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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

Summary

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

I. Introduction

1. The present report provides a brief overview of the most pressing human rights concerns in the Occupied Palestinian Territory at the time of submission, as identified by the 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 accountability, impunity and the responsibility of the international community to bring an end to the occupation of the Occupied Palestinian Territory and other Israeli practices amounting to violations of international humanitarian and human rights law.

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

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

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

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

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

¹ As specified in the mandate of the Special Rapporteur set out in Commission on Human Rights resolution 1993/2.

II. Current human rights situation

7. Since the previous report of the Special Rapporteur to the General Assembly (A/73/447), the human rights situation in the Occupied Palestinian Territory, in particular in Gaza, has continued to be dire. The key issues raised during the mission included the continued shrinking of civic space, the pervasive lack of accountability, especially in relation to the investigation and prosecution of hostilities in Gaza in 2014, home demolitions in the West Bank, in particular in East Jerusalem, the ongoing use of administrative detention and the detention of children, and the impact of various practices on the environment.²

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

A. Gaza

9. The land, sea and air blockade imposed on Gaza has now entered its twelfth year, severely restricting imports and exports, the movement of people into and out of Gaza and access to adequate health care, education and livelihoods, including agricultural land and fishing.³ Israel has considerably tightened restrictions on the movement of humanitarian staff since 2018, citing security concerns. The blockade of Gaza is a denial of basic human rights and amounts to collective punishment.⁴ The economy of Gaza continues to be close to collapse, as determined by the United Nations Conference on Trade and Development in July 2019 (see TD/B/EX(68)/4). The uncertain financial situation of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and cuts to its programmes have contributed to this situation. As at July 2019, the Agency had managed to raise \$110 million, but still faced a shortfall in meeting its annual budget of \$1.2 billion.⁵ The shortfall is exacerbated by the fact that some countries announced that they would withhold the pledged amounts until information on alleged corruption was clarified.⁶

10. Despite the concerning overall humanitarian situation, there has been some noteworthy improvement in the availability of electricity supply to Gaza. The provision of \$60 million by the Government of Qatar in October 2018 helped to provide additional fuel to Gaza, resulting in an immediate improvement in the electricity supply. This has enabled electricity to be supplied for between 14 and 15 hours per day, as opposed to fewer than 7 hours previously. Despite this improvement, the current electricity supply met less than half of the electricity demands of Gaza for

² Office of the United Nations High Commissioner for Human Rights (OHCHR), “Occupied Palestinian Territory: United Nations human rights expert says Israel bent on further annexation”, 12 July 2019.

³ United Nations, Office for the Coordination of Humanitarian Affairs, “Humanitarian situation in the Gaza Strip”, fact sheet, October 2011.

⁴ United Nations, Office for the Coordination of Humanitarian Affairs, “Increased restrictions on the movement of humanitarian staff in and out of Gaza”, Humanitarian Bulletin: Occupied Palestinian Territory, July 2019.

⁵ James Reinl, “United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) raises \$110m but still cash-strapped after US cuts”, Al-Jazeera, 25 June 2019.

⁶ Jewish Telegraphic Agency and Cnaan Lipshiz, “Swiss and Dutch suspend funding for United Nations aid agency for Palestinians over graft scandal”, *Haaretz*, 31 July 2019.

the first six months of 2019, and interruptions in the power supply still pose a significant obstacle to the functioning of hospitals and medical facilities.⁷

Demonstrations and the use of force

11. The Great March of Return and related protests have resulted to date in 207 Palestinians killed and 33,828 injured.⁸ The commission of inquiry set up in the aftermath found that, in all but two cases, the use of live ammunition by Israeli security forces against demonstrators was unlawful (A/HRC/40/74, para. 94). The commission also found that demonstrators were shot in violation of their right to life or of the principle of distinction under international humanitarian law (ibid., para. 97). Indeed, in the vast majority of cases, the victims were situated far from the fence, and Israeli forces were situated behind earth mounds with sufficient protection. Israel has demonstrated virtually no accountability for these actions despite calls by the international community and civil society for independent and transparent investigations into the incidents.⁹

12. Palestinians in Gaza have continued to demonstrate against the blockade and for the right to return to their homes, every Friday since March 2018. On 6 September 2019, for example, two children were killed by live ammunition from the Israeli security forces while demonstrating near the fence.¹⁰ According to human rights organizations, of the injured, the majority sustained wounds from live fire, while others were hit directly by tear gas canisters.¹¹

13. The health sector in Gaza still struggles to cope with the massive number of injuries, a majority of them from gunshot wounds. The health system in Gaza was already suffering from restrictions on people and materials, a lack of electricity and shortages of certain equipment and supplies, and is severely overwhelmed, to the point of collapse, by the need to treat the additional massive volume of injuries.¹² The overstretched health-care system of Gaza, compounded by the growing numbers of injuries from protests and demonstrations requiring urgent specialist attention, have contributed to a rise in requests for permits to leave Gaza for hospital referrals, most of which have been denied.

Human rights violations by Hamas in Gaza

14. In May 2019, Hamas forces violently suppressed economic protests in Gaza. According to reports, Hamas beat and arrested scores of Palestinians who were protesting against price rises and dire living conditions across the Gaza Strip. The group of activists who had organized the protests called themselves “We want to live” and led small protests in several locations along the Strip.¹³ This latest crackdown by Hamas comes after previous suppression of demonstrations in March 2019, in which

⁷ United Nations, Office for the Coordination of Humanitarian Affairs, “Improvements to Gaza electricity supply”, Humanitarian Bulletin: Occupied Palestinian Territory, June 2019.

