apartheid policy toward the Palestinian people as a whole can the UN begin to undo the political, legal, economic, social, demographic and geographic fragmentation imposed on the Palestinian people with the establishment of the State of Israel and its ever-expanding apartheid system.

How Israeli Apartheid Works

As clarified in the 1933 Montevideo Convention, the modern state is understood to be comprised of: (1) a distinct population, or people(s); (2) an identifiable land/territory; and (3) institutions, including a government recognized by other States.[10] Israel's case is unique, however, since its proclamation as a state in 1948 (before ratifying ICERD), rested on first establishing proto-state institutions, before constructing a people or acquiring territory. Those so-called "national" institutions evolved predominantly in the forms of the World Zionist Organization (WZO), in 1897, the Jewish National Fund (JNF), in 1901, and the Jewish Agency (JA) in 1921. The last of these three is a mirror reflection of the first, also dedicated to colonizing Palestine, but having later adopted a title more attractive to the world's non-Zionist and anti-Zionist majority of persons of Jewish faith. The WZO and JA then conjoined in 1929 as the Zionist Executive, later fused to the State of Israel through one of the Basic Laws that replace a territory-defining constitution.

Since their incorporation, these parastatal institutions have built upon an ideological foundation, expressed in their respective charters, that persons of Jewish faith constitute a separate "Jewish race or descendancy," and "Jewish nationality."[11] That constructed status serves as the basis for the enjoyment of acquired land, other natural resources and properties by the "national" institutions, discriminating against all others, in particular, the indigenous Palestinian people. The authors of these Zionist institutions the sought their recognition in public international law.[12] The eventual State of Israel, its laws and organs[13] formally defer to these institutions of material discrimination in many matters of legislation and policy affecting development; commerce; agriculture; recruitment of colonizing citizens of other states; access to and control over land and natural resources, including water; urban planning and other civil matters.

In 1952, Israel adopted the World Zionist Organization-Jewish Agency (Status) Law,[14] which authorizes the WZO, JA and affiliates to function in Israel as quasi-governmental entities. The Law states for its purposes that the WZO, operating also as the JA, continues to manage Jewish settlement projects and authorizes it to develop and settle Jews in the country and to coordinate with Jewish institutions and organisations active in those fields. The Law establishes that "[t]he mission of gathering in the exiles… is the central task of the State of Israel…." In the same sense, the 1950 Law of Return legalizes in Israel the ahistorical premise that persons of Jewish faith with citizenship in other countries entering Israeli-controlled territory claim adherence to the territory and allegiance to the State of Israel, as if s/he were only temporarily away from her/his origin in Palestine. This law confers a "nationality" right on its Jewish colonizers superior to persons of other status inside Israel's jurisdiction or territory of effective control.

Also in 1952, the Knesset adopted Israel's Law of Citizenship (*ezrahut*, in Hebrew), which is often deceptively mistranslated in official versions as a law of "nationality," creating confusion and deflecting attention from the important distinction between those two kinds of status in Israel. The Citizenship Law recognizes "return" as one pathway to Israeli citizenship, but that is unique to persons of Jewish faith, defined as persons born to a Jewish mother or, in rare cases, having converted to Judaism. This Law sets out three other ways to become an Israeli citizen: by birth, marriage or residency. However, because of the superior status of "Jewish nationality" (*le'om yahudi*, in Hebrew), citizenship is not a basis for equal rights in Israel.[15] Accordingly, the 1952 Citizenship Law, together with the Law of Return, cements Israel's institutionalized racism in civil law.

Shortly after Reform Jewish rabbis in the United States successfully challenged the WZO's claim to nongovernmental charity status,[16] the 1970 Zionist Congress resolved to create a territorial division of labour between the two personalities of WZO and JA, with the JA determining development inside Israel's

1948 borders, whereas the WZO's operations have specialized in colonizing the 1967-occupied Palestinian territory (oPt). The JNF supports both operations.[17]

Material Consequences of Israeli Apartheid Institutions

Israel's parastatal apartheid institutions such as the WZO/JA, the JNF and their affiliates are chartered to carry out material discrimination against non-Jewish persons. In particular, they have historically prevented the indigenous Palestinian people on both side of the Green Line (the 1948–49 Armistice Line) from accessing or exercising control over their means of subsistence, including their natural wealth and resources, by exploiting and diverting Palestinian natural resources for the benefit of Israeli-Jewish settlers and others exclusively classified as "Jewish nationals." These institutions play a pivotal role in Israel's apartheid regime over the Palestinian people, its demographic manipulation designs and projects, and the colonisation of Palestinian land through Israeli-Jewish immigration and settler-colony construction and expansion, as their principle task is "to work actively to build and maintain Israel as a Jewish State, particularly through immigration policy."[18] Meanwhile, these very institutions are registered and operate as tax-exempt charities in over 50 extraterritorial jurisdictions,[19] including 18 Member States of the UN Human Rights Council.[20]

In January 1949, shortly after Zionist forces ethnically cleansed much of Palestine during the Nakba, the Government of Israel (GoI) conferred one million dunums of land and other properties belonging to Palestinian refugees to the JNF and, in October 1950, the GoI transferred another 1.2 million dunums to the JNF. The tactical meaning of these land transfers is important, because, as explained by a JNF spokesperson in 1951, the transfer of title to the JNF "will redeem the lands and will turn them over to the Jewish people – to the people and not the state, which in the current composition of population cannot be an adequate guarantor of Jewish ownership."[21]

In September 1953, the Israeli Custodian of Absentee Properties executed a contract with the Israeli Department of Construction and Development, whereby the Custodian transferred the ownership of all the Palestinian lands under its control to the latter. The price for these properties was to be retained by the Israeli Department of Construction and Development as a loan. At the same time, the Custodian conveyed the ownership of the houses and commercial buildings in the Palestinian cities to Amidar, a quasi-public Israeli company founded to implant Israeli settlers in Palestinian lands and properties,[22] and thus began a practice that forms an unbroken pattern to this day.

Three months before that 1953 transaction, the JNF also executed a contract with the Israeli Department of Construction and Development, acquiring 2,373,677 dunums (237,367.7 hectares) of land confiscated from refugees and other Palestinians. The deal was completed after the Department concluded its transaction with the Custodian. By this time, the JNF had become statutorily fused to the State of Israel by the Status Law (1952). As a result, Palestinian property changed hands and its consolidation under the JNF, whose "ownership" totalled over 90 per cent of the total territories, thus fell under the control of the State of Israel in 1948. Although rightfully belonging to indigenous Palestinians, the landed properties are referred to in Israel as "national land." In Israeli vernacular, this is a subtle-but-important distinction, understood to mean that it is limited to exclusive use by Jews ("Jewish nationals"), whoever and wherever in the world they may be, and thereby foreclosed to the indigenous Palestinian people, including its private and collective owners.[23]

The consequences of these laws and their implementation have had the purpose and effect of displacing and dispossessing the Palestinian people of their land, homes, and property, denying Palestinians the

exercise of their inalienable and collective right of self-determination, including permanent sovereignty over natural wealth and resources, including land, and, thereby, denying them their means of subsistence as a people.

These transactions and methods of Israel's extensive parastatal apparatus exist to thinly conceal the practices of the State of Israel with the aim of dispossessing the Palestinian people. They also ensure the maintenance of its apartheid regime of institutionalised racial oppression and domination premised on superior status and benefits for "nationals" of "Jewish race and descendancy." The demographic manipulation and land seizure carried out under the aegis of the WZO/JA and JNF have been foundational to fragmenting the Palestinian people and remain instrumental in the Israeli apartheid system's ongoing maintenance through, *inter alia*, the restriction of Palestinian land to the exclusive use of "Jewish nationals," denials of freedom of movement, displacement, and their funding and support of the illegal settler-colony enterprise in the occupied West Bank, including East Jerusalem, on the part of the State of Israel and its organs.[24]

Denying the Palestinian People Their Right of Return to Their Homes and Property

During the 1948 War, 85 per cent of the Palestinian people were forcibly expelled and fled from 531 Palestinian towns, cities, and villages across Palestine under attack by Zionist forces.[25] In the aftermath of the Nakba, or 'catastrophe,' the GoI enacted legislation to prevent Palestinian refugees and displaced persons from returning to their homes, confiscated their assets and property, and razed the majority of their villages and towns. Since the Nakba, Palestinian refugees and displaced persons, in addition to involuntary exiles who found themselves outside Palestine during the war, have been denied their right of return to their homes and property, despite customary international law, as it stood at the time,[26] guaranteeing this inalienable right.

Notably, the International Military Tribunal at Nuremberg had already recognised the laws and customs of war, as enshrined in the 1907 Hague Regulations,[27] as constitutive of customary international humanitarian law at the time.[28] The Hague Regulations, which were applicable to the conflict in Palestine between 1947 and 1949,[29] and are domesticated in Israeli law,[30] required parties to the conflict to respect "[f]amily honour and rights, the lives of persons, and private property."[31] The Hague Regulations also already prohibited the confiscation of private property or its destruction in the absence of military necessity.[32]

At the same time, the 1945 London Charter of the International Military Tribunal at Nuremberg[33] prohibited as war crimes or violations of the laws and customs of war the "deportation to slave labour or for any other purpose of civilian population of or in occupied territory" and "wanton destruction of cities, towns, or villages, or devastation not justified by military necessity,"[34] while it prohibited as crimes against humanity "deportation, and other inhumane acts committed against any civilian population."[35] Accordingly, the transfer of the Palestinian people was illegal under international law at the time of the Nakba,[36] and Israel, following the establishment of the State, was under an obligation to repatriate and compensate those displaced under the laws of war, which had become customary by 1945.[37] Instead, Israel sealed the dispossession of displaced Palestinians in law and in practice through the enactment of the Absentee Property Law in 1950 in order to strip Palestinian refugees and displaced persons of their property, which was confiscated by the State of Israel.

The right of return was specifically recognised for Palestinian refugees and displaced persons in UN General Assembly Resolution 194 of 11 December 1948, which resolved that "the refugees wishing to return to their homes… should be permitted to do so at the earliest practicable date."[38]

Resolution 194, which has now been reaffirmed over a hundred times, reflects "repeated, overwhelming, decades-long international consensus" like no other resolution in UN history and has become binding under customary international law.[39] Since then, numerous UN resolutions have reiterated "the inalienable right of the Palestinians to return to their homes and property from which they have been displaced and uprooted," with the right of return of Palestinian refugees having gained strength over time.[40] In the same vein, the UDHR, adopted by the General Assembly on 10 December 1948, enshrined the right of everyone "to leave any country, including his own, and to return to his country" in Article 13(2).[41] In 1965, the same language was adopted by ICERD under Article 5(d)(ii), requiring States to prohibit and to eliminate racial discrimination in the enjoyment of "[t]he right to leave any country, including one's own, and to return to one's country."

Near the end of 1948, some Israeli officials had reached an agreement with Palestinian Bedouin tribes in the southern Naqab region of Palestine, including also some who fought as mercenaries alongside Zionist forces. In exchange for refraining from attacking Israeli forces or interfering in cross-border disputes, "The government would recognize their rights and their ownership of the land they lived on."[42] However, in practice, the State of Israel expropriated all the lands of the Bedouin whom Israel had moved elsewhere, dispossessing them on the grounds that the owners had "abandoned" their properties.[43]

With the Bedouins' absence from their habitations and villages, their properties became vulnerable to seizure and/or demolition. Israel's destruction of Naqab Bedouin habitation became most intense in the 1951–53 period, and again in the late 1960s,[44] when Israeli forces effectively destroyed their habitat outside of a predetermined *siyāj* (enclosure zone), demolishing a further 108 villages and habitation clusters. Thus, the Naqab Bedouins from outside the *siyāj* faced the fate of other villages belonging to the Palestinian refugees and IDPs, ensuring them little to which to return.[45]

Following a decade-long phase of land confiscations and military rule, GoI sought to make the acquisitions of Naqab lands and villages permanent with a modified policy toward the Arabs in Israel, as announced by David Ben-Gurion in 1959. For the Naqab, the policy prioritized:

a. passage of a law to mandate settlement of the Bedouins and their transfer to permanent homes…
b. speedy solution of the problem of compensation to the "present absentees"[46] for their land;
c. encouraging permanent Arab migration to the mixed cities.

