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

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

Note by the Secretary-General

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

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



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

Summary

The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, hereby submits his fifth report to the General Assembly. The report is based primarily on information provided by victims, witnesses, civil society representatives and United Nations agencies. The report addresses a number of concerns pertaining to the situation of human rights in the West Bank, including East Jerusalem, and in Gaza, and is the second report focusing on accountability-related issues.

I. Introduction

1. The present report provides a brief overview of the most pressing human rights concerns in the Occupied Palestinian Territory at the time of submission, as identified by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 in conversations and meetings with civil society. The report then presents a detailed analysis of the latest human rights concerns in the Occupied Palestinian Territory, with a specific focus on accountability.

2. The Special Rapporteur would like to highlight once again that, despite his repeated requests, he has not yet been granted access to the Occupied Palestinian Territory by Israel. The Special Rapporteur emphasizes once again his view that an open dialogue among all parties is essential for the protection and promotion of human rights and reminds Israel that he is ready and willing to engage. In addition, the Special Rapporteur continues to highlight that access to the Occupied Palestinian Territory would play a key role in understanding the fundamental realities of the human rights situation in the territory. The pattern of non-cooperation by Israel with the mandate is a serious concern.

3. The Special Rapporteur was not able to travel to the region, including Amman, owing to travel restrictions in connection with the spread of coronavirus disease (COVID-19). However, he was able to engage actively with members of civil society and United Nations agencies and collect important information on the topic, most notably through submissions.

4. In the present report, the Special Rapporteur focuses on two issues. First, he reviews the responsibilities of the Security Council in terms of accountability for ensuring that its decisions and directions on the Israeli occupation are obeyed. He then assesses the responsibilities of private corporations in terms of accountability for operating in, or benefiting from, directly or indirectly, the Israeli settlements and the Israeli occupation.

5. The Special Rapporteur wishes to express his appreciation to the Government of the State of Palestine for its full cooperation with his mandate.

6. The Special Rapporteur emphasizes again his support for the vital work being done by Palestinian, Israeli and international human rights organizations. This work is indispensable not only to the Rapporteur as he seeks to fulfil his mandate, but also to the broader international community. The efforts of human rights organizations to ensure that accurate and complete information about the situation in the Occupied Palestinian Territory is readily available should not go unacknowledged.

II. Current human rights situation

A. Impact of COVID-19

7. The spread of the COVID-19 pandemic in the Occupied Palestinian Territory has accentuated some of the existing and long-standing negative repercussions of Israeli occupation. In some respects, it has exposed further the structural deficiencies in vital sectors, particularly the health sector in the West Bank and Gaza, as a result of Israeli practices on the ground. It has also clearly demonstrated that, during a serious health crisis, one that crosses borders and communities, a two-tier occupation regime reinforces unequal rights, particularly the right to adequate health. Despite existing conditions on the ground, in the initial phase of the pandemic, specifically in the months of March and April 2020, duty bearers applied strict preventive measures that have effectively curbed the spread of the virus. Some coordination, although

short-lived, was noted at the time between the Palestinian Authority and Israel.¹ However, an exponential increase in cases has been observed since late June, when the total number of confirmed cases was only at 2,765.² By 13 October, the total number of confirmed cases had increased markedly and reached 52,292 in the West Bank and 4,175 in Gaza.

8. This exponential increase has significantly strained an already weakened and overstretched health sector, particularly in Gaza. This additional strain was further compounded by the suspension of security coordination between the Palestinian Authority and Israel on 19 May, which came in the aftermath of the announcement by Israel of its planned annexation of parts of the West Bank and the Jordan Valley.³ This situation has significantly affected Palestinians' access to health care, generally reduced humanitarian assistance and significantly reduced the Palestinian Authority's monthly revenues by more than 80 per cent, severely limiting its capacity to pay its employees, particularly health personnel. Israel has withheld the Palestinian Authority's tax revenues numerous times in the past. Since December 2019, those revenues have been withheld again. In his briefing to the Security Council, the United Nations Special Coordinator for the Middle East Peace Process noted that he was also concerned that the level of coordination was far below that which existed at the beginning of the year, when the first wave of the virus hit, a situation that could have serious repercussions on the ability to control the spread of the virus and mitigate its impact on people's lives (see [S/2020/736](#), annex 1).

9. Beyond the impact of this suspension, facts on the ground demonstrate that Israel, the occupying Power, through the imposition of existing measures, has significantly reduced Palestinians' access to health care and to humanitarian assistance. These measures include a vast settlement infrastructure with associated security zones and bypass roads, the separation wall, zoning policies and an extensive network of fixed and mobile checkpoints that effectively dissect the West Bank into separate, fragmented and disconnected areas. In terms of accessing proper health care – including more equipped and specialized hospitals – Palestinians continue to face restrictions on movement not only within the West Bank but also when attempting to receive treatment in East Jerusalem. Moreover, delays continue to be reported in terms of receiving vital medical equipment, including testing kits and other necessary equipment for prevention.⁴

10. Continued Israeli control over law enforcement, planning and reconstruction in Area C, constituting more than 60 per cent of the occupied West Bank, has also hampered efforts to combat the pandemic. Palestinians living in Area C, currently estimated to be around 300,000, face additional complications in accessing proper health care. Palestinians are thus prevented from taking initiatives of their own to curb the spread of the virus while in many cases being offered no alternatives by relevant Israeli authorities. Attempts to coordinate the entry of Palestinian police into the H2 zone in Hebron to reinforce prevention measures with Palestinians living there have so far failed. In East Jerusalem, similar dynamics could be observed. In April, Israeli security forces raided a COVID-19 testing clinic in the Palestinian neighbourhood of Silwan under the pretext that it was run and supported by the

¹ See www.un.org/press/en/2020/sc14167.doc.htm.

² See World Health Organization, <https://app.powerbi.com/view?r=eyJrIjoiaODJlYWM1YTEtNDIxZS00OTFILThkZjktNDA1ODY2OGQ3NGJkIiwidCI6ImY2MTBjMGJlLWJkMjQNGlZOS04MTBiLTNkYzI4MGFmYjU5MCIslmMiOj99>.

³ See <https://reliefweb.int/report/occupied-palestinian-territory/end-palestinian-authority-coordination-israel-response>.

⁴ See <https://mondoweiss.net/2020/09/palestinians-faces-consistent-testing-kit-shortages-during-covid-19/>.

Palestinian Authority.⁵ While rates of infection were markedly increasing during that period, Palestinians in East Jerusalem lacked adequate access to medical facilities, services and testing kits. The lack of provision of aggregated data by Israel on cases is also hampering efforts to combat the pandemic. Since then, Israeli authorities have opened another centre in the neighbourhood. With the recent spike in cases, there remain severe restrictions on the operations of health care professionals in East Jerusalem as health development efforts continue to be undermined by the occupying Power.

11. In another worrying development, there was an increase in rates of infection among Palestinian detainees in Israeli detention centres, including one reported case of a child.⁶ In April, the Special Rapporteur had called for the release of the most vulnerable detainees, including children, women, older persons and those with pre-existing conditions. The increase in infections among Palestinian detainees again highlights the critical need to release Palestinian political prisoners or find alternative arrangements for detention to ensure their safety.

12. As rates of infection increase significantly in the Occupied Palestinian Territory, the impact of structural issues resulting directly from occupation and Israeli practices will continue to be increasingly felt. The complex set of measures applied to different areas by the occupying Power, often resulting in discriminatory practices, is bound to compound the impact of occupation, especially under such a serious health crisis. Even in the midst of a serious health pandemic, the demolition of Palestinian homes and instances of excessive use of force continue to be recorded and, in some cases, have increased. It is imperative that Israel, as the occupying Power, and in the light of the currently alarming rates of COVID-19 infection, reverse these practices and allow for the better protection of Palestinians and improved access to health-care services. Absent such measures, health conditions for Palestinians, who are already suffering the scourge of occupation, are bound to worsen.