⁸ United Nations, Office for the Coordination of Humanitarian Affairs, Data on Casualties database, available at www.ochaopt.org/data/casualties.

⁹ Farhan Haq, Deputy Spokesman for the Secretary-General, statement attributable to the Spokesman for the Secretary-General on the situation in Gaza, 30 March 2018.

¹⁰ Michelle Bachelet, United Nations High Commissioner for Human Rights, statement to the forty-second session of the Human Rights Council, 9 September 2019.

¹¹ Al Mezan Centre for Human Rights, “71th Friday of demonstrations in Gaza, 161 wounded, including 56 children, one woman and six paramedics”, press release, 25 August 2019.

¹² World Health Organization (WHO) and Health Cluster – Occupied Palestinian Territory, *Emergency Trauma Response to the Gaza Mass Demonstrations 2018–2019: A One-Year Review of Trauma Data and the Humanitarian Consequences* (2019).

¹³ Oliver Holmes, “Hamas violently suppresses Gaza economic protests”, *Guardian*, 21 March 2019.

hundreds of demonstrators were subjected to beatings, arbitrary arrest and detention, torture and ill treatment.¹⁴ These actions by Hamas are alarming and in clear violation of Palestinians' rights to freedom of expression and association, depriving them also of their right to freedom from arbitrary detention and to physical integrity. It is the duty of Hamas to ensure that Palestinians in Gaza are free to exercise their rights without threats, intimidation or abuse.

B. West Bank

15. Against the backdrop of increased calls by the Prime Minister of Israel¹⁵ and senior members of his Government for the annexation of parts or all of the West Bank, levels of settler violence have increased there. Incidents of such violence were recorded in a number of towns in the West Bank, including Hebron, Nablus and Ramallah. The Office for the Coordination of Humanitarian Affairs documented seven Palestinian deaths owing to settler violence in 2019.¹⁶ The frequency of these attacks has particularly increased in parts of the Jordan Valley, especially in the northern district of Tubas, where a number of attacks by Israeli settlers targeted Palestinian shepherds.¹⁷ Many Palestinian inhabitants have been forced to leave these areas as a result of the violence, while Israeli settlements continue to expand, effectively surrounding and reducing the living space for Palestinian communities.

16. In parallel, the rate of home demolitions and seizures of Palestinian-owned structures has increased markedly in 2019 in comparison with previous years. As at July 2019, a total of 362 structures had been destroyed by the Israeli authorities, causing the displacement of more than 481 Palestinians. This marks an increase of 64 per cent compared with the equivalent period in 2018.¹⁸ The locations most affected by demolitions were Hebron, Tubas and Nablus. Israeli authorities have cited a number of reasons for the demolitions, such as security threats and a lack of building permits, including in relation to buildings in the "buffer zone" in close proximity to the separation wall. It is an Israeli policy and trend to reject building permits.

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

Restrictions on freedom of expression and association imposed by the Palestinian Authority

18. The Palestinian Authority has continued to impose restrictions on the rights to freedom of expression, association and peaceful assembly in the West Bank. In 2018, several journalists were arrested and charged with violating provisions of the

¹⁴ Amnesty International, "Gaza: Hamas must end brutal crackdown against protesters and rights defenders", 18 March 2019.

¹⁵ Oliver Holmes, "Netanyahu vows to annex large parts of occupied West Bank, *Guardian*", 10 September 2019.

¹⁶ United Nations, Office for the Coordination of Humanitarian Affairs, Data on Casualties database.

¹⁷ B'Tselem, "Israeli settlers and military intensify attacks against Palestinian shepherds in the village of al-Farisiyah in the northern Jordan Valley", 15 May 2019.

¹⁸ United Nations, Office for the Coordination of Humanitarian Affairs, "West Bank demolitions and displacement: an overview", July 2019.

cybercrime law of 2017 (A/HRC/40/39, para. 60, and A/HRC/40/43, para. 46). Despite recent amendments to the law, proceedings that had been initiated prior to the amendment were allowed to continue, including the arrests noted above. In one of the cases, a Palestinian journalist was arrested and charged with defamation and slander on the basis of the law (A/HRC/40/39, para. 60).

C. East Jerusalem

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

20. Recent figures indicate an increased rate of demolition of Palestinian homes in East Jerusalem, as well as settlement construction and expansion. As at 30 April 2019, 111 Palestinian-owned structures had been destroyed in East Jerusalem since the beginning of the year, either directly by the Israeli authorities or by their owners to avoid fines, following the issuance of demolition orders for the lack of building permits. Of these, 57 per cent were demolished in April.²⁰ The increase in both demolitions of Palestinian homes and construction of settlements, spearheaded by the perceived consent of the United States of America, cannot be understood in any way other than being for the purpose of changing the demographic balance – reducing the Palestinian presence and strengthening the Jewish majority in East Jerusalem.²¹

21. On 4 October 2018, the municipality of Jerusalem announced a plan to extend its control to all of Jerusalem, including East Jerusalem, and to replace UNRWA services with local municipal services. As part of the announcement, the outgoing mayor of Jerusalem, Nir Barkat, made an explicit commitment to dismantling UNRWA facilities in East Jerusalem and noted the municipality's intention to provide medical, education and sanitation services instead of allowing UNRWA to do so.²² Subsequently, Israeli forces entered an UNRWA clinic in East Jerusalem and demanded to see a permit.²³ UNRWA has since stated that it was not notified of the municipality's decisions and has expressed its strong opposition to the attempt by Israel to change the Agency's operational area. In a statement dated January 2019, UNRWA reminded Israel of its obligation to protect the Agency's installations in areas under its authority.²⁴ As highlighted in my previous report to the General Assembly, the extension by Israel of its laws and civil authority to occupied East Jerusalem is part of its continuing efforts to ensure that the de jure annexation of East Jerusalem is irreversible (A/73/447, para. 37).