As for the Palestinian Bedouins, the state's complex relationship with the inhabitants of the Naqab involved more than just a matter of housing, but effectively pursued the replacement of Palestinian rural society. By the time of this 1959 policy initiative, indigenous Naqab communities already were concentrated in the *siyāj*, or elsewhere evicted as IDPs or effective refugees and stateless people in the Gaza Strip or neighboring countries.[47]

As recognised by CERD, states parties have an obligation under Article 5 to ensure that "[all] refugees and displaced persons have the right to freely return to their homes of origin under conditions of safety"[48] and that "[a]ll such refugees and displaced persons have, after their return to their homes of origin, the right to have restored to them property of which they were deprived in the course of the conflict and to be compensated appropriately for any such property that cannot be restored to them."[49] This is relevant in

the Palestinian context in view of the Israeli Law of Return, which grants "[e]very Jew… the right to come to this country as an *oleh*," and to settle therein, whereas it excludes Palestinians, notably Palestinian refugees and exiles, from its scope.[50]

When Israel ratified ICERD on 3 January 1979, it undertook, in line with Article 5(d)(ii) of the Convention, to ensure the right of Palestinian refugees and displaced persons to return to their homes and property, as mandated by international law since the time of the Nakba. Yet, Israel's violation of that right of Palestinian refugees did not cease with the entry into force of the Convention, with the crime of population transfer continuing until this day as a matter of State policy.

According to Article 28 of the Vienna Convention on the Law of Treaties (VCLT), "[u]nless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to… *any situation which ceased to exist* before the date of the entry into force of the treaty with respect to that party" (emphasis added).[51] Since the violation did not cease to exist before the entry into force of ICERD, Article 5(d)(ii) requires Israel to grant Palestinian refugees their right of return, as rooted in international law at the time of the Nakba, and in light of the ongoing denial of the right of return as a continuing violation.[52]

The right of return of Palestinian refugees and displaced persons to their homes and property enjoys widespread recognition and has been reaffirmed repeatedly in Concluding Observations by UN treaty bodies, including CERD, which affirmed in 1998 that "[t]he right of many Palestinians to return and possess their homes in Israel is currently denied" and called on Israel to "give high priority to remedying this situation."[53] Similarly, in its Concluding Observations on Israel's initial report in 1998, CESCR expressed "its concern over the plight of an estimated 200,000 uprooted "present absentees," Palestinian Arab citizens of Israel most of whom were forced to leave their villages during the 1948 war on the understanding that they would be allowed by the [GoI] to return after the war.

Although a few have had their property returned, the vast majority continue to be displaced and dispossessed within the state because their lands were confiscated and not returned to them." [54] Accordingly, CESCR had called on Israel to ensure equality and non-discrimination and strongly recommended "a review of re-entry policies for Palestinians who wish to re-establish their domicile in their homeland."[55]

In 2001, CESCR further expressed its continued concern that Israel's "Law of Return denies indigenous Palestinian refugees the right to return to their homes and properties."[56] In the same vein, CERD also expressed its concern in 2007 "about the denial of the right of many Palestinians to return and repossess their land in Israel," urging Israel "to assure equality in the right to return to one's country and in the possession of property."[57] (See **Basis of the Recognition of Israeli Apartheid in International Law** below.)

Despite the repeated calls by UN treaty bodies, Israel has systematically failed to respect, protect, or fulfil the right of Palestinian refugees and displaced persons to return to their homes, land, and property, allowing the violation to continue for over seven decades, while the majority of the Palestinian people have been forced into a situation of prolonged refugeehood, displacement, and dispossession. Since 1948, the Palestinian people have endured an ongoing *Nakba* ("catastrophe," in Arabic), despite widespread international recognition of their right of return to their homes and property, as mandated by international law.

Israel's persistent refusal to grant Palestinian refugees, displaced persons, and their descendants their right of return amounts to a core element in its establishment and maintenance of an institutionalised regime of racial domination and oppression over the Palestinian people, constitutive of the crime of apartheid. In particular, 2017 report of the Economic and Social Council of Western Asia (ESCWA) found Israel's:

> "refusal to allow refugees and involuntary exiles to return ensures that the Palestinian population never gains the demographic weight that would either threaten Israeli military control of the [oPt], or provide the demographic leverage within Israel to allow them to insist on full democratic rights, which would supersede the Jewish character of the State of Israel. In short, [it] ensures that Palestinians will never be able to change the system."[58]

Within this context, Israel has actively sought, with the endorsement of other states, in particular the United States, to undermine the functioning of the UN Palestine Refugee Agency (UNRWA) which faced its biggest funding crisis yet in 2018. The increased attacks on UNRWA and attempts to undermine the rights of Palestinian refugees and their descendants have stoked deep anxiety among Palestinian refugees that "that the international community is abandoning them," thereby denying the exercise of their inalienable rights.[59]

At this critical juncture in the history of the Palestinian refugee question, 72 years on, it is imperative for UN human rights mechanisms, including the Human Rights Council, to reaffirm the inalienable rights of Palestinian refugees and displaced persons to return to their homes and property, among their entitlements to reparation.[60]

Discriminatory planning and zoning and denial of access to natural resources

As noted in the Vancouver Declaration and Action Plan (Habitat I, 1976), "[t]he ideologies of States are reflected in their human settlement policies. These being powerful instruments for change, they must not be used to dispossess people from their land or entrench privilege and exploitation."[61] In its reporting to treaty bodies and the High-level Political Forum on the Sustainable Development Goal progress, the State of Israel consistently minimizes the importance of planning and zoning functions of the State as they relate to its institutionalized practice of dispossession and material discrimination against the indigenous Palestinian people.[62]

In addition to the aforementioned racialized discriminatory charters of the Zionist parastatal institutions, which dominate land use, planning and physical development, the Basic Law: Israel Lands (1960) stipulates that the ownership of "Israel lands" – namely "land, houses, buildings and anything permanently fixed to land." Under the control of the state, the JNF and the Development Authority, "Israel lands" cannot be transferred in any manner. However, the law allows for the transfer of ownership among the three parastatal entities of WZO/JA and JNF, and remains fully consistent with the JNF charter's cardinal rule: "to manage and lease land on behalf of Jews only."

The National Planning and Building Law (1965) established the National Council for Planning and Construction and the Regional Councils for Planning and Construction, without including indigenous Palestinian representatives. However, the Planning Law does require that other groups such as women and the Yishuv (Jewish religious) institutions be included, following the recommendation of the JA, which also is chartered to exclude non-Jews. The JA representatives also maintain a constant voting majority in the Regional Councils responsible for spatial planning.

Within the founding principles of WZO/JA and JNF, the designation as public and state land renders such land exclusively for Jewish use. Hence, Israel's Public Lands Law (Eviction of Squatters) of 1981 enables the state to remove from public and state lands persons from "land, houses, buildings and anything permanently fixed to land" who fall outside that privileged category. A 2005 amendment to this law has expanded the powers of the Israel Lands Authority (ILA) and its agents to operate through administrative orders to evict and dispossess. Although Israeli state agencies have applied it to alter the demographic composition of Jerusalem[63] and elsewhere, the 2005 amendment was aimed primarily against the Arab Bedouin population of the southern Naqab.

Israel has instituted increasingly aggressive planning and zoning policies targeting Palestinians in the Naqab and across the Green Line in the occupied West Bank, including East Jerusalem, that deprive them of their rights to freedom of movement and residence, adequate housing, their land and other natural resources.[64] Through its discriminatory planning, zoning, and house demolition policies, Israel has created an increasingly uninhabitable and repressive environment for the indigenous Palestinian people. These policies have dramatically reduced the amount of land available for Palestinian use as a result of unlawful appropriation, illegal expansion of Israeli settler colonies in the oPt, and designation of lands as "state land" and closed military zones. In its reports to UN treaty bodies, Israel has attempted to promote its spatial planning and development policies as characterized by "inclusivity" and "outreach."[65]

In its 2013 Concluding Observations, the Committee on the Elimination of Racial Discrimination (CERD) urged Israel to "step up its efforts to ensure equal access to education, work, housing and public health in all territories under the State party's effective control," highlighting the "ongoing policy of home demolitions and forced displacement of the indigenous Bedouin communities."[66] The Committee also expressed concerns regarding "the adverse tendency of preferential treatment for the expansion of Israeli settlements, through the use of 'state land' allocated for settlements, the provision of infrastructure such as roads and water systems, [and] high approval rates for planning permits," concluding that "the current Israeli planning and zoning policy in the West Bank, including East Jerusalem, seriously breaches a range of fundamental rights under the Convention."[67] Accordingly, CERD urged Israel to reconsider its entire planning and zoning policy, in order to guarantee Palestinians their rights to property, adequate housing, and access to land and natural resources, also recommending that the state do so "in consultation with the populations directly affected by those measures."[68]

Notwithstanding, Israel has continued its discriminatory planning and zoning policies. As of 30 September 2019, Israeli occupying authorities carried out 123 residential home demolitions across the oPt since the start of the year. Overall, 58 demolitions were carried out in Area C of the West Bank and 49 in occupied East Jerusalem. Of the total, 110 structures demolished (nearly 90 per cent of all demolitions) were located in proximity to illegal Israeli settler colonies, the Apartheid/Annexation Wall, or in areas otherwise threatened by Israeli settler colony expansion.

During the same period, Israeli forces destroyed 132 other structures, constituting private Palestinian property, most of which are in Area C of the West Bank, in addition to the demolition of 12 structures constituting public property, among them nine water wells demolished in Area C. Overall, Israeli occupation forces demolished 2,451 Palestinian structures in the West Bank, including East Jerusalem, between 2012 and 2018, resulting in the displacement of 6,473 Palestinians, including 3,348 children.[69] In the southern Naqab region, the Palestinian Bedouin village of al-Araqib was demolished for the 176th time in March 2020. The Israeli courts have played a role in imposing fines on affected Palestinian citizens of Israel for the cost of demolishing and evacuating their village, under the pretext that the indigenous Palestinian people of the Naqab are trespassing on "state-owned" land.[70]

In addition, the Apartheid/Annexation Wall has displaced an untold number of households since its construction. The most-recent mass house demolitions in the Wadi al-Hummus neighbourhood of Jerusalem on 22 July 2019, claiming the proximity of Palestinian structures to the Wall as the pretext.[71] That mass demolition coincided with the 15th anniversary of the International Court of Justice (ICJ) Advisory Opinion on the Wall's illegal nature,[72] for which Israel owes reparation to the affected Palestinian people, in line with the criteria clarified by the UN General Assembly.[73]

The UN Guiding Principles on Internal Displacement note the prohibition against arbitrary displacement "[w]hen it is based on policies of apartheid, ethnic cleansing or similar practices aimed at or resulting in altering the ethnic, religious or racial composition of the affected population" and when used as a measure of collective punishment.[74] In May 2019, in response to Israeli government plans to forcibly displace 36,000 Palestinian Bedouin citizens of Israel from the Naqab, several UN special procedures mandate holders argued that Israel's "massive population transfers suggest that not all viable alternative solutions to avoid forced evictions, a gross violation of human rights that also constitutes internal displacement, have been considered, as required under international human rights law."[75]

Indigenous peoples have a right not to be forcibly removed from, and dispossessed of their ancestral lands, territories, and resources.[76] In addition to land, other natural resources are essential to a life with dignity, whereas water is the most critical. Israel has instituted a system for distributing this vital resource that mirrors the administration of land. Two "national" institutions dominate the field: Mekerot, established in 1937 and Tahal, in 1952. Mekerot was founded by the JA, JNF, and Histadrut.

Histadrut operates under a similarly discriminatory charter, like its JNF counterpart in the land sector, and was founded upon a radical Jewish-nationalist basis to organize labour resources.[77] Mekorot (Hebrew: מקורות, lit. "sources"), is the national water company of Israel and the country's top agency for water management, and it supplies Israel with 90 per cent of its drinking water, operating a cross-country water supply network known as the National Water Carrier. On 1952, the GoI established Tahal (named from the Hebrew initials for Water Planning for Israel, *Tikhnun ha-Mayim le-Yisrael*) by merging the Water Resources Department of the Ministry of Agriculture with the engineering division of Mekorot. Founded under Israel's company law, the GoI holds the major share (52 per cent) in Tahal; the rest of the shares are divided equally between the JA and JNF.[78]

Palestinians in the West Bank are denied access to the waters of the Jordan River, as the Israeli occupying forces destroyed at least 120 Palestinian wells along the Jordan Valley in 1967,[79] and control both the shoreline and the flow of the water, which is diverted, along with the Jordan headwaters in the occupied Syrian Golan, via the National Water Carrier (designed by Tahal and constructed by Mekorot) from Lake Tiberias to Jewish settlements inside the Green Line. Israeli parastatal institutions – primarily Mekorot – also retain control over the waters of the Mountain Aquifer, diverting 89 per cent of this resource to Israelis, despite the fact that 80 per cent of the water recharging the aquifer originates in the Palestinian West Bank.[80]

Meanwhile, Israel's water administration also massively over-pumps and pre-empts the mountain aquifer flowing to the coastal Strip.[81] The UN has determined that the Gaza Strip will be uninhabitable by 2020.[82] More immediately amid these conditions, the funding crisis has led the UN Relief Works Agency (UNRWA) to warn that 1 million Palestinians could starve in an impending "humanitarian catastrophe."[83]

Israel currently desalinates so much seawater that its municipalities are turning it away. Israel has so much manufactured water that some Israeli water engineers claim that "today, no one in Israel experiences water scarcity."[84] The excess desalinated water is being used to irrigate crops, and the country's water authority is planning to use it to refill Lake Tiberias[85] with Mekorot pumping the lake water into the arid Naqab to service Jewish colonies there.