B. Planned annexation and illegal settlement expansion by Israel

13. As part of a unity deal, on 20 April, the Prime Minister of Israel, Benjamin Netanyahu, and the leader of the Blue and White party, Benjamin Gantz, agreed to formally initiate a process to annex parts of the West Bank and the Jordan Valley.⁷ The planned annexation would have affected a third of the West Bank if implemented. The Special Rapporteur stressed that besides leading to a cascade of human rights violations, any annexation, even if partial, would be a serious breach of international law and the Charter of the United Nations and would set a dangerous precedent for the rules-based international order.⁸ The United Nations High Commissioner for Human Rights, Michelle Bachelet, also stated, on 29 June, that annexation was illegal and that it would have disastrous consequences not only for Palestinians but also for Israel itself.⁹

14. While formal annexation plans appear to have been delayed for the time being, it is imperative to stress that the de facto annexation of Palestinian territory by Israel is ongoing and has intensified in 2020, most notably through illegal settlement

⁵ See www.middleeastmonitor.com/20200416-israel-closes-coronavirus-testing-centre-in-occupied-east-jerusalem/.

⁶ See www.dci-palestine.org/palestinian_child_detainee_tests_positive_for_coronavirus_in_israeli_prison.

⁷ See www.amnesty.org/en/latest/news/2020/07/israelopt-10-things-you-need-to-know-about-annexation/.

⁸ See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25857&LangID=E.

⁹ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26009&LangID=E.

expansion. In 2020 alone, Israel has approved or advanced more than 12,150 settlement homes, making it the single highest rate on record since 2012, when such figures started to be recorded by Peace Now.¹⁰ More than 5,000 of these housing units were approved in mid-October alone. Settlements and settlement construction are illegal under international law and are one of the major obstacles to peace. Concurrently, demolitions of Palestinian-owned structures have increased significantly over the past year. In 2020 alone, more than 560 structures have been destroyed, leading to the displacement of 747 Palestinians.¹¹ The Special Rapporteur stresses that, while it was important to counter the formal Israeli annexation plans, it is also imperative to counter all measures on the ground that amount to de facto annexation, which Israel advances in the plain sight of the international community and which lead to serious breaches of the human rights of Palestinians on a daily basis.

C. Gaza

15. The Israeli-imposed land, sea and air blockade of Gaza has now entered its fourteenth year, with no end in sight. As a result, the 2 million residents of Gaza, including around 1 million children, continue to endure a grave and worsening humanitarian crisis at multiple levels. Gazans have had virtually all their human rights undermined under the weight of the blockade as they continue to lack access to adequate housing, education, water and sanitation. Food insecurity is endemic. Gaza bears one of the world's highest unemployment rates (estimated to be around 45 per cent), with poverty levels that exceeded 53 per cent as of late 2019.¹² The economy of Gaza is flat on its back, with growth in gross domestic product virtually at zero in 2019 and with an export sector that has nearly expired as a result of the closure and severe restrictions (see [TD/B/67/5](#), paras. 2 and 13).

16. Students in Gaza continue to lack adequate education infrastructure and the tools for distance learning, especially under the current pandemic. More than 575,000 children and teenagers lack access to computer equipment, reliable power supply and the Internet.¹³ It is estimated that only 30 per cent of Gaza households have Internet access, while Internet networks crash more than 10 times an hour on average.¹⁴ Despite their availability for more than 15 years, Gaza still lacks 3G networks, meaning that data upload times are significantly slowed down. As part of its comprehensive blockade, Israel prevents the entry of equipment needed for advanced data network infrastructure. With pre-existing limitations on networks and confinement measures, students in Gaza face insurmountable difficulties to learning and to one of the only gateways they have to the outside world. All of this undermines their fundamental right to education.

17. The health-care system in Gaza is at the verge of total collapse, which would result in a full-blown humanitarian catastrophe. After the first community transmissions in Gaza were detected on 25 August 2020, confirmed cases increased exponentially, putting a significant strain on an already battered health-care system.¹⁵ As of 14 October, there were 4,285 confirmed cases in Gaza, a marked increase from 1 July, when there were only 11 cases. Strict preventive measures have been

¹⁰ See www.aljazeera.com/news/2020/10/15/israels-settlement-approvals-hit-record-high-watchdog.

¹¹ See www.ochaopt.org/data/demolition.

¹² See <https://reliefweb.int/report/occupied-palestinian-territory/increase-gaza-s-unemployment-rate-2019>.

¹³ See <https://gisha.org/en-blog/2020/10/13/remote-learning/>.

¹⁴ See <http://pngoportal.org/en/3049.html>.

¹⁵ See www.aljazeera.com/news/2020/8/25/gaza-in-lockdown-after-first-covid-19-community-transmission.

implemented by the de facto authorities, including the imposition of full and partial curfews and the establishment of quarantine centres. Such measures did mitigate the impact and the spread of the virus but they could not remedy the fundamental structural deficiencies in the health-care sector caused by the blockade.

18. The prohibition of or severe restrictions on the entry of vital and dual-use materials – those that Israel considers could be used for both military and civilian purposes, including cement and steel – chronic power shortages and the contamination of more than 90 per cent of the drinkable water supply in Gaza have debilitated the work of hospitals even before the onset of the current pandemic. Current statistics are extremely disconcerting: it is estimated that there are only 93 ventilators and 110 beds in the intensive care units in Gaza to cover a population of 2 million.¹⁶ As of the end of September 2020, the World Health Organization estimated that 47 per cent of essential drugs were at zero stock level, with supply of less than a month jeopardizing the lives of more than 350 oncology patients and causing the suspension of more than 13,000 elective surgeries. More than 50 per cent of primary health-care staff in Gaza have been reassigned to support the COVID-19 response, gravely affecting an appropriate response to and treatment of non-COVID-19-related illnesses. The Special Rapporteur had specifically warned in early September that “should the COVID-19 pandemic take root in Gaza, the consequences would likely be very serious”.¹⁷

19. Faced with few alternatives for treatment, Palestinians in Gaza, especially those with critical health conditions, continue to experience arbitrary delays and denials of Israeli-issued exit permits needed for essential and often life-saving health care outside of Gaza. The suspension of security coordination between the Palestinian Authority and Israel in May 2020, in the context of announced annexation plans by Israel in the West Bank, has further complicated and delayed the process of exit permit applications. Since September 2020, the World Health Organization has been operating a coordination mechanism to support Palestinian patients in applying for Israeli exit permits in order to mitigate the impact of the coordination suspension.¹⁸ The Special Rapporteur reiterates that Israel, as the occupying Power, has the primary responsibility to ensure respect for and protection and fulfilment of the right to health of Palestinians in Gaza to the full extent of their actual control, while the Palestinian Authority and the de facto authorities in Gaza also have responsibilities to the extent of their effective control over the population.

20. The Israeli-imposed blockade on Gaza contravenes international law, specifically article 33 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), and amounts to the collective punishment of the entire civilian population in Gaza. The Special Rapporteur stated on 1 September that: “Gaza is on the verge of becoming unlivable. There is no comparable situation in the world where a substantial population has endured such a permanent lockdown, largely unable to travel or trade, and controlled by an occupying power in breach of its solemn international human rights and humanitarian obligations. Our international standards of dignity and morality do not allow such experiments in human despair.”¹⁹ The High Commissioner also noted on 14 September in her global update that “the blockade, which contravenes international law, has conclusively failed to deliver security or peace for Israelis and Palestinians, and should urgently be lifted”.²⁰ More than ever and after 14 years, the Israeli security rationale for the blockade has been undermined by the reality on the

¹⁶ See www.icrc.org/en/document/icrc-donates-vital-intensive-care-equipment-gaza.