22. Against the backdrop of the municipality's increased demonstration of control, the Israeli police intensified its incursions into the Palestinian neighbourhood of Isawiyah in June and July 2019, carrying out approximately 340 arrests. Most of those arrested were released shortly afterwards. According to some sources, charges were

¹⁹ Information provided by an international humanitarian organization. See also Al-Haq, "The occupational annexation of Jerusalem through Israeli bills and laws", 5 March 2018.

²⁰ United Nations, Office for the Coordination of Humanitarian Affairs, "United Nations officials call for an immediate halt to demolitions in East Jerusalem and respect for international law amidst rise", 3 May 2019.

²¹ Jerusalem Legal Aid and Human Rights Centre, "Annual report 2018", 2018.

²² Al-Jazeera, "Jerusalem to remove UNRWA to 'end lie of Palestine refugees'", 4 October 2018.

²³ Nir Hasson, "UNRWA says Israeli inspectors tried to raid its East Jerusalem clinic", *Haaretz*, 8 October 2018.

²⁴ UNRWA, "UNRWA was not notified of any decision to close down schools it operated in East Jerusalem", 21 January 2019.

filed against five suspects.²⁵ The enhanced police operations and presence included the use of roadblocks on roads leading to the village, the close inspection of cars, nightly checkpoints inside the village and late-night house searches and arrests. Clashes broke out in the village as a result of the heightened police presence and the anger of residents. Many residents were reportedly injured in the clashes, most by rubber bullets, and at least one Palestinian man was killed by the police in late June.²⁶

23. Finally, Israeli interference with Palestinian children's right to education in East Jerusalem is also a concern. In May 2018, the Government of Israel announced that it would invest 1.85 billion new shekels in infrastructure and services for East Jerusalem. According to the non-governmental organization Ir Amim, however, 43.4 per cent of the budget is intended to narrow the discrepancies in education between West and East Jerusalem, with the condition that the Palestinian matriculation system be transitioned to the Israeli system.²⁷ Palestinians in East Jerusalem essentially find themselves between a rock and a hard place, having to choose what would provide their children with more opportunities in the short term even if it leads to further erosion of Palestinian identity and autonomy. The attempt by Israel to influence schools to change the curriculum, in conjunction with the municipality's intention to close down UNRWA, paints a concerning picture of efforts to further diminish Palestinian autonomy and identity in East Jerusalem.²⁸

D. Human rights of children

24. Children constitute almost 48 per cent of the Palestinian population in the West Bank and Gaza; 1.3 million children live in the West Bank and 1 million in the Gaza Strip.²⁹ Children in both places continue to suffer adverse physical and psychological affects stemming from their exposure to continuous violence, including in the context of the Great March of Return and other demonstrations. In 2018, according to the report of the Secretary-General on children and armed conflict, the United Nations verified the highest number of Palestinian children killed (59) and injured (2,756) since 2014 (A/73/907-S/2019/509, para. 84).

25. Children in Gaza continue to face barriers in their access to adequate health care, including through the denial or delay of applications to cross into Israel for medical treatment. The approval rate for such applications is significantly lower for Palestinian children who were injured during demonstrations in Gaza than for those injured in other circumstances. In 2018, 22 per cent of applications were approved, compared with an average approval rate of 75 per cent for other cases involving children (ibid., para. 94). Israeli authorities continue to deny or delay applications for companions applying to travel with children in need of specialized health care in Israel.³⁰

26. Children's access to education is severely restricted in the occupied West Bank and Gaza. According to the annual report of the Secretary-General on children and armed conflict, 118 incidents of interference with education in the Occupied Palestinian Territory were verified in 2018, affecting 23,188 children, with more than

²⁵ Nir Hasson, "340 arrests and only five indictments: summer-long police sweep strikes fear in Isawiyah", *Haaretz*, 28 August 2019.

²⁶ Ibid.

²⁷ Ir Amim, "The state of education in East Jerusalem: budgetary discrimination and national identity", August 2018. Available at http://www.ir-amim.org.il/sites/default/files/The%20State%20of%20Education_2018_1.pdf.

²⁸ Nir Hasson, "Israel promises 'revolution' for East Jerusalem schools. Palestinians say it's 'brainwashing'", *Haaretz*, 29 August 2018.

²⁹ United Nations Children's Fund, "Children in the State of Palestine", November 2018.

³⁰ WHO, "Health access: barriers for patients in the Occupied Palestinian Territory", June 2019.

half of the incidents involving Israeli forces firing live ammunition, tear gas and sound grenades in and around schools (ibid., para. 91). In Gaza, there is a serious shortage of classrooms, leading to the operation of a shift system for classes. Students study in 274 UNRWA schools across the Gaza Strip, of which 84 operate on a single-shift basis, 177 on a double-shift basis and 13 on a triple-shift basis, staffed by 8,676 education personnel.³¹

27. Palestinian children also suffer along with their families the anxiety associated with living under the threat of demolition of their homes. Accordingly, they have been subjected to growing levels of stress as the number of evictions and demolition orders has risen, in particular in East Jerusalem.³² In 2019, there have been many examples of Palestinian homes demolished by Israeli forces that resulted, among other things, in the displacement of entire families and adverse effects on children's well-being. For example, on 25 April 2019, Israeli authorities demolished a home in the village of Zawiyah in Area B of the West Bank, on punitive grounds. This demolition resulted in the displacement of five children and their parents.³³ Displacement, in particular for the most vulnerable, is traumatic and has lasting consequences, and this is especially the case for children.