The consequences of these water policies result in a disparity in water consumption between Israelis and Palestinians by a factor estimated between 3.5 and 5 in favour of Israeli consumers.[86] The Gaza Strip has long experienced a severe water crisis as result of four root causes (in chronological order):[87]

i. The concentration of inhabitants created by the waves of population transfer during the 1948 Nakba and the 1951–53 ethnic cleansing of the Naqab, resulting in high extraction rates;
ii. The proliferation of Israeli wells diverting the natural flow of the Mountain Aquifer from the Hebron Hills toward the Gaza Strip;[88]
iii. Israeli agricultural settlers' depletion of a deep pocket of fresh water before leaving Gaza in 2005;[89] and
iv. Israeli bombing attacks targeting water and sewage infrastructure in each of its wars on Gaza.[90]

The damage and depletion of water resources has had numerous negative health and environmental consequences,[91] qualifying as toxic ecology or "biosphere of war,"[92] and has made the Gaza Strip uninhabitable, as repeatedly warned by the UN.

This Israel has continued to prevent Palestinians' access to, and control over their resources needed also for food production, exploiting and diverting Palestinian natural resources to the benefit of colonizing settlers through its parastatal institutions chartered to carry out material discrimination. These measures have accompanied the loss of productivity, soil fertility and biodiversity, with their destructive impacts on food security and nutrition. The measures limiting movement and other restrictions have affected particularly the Palestinian agricultural sector and food systems, while farmers have been denied access to domestic and external markets as well as their land and water resources,[93] impeding food production, and distribution.

Consequently, the protracted conflict, economic stagnation, restricted trade and access to resources impede local production and normal access to food and nutrition, driving high unemployment and poverty rates for Palestine. This poses serious challenges to the achievement of Sustainable Development Goal 2 on Zero Hunger, food security and improved nutrition.[94]

Israel's persistent and illegal military control of the occupied Palestinian territory since 1967 has seen periods of intensive military activity, causing considerable destruction to the environment, agriculture and economies.[95] Thus, Israel uses denial of food supply and natural resources as a weapon, most drastically through its decade-long blockade of the Gaza Strip.[96] Israel controls the quantity of food allowed to reach the Gaza population, even calculating the per-capita calorie intake.[97]

Maintaining Apartheid by Fragmenting a People

Israel's discriminatory legal and institutional foundations both establish and maintain apartheid over the Palestinian people through strategically fragmenting them. By way of the serious crimes of population transfer and demographic manipulation, Israel ensures the maintenance of its institutionalised regime of racial domination and oppression over the indigenous Palestinian people. This sees Israel consolidated its

apartheid regime by entrenching fragmentation, through a combination of persistent denial of Palestinian refugee return, the imposition of geographical fragmentation, revoking of residency, the denial of family life, the maintenance of a repressive environment designed to drive Palestinian transfer and weaken the will of the Palestinian people to challenge Israel's apartheid regime. These measures manifest through denial of access to healthcare, arbitrary detention, torture and other ill-treatment, widespread collective punishment, and a government-led and military-executed effort to silence opposition to Israeli apartheid.

These activities are carried out under a legal framework that is designed to produce impunity and prevent Palestinians from effectively challenging the many facets of the apartheid regime. Israel's legislation and military orders (in the oPt) codify the apartheid regime and its pursuant inhumane acts in domestic law, render courts enablers of the system that confers legitimacy on the apartheid system's legal foundations. Instead of upholding its obligation as a state party to "condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature"[98] (ICERD, Article 3), the GoI has instituted a system that secures impunity for the very same practices, in line with the ultimate goal of securing its apartheid *raison d'état*.

Perpetuating Fragmentation

Approximately 1.9 million Palestinians are citizens of Israel; they are accorded second-class legal status, receive inferior services, suffer from discriminatory and restrictive zoning laws and race-based inferior budget allocations, and face restrictions in access to jobs and professional opportunities, due to their designation as non-Jewish citizens. Palestinian citizens are represented in the Israeli Parliament through the constitutive parties of the "Joint List."[99] However, this is, at best, a superficial representation, as these parties are restricted by Israel's Basic Laws (e.g., Knesset Law, amendment 7) banning representation and proposed legislation that would compromise the racial categories and character of the State.[100]

As such, when the "Joint List" attempted to challenge the bill for the Basic Law: Jewish Nation-State (2018) by submitting a bill titled "Israel as the Nation-State of all its Citizens," the Knesset Presidium refused to allow discussion of the proposal.[101] These censoring measures are consolidated in the non-extension of "national rights" to Palestinian citizens, due to the distinction between Israeli "citizenship," enjoyed by all Israeli citizens, and "Jewish nationality" (*le'om yehudi*) enjoyed only by Jewish citizens of Israel and other extraterritorial states; "National rights" apply only to the latter, and Israel's parastatal institutions regularly demand external citizens' allegiance to Israel, a foreign state, despite its prohibition in the custom of international relations. In the Israeli system of dual-tiered civil status,[102] no "Israeli nationality" status exists.[103]

In East Jerusalem, some 323,700 Palestinians lived as so-called "permanent residents" in 2017.[104] Israel has falsely reported to the UN Treaty System that the holders of this status enjoy the same rights as Israeli citizens. [105] In reality, they carry a revocable "permanent residency" status, which Israel granted Palestinians in East Jerusalem following its invasion, occupation, and practices of the eastern part of the city since 1967. In 1980, Israel's "annexation" of occupied East Jerusalem with the adoption of its Basic Law: Jerusalem, Capital of Israel was censured in the strongest terms by the UN Security Council, which determined the Basic Law to be "null and void" and called on Israel to rescind it forthwith in Resolution 478 of 20 August 1980.[106]

Since then, Israel has failed to reverse its unlawful annexation of occupied East Jerusalem, in the same way that it continues to illegally annex West Jerusalem since 1948, in violation of the prohibition on the acquisition of territory through the threat or use of force and the right of the indigenous Palestinian

people to self-determination and permanent sovereignty in their capital.[107] As residents, they are treated "as foreigners for whom residency in the land of their birth is a privilege rather than a right, subject to revocation."[108] Palestinian residents in Jerusalem face onerous requirements to constantly prove that their so-called "centre of life" is in Jerusalem, and face the constant threat of forced eviction, house demolitions and other policies and practices such as residency revocation, aimed at guaranteeing and maintaining an Israeli-Jewish demographic majority in the city at the expense of the indigenous Palestinian people's rights, as clearly outlined in Israel's racist master plans for Jerusalem.[109] While CERD already has called on Israel to eliminate its "demographic balance" goals from its Jerusalem "master plan" in 2012,[110] it is evident that Israel has shown no progress in this regard and appears to have no intention to do so.

Some 2,482,034 Palestinians live in the West Bank, excluding East Jerusalem,[111] including some 809,738 Palestinian refugees registered with the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).[112] With some 1,918,221 Palestinians in the Gaza Strip,[113] 1,348,536 are refugees registered with UNRWA.[114] Approximately 418,00 Israeli settlers also live in the West Bank.[115] In addition, 215,800 Israeli settlers reside in occupied East Jerusalem.[116]

In light of Israel's fragmentation of the Palestinian people as a main method through which it enforces apartheid through discriminatory laws, policies, and practices, these relate to the Palestinian people as a whole. The international community, especially Western states, have played a negative role in normalizing this fragmentation, by drawing a strict distinction between Palestinian citizens of Israel and Palestinians in the oPt, and disregarding the reparation rights of Palestinian refugees and exiles, including the right to return.[117]

Moreover, no forum or organ of the United Nations addresses the Palestinian people as a whole, except for the General Assembly's Committee on the Exercise of the Inalienable Rights of the Palestinian People, although that mechanism has not lived up to that mandate. Meanwhile, Israel has continued to entrench its fragmentation of the Palestinian people, in order to disperse and prevent Palestinians from effectively challenging its apartheid regime, let alone exercise its sovereign right to self-determination.

Restrictions on Freedom of Movement, Residence, and the Right to Family Life

Despite claims to the contrary,[118] Israel has imposed draconian restrictions on freedom of movement and residence within the oPt and across the Green Line, severely impacting the rights of indigenous Palestinians to family life, choice of residence and spouse, adequate housing, and an adequate standard of living for oneself and one's family. These policies and practices have played an important role in the fragmentation of the Palestinian people and territory, ensuring that Palestinians from different geographical areas of their native country are unable to meet, group, live together, share in the practice of their culture, and exercise any collective rights, including to self-determination and permanent sovereignty over their natural wealth and resources.

These measures severely deny the Palestinian people the right to freedom of movement and residence within the borders of the state, in violation of Article 5(d)(i) of ICERD, including the right to leave their country and to return. In stark contrast, Israel has enabled Jewish colonial settlers to appropriate Palestinian land, water, and other means of subsistence, while in Gaza, the movement restrictions consume 35 per cent of agricultural land and the majority of productive fishing grounds, affecting the exercise of the right to food. Moreover, it has abetted the appropriation of Palestinians' culinary heritage,[119] potentially violating Article 5(e)(vi) of ICERD and contravening numerous principles of the UN Declaration on the Rights of Indigenous Peoples.[120]

Some of Israel's measures of dispossession and fragmentation are more visible than others, including the separation of Palestinians in the oPt from Palestinian citizens of Israel through the closure of Gaza and the West Bank, the Annexation Wall running along the West Bank, including in and around East Jerusalem, and Israel's permit regime consisting of checkpoints and other physical barriers, which severely impact the freedom of movement of Palestinians in the oPt, denying them access to essential services, including healthcare, in Jerusalem, Israel, and abroad, and denying them access to places of worship in Jerusalem, Nazareth and elsewhere.

In 2004, the ICJ determined that the Annexation Wall was in breach of Israel's obligation to uphold the right of the Palestinian people to self-determination, and called on Israel to dismantle the sections already built.[121] Despite its claims that it does not generally restrict freedom of movement internally,[122] Israel has not halted its construction of the Apartheid/Annexation Wall, which remains standing and under further construction 16 years since the ICJ advisory opinion, and continues to result in material discrimination against Palestinians, including the appropriation of Palestinian land for illegal Israeli settlement construction and expansion.[123]

At the same time, Israel has also imposed less visible measures designed to fragment the Palestinian people and to undermine the exercise of their inalienable rights, through its control of the Population Registry on both sides of the Green Line, its implementation of a tiered and racially discriminatory ID system, and its control over who enters and exists the oPt.[124] Israel maintains that "[a]ll residents of Israel (i.e., citizens, permanent residents who are not citizens, and temporary residents) are required to register their address, or any change thereof, with the Population Registry."[125] While such administrative measures may appear to be commonplace, they accompany restrictions resulting in extreme hardships for foreign national spouses, including Palestinians with foreign citizenship status, who are married to Palestinians with West Bank, Gaza Strip or Jerusalem IDs, including those who live without permits in constant fear of arrest and expulsion.[126]

As recognised by the former UN Human Rights Council's Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Prof. John Dugard reported in 2007:"Israeli law and practice shows [sic] little respect for family life," by denying Palestinians with different residency or citizenship status the right to live with their spouses.[127] At the time, Dugard reported to the Council:

> "Can it seriously be denied that the purpose of such action is to establish and maintain domination by one racial group (Jews) over another racial group (Palestinians) and systematically oppressing them? Israel denies that this is its intention or purpose. But such an intention or purpose may be inferred…"[128]

Israel's severe restrictions on the right of the Palestinian people to freedom of movement and residence, including to leave and to return to their country, a staple of Israeli state policy since the Nakba, suggest otherwise. As highlighted in the ESCWA report, with respect to Palestinian citizens, Israel's

> "policy of domination is manifest by the provision of inferior social services, restrictive zoning laws, and limited budget allocations benefitting their communities, in formal and informal restrictions on jobs and professional opportunities, and in the segregated landscapes of their places of residence: Jewish and Palestinian citizens overwhelmingly live separately in their own respective cities and towns."[129]

Two decades ago, CESCR observed that Israel's freedom of movement restrictions "apply only to Palestinians and not to Jewish Israeli citizens," noting that "closures have cut off Palestinians from their own land and resources, resulting in widespread violations of their economic, social and cultural rights," in particular the right to self-determination, and the obligation not to deprive a people of their means of subsistence.[130] Similarly, the UN Human Rights Committee expressed concern in 1998 that:

> "the authorities appear to be placing obstacles in the way of family reunion in the case of marriages between an Israeli citizen and a non-citizen who is not Jewish (and therefore not entitled to enter under the Law of Return)."[131]