¹⁷ See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26201&LangID=E.

¹⁸ See www.ochaopt.org/content/covid-19-emergency-situation-report-18.

¹⁹ See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26201&LangID=E.

²⁰ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26226.

ground, demonstrating that the civilian population of Gaza continues to suffer the brunt of the blockade.

21. The latest asymmetrical escalation of hostilities between Israel and armed groups in Gaza, which ended with a mediated ceasefire in late August, demonstrates that instability will remain unless the fundamental human rights of Palestinians are achieved and protected. Short-term solutions will only serve to deepen the humanitarian crisis as a result of the blockade and increase the frustration of a population already living in extremely dire conditions. The Palestinians in Gaza urgently require immediate steps to ease the impact of the blockade. The Special Rapporteur calls for a specific set of measures, including the reconstruction of the Gaza seaport, the building of new power, water and sewage treatment plants and the permission of the entry of much larger quantities of construction materials and freedom of movement for Gazans. The crisis in Gaza is human-made, and only through the exercise of concerted political will by those with authority can a full-blown humanitarian catastrophe be averted.

D. Children

22. The daily lives of Palestinian children continue to be especially negatively impacted by the continuation of occupation and the exposure of children to violence. According to the report of the Secretary-General on children and armed conflict, in 2019, 32 Palestinian children (29 boys, 3 girls) and 1 Israeli girl were killed in the occupied West Bank, including East Jerusalem. Most of the Palestinian children casualties were attributed to Israeli forces and were mostly caused by live ammunition or air strikes. In the same year, 1,539 Palestinian children (1,460 boys, 79 girls) and 8 Israeli children (5 boys, 3 girls) were maimed (see [A/74/845-S/2020/525](#), paras. 85–86). In that report, the Secretary-General urged Israel to end the excessive use of force against children and ensure accountability for cases involving the killing and maiming of children. He urged Palestinian armed groups to ensure children's safety, including by preventing them from being exposed to violence or by abstaining from instrumentalizing children for political purposes (*ibid.*, paras. 91–92).

23. Palestinian children's access to health care continues to be severely affected. The intricate system of movement restrictions in the case of the West Bank, including East Jerusalem, and the 14-year blockade of Gaza by Israel have resulted in serious challenges in access to health-care facilities and specialized medical treatment for children. In Gaza, children continue to face denial of or delay in access to health-care facilities or specialized treatment outside of the Strip.

24. The Special Rapporteur also continues to be seriously concerned about reports of ill-treatment of children during arrest, interrogation or detention. In 2019, the United Nations received testimonies of children who reported breaches of due process and ill-treatment by Israeli forces in the context of detention, including physical violence (*ibid.*, para. 84). Children held in Israeli detention report patterns of ill-treatment, such as the use of blindfolds, hand ties or leg ties and the denial of food and water or access to toilets. Children also report being denied access to lawyers or parents during interrogation, being compelled to sign documents in Hebrew, which many of the children do not understand, and not being adequately informed about their rights (see [A/75/336](#), para. 20). Israeli practices and policies thus continue to prioritize the punishment and criminalization of Palestinian children instead of their rehabilitation.

E. Palestinian Authority and the de facto authorities in Gaza

25. There continue to be reports of cases of arbitrary arrest and detention by the de facto authorities in Gaza, particularly of journalists and human rights and political activists. Many continue to be arrested because of their political affiliation and perceived opposition to the Hamas authorities. Serious restrictions on freedom of expression continue to be in place, particularly in the context of reporting on the socioeconomic impact of the COVID-19 pandemic. There are also concerning reports of excessive use of force against those who violate curfews in relation to imposed preventive measures.

26. During the COVID-19 crisis, it has been reported that the Palestinian Authority has released some prisoners in order to try to contain the pandemic. However, a number of arrests by Palestinian security forces continued to be reported in the West Bank. Many of those arrested were accused of using social media platforms to criticize the Palestinian Authority or for expressing opposing political views.²¹ Limitations on freedom of expression remain a concern for journalists. A number of allegations of ill-treatment of those arrested also continue to be received.

III. Accountability, impunity and the responsibility of the international community

27. Accountability – the institutional check on the exercise of public and private power on behalf of the common good – is the indispensable component of the rule of law. When used purposively and effectively, accountability entrenches fairness and equality, it promotes healing and resolution, it delivers justice to victims and perpetrators alike, it alleviates conflicts and prevents others from igniting, and it sews together the 10,000 threads of accommodation which nurture social trust.

28. Without accountability, the best-designed systems of law and human governance will wither for lack of enforceability and respect. Without accountability, the possibility of political reconciliation, let alone its flourishing, is unattainable. And without accountability, social wounds metastasize, leaving unchecked retaliation, rather than measured restitution, as the likely response to the injustices of the past and present. As the Office of the United Nations High Commissioner for Human Rights (OHCHR) has noted, “lack of the rule of law and accountability for human rights violations leads to failures of justice and impunity for crimes, conflict over unaddressed grievances, and oppressive, unaccountable rule”.²²

29. The accountability principle applies to all stakeholders, public and private, who have the capacity, through their authority or power, to affect the common good. The former Secretary-General of the United Nations, Kofi Annan, endorsed this broad application of the principle in a report to the Security Council in 2004, stating that the rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards (see [S/2004/616](#), para. 6).

30. The breadth of this principle ensures that not only must those who are violating the norms of international human rights and humanitarian norms end their transgressions and be held accountable, but – equally as important – those who have the individual and collective capacity to influence the behaviour of these perpetrators

²¹ See www.amnesty.org/en/latest/news/2020/05/palestine-end-arbitrary-detention-of-critics-in-west-bank-and-gaza/.

²² See <https://bangkok.ohchr.org/rule-of-law-accountability/>.

are also accountable to utilize, to the extent possible, their weight to meaningfully sanction and end these breaches and crimes.

31. The international supervision of the 53-year-old Israeli occupation of Palestine illustrates that, between international law and accountability, there is an enormous gap between promise and performance. The tragic paradox is that there has been no other conflict in the modern world to which the United Nations has contributed so decisively to the development of international law in such a large number of significant areas – providing depth and breadth to the rights of refugees, the application and meaning of belligerent occupation, the strict prohibition against the annexation of occupied territory, the legal status of civilian settlements in occupied lands and the centrality of the right to self-determination, among other areas – while delivering such a paucity of actual protections to the occupation’s many victims.²³

32. The United Nations and other authoritative international institutions have spoken, often with lucidity and incisiveness, about the incompatibility of the Israeli occupation with international law and basic rights-based principles. On a number of occasions, they have warned Israel about its defiance of, and non-compliance with, Security Council, General Assembly and Human Rights Council resolutions. Rarely, however, have they actually taken steps to hold Israel accountable – through effective countermeasures and sanctions – for its obstructive policies and practices concerning the occupation.