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

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

29. The enemies of accountability are impunity and exceptionalism. As was stated recently in the Security Council: “International law is not an à la carte menu”.³⁴ Those who maintain that they are exempt from the directions of the international legal and diplomatic order not only defy the rule of law, but also fail the test of political realism. For no country can sustain for long its standing and influence among the community of nations if it asserts special arguments forbidden to others,³⁵ and no international rules-based order can command the requisite compliance with its laws and directions if it allows defiance and exceptionalism to thrive unchallenged. Impunity anywhere is a danger to justice everywhere.

30. An acute problem in the modern world is not the absence of laws, but the absence of international political will. As the Deputy Permanent Representative of the United Kingdom of Great Britain and Northern Ireland, Jonathan Allen, pointed out during a Security Council briefing on international humanitarian law in April

³¹ See www.unrwa.org/activity/education-gaza-strip.

³² Palestinian Counselling Centre, Save the Children and Welfare Association, “Broken homes: addressing the impact of house demolitions on Palestinian children and families”, April 2009.

³³ United Nations, Office for the Coordination of Humanitarian Affairs, “Protection of civilians”, Biweekly Highlights, 23 April–6 May 2019.

³⁴ Christoph Heusgen, Permanent Representative of Germany to the United Nations, statement at the Security Council open debate on the Middle East, 23 July 2019.

³⁵ Benjamin R. Barber, *Fear's Empire: War, Terrorism and Democracy* (New York, W.W. Norton and Company, 2003).

2019. “We do not lack law, we lack enforcement and accountability.”³⁶ Far too often, accountability has been applied by the international community in a selective and partisan fashion to many serious issues, reflecting a dispiriting mixture of design and indifference, collusion and apathy. On too many occasions, defiance has been ignored and outliers have been excused or appeased. This deficit of accountability erodes popular trust in the efficacy of international law, thereby jeopardizing a precious common good.

31. The 52-year Israeli occupation of the Palestinian territory – Gaza and the West Bank, including East Jerusalem – is a bitter illustration of the absence of international accountability in the face of the systemic violations of Palestinian rights under human rights and humanitarian law. Accountability is the key to opening the titanium cage that is the permanent occupation, and its principled application is the best path to a just and durable settlement. Israel, a relatively small country in terms of geography and population and with a particular dependence on the international community for both trade and investment and diplomatic cooperation, could not have sustained such a prolonged and repressive occupation in clear violation of international law without the active support and malign neglect of many in the industrialized world. While the international community has issued numerous resolutions and declarations critical of the unending occupation by Israel and its steady designs for annexation, such criticisms have rarely been matched by any meaningful consequences. In a comment that aptly applies to the wider world, the former European Union Special Representative for the Middle East, Miguel Moratinos, stated with regard to the Israeli occupation: “We Europeans excel at declarations. It is compensation for our scarcity of action.”³⁷

32. In the next part of the report, the obligations of the international community to bring serious human rights violations to an end and closely regulate belligerent occupation are reviewed, and its duty to ensure that its directions are obeyed by its fellow members is examined. Later in the report, the impunity enjoyed by Israel is assessed. Finally, the various accountability measures that the international community has adopted and applied in select conflicts and zones in relation to human rights violations are discussed, and it is considered which of these could be meaningfully applied to bring an end to the Israeli occupation.

A. Legal responsibilities of the international community

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

- (a) Common article 1 to the four Geneva Conventions of 1949;

³⁶ Jonathan Allen, Deputy Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations, “International humanitarian law: we lack enforcement and accountability”, statement at the Security Council briefing on international humanitarian law, 1 April 2019.

³⁷ Akiva Eldar, “Israel can’t afford to postpone Mideast peace much longer”, *Haaretz*, 12 November 2010.

- (b) The articles on responsibility of States for internationally wrongful acts, of 2001;
- (c) Article 25 of the Charter of the United Nations.

Common article 1 to the Geneva Conventions of 1949

34. The Fourth Geneva Convention of 1949 applies in full to the Israeli occupation of the Palestinian territory. This was first declared by the Security Council in its resolution 237 (1967), within days of the occupation, and has been reconfirmed by the Council many times since, most recently in its resolution 2334 (2016). Other primary bodies of the United Nations, including the General Assembly (in, for example, its resolution 73/97), the Human Rights Council (in, for example, its resolution 40/23) and the International Court of Justice,³⁸ have endorsed this view. Although Israel ratified the Conventions on 6 July 1951 and was called upon by the Security Council, in its resolution 446 (1979), to abide by them scrupulously, it denies that the Fourth Geneva Convention applies to the conflict or that it is the occupying Power of the Palestinian territory.³⁹ However, its position has found little support within the international community or among international law scholars.