The Human Rights Committee had noted that restrictions on freedom of movement affect "nearly all areas of Palestinian life."[132] Since then, Israel has continued to entrench its fragmentation of the Palestinian people and of the oPt. Article II(c) of the Apartheid Convention defines the crime of apartheid as involving "inhuman acts" comprising "measures calculated to prevent a racial group… from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group… by denying to members of a racial group or groups basic human rights and freedoms, including… the right to leave and to return to their country" and "the right to freedom of movement and residence." Israel's fragmentation policy and practice, including denial of Palestinian refugee return, and freedom of movement and residence violations, constitute core methods through which Israel has implemented its apartheid regime over the Palestinian people.[133]

The Closure of Jerusalem and the Pursuit to Eliminate Indigenous Palestinian Presence in the City

Israel's closure regime and denial of access to Palestinians from the West Bank and Gaza Strip have significantly impacted Palestinian political, social, economic, and cultural life in the city of Jerusalem. In particular, Israel's closure of Jerusalem has resulted in the isolation and severe marginalization of Palestinian life in the city, separating Palestinians in Jerusalem from the rest of the oPt. The Apartheid/Annexation Wall and its associated closure and permit regime have radically transformed the city since Israel began its construction in 2002, cutting East Jerusalem off from the West Bank.[134] Today, roughly a third of East Jerusalem's Palestinian residents live in neighbourhoods behind the Wall, in Kufr 'Aqab, 'Anata, and Shu'fat Refugee Camp, with the Apartheid/Annexation Wall separating families in a highly visible extension of Israel's fragmentation-and-apartheid system.[135] Entirely sealing off the city from the rest of the West Bank, the route of the Wall in and around East Jerusalem serves Israel's long-term demographic goals in the city, to annex as much land as possible with minimal Palestinian presence.[136]

Through its fragmentation of the oPt and closure of Jerusalem, Israel has pursued the social and economic suffocation of Palestinians in their capital city, attempting to redirect Palestinian presence away from the city to serve Israel's demographic goals and unilateral control over Jerusalem.[137] Israel has isolated and marginalised Jerusalem in order to gradually eliminate the city's central role for all aspects of Palestinian life, including access to the holy places of worship and access to East Jerusalem hospitals for treatment.

For nearly two decades, Israel has denied Palestinians any collective rights in the city and prevented Palestinian institutions in Jerusalem from operating, including the Orient House, as the national headquarters of the Palestinian people in Jerusalem.[138] At the same time, Israel's policies and practices have resulted in dire economic conditions for the Palestinian people in occupied East Jerusalem, including gaps in access to education and a lack of basic services.

As of 2019, it is estimated that 72 per cent of all Palestinian families in Jerusalem live below the poverty line, compared to 26 per cent of Israeli-Jewish families. At the same time, 81 per cent of Palestinian children in Jerusalem live below the poverty line, compared to 36 per cent of Israeli-Jewish children. Moreover, roughly a third of Palestinian adolescents in Jerusalem do not complete 12 years of schooling. In turn, the drop-out rate for Israeli-Jewish students in Jerusalem is estimated at 1.5 per cent. Lastly, fewer than half of Palestinians in East Jerusalem are formally connected to the water network.[139]

According to the UN Conference on Trade and Development (UNCTAD),

> "[a] matrix of policies implemented by the Israeli Government has effectively impeded the natural growth of the Palestinian population in East Jerusalem, most recently the [Apartheid/Annexation Wall], revocation of residency rights, discriminatory family unification policies and disadvantageous allocation of the municipal budget and services between East and West Jerusalem."[140]

At the same time, Israel's occupation of East Jerusalem has been transformative, with Israel not only isolating the city but transferring the indigenous Palestinian people from Jerusalem, and radically altering the character of the city through the judaization of street names and settlement construction. These policies have been especially apparent in the Old City of Jerusalem, which remains a central target of Israel's goal to erase Palestinian presence, culture, heritage, and identity.[141]

The Closure and Blockade of the Gaza Strip

Israel has imposed a land, sea and air blockade and comprehensive closure of the Gaza Strip for 12 consecutive years, impacting the entire population of approximately two million Palestinians. The Israeli blockade-and-closure regime amounts to a prohibited form of collective punishment,[142] as recognised by, among others, the former UN Secretary-General Ban Ki Moon[143] and the International Committee of the Red Cross (ICRC).[144]

The term "closure" denotes the list of Israeli policies and practices beyond the blockade measures that cumulatively amount to effective control, imposition of Israeli administrative measures and, therefore, occupation of the Gaza Strip by the Israeli occupying authorities. These restrictions and enforcements include Israeli administrative control over the Population Registry, telecommunications, water, sanitation, fuel and, as noted below, food availability. The frequent presence of Israeli occupying forces inside the Gaza Strip, conducting incursions and military operations, also attests to Israel's ability to enter the territory at will.[145]

The blockade and closure regime over the Gaza Strip forms part of the Israeli Government's campaign to separate and fragment Palestinian communities within the oPt, and elsewhere, and to deny the Palestinian people their inalienable right of self-determination, including permanent sovereignty over natural wealth and resources. Initially claiming to the media and in court that the closure policy was instituted for security reasons, in 2012, the GoI confirmed that the closure policy is in fact not a security measure; the policy instead constitutes a political measure serving Israeli strategic and geopolitical aims.

In the course of hearing arguments before the Israeli High Court of Justice in 2012 for a petition lodged by Al Mezan and Gisha on behalf of five students from Gaza enrolled in Birzeit University, in the West Bank, the Israeli State Attorney clarified that it had no security claim against any of the petitioners, but rather, rejected their requests to travel as part of a comprehensive ban.[146] At least one of the banned students had previously received the requisite security clearance from the Israeli occupying authorities to travel. By acknowledging that the denial of movement between Gaza and the West Bank was part of a

systematic policy rather than a security measure, the State Attorney pronounced the government's explicit intent of separation and isolation of the Gaza Strip.

The policy of deliberate separation and fragmentation of the oPt and the Palestinian people plays firmly into the political interests of the State of Israel: if the Palestinian government remains divided, the Palestinian people are without effective representation and the Israeli government has more discretion in implementing its "grand apartheid" plans over the oPt, including forestalling the establishment of a sovereign Palestinian State. During Benjamin Netanyahu's recent election campaigns, the Israeli Prime Minister defended his Gaza closure policy as a means of continued division.[147] Both physical and political separation are key to enforcing a scheme that prevents the Palestinian people's exercise of their right to self-determination.

The Gaza blockade-and-closure policy, with its unprecedented duration and severity, has resulted in Gaza effectively becoming an open-air prison, completely disconnected from the rest of the oPt and the outside world.[148] Palestinian families are forcibly divided between the Gaza Strip, the West Bank, including East Jerusalem, across the Green Line, and abroad, with parents, children, spouses, brothers, sisters and extended families unable to visit each other for decades, even within the oPt. Students from Gaza are unable to attend universities in the West Bank, including East Jerusalem, where they previously made up to 35 per cent of the mixed student body. Under blockade, the occupation authorities frequently deny or delay the requisite travel permits to exit for study elsewhere in their country or abroad.

Business people and traders are impeded in conducting their professional activities, even within the oPt, as exports are virtually banned[149] and imports are severely restricted or included in the banned "dual-use" goods or commodities list.[150] A recent measure has seen Israel banning the distribution and export of Palestinian produce from the oPt to external markets.[151]

While preventing Palestinian residents of the Gaza Strip from accessing the rest of the oPt and Israel, the Israeli government is also simultaneously promoting the emigration of Palestinians from Gaza to other countries, both explicitly,,[152] and in the implicit practice of making Gaza unliveable. The 2017 UN report, "Gaza – 10 Years Later," calculated that Gaza would be unable to support proper human life by 2020.[153] In practice, Gaza is already uninhabitable due to the Israeli-imposed blockade and closure, which have resulted in extreme economic decline, de-development, profound and unparalleled levels of poverty, aid-dependency, food insecurity, a projected unemployment rate of 44.4 per cent for 2020, and collapsing public services.[154]

Israel's blockade and closure policy impedes the ability of Palestinians in Gaza to access safe drinking water, with 95 per cent of residents not having access to clean water.[155] The Palestinian people endures routine power outages, which serve to exacerbate the effects of the water and sanitation crisis in Gaza. The lack of potable water, reduced ability to filter water, and water pollution-spread diseases, worsen existing illnesses, and prevent effective address of medical conditions. Of particular concern is the lack of equipment and resources to properly treat sewage, wastewater and solid waste. The result is increased air and sea pollution that puts Gaza's population of two million at risk of water and air-borne disease, and further strains the collapsing health sector.

Israel enforces a maritime and land "buffer zone," also referred to as an "access-restricted area," where the Israeli military enforces its unilaterally imposed movement restrictions within the Palestinian coastal waters and the Gaza side of Israel's perimeter fence. The limits of the "buffer zone" are constantly shifting, in particular, restricting where Palestinian fishermen may operate. This has devastated the economic and

social conditions of approximately 4,080 fishermen registered with the Fishermen's Syndicate and approximately 1,000 workers in fishing-related professions.[156] Further, the Israeli occupying forces regularly attack Gaza fishermen at sea under the pretext of law enforcement.

Since the start of 2012, the Israeli Navy has attacked Palestinian fishermen with live fire 1,483 times, killing six fishers and injuring 132 injured, including six children. In the same period, the Israeli Navy arrested 547 fishermen, 40 of them children, confiscated 177 boats and damaged and destroyed 101 boats. These policies and practices by Israel have led to the collapse of the sector and resulted in approximately 95 per cent of the fishermen living below the poverty line.[157] Such attacks clearly indicate Israel's intentions to preserve and reinforce the physical containment of Palestinian residents of Gaza amid its fragmentation of the Palestinian people as a whole, in order to maintain their subjugation within its apartheid regime.

Gaza's agricultural sector has been equally undermined by the closure policy, where some 27,000 dunums, 35 per cent of the Gaza Strip's agricultural land, fall within the 300-meter-wide Israel-enforced buffer zone inside the territory of Gaza. This military and administrative measure puts farmers at risk of injury or death from unlawful live fire. Since 2012, 11 farmers have been killed while at work. Moreover, the Israeli occupying forces have been conducting periodic aerial spraying of herbicides, impacting farmland on the Gaza side of the fence.

According to information received in a Freedom of Information Act request and human rights monitoring and documentation, Israel has conducted this toxic spraying of cultivated lands in Gaza at least 30 times since 2014. The practice is reported to have created lasting change to the chemical composition of entire swaths of arable land, reaching up to 700 metres beyond the perimeter fence, causing serious environmental damage, harming food safety and security, and causing enormous financial losses to local farmers.[158] A spraying operation in January 2018 affected some 550 acres of agricultural lands belonging to 212 farmers, with an estimated loss of US$1.3 million.[159] In its October 2019 Concluding Observations, CESCR was "concerned at the long-lasting hazardous impact of the aerial herbicide spraying… adjacent to the fence between Israel and Gaza on the crops productivity and soil in nearby areas in Gaza."[160]

Israel's blockade and closure policy has also strained the ability of Palestinian authorities to respond to the increasing health needs of Palestinians in Gaza. When access to specialist and/or lifesaving medical care is unavailable inside Gaza, doctors must refer their patients to hospitals in the West Bank and Israel, or abroad. However, the movement restrictions forming the basis of the blockade and closure regime ban all of Gaza's residents from leaving Gaza, except for patients that meet the exceptional 'humanitarian criteria' put in place by the Israeli authorities. Patients needing lifesaving can apply through an onerous, opaque and complex process for a permit on 'humanitarian' grounds. Many are rejected or do not receive a response to their application.[161] According to the Palestinian General Authority of Civil Affairs, Israeli authorities rejected 937 patient requests to travel for medical care in the first half of 2019, delayed 3,230 requests and approved 8,190 requests in the same period.

Recognition of Israeli Apartheid in International Law

International law authorities, in particular, the Treaty Bodies if the UN Human Rights System have severally and repeatedly observed the Israel's practice of institutionalized material discrimination against the Palestinian people, pointing out its explicit failure to combat apartheid domestically, as well as violate the human rights of Palestinian refugees extraterritorially. This section chronicles these findings through the legal forums of the United

Nations since Israel's ratification of the major human rights treaties and its assumption of the corresponding obligations arising over the decades.

Concluding Observations and Recommendations of the UN Committee on Elimination of Racial Discrimination

The first international legal treaty to codify the prohibition against apartheid was the 1965 International Convention on the Elimination of all Forms of Racial Discrimination. Article 3 of this Convention "particularly condemns" apartheid and segregation as especially egregious manifestations of racial discrimination, and obliges states parties to the Convention, of which Israel is one, "to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction." CERD reviews the performance of states that have ratified the Convention on a rotating basis.