33. The purpose of this call for consequential accountability is plainly obvious: Israel has been operating a largely cost-free occupation for decades, with every available indicator – whether it is the unrelenting growth in the settlement population, the confiscation of more and more Palestinian public and private lands for settlements and the Israeli military, the repeated proclamations by Israeli political leaders that the occupied lands are Israeli by right, or the refusal by Israel to acknowledge that its rule over the Palestinian territory is governed by the laws of occupation – pointing to an unremitting occupation. The former head of the Israeli Shin Bet (the country’s internal security unit), Carmi Gillon, recently observed, with regret, that “the status quo is good for Israel, because Israel gets all it wants without paying a price”.²⁴

34. Israel is a rational actor, and it understands that, if the incentives to thicken its occupation are high and the deterrents from the international community are virtually non-existent, it can continue to devour the territory meant for a Palestinian State unimpeded. If impunity continues to be indulged and even rewarded by the international community, then it is magical thinking to expect an acquisitive occupying power would do anything else but further expand its settlement enterprise, prepare even more assiduously for a future de jure annexation claim, doom the Palestinians to a future without hope and write the obituary for the two-State solution.

35. In the report of the Special Rapporteur of October 2019 (A/74/507), the section on accountability focused on the responsibilities of the international community. The present report addresses the accountability responsibilities of two other important and influential actors in the context of the occupation: the Security Council of the United Nations and private corporations. The Security Council is the custodian for ensuring international peace and security and has the authority to impose international sanctions and other actions to protect international law when peace and security are threatened. Private corporations play a significant role in sustaining the economic

²³ Susan Akram and others, eds., *International Law and the Israeli-Palestinian Conflict: A Rights-Based Approach to Middle East Peace* (Abingdon, United Kingdom of Great Britain and Northern Ireland, Routledge, 2011).

²⁴ See www.haaretz.com/middle-east-news/palestinians/.premium-the-palestinians-got-screwed-they-are-now-a-non-issue-1.8968748.

viability of the illegal Israeli settlements, thereby inextricably entangling businesses in the abusive human rights record of the occupation.

A. Security Council and the Israeli occupation

Introduction

36. Over the past five decades, the Security Council has repeatedly and unambiguously endorsed three fundamental principles with respect to the Israeli occupation of the Palestinian territory (the West Bank, including East Jerusalem, and Gaza). First, Israel is the occupying Power, the Fourth Geneva Convention of 1949 applies in full, and Israel is required to fulfil all of its obligations under the Convention.²⁵ Second, the acquisition of territory by force or war is inadmissible.²⁶ Third, the creation and expansion of the Israeli settlements is a serious violation of the absolute prohibition under international law of the occupying Power transferring parts of its civilian population into the occupied territory.²⁷ All three of these principles were expressly reaffirmed by the Council in its resolution [2334 \(2016\)](#). These three principles are among the most settled and widely-accepted tenets of modern international law.

37. At no time have any of these three principles been accepted or applied by Israel. The Security Council has spoken, at times sharply, about the defiance of Israel, but it has not imposed any consequences in the face of the ongoing obstructiveness of Israel. There is no other grave international human rights situation, and no other insubordinate State actor, in the world today about which the Security Council has spoken in such quantity and with such critical clarity, but acted with such passivity.²⁸ And yet, even as Israel has deepened its obstinacy in recent years, the Security Council has not only failed to act, it no longer even speaks on the issue with the regularity it had before: since January 2009, the Council has adopted only two resolutions critical of the Israeli occupation,²⁹ even as human rights conditions on the ground have progressively worsened.

Principle 1: Fourth Geneva Convention

38. The Fourth Geneva Convention was enacted in the aftermath of the Second World War to offer broad protections to civilians caught in war, who are the most vulnerable people in any armed conflict. Regarding the applicability of the Convention, Israel has argued – virtually alone in the world – that it does not apply to the Palestinian territory, and therefore that the territory is not occupied. This is because, in its view, no other State had a valid sovereign claim to those lands when it captured them in 1967.³⁰ The Security Council has consistently repudiated this stance, confirming in at least 22 resolutions since 1967 that the Convention applies in full to

²⁵ The Security Council first referred to the applicability of the Fourth Geneva Convention to the Israeli occupation in its resolution [237 \(1967\)](#), adopted within a week of the end of the war of June 1967.

²⁶ See Council resolution [242 \(1967\)](#).

²⁷ See Council resolution [446 \(1979\)](#).

²⁸ Kofi Annan, in his memoirs, observed that “the Council’s aggressive stance against the Syrian presence in Lebanon stood in stark contrast to its passivity regarding Israel’s occupation of Arab lands...the perception of double standards in the Middle East undermined the United Nations”. See Kofi Annan, with Nader Mousavizadeh, *Interventions* (New York, Penguin Books, 2012), p. 298.

²⁹ Resolutions [1860 \(2009\)](#) and [2334 \(2016\)](#).

³⁰ See <https://mfa.gov.il/MFA/MFA-Archive/2003/Pages/DISPUTED%20TERRITORIES-%20Forgotten%20Facts%20About%20the%20We.aspx>.

the Israeli occupation, most recently in 2016.³¹ On various occasions, the Security Council has “strongly deplored” the continued refusal by Israel to comply with previous resolutions directing it to abide by the Convention,³² demanded that Israel “immediately and scrupulously” comply with the Convention³³ and noted that, in the event of non-compliance, it would examine “practical ways and means” to secure “full implementation” by Israel of prior resolutions on the application of the Convention.³⁴

39. Twice in 1980 – after 13 years of occupation – the Security Council affirmed the “overriding necessity to end the prolonged occupation of Arab territories occupied by Israel since 1967, including Jerusalem”.³⁵ Yet, in 2020 – with the Israeli occupation now four times as prolonged as it was in 1980 – the occupation has exponentially deepened and thickened.³⁶ Israel has rejected the applicability of the Fourth Geneva Convention since the very beginning of the occupation,³⁷ and both the United Nations and many respected human rights organizations have determined that Israel has repeatedly breached a number of the guaranteed protections enshrined in the Convention (see [A/HRC/43/67](#)).³⁸

Principle 2: annexation of occupied territory

40. The annexation of occupied territory by an occupying power is not only strictly prohibited by international law,³⁹ it is now deemed to be a crime of aggression under the Rome Statute of the International Criminal Court.⁴⁰ In the context of the Israeli occupation, the Security Council has expressly endorsed the principle of the inadmissibility of the acquisition of territory by war, force and/or military conquest on at least 11 occasions.⁴¹ With respect to the two-stage annexation by Israel of East Jerusalem (in June 1967 by a Cabinet decision and in June 1980 by the Knesset), the Security Council has repeatedly stated that East Jerusalem remains occupied and that the proclamation by Israel of sovereignty is “null and void”, is “a flagrant violation of the Fourth Geneva Convention” and has “no legal validity”.⁴²

41. In the face of the persistent refusal of Israel to unwind its annexation of East Jerusalem, the Security Council has “strongly deplored” contravention by Israel of

³¹ See, generally, resolutions [446 \(1979\)](#) and [2334 \(2016\)](#).

³² See Council resolution [476 \(1980\)](#).

³³ See Council resolution [592 \(1986\)](#).

³⁴ See Council resolution [478 \(1980\)](#).

³⁵ See Council resolutions [471 \(1980\)](#) and [476 \(1980\)](#).

³⁶ Ardi Imseis, “Negotiating the illegal: on the United Nations and the illegal occupation of Palestine, 1967-2020”, *European Journal of International Law* (September 2020); and Michael Sfard, *The Wall and the Gate: Israel, Palestine, and the Legal Battle for Human Rights* (New York, Metropolitan Books, 2018).

³⁷ Theodor Meron, “The West Bank and international humanitarian law on the eve of the fiftieth anniversary of the Six-Day War”, *American Journal of International Law*, vol. 111, No. 2 (April 2017).

³⁸ See also the Israel/Palestine country pages of Amnesty International (www.amnesty.org/en/countries/middle-east-and-north-africa/israel-and-occupied-palestinian-territories/) and Human Rights Watch (www.hrw.org/middle-east/north-africa/israel/palestine).