35. According to common article 1 to the four Geneva Conventions: “The High Contracting Parties undertake to respect and to ensure respect for the ... Convention in all circumstances”.⁴⁰

36. This solemn obligation is central to the enforcement of the rights guaranteed in the four Geneva Conventions and in international humanitarian law. Contemporary legal scholars have stated that common article 1 has acquired a “quasi-constitutional nature”,⁴¹ an elevated legal status that requires States not only to obey the Conventions themselves, but also to take all steps within their capacity to insist that other States meet their obligations under international humanitarian law.⁴² Common article 1 is also reflective of customary international law, giving it universal standing.⁴³

37. The authoritative commentary on the four Geneva Conventions was issued by the International Committee of the Red Cross (ICRC) in 2016.⁴⁴ On common article 1, the ICRC noted in the commentary that the obligation to ensure respect was not a “loose pledge but a commitment vested with legal force”.⁴⁵ In interpreting this provision, the International Court of Justice stated that the term “undertake” was “not merely hortatory or purposive”, nor was it meant to simply introduce subsequent obligations, but was itself intended to “accept an obligation”.⁴⁶ ICRC further explains

³⁸ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, para. 101.

³⁹ International Committee of the Red Cross (ICRC), “International humanitarian law, ICRC and Israel’s status in the territories”, 31 December 2012.

⁴⁰ See www.icrc.org/en/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm.

⁴¹ Laurence Boisson de Chazournes and Luigi Condorelli, “Common article 1 of the Geneva Conventions revisited: protecting collective interests”, ICRC, 31 March 2000.

⁴² Knut Dörmann and Jose Serralvo, “Common article 1 to the Geneva Conventions and the obligation to prevent international humanitarian law violations”, ICRC, 21 September 2015.

⁴³ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, para. 158.

⁴⁴ See <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=72239588AFA66200C1257F7D00367DBD>, paras. 118–191.

⁴⁵ *Ibid.*, para. 170.

⁴⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007*, p. 43, para. 162.

in its commentary that, “by committing themselves to ‘respect and to ensure respect’ for the Conventions, States have also recognized the importance of adopting all reasonable measures to prevent violations from happening in the first place”.⁴⁷ When violations of the Conventions occur, the High Contracting Parties will only satisfy their legal obligations under common article 1 “as long as they have done everything reasonably in their power to bring the violations to an end”.⁴⁸

38. ICRC emphasizes in its commentary that the obligations in the Conventions are of such fundamental importance to the international community that they are *erga omnes partes*, obligations owed towards all other High Contracting Parties, at all times.⁴⁹ Regarding common article 1, this creates two primary interdependent obligations: (a) every individual High Contracting Party is duty-bound to all other High Contracting Parties to respect all of its own obligations under the Conventions (a negative duty not to violate); and (b) all High Contracting Parties bear a duty, individually and collectively, to ensure that every other High Contracting Party is respecting all of its obligations under the Conventions (a positive duty to compel others to comply).⁵⁰

39. It is therefore necessary to ask what nature of violations of international humanitarian law would trigger the obligations of other High Contracting Parties to ensure respect for the Conventions. Common article 1 must be read broadly and purposively.⁵¹ Political considerations, such as domestic inertia or unwillingness to confront an ally, are insufficient reasons to abstain from fulfilling the obligations to ensure accountability. As international law experts Théo Boutruche and Marco Sassòli have stated, in their legal opinion on this topic:

By definition, the existence of a legal duty in the form of the obligation to ensure respect requires an objective assessment and prevents a State from using mere political considerations to claim that no steps can be taken under that obligation. The fact that the fulfilment of an international obligation can prove to be politically difficult cannot serve as a ground to refuse to take any measure in the implementation of that obligation.⁵²

40. While States have an obligation to ensure respect for the Conventions “in all circumstances” and with respect to all violations, it is abundantly clear that serious violations and grave breaches of the Conventions trigger a particularly compelling international onus on all other High Contracting Parties to use all available means to bring such violations and breaches to an end.⁵³ Serious violations and grave breaches under international humanitarian law would include: wilful killing; extensive destruction and appropriation of property; collective punishment; unlawful deportation, transfer and unlawful confinement; the launching of indiscriminate attacks affecting the civilian population; the transfer by the occupying Power of parts of its own civilian population into the occupied territory; and practices of racial separateness and discrimination.⁵⁴ All of these grave breaches have been either

⁴⁷ See <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=72239588AFA66200C1257F7D00367DBD>, para. 121.

⁴⁸ *Ibid.*, para. 165.

⁴⁹ *Ibid.*, para. 119.

⁵⁰ *Ibid.*, paras. 153–173.

⁵¹ Robin Geiß, “The obligation to respect and to ensure respect for the Conventions”, in Andrew Clapham, Paolo Gaeta and Marco Sassòli, eds., *The 1949 Geneva Conventions: A Commentary* (Oxford University Press, Oxford, United Kingdom, 2015), p. 113.

⁵² Théo Boutruche and Marco Sassòli, “Expert opinion on third states’ obligations vis-à-vis IHL violations under international law, with a special focus on common article 1 to the 1949 Geneva Conventions”, 8 November 2016.

⁵³ Reinforced by the Fourth Geneva Convention, art. 146, and Additional Protocol I, art. 86.