In 2007[162] and 2012,[163] the Committee found Israel, as State party to ICERD, to be in violation of Article 3 of the Convention and urged Israel to take immediate measures to prohibit and eradicate any policies or practices of racial segregation and apartheid, which disproportionately affect the rights of the Palestinian people in the occupied Palestinian Territory (oPt), comprising the Gaza Strip and the West Bank, including East Jerusalem.[164]

In its concluding observations issued in March 2012, the Committee censured Israel under the rubric of apartheid.[165] The Committee reiterated concerns it had raised in previous reviews of Israel about the general segregation of Jewish and non-Jewish sectors of Israeli society, before going on to say that it was "particularly appalled at the hermetic character of the separation" between Jewish and Palestinian populations in the oPt.[166] It deemed this separation (*hafrada,* in Israeli Hebrew usage) to include the separate legal systems and institutions, physical infrastructure, access to services and resources, and entitlements to freedoms and rights. Accordingly, CERD urged Israel, pursuant to Article 3 of the Convention, to prohibit and eradicate policies or practices of racial segregation and apartheid that "severely and disproportionately affect the Palestinian population."[167]

In 2019, the Committee reiterates its concern[168] that the Israeli society continues to be segregated as the state "maintains Jewish and non-Jewish sectors, including two systems of education with unequal conditions, as well as separate municipalities, namely Jewish municipalities and the so-called `municipalities of the minorities'."[169] This system also contravenes Article 3 of ICERD, as the Committee has noted, whereas Regional Planning Councils exercise full discretion to reject applicants deemed "unsuitable to the social life of the community."[170] Notably, these public bodies are set up with a permanent majority of members representing the Jewish Agency, a parastatal organization discharging public urban-development functions that is chartered to discriminate in favour of persons recognized as holding the status of "Jewish nationals," but not citizens of the state without discrimination.

This set-up precedes and is in addition to the specific situation in the oPt. However, the Committee has noted "the consequences of policies and practices that amount to segregation" such as the maintenance of two entirely separate legal systems and sets of institutions in the oPt: One for Jewish communities in the prohibited settler colonies, on the one hand, and Palestinian populations living the same territory in Palestinian towns and villages under Israeli military rule, on the other.[171]

CERD's review found appalling "the hermetic character of the separation of the two groups, who live on the same territory but do not enjoy either equal use of roads and infrastructure or equal access to basic

services, lands and water resources." The Committee found contravention of ICERD's Article 3 obligation to combat apartheid in that:

> "Such separation is materialized by the implementation of a complex combination of movement restrictions consisting of the Wall, the settlements, roadblocks, military checkpoints, the obligation to use separate roads and a permit regime that impacts the Palestinian population negatively."

As in previous Concluding Observations,[172] CERD's most-recent review of Israel's performance of ICERD invoked its General Recommendation No. 19 (1995) concerning the prevention, prohibition and eradication of all policies and practices of racial segregation and apartheid, and urged Israel. In 2019, CERD urged Israel, once again, "to give full effect to Article 3 of the Convention to eradicate all forms of segregation between Jewish and non-Jewish communities and any such policies or practices [that] severely and disproportionately affect the Palestinian population" inside Israel and the oPt.[173]

CERD's 2019 review of Israel's treaty obligations also found:

> (a) The tide of racist hate speech in public discourse, in particular by public officials, political and religious leaders, in certain media outlets and in school curricula and textbooks;
>
> (b) The proliferation of racist and xenophobic acts that particularly target non-Jewish minorities, especially Palestinian citizens of Israel, Palestinians residing in the Occupied Palestinian Territory and migrants and asylum-seekers of African origin;
>
> (c) Reports that the judiciary might handle cases of racial discrimination by applying different standards based on the alleged perpetrator's ethnic or national origin.[174]

Moreover, the practice of "continuing confiscation and expropriation of Palestinian land, continuing restrictions on access of Palestinians in the Occupied Palestinian Territory, including East Jerusalem, to natural resources, inter alia, agricultural land and adequate water supply" have led the CERD Committee to raise concern:

a. About the discriminatory effect of planning and zoning laws and policies on Palestinians and Bedouin communities in the West Bank, the continued demolitions of building and structures, including water wells and, as a consequence, further displacement of Palestinians;

b. That the process of applying for building permits is prolonged, complicated and expensive and that few such applications are approved, while a preferential treatment continues for the expansion of Israeli settlements, including through the use of "state land" allocated for settlements;

c. About acts of violence perpetrated by the State party's settlers against Palestinians and their property in the West Bank, including East Jerusalem, and at the lack of effective accountability for and protection from such acts by the State party's authorities[175]

The Committee is concerned about the discriminatory effect of the Basic Law: Israel – the Nation State of the Jewish People (2018) on non-Jewish people in the State party, as it stipulates that the right to exercise self-determination in Israel is "unique to the Jewish people…"[176]

The Committee has noted that this and other discriminatory laws maintain discrimination against Arab citizens of Israel and Palestinians in the oPt and "create differences among them, as regards their civil status, legal protection, access to social and economic benefits, or right to land and property." The Committee identified specifically Amendment No. 30 of 2018 to the already-discriminatory Entry into Israel Law (1952), which grants the Israeli Minister of Interior broad discretion to revoke the permanent

residency permit of Palestinians living in East Jerusalem." [177] CERD has found that this form of institutionalized discrimination contravenes Articles 2 and 5 of ICERD.

Concluding Observations and Recommendations of the UN Committee on Economic, Social and Cultural Rights

After submissions from local and international civil society, Israel belatedly submitted its combined initial and first periodic reports on the implementation of the Covenant on Economic, Social and Cultural Rights (ICESCR) to the monitoring Committee on Economic, Social and Cultural Rights (CESCR) on 28 November 1997. In accordance with the standard CESCR procedures, the Committee reviewed the government report, cross-checking it with other reliable information, to produce a "list of priority concerns" in June 1998.[178] The Israeli government delegation then appeared before the Committee at its 19th session on 17–18 November 1998.[179]

The result counted as a milestone in UN history. The seemingly political and telegraphic "Zionism-is-racism" resolution of 1976,[180] expunged in 1991 also for political reasons, may have been the first international instrument recognizing Israel's discriminatory state ideology. However, CESCR's 1998 Concluding Observations reflected a legal analysis of institutionalized material discrimination operated by Israel's government and other organs of the state.[181] Thanks to the reports and testimonies provided by 15 NGOs,[182] including civil representatives under both Israeli citizenship and military occupation, the 18 Committee members achieved understanding and consensus as to how the combination of ideology, legislation, central and local public institutions and parastatal organizations conspires to dispossess an entire people, beginning with their habitat (land, housing, water and food sovereignty), effectively rendering the indigenous Palestinians "a people deprived of its means of subsistence."[183]

Israel's Initial CESCR Review

In its initial review, CESCR observed that Israel's "excessive emphasis upon the State as a "Jewish State" encourages discrimination and accords a second-class citizenship to its non-Jewish citizens."[184] More substantively, the Committee found that Israel's legislation, including its Basic Laws, subliminally discriminate against the indigenous population. The Committee noted "with concern that the Law of Return, which permits any Jew from anywhere in the world to immigrate to, and, thereby, enjoy virtually automatic residence and obtain citizenship in Israel, and that this discriminates against Palestinians in the *diaspora* upon whom the Government of Israel (GoI) has imposed restrictive requirements that make it almost impossible to return to their land of their birth."[185]

CESCR concluded the first periodical review of Israel, analyzing for the first time in a UN forum the nature and effects of structural discrimination in Israel's laws and institutions.[186] Among Israel's breaches of the Covenant, CESCR cited the operations of the "national" (i.e., parastatal) institutions and expressed "grave concern" over the Status Law of 1952, which "authorized the World Zionist Organization/Jewish Agency and its subsidiaries, including the JNF [Jewish National Fund], to control most of the land of Israel, since these institutions are chartered to benefit Jews exclusively."[187]

The Committee identified specific forms of discrimination against Palestinian Arab citizens in housing and land. It considered the "unrecognized villages" of the Galilee and the Naqab regions[188] whose resident Arab citizens "face demolition orders, lack of basic services and removal into concentrated 'townships'."[189] It noted that the "mixed" (i.e., cohabited by indigenous Arabs with Jewish settlers) towns, such as Yaffa and Lydd,

whose Arab neighbourhoods (where many of the estimated 270,000 "present absentees" live) have "deteriorated into virtual slums" as the result of Israeli policies.[190]

CESCR formally notified Israel that, in order to meet its minimum requirements under the Covenant, the state party would have to "ensure the equality of treatment of all Israeli citizens."[191] It urged the Israeli government to "review the status of its relationship with the [World Zionist Organization] WZO/JA [Jewish Agency] and JNF [Jewish National Fund],"[192] the major parastatal organizations chartered to discriminate in favor of "Jewish nationals" and against the indigenous Palestinian people, while carrying out public functions, including those related to human settlements and natural resources. The Committee also called for Israel to revise its re-entry policies *vis-à-vis* Palestinians "to a level comparable to the Law of Return as applied to Jews."[193]

Despite the Committee's request, the state party has undertaken no such review of these or other institutional forms of material discrimination against persons not of Jewish faith, in general, nor against Palestinians, in particular. These issues and breaches of the Covenant remain current today, 22 years and four intervening CESCR reviews later.

When Israel refused to present its side of its follow-up review at CESCR's 24th session (13 November to 1 December 2000), a community of NGOs nevertheless presented relevant information.[194] In a letter, issued one day before the Committee convened its session to review Israel's "additional information," the state party proposed instead to submit a new, second periodic report well in time for its next (25th) session. In the letter, the Israeli government still abdicated any responsibility for upholding or reporting on economic, social and cultural human rights in the oPt, and proposed to submit a new periodic report by March 2001 and begin a new review process instead. The Committee responded formally by upholding the integrity of its earlier finding on Israel's jurisdictional responsibility in the oPt, particularly "in light of all current circumstances…and the current crisis."[195]

The state party's refusal to provide information on its application of the Covenant in oPt already had qualified Israel as a "nonreporting" country. The resulting communication to the Israel Permanent Mission reiterated that Israel's Covenant obligations indeed apply to the oPt and that "the State party's argument that jurisdiction has been transferred to other parties is not valid from the perspective of the Covenant, particularly in view of Israel's besieging of all the Palestinian territories occupied since 1967."[196]

Israel's Second Periodic CESCR Review

In time for the CESCR spring 2002 pre-sessional, Israel did present a new periodic report[197] with an attached cover letter, again refusing to report on the Covenant's application in the oPt. Ultimately presenting its second report on the very eve of the session, however, prevented the Committee from considering it with the required translations into the working languages. Nonetheless, the procedures allowed for consideration of numerous and more-timely NGO submissions[198] and an official response.

At that stage, the CESCR review of Israel took on a further, unprecedented dimension. The Committee was faced with a state party's refusal to apply its Covenant obligations in, and report on a territory it occupied (i.e., territory of effective control), despite the consensus among treaty bodies of Israel's treaty obligations in all the oPt.[199] The Committee, therefore, took the unprecedented step of forwarding its communication to Israel in annex to an appeal to the Economic and Social Council's summer 2001 session, in accordance with provisions under Articles 21 and 22 of the Covenant. That intervention essentially underscored the need to protect Palestinian civilians and to take "effective measures,"[200] such as those

that the various UN bodies and human rights mechanisms already recommended and remained unimplemented.[201]

The Committee's subsequent Concluding Observations concentrated on the deteriorating situation in the oPt, and issued a special observation that it remains "concerned that the State party's Law of Return denies indigenous Palestinian refugees the right to return to their homes and properties."[202] CESCR also scheduled the review of Israel's 2nd periodic report at its 30th session, May 2003. That session focused on the Committee's list of questions to the state party issued at its pre-sessional working group in May 2002.[203]

The review of Israel's second periodic report reflected progress in UN treaty bodies' consideration of Israel's "legalized" and institutional discrimination on the basis of "Jewish nationality." CESCR demanded that the State party "explain the distinction between the religion and nationality status categories in Israeli law…, what types of nationality status exist in Israel, and how this status is distinct from other citizenship status in the enjoyment of economic, social and cultural rights."[204] The Committee also sought answers as to what steps Israel had undertaken to implement the Committee's recommendation that the State party review its relationship with patently discriminatory institutions such as the WZO/JA and JNF.[205]

In 1998, CESCR found that "the large-scale systematic confiscation of Palestinian land and property by the State and the transfer of that property to these [Zionist] agencies constitute an institutionalized form of discrimination, because these agencies by definition would deny the use of these properties to non-Jews."[206]

The GoI delegation did not provide satisfactory answers to these fundamental questions, and the Committee members generally sought to maintain a convivial atmosphere during the constructive dialogue, in order to avoid the previous conduct of the State party when refusing to cooperate in its 25th session in 2001. This diplomatic posture was maintained in the formal Concluding Observations, omitting explicit references to "breaches" of the Covenant. Nonetheless, the Committee did remain consistent with its inquiry so far about the pivotal matter of differentiated "nationality" status of citizens and other persons under Israeli jurisdiction and effective control. Significantly, it stated:

> "The Committee is particularly concerned about the status of 'Jewish nationality,' which is a ground for exclusive preferential treatment for persons of Jewish nationality under the Israeli Law of Return, granting them automatic citizenship and financial government benefits, thus resulting in practice in discriminatory treatment against non-Jews, in particular Palestinian refugees. The Committee is also concerned about the practice of restrictive family reunification with regard to Palestinians, which has been adopted for reasons of national security. In this regard, the Committee reiterates its concern contained in paragraph 13 of its 1998 concluding observations, and paragraph 14 of its 2001 concluding observations...[207]

Israel's Third Periodic CESCR Review

Amid its principal subjects of concern and recommendations, the Committee reiterated its previous unanswered questions and observations in its 2011 third periodic review of Israel. CESCR noted with concern that most of the recommendations addressed to the state party following the consideration by the Committee of the state party's second periodic report in 2003 still remained valid. Therefore, the Committee recommended that the state party follow-up to those recommendations that were issued in 2003 and that remain valid today.[208]

Israel's Fourth Periodic CESCR Review

The state party's fourth report to CESCR in 2018 did not address most of the hanging questions and recommendations. Consistent with foregoing observations, CESCR's Concluding Observations on Israel in 2019 called on Israel to:

> "Immediately halt and reverse all settlement policies and developments in the West Bank, including East Jerusalem, and the Occupied Syrian Golan, and rescind the delegated powers granted to organizations facilitating settlement such as the World Zionist Organization and the Jewish National Fund, and discontinue support to these organizations."[209]

With regard to non-discrimination, in general, CESCR noted the absence of comprehensive anti-discrimination legislation in Israel and observed that existing legislation officially presented as addressing anti-discrimination legislation "is not fully in line with article 2(1) of the Covenant, with limited prohibited grounds of discrimination and that the State party has not taken any step to review the existing legislation.[210] Consequently, CESCR called on Israel to:

> "revise the existing anti-discrimination legislation or adopt comprehensive anti-discrimination legislation with a view to ensuring that legislation prohibits all direct, indirect and multiple forms of discrimination on all grounds, including language, colour, social origin, property, sexual orientation, birth or other status, and providing for effective remedies for victims of discrimination."[211]

More specifically, the Committee expressed deep concern over the recently adopted Basic Law: Israel – The Nation State of the Jewish People for its discriminatory purpose and effect on the enjoyment of the Covenant rights of non-Jewish persons, especially in the oPt, "which have already significantly been hampered…"[212]

CESCR noted also the affected parties subject to discrimination as Palestinian citizens of Israel,[213] especially Bedouins[214]; Palestinians residing in the oPt, but also refugees and asylum seekers;[215] and migrant workers.[216] The Committee found that the Israeli system's institutional materialized discrimination derogates the human right self-determination, including disposition of natural resources[217]; decent work[218]; social security[219]; protection of the family, including family reunification[220]; food[221]; water and sanitation[222]; adequate housing[223]; health[224]; education[225] and participation in culture.[226]

Cumulative Recognition of Israeli Apartheid and Calls to Reconstitute the UN Special Committee against Apartheid and Centre against Apartheid

The recognition of Israeli apartheid and recommendation to revive the Centre against Apartheid as a specialize unit under the UN General Assembly has emerged numerous times in UN forums and by other observers of Zionism and its eventual State of Israel's colonial project in Palestine. This recommendation has been most direct and explicit in the following notable instances:

2006: The UN Human Rights Council's Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967, South African legal scholar Prof. John Dugard, noted the position of the Middle East Quartet, to which the United States, European Union, Russian Federation in support of Israel's siege on the occupied Gaza Strip. He observed that the Quartet's economic isolation of Palestine hurts the Palestinian people, but compared this situation, as a South African, recalling the Western powers' refusal to impose

economic sanctions on the apartheid regime because this would hurt the black people of South Africa. By contrast, he lamented, "No such sympathy is extended to the Palestinian people and their human rights."[227]

The Special Rapporteur identified three regimes identified by the international community's as inimical to human rights: colonialism, apartheid and foreign occupation, noting that elements of Israel's occupation regime constitute forms of colonialism and apartheid.[228] Discrimination against Palestinians occurs in many fields. Moreover, the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid appears to be violated by many practices, particularly those denying freedom of movement to Palestinians,[229] further noting the similarity of Israel's restriction and denial of Palestinians freedom of movement to the notorious "pass laws" of apartheid South Africa.[230]

In his 2006 report, the Special Rapporteur explored the question of Israel's violation of both ICERD and the Apartheid Convention, however, consistent with his mandate, only within the oPt.[231] On the matter of apartheid, he raided the question of the utility of seeking an Advisory Opinion of the International Court of Justice on the specific question:

> "Israel's practices and policies in the OPT are frequently likened to those of apartheid South Africa (see, for example, Jimmy Carter, *Palestine: Peace, Not Apartheid* (2006)). On the face of it, occupation and apartheid are two very different regimes. Occupation is not intended to be a long-term oppressive regime but an interim measure that maintains law and order in a territory following an armed conflict and pending a peace settlement. Apartheid is a system of institutionalized racial discrimination that the white minority in South Africa employed to maintain power over the black majority. It was characterized by the denial of political rights to blacks, the fragmentation of the country into white areas and black areas (called Bantustans) and by the imposition on blacks of restrictive measures designed to achieve white superiority, racial separation and white security. Freedom of movement was restricted by the "pass system" which sought to restrict the entry of blacks into the cities. Apartheid was enforced by a brutal security apparatus in which torture played a significant role. Although the two regimes are different, Israel's laws and practices in the OPT certainly resemble aspects of apartheid, as shown in paragraphs 49-50 above, and probably fall within the scope of the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid."[232]

2008: The UN Human Rights Council's Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967 analyzed a context of what he referred to as "a war of national liberation against colonialism, apartheid or military occupation. While such acts cannot be justified, they must be understood as being a painful but inevitable consequence of colonialism, apartheid or occupation." He analogized this situation in Palestine with a history replete with other examples of military occupation and resistance in, for example, "many European countries in the Second World War; the South West Africa People's Organization (SWAPO) resisted South Africa's occupation of Namibia…"[233]

In addressing the Israeli settler colonies increasing and expanding in the oPt, the Special; Rapporteur observed in 2008 that the result of this practice, forbidden in international criminal law, involved:

> "More than 38 per cent of the West Bank consists of settlements, outposts, military areas and Israeli nature reserves that are off limits to Palestinians. Settler roads link settlements to each other and to Israel. These roads are largely closed to Palestinian vehicles. (Israel has therefore introduced a system of "road apartheid", which was unknown in apartheid South Africa.)[234]

He added to the analogy with regard to Israeli checkpoints operating across the oPt that:

> "serve to humiliate Palestinians and to create feelings of deep hostility towards Israel. In this respect they resemble the "pass laws" of apartheid South Africa, which required black South Africans to demonstrate permission to travel or reside anywhere in South Africa.[235]

In September 2007 the Special Rapporteur visited Al Hadidiya in the Jordan Valley where the structures of a Bedouin community of some 200 families, comprising 6,000 people, living near to the Jewish settlement of Roi, were demolished by the IDF. He reflected: “This brought back memories of the practice in apartheid South Africa of destroying black villages (termed “black spots”) that were too close to white residents.”[236]

2009: The Human Sciences Research Council of South Africa (HSRC) released the outcome of a 15-month-long study concluding that Israel is practicing both colonialism and apartheid in the oPt. The HSRC commissioned an international team of scholars and practitioners of international public law from South Africa, the United Kingdom, Israel and Palestine to conduct the study.

The resulting 300-page report, entitled *Occupation, Colonialism, Apartheid? A re-assessment of Israel's practices in the occupied Palestinian territories under international law*,[237] constitutes an exhaustive review of Israel's practices in the oPt according to definitions of colonialism and apartheid provided by international law. The project was suggested originally by the January 2007 report by eminent South African jurist John Dugard, in his capacity as Special Rapporteur to the United Nations Human Rights Council, when he indicated that Israel practices had assumed characteristics of colonialism and apartheid.

Regarding apartheid, the team found that Israel's laws and policies conform with the definition of apartheid in the International Convention on the Suppression and Punishment of the Crime of Apartheid. Israeli law conveys privileges to Jewish settlers and disadvantages Palestinians in the same territory on the basis of their respective identities, which function in this case as racialized identities in international law criteria. Israel's practices are corollary to five of the six “inhuman acts” listed by the Convention.

A policy of apartheid is especially indicated by Israel's demarcation of geographic “reserves” in the West Bank, to which Palestinian residence is confined and which Palestinians cannot leave without a permit. The system is very similar to the policy of ‘Grand Apartheid' in apartheid South Africa, in which black South Africans were confined to black homelands delineated by the South African government, while white South Africans enjoyed freedom of movement and full civil rights in the rest of the country.

The Executive Summary of the report says that Israel practices the three pillars of apartheid applied in South Africa: (1) Demarcating the population into racial groups, and to accord superior rights, privileges and services to the colonizing racial group; (2) Segregating the population into different geographic areas allocated by law to different racial groups, and restricting passage by members of any group into the area allocated to other groups; and (3) "A matrix of draconian ‘security' laws and policies employed to suppress any opposition to the regime and to reinforce the system of racial domination, by providing for administrative detention, torture, censorship, banning and assassination."

The Report finds that Israeli practices exhibit the same three 'pillars' of apartheid:

- The first pillar “derives from Israeli laws and policies that establish Jewish identity for purposes of law and afford a preferential legal status and material benefits to Jews over non-Jews”;
- The second pillar is reflected in “Israel's ‘grand’ policy [i.e., ‘grand apartheid’] to fragment the oPt ensure that Palestinians remain confined to the reserves designated for them, while Israeli Jews are prohibited from entering those reserves, but enjoy freedom of movement throughout the rest of the Palestinian territory. This policy is evidenced by Israel's extensive appropriation of Palestinian land, which continues to shrink the territorial space available to Palestinians; the hermetic closure and isolation of the Gaza Strip from the rest of the oPt; the deliberate severing of East Jerusalem from the

rest of the West Bank; and the appropriation and construction policies serving to carve up the West Bank into an intricate and well-serviced network of connected settlements for Jewish-Israelis and an archipelago of besieged and non-contiguous enclaves for Palestinians."

- The third pillar is "Israel's invocation of 'security' to validate sweeping restrictions on Palestinian freedom of opinion, expression, assembly, association and movement [to] mask a true underlying intent to suppress dissent to its system of domination and thereby maintain control over Palestinians as a group."

The research team included scholars and international lawyers based at the HSRC, the School for Oriental and African Studies (London), the British Institute for International and Comparative Law, the University of Kwa-Zulu Natal (Durban), the Adalah/Legal Centre for Arab Minority Rights in Israel and al-Haq/West Bank Affiliate of the International Commission of Jurists. Consultation on the study's theory and method was provided by eminent jurists from South Africa, Israel and Europe.

2011: Third International Session of the Russell Tribunal on Palestine (RtoP), District Six Museum, Cape Town, South Africa, 5–7 November 2011, examining the question: "Are Israel practices against the Palestinian People in breach of the prohibition on Apartheid under International Law?" recommended to the UN General Assembly:

> "The UN General Assembly to reconstitute the UN Special Committee against Apartheid, and to convene a special session to consider the question of apartheid against the Palestinian people. In this connection the Committee should compile a list of individuals, organisations, banks, companies, corporations, charities, and any other private or public bodies which assist Israel's apartheid regime with a view to taking appropriate measures;…"[238]

The RtoP jurors issued an urgent international appeal to all political actors and civil society to bring pressure to bear on Israel to halt its violations of international law and to put pressure on the United Nations Secretary-General to use all available UN instruments to force Israel to dismantle its system of apartheid, which it currently applies to the whole Palestinian people (to those in the oPt, but also to refugees and to those in Israel itself); to rescind all discriminatory laws and practices; not to pass any further discriminatory legislation; and to cease forthwith acts of persecution against Palestinians wherever they reside.[239]

The RToP also called on the UN General Assembly to request an advisory opinion from the International Court of Justice, as called for by the current and former UN Special Rapporteurs on the situation of human rights in the Occupied Palestinian Territory, as well as by the Human Sciences Research Council of South Africa, to examine the nature, consequences, and legal status of Israel's prolonged occupation and apartheid.[240]

Also in 2011, the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967 Prof. Richard Falk reiterated his predecessor's 2007 call for a referral to the International Court of Justice for an advisory opinion on the question of whether "elements of the [Israeli] occupation constitute forms of colonialism and apartheid."[241]

2012: Fourth International Session of the Russell Tribunal on Palestine, New York, 6–8 October 2012, examining the question of "US Complicity and UN failings in Dealing with Israel's Violations of International Law Towards the Palestinian People" found:

> "Violation of the prohibition of discrimination based on national origin through Israeli policies and practices akin to apartheid (2011 Cape Town findings of this Tribunal), which have denied Palestinians a functioning nationality both within Israel proper as well as in the Occupied Territory and beyond."[242]

2013: In February 2013, the report of the UN Human Rights Council's International Fact-Finding Mission on Israeli Settlements in the Occupied Palestinian Territory similarly condemned Israel's segregationist policies:

> "The legal regime of segregation operating in the [oPt] has enabled the establishment and the consolidation of the settlements through the creation of the privileged legal space for settlements and settlers. It results in daily violations of a multitude of the human rights of the Palestinians in the OPT, including incontrovertibly violating their rights to non-discrimination, equality before the law and equal protection of the law."[243]

2014: Nobel Peace laureate and former South African Archbishop Desmond Tutu declared his support for the boycott, divestment and sanction (BDS) movement targeting Israeli "apartheid" and other crimes against the Palestinians.[244] Echoing his address at the opening of the Third RtoP, Archbishop TuTu testified in an interview:

> "I have witnessed the systemic humiliation of Palestinian men, women and children by members of the Israeli security forces." "Their humiliation is familiar to all black South Africans who were corralled and harassed and insulted and assaulted by the security forces of the apartheid government."