³⁹ See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, at para. 87 (p. 171), where the International Court of Justice stated that the principal “No territorial acquisition resulting from the threat or use of force shall be recognized as legal” has now achieved the status of customary international law.

⁴⁰ Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, article 8 bis, para. 2: “Any of the following acts ... qualify as an act of aggression: (a) ... any annexation by the use of force of the territory of another State or part thereof”.

⁴¹ See resolution [2334 \(2016\)](#), in which the Council reaffirmed the inadmissibility of the acquisition of territory by force.

⁴² See resolutions [471 \(1980\)](#), [476 \(1980\)](#) and [478 \(1980\)](#).

United Nations resolutions, has “urgently” called upon it to “rescind all such measures” and has demanded that Israel “desist forthwith” from any further action to alter the status of Jerusalem.⁴³ On other occasions, the Council has confirmed “in the strongest terms” that the annexation is “totally invalid” and deplored “the failure of Israel to show any regard for the resolutions of the General Assembly and the Security Council”.⁴⁴

42. In reply, Israel has continued to intensify its annexation of East Jerusalem through the creation and expansion of 12 civilian settlements, the presence of 215,000 Jewish settlers and the construction of a wall separating East Jerusalem from the West Bank, and by solidifying the political and infrastructural integration of East and West Jerusalem.⁴⁵ No evidence has ever been forthcoming on the part of Israel that it has begun to comply, or intends to comply, with any of the directions of the Security Council on East Jerusalem, with the Prime Minister of Israel proclaiming in February 2020 that the Government had successfully accomplished its annexation of East Jerusalem in the face of great international opposition.⁴⁶

Principle 3: Israeli settlements

43. International law has strictly forbidden an occupying power from attempting to demographically transform an occupied territory through the implantation of its civilian population.⁴⁷ The purpose of this prohibition is to preserve the indigenous population’s right to self-determination,⁴⁸ to halt an avaricious occupying power from advancing an impermissible annexation claim through territorial colonization,⁴⁹ and to avert the immense human suffering that inevitably follows the process of settler implantation.⁵⁰ Since 2002, settler implantation has been determined to be a war crime under the Rome Statute.⁵¹

44. Beginning in 1979, the Security Council has stated on at least six occasions that the establishment by Israel of civilian settlements in occupied territory has “no legal validity” and, more vividly, is a “flagrant violation under international law”.⁵² In 1980, the Council “strongly deplored” the non-cooperation of Israel and its rejection of prior resolutions on settler implantation.⁵³ In 2016, the Council determined that the

⁴³ See resolutions [252 \(1968\)](#), [476 \(1980\)](#) and [478 \(1980\)](#).

⁴⁴ See resolution [267 \(1969\)](#); see also resolutions [298 \(1971\)](#) and [478 \(1980\)](#).

⁴⁵ Meir Margalit, *The City of Jerusalem: the Israeli Occupation and Municipal Subjugation of Palestinian Jerusalemites* (Brighton, United Kingdom, Sussex University Press, 2020).

⁴⁶ Oren Liebermann and Andrew Carey (Cable News Network), “As election looms, Netanyahu announces new construction in East Jerusalem”, 20 February 2020: “‘We did this then in the face of strong international opposition. We overcame every obstacle and we did it, and see what we have done in Jerusalem’, Netanyahu said. ‘We are connecting all parts of the united Jerusalem, the rebuilt Jerusalem. It is a source of great pride and is great news for the entire people of Israel’.”

⁴⁷ See Fourth Geneva Convention, article 49, sixth paragraph.

⁴⁸ See [E/CN.4/Sub.2/1993/17](#) and [E/CN.4/Sub.2/1993/17/Corr.1](#), para. 202: “Policies and practices of population transfer may be aimed specifically at denying a meaningful implementation of the right to self-determination, for instance, by altering the relevant unit of self-determination through demographic manipulation, or policies which have that effect”.

⁴⁹ See International Committee of the Red Cross, commentary of 1958 on the sixth paragraph of article 49 of the Fourth Geneva Convention, available from: www.icrc.org/ihl.nsf/COM/380-600056?OpenDocument.

⁵⁰ See [E/CN.4/Sub.2/1997/23](#) and [E/CN.4/Sub.2/1997/23.Corr.1](#), para. 16: “The range of human rights violated by population transfer and the implantation of settlers place this phenomenon in the category of mass violations of human rights”.

⁵¹ Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, article 8 (2) (b) (viii).

⁵² See resolutions [446 \(1979\)](#) and [465 \(1980\)](#).

⁵³ See resolutions [465 \(1980\)](#) and [471 \(1980\)](#).

settlement enterprise of Israel was gravely imperilling what remained of the two-State solution and demanded that Israel “immediately and completely cease all settlement activities”.⁵⁴ By 2020, however, Israel has created approximately 250 thriving settlements, with more than 650,000 settlers, in East Jerusalem and the West Bank, and it has continued to approve record numbers of new settlement housing units over the past year.⁵⁵ In his 14 quarterly reports to the Security Council since 2017 as to whether Israel has been implementing the clear direction in resolution [2334 \(2016\)](#) that it absolutely halt all of its settlement activities, the Special Coordinator for the Middle East Peace Process has reported, on each occasion, that Israel has taken no steps to satisfy this obligation.⁵⁶

Security Council and accountability

45. Under Article 24 (1) of the Charter of the United Nations, the Security Council has the responsibility of maintaining international peace and security. With that responsibility comes the authority, under Article 41 of the Charter, to apply a broad range of enforcement mechanisms, short of military action, in order to compel errant States and actors to cooperate with international law (such as the 1991 Iraqi invasion of Kuwait), to contain a perceived threat to international peace and security (such as regional nuclear proliferation) or to address the malign actions of specific international, national or subnational actors (such as Islamic State in Iraq and the Levant, Al-Qaida and the Taliban)⁵⁷. Since 1966, the Security Council has established 30 sanctions regimes, and currently maintains 14 ongoing regimes. While Security Council sanctions have had a varied record in effectiveness and have been criticized on occasion for their adverse humanitarian impact,⁵⁸ more recent history has demonstrated that – when applied with precision, purpose, unity and the flexibility to vary and escalate accountability measures – United Nations-led sanctions can produce meaningful changes in behaviour by States and other actors.⁵⁹

46. The defiance of Israel – as termed by the Security Council⁶⁰ – of the direction of the international community is a serious challenge to the rules-based international order. The resolutions and decisions of the Security Council, along with those of the General Assembly, are the bedrock of the international legal consensus on the Israeli occupation of Palestine. As a solemn condition of joining the United Nations, Member States commit themselves to accepting and carrying out the decisions and directions of the Security Council.⁶¹ If the rule of law matters, then so does accountability. If the Security Council is to speak with authority, then the disobedience of Council directions must have consequences.

47. Similarly, the inertia of the Security Council in meaningfully responding to the non-compliance of Israel with its resolutions and directions – particularly on the three

⁵⁴ See resolution [2334 \(2016\)](#).

⁵⁵ See Peace Now, “4,948 settlement units advanced at October 2020 Higher Planning Council sessions”, 15 October 2020: “These approvals officially make 2020 the highest year on record in terms of units of settlement plans promoted since Peace Now began recording in 2012”.

⁵⁶ See, for example, Nickolay Mladenov, Special Coordinator for the Middle East Peace Process, statement at the Security Council briefing on the situation in the Middle East, 29 September 2020 (see [S/PV.8762](#)).

⁵⁷ Larissa Van Den Herik, *Research Handbook on UN Sanctions and International Law* (Cheltenham, United Kingdom, Edward Elgar Publishing, 2017).

⁵⁸ Jeremy Matam Farrall, *United Nations Sanctions and the Rule of Law* (Cambridge, United Kingdom, Cambridge University Press, 2007).