⁵⁴ Fourth Geneva Convention, arts. 33, 49 and 147, and Additional Protocol, art. 85.

substantively alleged or actually established during Israeli conduct of the occupation.⁵⁵

41. The International Court of Justice, in advisory opinion of 2004 on the legal consequences of the construction of a wall in the Occupied Palestinian Territory, expressly stated that the High Contracting Parties bore a responsibility to ensure that Israel, the occupying Power, fulfilled its obligations under the Fourth Geneva Convention.⁵⁶

42. Taken together, the special place of international humanitarian law within international law, the direction of the International Court of Justice that the responsibilities of the international community under the Geneva Conventions are lawful obligations rather than moral sentiments and the emphasis in the ICRC commentary that the Conventions are invested with binding obligations cumulatively place a substantive legal duty on all High Contracting Parties to take all measures within their power to bring the Israeli occupation and its multiple violations of the law to a swift and complete end. While the occasional declarations by the High Contracting Parties regarding the humanitarian principles applicable to the occupation and the conflict are welcome,⁵⁷ much more is required to satisfy the obligation to ensure respect for the Conventions.

Articles on responsibility of States for internationally wrongful acts

43. In August 2001, at the end of a five-decade-long codification process, the International Law Commission adopted the articles on responsibility of States for internationally wrongful acts. The General Assembly accepted the articles in December 2001 (see resolution 56/83, annex). A basic norm of international law is that all States are to obey international law at all times, consistent with their obligations under the rules-based international order. It is established in the articles, as a foundational principle, that all States assume a legal responsibility to ensure that other States respect international law at all times. As such, all States bear the responsibility not to recognize as lawful any situation created by a serious breach of an obligation by another State arising from a peremptory norm of general international law. The articles are widely considered to reflect customary international law on State responsibility.⁵⁸

44. According to article 40 of the articles on responsibility of States for internationally wrongful acts,

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

45. A peremptory norm (a *jus cogens* norm) of general international law is a lawful obligation that is accepted by the international community as a norm from which no

⁵⁵ Human Rights Watch, Amnesty International, Al-Haq, Al Mezan, B’Tselem and Gisha, among others.

⁵⁶ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, para. 159.

⁵⁷ The Conference of the High Contracting Parties issued statements and declarations on the humanitarian principles applicable to the Israeli occupation of Palestinian territory in 1999, 2001 and 2014. Available at <https://unispal.un.org/UNISPAL.NSF/0/E7B8432A312475D385257DB100568AE8>.

⁵⁸ James Crawford, *State Responsibility: The General Part* (Cambridge University Press, New York, 2013), p. 43.

derogation or exception is permitted.⁵⁹ According to the substantive commentary on the articles issued by the United Nations in 2008,⁶⁰ peremptory norms of law would include respect for the basic rules of international humanitarian law and the right to self-determination, as well as the prohibitions against racial discrimination, apartheid, genocide, annexation, aggression and torture.⁶¹ A systematic violation, as mentioned in article 40 (2), is one that is carried out in an “organized and deliberate way”, while a gross violation “denotes violations of a flagrant nature, amounting to a direct and outright assault on the values protected by the rule”.⁶²

46. According to article 41 of the articles on responsibility of States for internationally wrongful acts, “States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40” and “no State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation”.

47. In accordance with article 41, States assume three basic obligations as part of their responsibility to ensure that other States uphold international law: (a) they cannot recognize as lawful situations those created by serious breaches as understood by article 40; (b) they cannot offer aid or assistance in maintaining any situation involving serious breaches; and (c) they have a positive duty to cooperate with each other in bringing such serious breaches to an end.⁶³ The purpose for these special third-party responsibilities is to counteract the challenge that such serious breaches pose to the legal, political and moral order of the international community as a whole.

48. The obligation of non-recognition of an unlawful situation resulting from a serious breach of a peremptory norm is to prevent the validation of an illegal fait accompli from crystallizing into a law-creating fact over time.⁶⁴ It is grounded in the legal principle of *ex injuria jus non oritur*: legal rights cannot derive from an unlawful act. According to the articles, States are prohibited from offering recognition to a transgressing State which would allow it to acquire, among other acts, sovereign title to annexed territory, lawful condonation of its practices of racial discrimination or apartheid, or legal acceptance of its denial of self-determination through its sustained defiance and the passage of time.⁶⁵

49. The obligation not to provide aid or assistance for maintaining a serious breach of international law is based on the principles of interdependence and solidarity that underlie the Charter of the United Nations and other lawful duties inherent in the rules-based international order.⁶⁶ This obligation requires States to individually refuse to offer any form of support to the transgressing State in its continuation of the serious breach. States that knowingly provide assistance to the transgressing State which aids in the ongoing breach, will themselves become responsible for the adverse effects of their assistance.⁶⁷ The Security Council, in its resolution 465 (1980), directed the international community to apply this principle with respect to the Israeli settlements.

⁵⁹ Convention on the Law of Treaties, art. 53.

⁶⁰ *Yearbook of the International Law Commission, 2001*, vol. II, Part Two (United Nations publication, Sales No. E.04.V.17 (Part 2)), chap. IV, sect. E.2 (Draft articles with commentaries thereto).

⁶¹ *Ibid.*, commentary on art. 40.

⁶² *Ibid.*

⁶³ *Ibid.*, commentary on art. 41.

⁶⁴ Martin Dawidowicz, “The obligation of non-recognition of an unlawful situation”, in James Crawford, Alain Pellet and Simon Olleson, eds., *The Law of International Responsibility* (New York, Oxford University Press, 2010).

⁶⁵ Draft articles with commentaries thereto, commentary on art. 41.

⁶⁶ Nina H.B. Jørgensen, “The obligation of non-assistance to the responsible State”, in Crawford, Pellet and Olleson, eds., *The Law of International Responsibility*.