With reference to the effective measures taken that led to the end of South African apartheid, he said:

> "In South Africa, we could not have achieved our democracy without the help of people around the world, who through the use of non-violent means, such as boycotts and divestment, encouraged their governments and other corporate actors to reverse decades-long support for the apartheid regime."[245]

In the same year, Special Rapporteur Prof. Falk also investigated Israel's taking of Palestinian lives outside the limited circumstances in which international humanitarian law and international human rights law do not absolutely prohibit as a potential element of apartheid, in the context of a systematic and institutional regime in which such unlawful killings form part of acts to maintain dominance over Palestinians. He noted in this respect the high proportion of civilian casualties caused by Israeli security forces in occupied Palestine, as well as the absolutely prohibited use of torture.

The Special Rapporteur concluded in his 2014 report that:

> "It seems incontestable that Israeli measures do divide the population of the Occupied Palestinian Territory along racial lines, create separate reserves for Palestinians and expropriate their land.[246]

In the same report, he recommended to the General Assembly to request the International Court of Justice to issue an advisory opinion on the legal status of the prolonged occupation of Palestine, as aggravated by criminally prohibited population transfers of persons from and into the oPt to transform the demographic composition of the territory, and the imposition of a dual and discriminatory administrative and legal system in the West Bank, including East Jerusalem, and further assess allegations that the prolonged occupation possesses legally unacceptable characteristics of "colonialism," "apartheid," and "ethnic cleansing."[247]

2015: The International Meeting on the Question of Palestine convened at Brussels on 7 and 8 September under the theme: "Israeli settlements as an obstacle to peace – possible ways forward." At the event, the participants in the Meeting and the subsequent civil society roundtable with the UN Committee on the Exercise of the Inalienable Rights of the Palestinian People (CEIRPP) called for the General Assembly, through CEIRPP, to "pursue reconstitution of the Special Committee against and its functions in the UNGA, based on the legal findings of the UN treaty bodies and other authoritative sources."[248] That proposal invoked the 65-year anniversary since UNGA resolutions 615 and 616 on apartheid as a subject of international threat to regional peace and security[249] and formed part of civil society input to the CEIRPP/DPR retreat in November 2015.

2017: Israel's policies and practices have the purpose and effect of fragmenting the indigenous Palestinian people as a whole. This observation is compellingly argued in the 2017 report commissioned by the UN Economic and Social Commission for Western Asia (ESCWA), titled "Israeli Practices towards the Palestinian People and the Question of Apartheid" (hereinafter 'ESCWA report'). [250] Notably, in examining Israel's apartheid regime over the Palestinian people as a whole, the authors of the ESCWA report found that the international community has played a role in normalizing Israel's fragmentation of the Palestinian population more broadly, and has:

> "unwittingly collaborated with this manoeuvre by drawing a strict distinction between Palestinian citizens of Israel and Palestinians in the occupied Palestinian territory, and treating Palestinians outside the country as 'the refugee problem'." The Israeli apartheid regime is built on this geographic fragmentation, which has come to be accepted as normative. The method of fragmentation serves also to obscure this regime's very existence."[251]

The ESCWA report observes how Israel has further divided the Palestinian people administratively into four separate fragments or legal 'domains,' in which the Palestinian people are "ostensibly treated differently but share in common the racial oppression that results from the apartheid regime."[252] The four legal 'domains,' as identified in the ESCWA report, are as follows:

1. Israeli civil law governing Palestinian citizens of Israel;
2. Israeli permanent residency law governing Palestinians in their capital City of Jerusalem;
3. Israeli military law governing Palestinians, including Palestinians in refugee camps, under Israeli military occupation in the West Bank and Gaza Strip, since 1967; and
4. Israel's policy to deny the return of Palestinian refugees or exiles, living outside territory under Israel's control.[253]

Strategic fragmentation is a principal method by which Israel imposes apartheid, dispossesses and exerts its control over the Palestinian people, a key finding outlined in the 2017 ESCWA report.[254] It is through this systematic and widespread fragmentation that Israel obfuscates the reality of its apartheid regime and thoroughly represses the ability of Palestinians to oppose and challenge it. As outlined by the ESCWA report, Israel's apartheid regime has administratively divided the Palestinian people into four legal 'domains,' including:

1. Palestinians with Israeli citizenship, who are subject to Israeli civil law;
2. Palestinians with permanent residency status in occupied East Jerusalem;
3. Palestinians in the occupied West Bank and Gaza Strip, subject to Israeli military law; and
4. Palestinian refugees and exiles living outside territory under Israel's control and whose right to return to their homes and property Israel has systematically denied.[255]

The ESCWA report identifies the Palestinian people in the West Bank and Gaza Strip as the 'domain,' which most clearly lives under the definition of apartheid as outlined in the Apartheid Convention. However, it is through the establishment of all four 'domains' that Israel strategically fragments the Palestinian population and imposes its apartheid regime over the Palestinian people as a whole. Palestinians in the oPt are governed by Israeli military law, while Israeli-Jewish settlers, whose mere presence in the oPt is illegal under international law, are subject to Israeli civil law. Israel has established two separate legal regimes for each racial group in the same territory, which is consistent with the definition of apartheid.[256]

Finally, as highlighted by the ESCWA report, Palestinian refugees and involuntary exiles make up the fourth 'domain' through which Israel has fragmented the Palestinian people. Tellingly, this fragment of the Palestinian people is not mentioned in the State report, consistent with Israel's persistent denial of Palestinian refugee rights. While Palestinian refugees and exiles find themselves outside the territory under Israel's jurisdiction or effective control, it is Israel's systematic refusal to uphold their inalienable right of return to their homes and property which forms part of Israel's institutionalised regime of racial domination and oppression. By denying Palestinians their right of return, Israel seeks to defend itself against what it has referred to as the so-called "demographic threat," of an increase in the Palestinian demographic makeup, which would inherently challenge Israel's ability to maintain and manage its apartheid regime over the Palestinian people.[257]

This fragmentation serves to weaken the will of the Palestinian people, their national identity, and their capacity to exercise their inalienable rights as a people and as individuals. It is, therefore, the key method through which Israel has established and continues to maintain its apartheid regime over the Palestinian people.[258]

Conclusion

Since its inception, the Zionist movement to colonize Palestine and its founding institutions have, throughout more than a century, incorporated the notion of a unique racial character of persons of Jewish faith, distinct from all others, and constructed a system of racial supremacy on that basis. As noted by numerous scholars and UN Human Rights Treaty Bodies,[259] religion and race are conflated in the constructed concept of "Jewish nationality"—distinct from, and superior to citizenship—uniquely affirmed in Israeli law and institutions, those same founding institutions, that drive Israeli policy today. This foundation of racial classification and supremacy form the basis for perpetual, material discrimination deliberately targeting the indigenous Palestinian people for a century.

The consequences of this regime are legend and manifest in the serious crimes of population transfer, pillage, forced displacement, social fragmentation, dispossession and overt and enforced denial of the Palestinian people's self-determination. This regime has prevailed across historic Palestine since 1948, the same year that Israel's close ally, apartheid South Africa, formally perpetrated its own system of apartheid in its jurisdiction and territory of effective control (including Namibia). The UN has recognized the injustice, falsehood and regional threats to peace and security of the apartheid regimes in South Africa, Namibia and Rhodesia, ultimately imposing targeted sanctions for breaches of the UN Charter and norms codified as grave crimes prosecuted since the end of World War II. However, a lack of integrity and double standards practiced through the foreign relations of certain states have continued to obstruct the same pursuit of justice and remedy to apartheid and extreme racial discrimination elsewhere.

Israel has maintained its apartheid regime through the tactical fragmentation of the Palestinian people into four distinct legal, geographical and political domains, which serves to obscure the very existence of the apartheid regime. These four principal groups comprise:

- Palestinian citizens of Israel,
- Palestinian residents of Jerusalem,
- Palestinians in the West Bank and Gaza subject to military law, and
- Palestinian refugees and exiles abroad denied the right to return to their homes, land, and property.

As explained by Virginia Tilley and Richard Falk in the pivotal UN report by the Economic and Social Commission for Western Asia "Israeli Practices towards the Palestinian People and the Question of Apartheid," the international community has "unwittingly collaborated" in this regard by "drawing a strict distinction between Palestinian citizens of Israel and Palestinians in the occupied Palestinian territory, and treating Palestinians outside the country as 'the refugee problem'."[260]

Among these violations of international law, several are criminally sanctioned. Elements of Israeli apartheid include war crimes such as: population transfer, including the implantation of settlers and settler colonies;[261] willful killing; willfully causing great suffering or serious injury to body or health; inhumane treatment; torture; indiscriminate attacks; pillage; home demolitions; wanton destruction of property; deprivation of fair trial;[262] collective punishment;[263] and altering the legal system in an occupied territory.[264] Among the elements of Israeli apartheid are also crimes against humanity, including persecution on the basis of political opinion, race, national origin, ethnicity, culture, religion, gender, or other grounds that are universally recognized as impermissible under international law,[265] the above crimes and breaches and the composite crime of apartheid.[266] Because of their systematic, numerous, flagrant and, often, criminal character, these violations form a pattern of a particular gravity.

The UN Charter informs us that the purposes of the United Nations remain to:

- Maintain international peace and security,[267]
- Develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples,[268] and
- Promote and encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."[269]

To achieve these goals, the Charter provides that the UN must "take effective collective measures" and "other appropriate measures to strengthen universal peace."[270] In other words, the UN would not fulfil the duties that the Member states have entrusted to the Organization if it were to fail to take the necessary measures to achieve them. In its advisory opinion to the General Assembly in 1949, the ICJ noted that the UN was not a mere forum for discussion around a common purpose, but is also a mechanism with organs suited to take action:

> "The Charter has not been content to make the Organization created by it merely a centre 'for harmonizing the actions of nations in the attainment of these common ends'." It has equipped that centre with organs and has given it special tasks."[271]

In light of the Charter and the purposes of maintaining peace and security and promoting human rights, the competent organs of the United Nations and its Member states bear the duty to recognize the performance of Israel as that of an apartheid state, and to take the effective measures to bring the illegal situation to an end. For these reasons, we urge the Human Rights Council to resolve accordingly to

recognize the apartheid system operating across historic Palestine and to call for the reconstitution of the UN Centre against Apartheid to advise the General Assembly and Security Council on effective measures to remedy and make reparations for Israel's commission of the grave crime of apartheid.

Endnotes:

[1] Persecution and Discrimination, A/RES/103 (I), 19 November 1946, at: https://undocs.org/en/A/RES/103(I).

[2] *International Convention on the Elimination of All Forms of Racial Discrimination* (adopted 7 March 1966, entry into force 4 January 1969) 660 UNTS 195 (hereinafter ICERD).

[3] Universal Declaration of Human Rights, General Assembly resolution 2017 A, 10 December 1948, at: https://www.un.org/en/universal-declaration-human-rights/. Only the human rights to property, Article 17 of UDHR, was omitted in the drafting of the two Covenants.

[4] Article 1 on self-determination common to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and International Covenant on Civil and Political Rights (ICCPR), as well as the nondiscrimination principle in ICESCR, Article 2.2 and ICCPR, Article 2.1.