⁵⁹ Enrico Carisch, Loraine Rickard-Martin and Shawna W. Meister, *The Evolution of UN Sanctions: from a Tool of Warfare to a Tool of Peace, Security and Human Rights* (New York, Springer, 2017).

⁶⁰ See Council resolutions [608 \(1988\)](#), [636 \(1989\)](#) and [641 \(1989\)](#).

⁶¹ See Charter of the United Nations, Article 25.

fundamental principles it has so frequently endorsed – is also a body blow to the efficacy of international law.⁶² In his memoirs, Kofi Annan was disturbed by the “prolonged and sometimes brutal occupation” by Israel, and lamented the timidity of the Security Council’s response: “Even when the Council took positions, it did not establish mechanisms to enforce its will”.⁶³ He also identified a leading source for the Council’s paralysis: the “unhealthy possessiveness of the Middle East peace process” by the United States of America.⁶⁴ Since 1973, the United States has cast 31 vetoes at the Security Council against draft resolutions critical of the Israeli occupation; in each case, it has been the only Council member casting a negative vote. No other permanent member of the Security Council has vetoed a Council resolution critical of the Israeli occupation.⁶⁵

B. Private corporations and the Israeli settlements

Introduction

48. In 2011, the Human Rights Council unanimously adopted the Guiding Principles on Business and Human Rights (A/HRC/17/31, annex). The Guiding Principles are a set of non-binding norms to influence corporate decision-making in integrating human rights principles into daily business operations. The Principles are intended to apply to all commercial and corporate sectors and to all geographic regions. They are part of a larger global initiative – including major statements by the International Committee of the Red Cross⁶⁶ and the Organization for Economic Cooperation and Development⁶⁷ – to mainstream a responsive and vibrant human rights culture within the corporate world. The Guiding Principles set out three pillars as part of the United Nations “Protect, Respect and Remedy” Framework to advance human rights practices and compliance:

- (a) The duty of States to protect human rights, including against abuses by corporations;
- (b) The corporate responsibility to respect human rights, including by acting with due diligence to avoid violating the rights of others;
- (c) The need for greater access to effective remedies for victims of business-related abuses.

49. The Guiding Principles are not law, and most international human rights treaties do not contain specific obligations with respect to corporations.⁶⁸ Nonetheless, a number of States have extended criminal and/or civil liability to corporations domiciled within their jurisdictions through their domestic laws, many of which reflect international human rights standards (see A/HRC/17/31, annex, commentary on Principle 12). Some States have also issued national guidance policies and

⁶² In 2020, retired Ambassador of the United States of America, Peter Mulrean, observed that the international community’s “words were never matched by action, however, especially because the United States ensured through pressure on other countries and through the United Nations Security Council veto that Israel was never meaningfully punished by or even harshly criticized in that potentially influential forum” (see www.justsecurity.org/69925/trumps-deal-of-the-century-is-bibis-dream-come-true/).

⁶³ Annan, *Interventions*, p. 256.

⁶⁴ *Ibid.*, p. 290.

⁶⁵ See <https://research.un.org/en/docs/sc/quick>.

⁶⁶ See www.icrc.org/en/doc/resources/documents/misc/business-ihl-150806.htm.

⁶⁷ See www.oecd.org/corporate/mne/responsible-business-conduct-matters.htm.

⁶⁸ Note that there are advanced negotiations for a legally-binding international treaty on business and human rights (see www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/OEIGWG_RevisedDraft_LBI.pdf).

advisories to corporations regarding their compliance with human rights standards internationally. The rich body of modern international human rights legal instruments – regarding labour rights, environmental rights and the rights of vulnerable groups, such as minorities, women, children and persons with disabilities, among other guarantees – is the North Star for directing corporations on how to satisfy their human rights responsibilities.

50. Among the relevant principles found in the Guiding Principles with respect to corporate activity in the Israeli settlements and the occupation are the following:

(a) **Principle 7.** States should assist businesses that are involved in conflict-affected areas to identify, prevent and mitigate human rights risks, and should deny access to businesses involved in gross human rights abuses;

(b) **Principle 11.** Businesses should avoid infringing the human rights of others and should address human rights impacts with which they are involved;

(c) **Principle 12.** The responsibility to respect human rights refers to internationally recognized human rights, which would include the International Bill of Human Rights and fundamental labour standards, but would also encompass all other United Nations human rights instruments;

(d) **Principle 13.** The responsibility to respect human rights requires businesses to avoid causing or contributing to adverse human rights impacts, and to prevent or mitigate human rights impacts that are directly linked to their business relationships;

(e) **Principle 23.** In all contexts, businesses should comply with all applicable internationally recognized human rights and treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue.

51. In addition to international human rights law, businesses are expected to incorporate the tenets of international humanitarian law and international criminal law in their operational responsibilities.⁶⁹ International humanitarian law applies to conflict-affected areas and occupied territories and requires that States and individuals adhere to the gold-standard humanitarian legal obligations found primarily in the Geneva Conventions of 1949 and their legal offspring. While companies operating in a conflict zone or in an occupation could contribute to the economic and social well-being of the affected population, their activities, conversely, could become complicit in the commission of human rights and humanitarian abuses or assisting the occupying power to sustain its alien rule once it has become apparent that it is governing in violation of the laws of occupation.

52. The focus of international criminal law is on individuals (rather than States or other institutional actors) who commit, instigate, order, plan or are complicit in prohibited activity under the Rome Statute of the International Criminal Court, such as war crimes and crimes against humanity. Individual corporate decision makers could be liable under international criminal law. Serious issues relating to international humanitarian and criminal law can arise in occupations where the occupying power is engaged in the transfer of parts of its civilian population into the occupied territory. The Guiding Principles on Business and Human Rights require companies in conflict zones and occupations to employ an enhanced due diligence, or “heightened care”, to ensure that their operations are compliant with their legal responsibilities. However, there are some circumstances in which no amount of

⁶⁹ For valuable commentary, see: D. Hughes, “Differentiating the Corporation: Accountability and International Humanitarian Law”, *Michigan Journal of International Law*, vol. 41, No. 1 (2020); and Marya Farah, *Business and Human Rights in Occupied Territory: Guidance for Upholding Human Rights* (Ramallah, Al-Haq, 2019).

enhanced due diligence will avoid corporate complicity in human rights violations in a conflict area or an occupation.

Corporations and the Israeli settlements

53. The Israeli settlements are a profound breach of international law, as determined by the leading deliberative and judicial organs of the United Nations, including the Security Council,⁷⁰ the General Assembly,⁷¹ the Human Rights Council⁷² and the International Court of Justice.⁷³ Other influential international bodies – including the European Union,⁷⁴ the International Committee of the Red Cross⁷⁵ and the High Contracting Parties to the Fourth Geneva Convention⁷⁶ – concur. More seriously, the settlements are a presumptive war crime under the Rome Statute.⁷⁷

54. The disfiguring human rights consequences of the settlements upon the Palestinians in East Jerusalem and the West Bank are pervasive. The United Nations High Commissioner for Human Rights has determined that the human rights violations emanating from the settlements include land confiscation and alienation, settler violence, discriminatory planning laws, the appropriation of natural resources, home demolitions, forcible population transfer, labour exploitation, forced evictions and displacement, physical confinement, discriminatory law enforcement and the imposition of a two-tiered system of unequal political, social and economic rights based on ethnicity. Above all, the settlements serve the broader goal of the Government of Israel of staking an impermissible sovereignty claim over parts of the occupied territory while simultaneously denying Palestinian self-determination (see [A/HRC/43/67](#); see also [A/HRC/22/63](#)). The Israeli settlements and the corresponding shrinking space for Palestinians have created a “coercive environment” in the Occupied Palestinian Territory, according to the United Nations.⁷⁸

55. The United Nations Conference on Trade and Development has found that the territorial restrictions imposed by the settlements – the separate road systems for settlers and Palestinians; the hundreds of roadblocks, checkpoints and obstructions throughout the West Bank; settler violence; and regular area closures and curfews – have created a shattered economic space in the Occupied Palestinian Territory. This has resulted in a highly dependent and captive Palestinian economy, mounting impoverishment, daily impositions and indignities and an accelerating trend towards economic de-development.⁷⁹ In 2018, a leaked memorandum by European Union

⁷⁰ See resolution [2334 \(2016\)](#).