⁶⁷ Draft articles with commentaries thereto, commentary on art. 41.

50. The obligation of cooperation creates a positive duty on all States to jointly partake in lawful actions on behalf of the international community to bring an end to the serious breaches of the transgressing State.⁶⁸ Without providing details of the forms of cooperation that may be required, the obligation nevertheless establishes the duty to take collective action where serious breaches have occurred. This builds upon the obligation of cooperation found in the Declaration on Principles of Friendly Relations and Cooperation among States, adopted by the General Assembly by its resolution 2625 (XXV) in October 1970.

Article 25 of the Charter of the United Nations

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

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

The prevailing view regarding the scope of Article 25 is that resolutions adopted by the Security Council in which something is decided, rather than simply recommended, are binding decisions on all Members of the United Nations and must be obeyed and implemented.⁶⁹ This binding authority of Council decisions follows the fact that all States, in agreeing to become Members of the United Nations, have consented to be bound by the terms of the Charter.⁷⁰

52. The leading judicial interpretation of the meaning and scope of Article 25 was provided by the International Court of Justice in its *Namibia* advisory opinion of 1971. In its commentary on Article 25, the Court ruled on three significant issues. First, it dismissed the argument advanced by the apartheid regime of South Africa that Article 25 was limited only to those occasions when a Security Council resolution specifically contained a mention of Chapter VII (the chapter of the Charter on enforcement mechanisms to address threats to or breaches of the peace).⁷¹ This finding confirmed that the Council was entitled to issue legally binding decisions outside of Chapter VII, thus ensuring its effectiveness in compelling adherence to a variety of its resolutions addressing a range of crises, violations of international law and non-compliance with previous United Nations decisions.

53. Second, in the *Namibia* advisory opinion, the Court laid out a viable legal test to determine when the language of a Security Council resolution constituted a decision and was therefore binding on States Members of the United Nations. It stated that the language of a Council resolution had to be carefully analysed to assess its legally binding nature, including:

- The terms of the resolution to be interpreted
- The discussions leading to it
- The Charter provisions invoked
- All other relevant circumstances⁷²

⁶⁸ Nina H.B. Jørgensen, “The obligation of cooperation”, in Crawford, Pellet and Olleson, eds., *The Law of International Responsibility*.

⁶⁹ Bruno Simma and others, *The Charter of the United Nations: A Commentary*, 3rd ed. (New York, Oxford University Press), 2013, p. 454.

⁷⁰ Hisahi Owada, “Problems of interaction between the international and domestic legal orders”, *Asian Journal of International Law*, vol. 5, No. 2 (July 2015).

⁷¹ *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, para. 113.

⁷² *Ibid.*, para. 114.

The Court, in the *Namibia* advisory opinion, had reviewed the language of Council resolution 276 (1970) on the expired mandate of the apartheid regime of South Africa in Namibia. The Court ruled that paragraphs 2 and 5 of the resolution were both legally binding on all States Members of the United Nations, “which are thus under obligation to accept and carry them out”:⁷³

- In paragraph 2 of resolution 276 (1970), the Council “declares” that the continued presence of South Africa in Namibia is illegal
- In paragraph 5 of resolution 276 (1970), the Council “calls upon all States” to refrain from dealings with South Africa that are inconsistent with paragraph 2

The Special Rapporteur adopts the position that language used in a Council resolution to make a declaration, demand an action from a Member State or pronounce on the illegality of a situation is likely to be a decision within the meaning of Article 25.

54. Third, the Court, in its *Namibia* advisory opinion, expressly addressed the issue of the legal responsibility of the international community. It stated that, when the Security Council adopts a decision under Article 25 of the Charter, it is legally binding on all Member States.⁷⁴ The Court then elaborated upon the duty of accountability of the international community when a competent organ of the United Nations had issued a binding decision on the illegality of a situation. It ruled that “such a situation cannot remain without consequences” and that the Members of the United Nations would have “an obligation ... to bring that situation to an end”. It continued by stating that “this decision entails a legal consequence, namely that of putting an end to an illegal situation”.⁷⁵

55. Recent debates in the Security Council on the binding nature of its resolutions indicate that some leading Council members accept that such resolutions create legal obligations on States Members of the United Nations. During a special session of the Council devoted to the Middle East, held in July 2019, the Permanent Representative of Germany specifically addressed the binding nature of the resolutions adopted by the Council on the Israeli occupation of the Palestinian territory, with particular reference to resolution 2334 (2016):

We believe in the United Nations and ... Security Council resolutions. For us, they are binding international law. We believe in the force of international law and we do not believe in the force of the strongest. ... For us, resolution 2334 (2016) – just to name the most recent Security Council resolution – is binding law and that is the international consensus.⁷⁶

56. Speaking after the Permanent Representative of Germany, the Permanent Representative of the United Kingdom expressed her agreement with his view about the binding nature of Security Council resolutions:

I just wanted to pick up on something the German representative said about international law. We share his view that the Security Council is responsible for maintaining international peace and security and we all agree that the Arab-Israeli conflict is a threat to international peace and security. It is therefore right that we have adopted resolutions on that topic. We are bound by those resolutions and we all have a responsibility to implement them, just as we do ... on other topics. Indeed, this is the very basis of the Council’s work.⁷⁷

⁷³ Ibid., para. 115.

⁷⁴ Ibid., para. 116.

⁷⁵ Ibid., para. 117.

⁷⁶ Heusgen, statement at the Security Council open debate on the Middle East.