[5] All treaty bodies have issued the same determination affirming applicability of the Human Rights Treaties as territory of effective control: Concluding Observations of the Committee on the Elimination of Discrimination against Women (CEDaW) upon Consideration of Reports Submitted by States Parties," A/52/38/REV.1(SUPP), 12 August 1997, p. 91, para. 170, at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=A%2f52%2f38%2fREV.1(SUPP)&Lang=en; "Concluding observations of the Human Rights Committee: Israel," CCPR/C/79/Add.93, 18 August 1998, para. 10, at: https://undocs.org/CCPR/C/79/Add.93; "Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel," E/C.12/1/Add.27, 4 December 1998, para. 8; "Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel," CERD/C/304/Add.45, 30 March 1998, paras. 4, 12, at: https://unispal.un.org/UNISPAL.NSF/0/C30D8E2926B7471B852569AF00582A80; Letter of Chairperson Virginia Bonoan Dandan to Permanent Representative of Israel H.E. Ambassador M. David Peleg, 1 December 2000; Letter of CESCR Chairperson Virginia Bonoan Dandan to Permanent Representative H.E. M. Yaakov Levy, Geneva, 11 May 2001. Conclusions and Recommendations of the Committee against Torture: Israel," CAT/C/XXVII/Concl.5, 23 November 2001, pp. 28–30, paras. 51–53, at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=A%2f57%2f44(SUPP)&Lang=en; "Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel," E/C.12/1/Add.90, 23 May 2003, para. 15, at: https://undocs.org/E/C.12/1/Add.90; "Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel," CERD/C/ISR/CO/13, 14 June 2007, paras. 3, 13, 32, at: https://undocs.org/CERD/C/ISR/CO/13; Committee on the Elimination of Discrimination against Women (CEDaW), Concluding observations: Israel," CEDAW/C/ISR/CO/5, 5 April 2011, paras. 2, 12, 13, 16, 17, 21–24, 26, 28, 38, 40, at: https://undocs.org/CEDAW/C/ISR/CO/5; Concluding observations of the Committee on Economic, Social and Cultural Rights: Israel, E/C.12/ISR/CO/3, 16 December 2011, paras. 8, 16, 19, 24, 28, 29, 32–33, 35–36, at: https://undocs.org/E/C.12/ISR/CO/3; Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel, CERD/C/ISR/CO/14–16, 3 April 2012, paras. 3, 4, 10, 23, 24, 26, 28, 29, at: https://undocs.org/CERD/C/ISR/CO/14-16; CRC, "Concluding observations on the second to fourth periodic reports of Israel, adopted by the Committee at its sixty-third session (27 May–14 June 2013), paras. 3, 7, 26, 59, at: https://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-ISR-CO-2-4.pdf; Human Rights Committee, "Concluding observations on the fourth periodic report of Israel," CCPR/C/ISR/CO/4, 21 November 2014, paras. 5, 9, 12, 13, 15–18, 22, at: https://undocs.org/CCPR/C/ISR/CO/4; CRC, "Concluding observations on the report submitted by Israel under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography," CRC/C/OPSC/ISR/CO/1, 13 July 2015, para. 3, at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/155/82/PDF/G1515582.pdf?OpenElement; Committee against Torture (CaT), Concluding observations on the fifth periodic report of Israel, 3 June 2016, CAT/C/ISR/CO/5, paras. 8–9, at: https://undocs.org/CAT/C/ISR/CO/5; Committee against Torture, List of issues prior to submission of the sixth periodic report of Israel, CAT/C/ISR/QPR/6, 7 December 2018, para. 32, at: https://undocs.org/en/CAT/C/ISR/QPR/6; CaT, Concluding observations on the fifth periodic report of Israel, CAT/C/ISR/CO/5, 3 June 2016, paras. 89 and 28, at: https://undocs.org/CAT/C/ISR/CO/5; Concluding observations on the sixth periodic report of Israel, CEDAW/C/ISR/CO/6, 17 November 2017, paras. 14–15, 18(a), 19(a), 30(a), 31(a), 32, 32(a), 33(a), 40(a–b), 46(a) and 52, at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/ISR/CO/6&Lang=En; Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel, E/C.12/ISR/CO/4, 18 October 2019, paras. 8–9, at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E/C.12/ISR/CO/4&Lang=En; Concluding observations on the combined seventeenth to nineteenth reports of Israel, CERD/C/ISR/CO/17-19, 27 January 2020, paras. 34, 9–10, 13–16, 21–23, 26, 42, 46–47 and 55, at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD/C/ISR/CO/17-19&Lang=En.

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[7] General Assembly resolution 1761 (XVII), 6 November 1962, at: https://undocs.org/en/A/RES/1761(XVII).

[8] S/RES/465, 1 March 1980, para. 7, at: https://unispal.un.org/DPA/DPR/unispal.nsf/0/5AA254A1C8F8B1CB852560E50075D7D5.

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[13] Adopting the terminology of the International Law Commission. See its Draft articles on Responsibility of States for internationally wrongful acts, A/56/10 (2001), at: http://www.un.org/documents/ga/docs/56/a5610.pdf; and Commentaries, at: http://www.eydner.org/dokumente/darsiwa_comm_e.pdf.

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[15] Roselle Tekiner, "Race and the Issue of National Identity in Israel," *International Journal of Middle Eastern Studies*, Vol. 23, Issue 1 (February 1991), pp. 39–55.

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[20] Argentina, Australia, Austria, Brazil, Bulgaria, Chile, Czech Republic, Denmark, Germany, Italy, Mexico, Netherlands, Peru, Poland, Spain, Ukraine, Uruguay and Venezuela.

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[22] Sabri Jiryis, *The Arabs in Israel* (New York: Monthly Review Press, 1976), pp. 77–101; Usama Halabi, "Israeli Law as a Tool of Confiscation, Planning, and Settlement Policy," *Adalah's Review,* Vol. 2 (fall 2000), pp. 7–13, at: https://www.adalah.org/uploads/Adalah_review_2_Land.pdf.

[23] *Ibid* (Jiryis).

[24] Amy Teibel, "Lawsuit brings murky West Bank land deals to light," Associated Press (20 June 2009), at: https://www.sandiegouniontribune.com/sdut-ml-israel-disputed-deal-062009-2009jun20-story.html. In 2014, the Settlement Division received 130m NIS (US$34.7m) from Israel. See Nimrod Bousso, "Israel to Allocate $35m to World Zionist Organization's Settlement Division," *Haaretz* (23 October 2014), at: https://www.haaretz.com/.premium-what-will-wzo-do-with-nis-130m-1.5318862.

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[27] *Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land*, The Hague, 18 October 1907 (hereinafter "Hague Regulations").

[28] International Military Tribunal, "Trial of the Major War Criminals before the International Military Tribunal" (1947) 1, at 253–54.

[29] Terry Rempel, ed., *Rights in Principle – Rights in Practice: Revisiting the Role of International Law in Crafting Durable Solutions for Palestinian Refugees* (Bethlehem: BADIL, 2009), p. 399.

[30] Since the Beit El case, the Israeli High Court of Justice has ruled that The Hague Regulations (1907) are customary law, therefore, automatically part of municipal law and judiciable in Israel. High Court of Justice 606, 610/78, *Suleiman Tawfiq Ayyub et al. v. Minister of Defence et al, Piskei Din* 33(2), at: at: http://www.hamoked.org/Document.aspx?dID=3860.

[31] The Hague Regulations, Article 46.

[32] *Ibid.*, Articles 23(g), 46, and 56.

[33] *Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, and Charter of the International Military Tribunal* (entered into force 08 August 1945) 82 UNTS 280 (hereinafter 'London Charter').

[34] London Charter, Article 6(b).

[35] *Ibid.*, Article 6(c).

[36] Rempel, *op. cit*., p. 399.

[37] Albanese, *op. cit*.

[38] UN General Assembly, Resolution 194 (III), 11 December 1948, UN Doc A/RES/194 (III), para. 11.

[39] Salman Abu-Sitta, *op. cit.*, p. 197; Susan M Akram, 'Myths and Realities of the Palestinian Refugee Problem: Reframing the right of return' in Susan M Akram, Michael Dumper, Michael Lynk and Iain Scobbie, eds., *International Law and the Israeli-Palestinian Conflict: A rights-based approach to Middle East peace* (Routledge 2011), at 30.

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[41] UDHR, Article 13(2). *See also* Rania Muhareb, "The Universal Declaration of Human Rights and the Ongoing Nakba: 70 Years of Exile, Rights Abuses, and Israeli Impunity" (Ramallah: Al-Haq, 10 December 2018), at: http://www.alhaq.org/advocacy/6124.html.

[42] As Naqab Bedouin elders testified in a press conference reported in Haaretz (13 June 1965). See also Weitz, *Diaries* 3:355–57, 359; 4:8, 9, 15, and 22; and Emanuel Marx, "Bedouin of the Negev," *Hamizrah Hehadash* Vol. 7, No. 2 (1966), 89–98; and Ben Gurion's statements in *Knesset Debates*, 6 February 1952, pp. 1222–23, as cited in Jiryis, op. cit., p. 121.

[43] Emanuel Marx, *Bedouin of the Negev* (Manchester: Manchester University Press, 1967), p. 35, cited in Jiryis, op. cit., p. 35.

[44] Y. Ariel, *Ha'aretz* (13 August 1965). As an expression of policy on the need to demolish abandoned Arab villages David Ben-Gurion is recorded as saying: "I think one should remove all the remains left in the southern Negev…. They still stand there because a lot of money is needed to explode them and level the ground. But why should they stand at all? People pass in the vicinity of Julis and other places and see empty ruins. Who needs that?" Cabinet Meeting, 20 January 1952 (Jerusalem: Israel State Archives, 1952), cited in Aron Shai, "The Fate of Abandoned Arab Villages in Israel, 1965–1969," History & Memory, Vol. 18, No. 2 (fall/winter 2006), pp. 86–106.

[45] Shai, op. cit.

[46] Absentee: persons whose status is defined in Israel's Basic Law: Law of Absentees' Property (5710 - 1950) and applied both *retroactively* and prospectively for the State of Israel possession by confiscation properties (mostly to be administered by the Jewish National Fund and subsidiaries). Those whom the Basic Law identifies as "absentees" include anyone who:

1. At any time during the period between 16 Kislev 5708 (29 November 1947) and the declaration published under Section 9(d) of the Law and Administrative Ordinance, 12 Iyar 5708 (21 May 1948), has ceased to exist as a legal owner of any property situated in the area of Israel or enjoyed or held by it, whether by himself of and another and who, at any time during the said period,

   (i) was a national or citizen of the Lebanon, Egypt, Syria, Saudi Arabia, Transjordan, Iraq or the Yemen; or
   (ii) was in one of these countries or in any part of Palestine outside the area of Israel; or
   (iii) was a Palestinian citizen and left his ordinary pace of residence in Palestine
      (a) for a place outside Palestine before 27 Av 5708 (1 September 1948); or
      (b) for a place in Palestine held at the time by forces that sought to prevent the establishment of the state of Israel or that fought against its establishment." [Full text of Basic Law: Absentees' Property Law (LAP), at: http://domino.un.org/UNISPAL.NSF/d80185e9f0c69a7b85256cbf005afeac/e0b719e95e3b494885256f9a005ab90a!OpenDocument.

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[49] *Ibid.*, p. 126, para. 2(c).

[50] Law of Return 5710/1950, 05 July 1950, para. 1.

[51] *Vienna Convention on the Law of Treaties,* adopted 23 May 1969, entered into force 27 January 1980, 1155 UNTS 331, Article 28.

[52] *See*, notably, Rempel, *op. cit.*, *p.* 400; Boling, *op. cit.*, p. 231; Victor Kattan, *From Coexistence to Conquest: International Law and the Origins of the Arab–Israeli Conflict, 1891–1949* (London: Pluto Press 2009), p. 217. This analysis is supported by the jurisprudence of the UN Human Rights Committee, which considered, in the case of Lovelace v. Canada, that "it is empowered to consider a communication when the measures complained of, although they occurred before the entry into force of the [ICCPR], continued to have effects which themselves constitute a violation of the Covenant after that date." Human Rights Committee, Lovelace *v Canada*, Communication No 24/1977, CCPR/C/13/D/24/1977, 30 July 1981, para. 7.3, at: https://juris.ohchr.org/Search/Details/286.

[53] CERD/C/304/Add.45, *op. cit.*, para. 18.

[54] E/C.12/1/Add.27, *op. cit.*, para. 25.

[55] *Ibid.*, para. 36.

[56] CESCR, Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel, 31 August 2001, E/C.12/1/Add.69, para. 14.

[57] CERD/C/ISR/CO/13, *op. cit.,* para. 18.

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[63] Gil Stern Stern Zohar, " Private landowners, urban planners and political activists grapple with territorial disputes in east Jerusalem," *The Jerusalem Post* (26 July 2007), at: https://www.jpost.com/Local-Israel/In-Jerusalem/The-land-is-whose-land; Adam Eliyahu Berkowitz, "Arab Squatters Evicted From Jerusalem House Owned by Jews for 140 Years," *Breaking Israel News* (5 September 2017), at: https://www.breakingisraelnews.com/94394/arab-squatters-evicted-jerusalem-house-owned-jews-140-years/.

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[68] *Ibid*.

[69] Al-Haq's Monitoring and Documentation Department. See also Al-Haq, BADIL, HIC-HLRN and CIHRS, *Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel's Seventeenth to Nineteenth Periodic Reports,* 100th Session, 10 November 2019, para. 102, at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fNGO%2fISR%2f39700&Lang=en.

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