⁷¹ See Assembly resolution [71/97](#).

⁷² See Council resolution [43/31](#).

⁷³ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, at para. 120.

⁷⁴ Council of the European Union, “Council conclusions on the Middle East peace process” (18 January 2016).

⁷⁵ Peter Maurer, “Challenges to international humanitarian law: Israel’s occupation policy”, *International Review of the Red Cross*, vol. 94, No. 888 (2012), p. 1503.

⁷⁶ Declaration of the Conference of High Contracting Parties to the Fourth Geneva Convention, 17 December 2014, available from: <https://unispal.un.org/UNISPAL.NSF/0/E7B8432A312475D385257DB100568AE8>.

⁷⁷ Ghislain Poissonier and Eric David, “Israeli settlements in the West Bank: a war crime?” *La Revue des droits de l’homme*, No. 17 (2020). See also www.amnestyusa.org/lets-be-clear-israels-long-running-settlement-policy-constitutes-a-war-crime/.

⁷⁸ See www.un.org/unispal/document/ocha-2019-humanitarian-needs-overview/.

⁷⁹ *The Economic Costs of the Israeli Occupation for the Palestinian People: Cumulative Fiscal Costs* (United Nations publication, Sales No. E.20.II.D.6).

diplomats in Jerusalem highlighted the “systematic legal discrimination” imposed by the Israeli occupation and its settlement enterprise against the Palestinian people.⁸⁰

56. Corporate and business activities contribute significantly to the economic viability of the Israel settlement enterprise.⁸¹ It is private corporations that, through tenders issued by the Israeli Government agencies that administer the settlement enterprise, construct the settlements and build and maintain the roads and utility infrastructure that service them. Businesses operating in the settlements and the industrial parks – in particular, manufacturing and service industries, and wineries – provide jobs and commercial activity that economically sustain the settlements, while paying taxes to settlement municipalities. Private security companies guard many of the settlements, and those companies and high-tech businesses supply surveillance and identification equipment. Banks and financial institutions facilitate the fiscal infrastructure to arrange residential mortgages and to lend capital to businesses operating in the settlements. Law firms offer legal services to the settlements, settlers and settlement businesses. Real estate firms coordinate the sale and purchase of residential and commercial properties in the settlements. Agricultural corporations grow a range of foodstuffs for domestic and export markets, utilizing large-scale farming and modern technology. Domestic and international tourism is an emerging sector for the settlements, along with hotels and accommodation rentals. Retail store chains operate in the settlements. Transportation companies link the settlements to each other and to communities within Israel. Extraction companies exploit the Occupied Palestinian Territory’s natural resources, including minerals and water. Equipment companies supply the heavy machinery needed to construct residential and commercial building structures. Waste management companies service both municipalities and industrial enterprises in the settlements. The construction and maintenance of the separation wall through occupied territory solidifies an illegal situation.

57. Many of the corporations and businesses supplying commercial services in, or to, the settlement economy are Israeli companies. However, a number of international corporations also contribute to, and profit from, the settlement economy. International banks and financial institutions underwrite loans to, or invest in, businesses with operations in the settlements. Other companies sell goods and services to the settlements, such as construction materials, heavy machinery and solar power technology, or excavate non-renewable natural resources. Major international transportation companies have participated in the building of the Jerusalem light rail system (which connects a number of the illegal East Jerusalem settlements to West Jerusalem) and the high-speed rail connection between Tel Aviv and Jerusalem (which passes through parts of the occupied territory). Major international accommodation booking companies advertise housing rentals in the Israeli settlements. Goods and services from the Israeli settlements, including manufactured goods, wines and foodstuffs, are exported in quantity to the international market.

58. Without this extensive corporate involvement, the settlements – the engine of the occupation – would be an unsustainable economic burden for the Government of Israel. These businesses – domestic and international – benefit greatly from the illegal

⁸⁰ Andrew Rettman, “No EU cost for Israeli ‘apartheid’ in West Bank”, EUobserver, 1 February 2019.

⁸¹ Paras. 56–58 are informed by the comprehensive overviews of the corporate dimensions of the Israeli settlement economy provided in Amnesty International, *Think Twice* (2019); Amnesty International, *Destination: Occupation* (2019); Farah, *Business and Human Rights in Occupied Territory*; Profundo and 11.11.11, *Doing Business with the Occupation* (2018); Human Rights Watch, *Bankrolling Abuse* (2018); Human Rights Watch, *Occupation, Inc.* (2016); and Diakonia, *The Unsettling Business of Settlement Business* (2015). See also the work of Who Profits, available from: www.whoprofits.org/.

confiscation by Israel of Palestinian land and natural resources, from the discriminatory Israeli two-tier system of rights, benefits and opportunities between the settlements and Palestinian people, and from Palestinian impoverishment (and the resulting employment of low-cost Palestinian labour in the settlements) that is the inevitable consequence of a settlement implantation enterprise.⁸² The question becomes whether companies can become, or remain, involved with the Israeli settlements and still honour their human rights commitments.

Enhanced due diligence or complete corporate abstinence?

59. In 2014, the Working Group on the issue of human rights and transnational corporations and other business enterprises issued a detailed statement on the implications of the Guiding Principles on Business and Human Rights in the context of the Israeli settlements.⁸³ It pointed to the illegality of the settlements and the wide ranges of human rights abuses associated with them. In its conclusion, the Working Group issued a cautionary yellow light to corporate involvement in the Israeli settlements, stating that:

Business enterprises doing business, or seeking to do business, in or connected to the Israeli settlements in the OPT need to be able to demonstrate that they neither support the continuation of an international illegality nor are complicit in human rights abuses; that they can effectively prevent or mitigate human rights risks; and are able to account for their efforts in this regard.

60. In 2018, OHCHR released an interim report regarding its progress towards creating a database of businesses involved in the Israeli settlements. In its conclusion, OHCHR expressed considerable doubt as to whether a company could engage commercially with the Israeli settlements and, at the same time, comply with its human rights responsibilities (see [A/HRC/37/39](#), para. 41):

Considering the weight of the international legal consensus concerning the illegal nature of the settlements themselves, and the systemic and pervasive nature of the negative human rights impact caused by them, it is difficult to imagine a scenario in which a company could engage in listed activities in a way that is consistent with the Guiding Principles and international law.

61. In 2019, Amnesty International published a substantive study on the human rights and legal implications of companies doing business with the Israeli settlements.⁸⁴ It concluded that, given their grave human rights consequences, only a complete red light abstinence would suffice:

A company cannot meet its responsibility to respect human rights and the standards of international humanitarian law while doing business with the settlements. This is because the settlements have been established and developed in breach of the international law rules governing what states can and cannot do in a situation of military occupation. As such, they constitute war crimes and give rise to systematic, widespread and serious human rights violations.

62. The Special Rapporteur takes the view that any form of corporate involvement – whether Israeli or international, whether direct or indirect, whether intentional or incidental – with the Israeli settlements is wholly incompatible with human rights obligations, with the Guiding Principles and with any purposive definition of enhanced due diligence. Three reasons inform this view. First, the Israeli settlements

⁸² Yael Ronen, “Responsibility of businesses involved in the Israeli settlements in the West Bank”, January 2015.

⁸³ See <https://www.ohchr.org/Documents/Issues/Business/OPTStatement6June2014.pdf>.

⁸⁴ See Amnesty International, *Think Twice*, p. 25.

are a flagrant violation and a grave breach of the Fourth Geneva Convention and a presumptive war crime under the Rome Statute. These are among the most serious of contraventions under international human rights, humanitarian and criminal law. Second, corporations and businesses operating in, or benefiting from, the settlements provide the indispensable economic oxygen for their growth. Whatever positive benefits are cited by companies in defending their engagement with the settlements – often, the employment of Palestinian labour, or the payment of local taxes⁸⁵ – are far outweighed on the human rights ledger by the scale of gross violations inherent in the settlement enterprise. Third, the settlements are the primary political instrument – the pervasive “facts on the ground” – employed by the Government of Israel to advance its de facto and de jure annexation claims and to deny Palestinian self-determination. Annexation is a crime of aggression,⁸⁶ and self-determination is *primus inter pares* of human rights.⁸⁷

63. Under present conditions, the only form of corporate engagement in the Occupied Palestinian Territory that could comply with the human rights responsibilities of businesses would have to: (a) directly benefit the protected population under occupation; (b) withhold any benefits to, or involvement with, the Israeli settlements; and (c) contribute to the inherent sovereignty claim of the Palestinian people over their territory.

Human Rights Council database

64. In February 2020, OHCHR released the database of business enterprises involved in certain activities related to the Israeli settlements (see [A/HRC/43/71](#)), pursuant to the request of the Human Rights Council in its resolution [31/36](#). Databases of business activities had been previously commissioned by the United Nations with respect to other conflict zones, including the Democratic Republic of the Congo (see [S/2003/1027](#)) and Myanmar (see [A/HRC/42/CRP.3](#)). The Special Rapporteur welcomes the release of the database, as it provides an important spotlight on corporate activity – both Israeli and international – in the settlements and advances public and corporate understanding of the adverse human rights environment sustained by the settlements.⁸⁸ At the same time, the Special Rapporteur recognizes that the database had a restrictive mandate (it did not seek to cover all business activity related to the settlements that may raise human rights concerns), it was interpreted narrowly (a number of companies with important supply relationships with the settlements and/or the occupation were not included) and it did not contain an adjudicative mechanism.⁸⁹ These concerns must be addressed while enhancing the database’s ability to be a living tool.

⁸⁵ Maha Abdullah and Lydia de Leeuw, *Violations Set in Stone* (Amsterdam, Somo, and Ramallah, Al-Haq, 2020).

⁸⁶ Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, article 8 bis, para. 2 (a).

⁸⁷ Self-determination is the very first human right cited in both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

⁸⁸ Valentina Azarova, “Business and human rights in occupied territory: the UN database of business active in Israel’s settlements”, *Business and Human Rights Journal*, vol. 3, No. 2 (July 2018), p. 187.

⁸⁹ See www.haaretz.com/israel-news/premium-why-the-un-s-settlement-database-doesn-t-go-far-enough-1.8589282.

IV. Conclusions

65. In 1970, the Security Council was faced with an international crisis that has striking similarities to that of the Occupied Palestinian Territory: the prolonged rule of apartheid South Africa over Namibia.⁹⁰ Like Palestine, Namibia was ruled through a United Nations-supervised trust relationship – in one case, an occupation; in the other case, a mandate – by an alien power that was exploiting its position and advancing an illegal claim of sovereignty. Like Palestine, South African rule over Namibia was aided by the extensive presence of regional and international businesses. And like Palestine, the alien power in Namibia was defying the long-standing directions of the Council to end its abusive rule and open the path to independence. In response, the Council authorized a comprehensive set of sanctions and countermeasures to bring an end to South African rule over Namibia. These accountability measures – found, among other places, in Council resolution 283 (1970) and the 1971 advisory opinion of the International Court of Justice on Namibia⁹¹ – laid the basis for the international community’s actions against illegal rule by South Africa and the eventual independence of Namibia in 1990.

66. Without the comprehensive accountability measures developed and applied by the Security Council against South Africa, the independence of Namibia would never have occurred when it did. And without the development and application of comprehensive accountability measures by the international community against the Israeli occupation, it will continue well into the future. This occupation will not die of old age. Nor will it crumble from pleas to respect the United Nations which do not promise the inevitability of adverse consequences if disobeyed. Rights under international law are self-evident, but they are not self-executing.

67. In its resolutions 465 (1980) and 471 (1980), the Security Council called upon all States “not to provide Israel with any assistance to be used specifically in connection with settlements in the occupied territories” and for Israel “to end the prolonged occupation”. Forty years later, it is well past time for the Council to lead the international community by drawing from its own precedents respecting Namibia and other modern sanctions regimes to honour its directions to end assistance to the settlements and to end the occupation. As the International Court of Justice stated in its advisory opinion:

It would be an untenable interpretation to maintain that, once such a declaration had been made by the Security Council under Article 24 of the Charter, on behalf of member States, these Members would be free to act in disregard of such illegality or even to recognize violations of law resulting from it.⁹²

V. Recommendations

68. The Special Rapporteur recommends that the Government of Israel should fully comply with its obligations under international law and that it should completely end its 53 years of occupation with all deliberate speed and enable the realization of Palestinian self-determination.

⁹⁰ John Dugard, *Confronting Apartheid: A Personal History of South Africa, Namibia and Palestine* (Johannesburg, South Africa, Jacana Media, 2018).

⁹¹ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16.

⁹² *Ibid.*, at para. 112 (p. 52).

69. The Rapporteur recommends that the Council, or, if it fails to act, the General Assembly, in accordance with the procedure pursuant to its resolution [377 \(V\)](#), entitled “Uniting for peace”, adopt resolutions containing the following directions:

(a) To call upon all States maintaining diplomatic or consular relations with Israel to issue a formal declaration to the Government of Israel to the effect that they do not recognize any authority of Israel with regard to the Occupied Palestinian Territory and that they consider the continued presence of Israel in the Territory to be illegal;

(b) To request all States to refrain from any relations – including diplomatic, consular, trade and other agreements – with Israel implying any recognition of the authority of the Government of Israel over any part of the Occupied Palestinian Territory;

(c) To call upon all States to ensure that all corporate enterprises regulated by them cease any and all investment, commercial, operational and trade dealings of any sort with respect to the Israeli settlements and Israeli industrial enterprise zones or with companies regulated by the Government of Israel operating in the Occupied Palestinian Territory;

(d) To request all States to undertake, without delay, a detailed study and review of all bilateral treaties between themselves and Israel to identify whether these treaties contain provisions by which they might apply to the Israeli settlements in the Occupied Palestinian Territory;

(e) To call upon all States to discourage the promotion of tourism and emigration to the Israeli settlements;

(f) Also to call upon all States not to permit the entry of any goods and services produced in or originating from, in whole or in part, the Israeli settlements or Israeli-regulated commercial enterprises in the Occupied Palestinian Territory;

(g) To request all States to report to the Secretary-General on measures they have taken on an annual basis in order to give effect to the provisions set forth by the Security Council and the General Assembly.

70. The Rapporteur recommends that the Security Council should ensure that the database of business enterprises involved in certain activities related to the Israeli settlements becomes a living tool, that it clarify and broaden the mandate of the database and that it provide the database with sufficient resources so that its spotlight can properly identify the scope of all business involvement with the settlements and the occupation.