⁷⁷ Karen Pierce, Permanent Representative of the United Kingdom to the United Nations, “Political and economic progress in Israel and the Occupied Palestinian Territories”, speech at the Security Council briefing on the situation in the Middle East, 23 July 2019.

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

B. Lack of accountability in the conduct of the Israeli occupation

58. Israel has occupied the Palestinian territory for more than 52 years, the longest belligerent occupation in the modern world. In particular, the occupation has been characterized by two defining features. First, the conduct of the Israeli occupation has been marked by numerous intentional and serious violations of international law, including humanitarian and human rights law. The annexation of occupied territory, whether de jure or de facto, is illegal (A/73/447, paras. 24–59). The creation of civilian settlements in occupied territory is a grave breach of the Fourth Geneva Convention⁷⁸ and a war crime under the Rome Statute of the International Criminal Court.⁷⁹ The location, permanence and continued existence of the separation wall in the Occupied Palestinian Territory has been found to be a violation of international law.⁸⁰ It has been stated in United Nations reports that war crimes may have been committed by Israel during its various military operations in Gaza (see A/HRC/12/48, A/HRC/29/CRP.4 and A/HRC/40/74). Multiple and systematic human rights violations have been credibly documented by the United Nations and by international, Israeli and Palestinian human rights defenders (see A/HRC/40/43). The Special Rapporteur has determined previously that the occupation itself has become illegal, given its flagrant violations of the foundational principles of modern laws of occupation (see A/72/556).

59. Second, the international community has demonstrated great unwillingness to impose any meaningful accountability on Israel for its permanent occupation and its serious violations of international law. In the face of the volumes of resolutions in which United Nations bodies have insisted that Israel unwind its occupation, end its settlement enterprise, undo its annexation of East Jerusalem, respect all of its human rights obligations, investigate purported war crimes, facilitate the return of Palestinian refugees and remove its obstruction to the full realization of Palestinian self-determination, Israel has remained profoundly resistant to international direction. It has rightly assessed that the international community – in particular the Western industrial nations – has lacked the political will to compel an end to its impunity. As a result, it has rarely faced meaningful consequences for its truculent behaviour. As the Israeli journalist Gideon Levy has written: “No country is as dependent on the support of the international community as Israel, yet Israel allows itself to defy the world as few dare”.⁸¹

Security Council resolutions

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

⁷⁸ Fourth Geneva Convention, art. 49; and Additional Protocol 1, art. 85 (4) (a).

⁷⁹ Rome Statute of the International Criminal Court, art. 8 (2) (b) (viii).

⁸⁰ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, para. 142.

⁸¹ Gideon Levy, “Netanyahu’s right: the occupation can actually go on forever”, Haaretz, 25 September 2016.

61. **East Jerusalem.** In August 1980, the Security Council declared, in resolution [478 \(1980\)](#), that the de jure annexation of East Jerusalem by Israel that year was null and void and must be rescinded forthwith. It decided not to recognize the “basic law” and such other actions by Israel that, as a result of that law, sought to alter the character and status of Jerusalem. In December 2016, the Council reaffirmed that resolution in adopting its resolution [2334 \(2016\)](#). Almost four decades later, however, Israel remains in violation of Council resolution [478 \(1980\)](#), and its occupation and annexation of East Jerusalem have only become more entrenched.

62. **Settlements.** The Security Council affirmed in its resolutions [446 \(1979\)](#), [452 \(1979\)](#) and [465 \(1980\)](#) that the construction of settlements by Israel was contrary to international law. In its resolution [2334 \(2016\)](#), it further stressed that the Israeli settlements constituted a flagrant violation under international law. In its resolution [2334 \(2016\)](#), the Council, echoing its earlier demands, stated that Israel must immediately and completely cease all settlement activities in the Occupied Palestinian Territory, including East Jerusalem, and that it must fully respect all of its legal obligations in this regard. Earlier, in 2013, the independent international fact-finding mission appointed by the Human Rights Council to investigate the Israeli settlements had found that,

“despite all pertinent United Nations resolutions declaring that the existence of the settlements is illegal and calling for their cessation, the planning and growth of the settlements continues of existing as well as of new structures” ([A/HRC/22/63](#), para. 100).

In each of his three most recent quarterly reports to the Council on the implementation of resolution [2334 \(2016\)](#), the United Nations Special Coordinator for the Middle East Peace Process and Personal Representative of the Secretary-General to the Palestine Liberation Organization and the Palestinian Authority stated that, with respect to the Council’s direction to Israel to cease all settlement activity, “no steps were taken to that effect during the reporting period”. Rather, as the Special Coordinator pointed out previously, the Government of Israel had continued to announce significant settlement housing unit plans and the launch of construction.⁸² In 1983, there were 99,000 Israeli settlers in the West Bank and East Jerusalem;⁸³ today, there are 650,000 settlers, an increase of more than 550 per cent.⁸⁴

63. **Annexation.** The Security Council has affirmed the legal principle on at least eight occasions, most recently in its resolution [2334 \(2016\)](#), that the acquisition of territory by force is inadmissible. Although it denounced the annexation by Israel of East Jerusalem in 1980 and of the Syrian Golan Heights in 1981 as unlawful, Israel has not reversed these de jure annexations, nor has its political leadership been impeded from intensifying its de facto annexation of the West Bank through ongoing land confiscation and its burgeoning settlement enterprise. Moreover, the Israeli political leadership continues to regularly express its support for formally annexing parts or all of the West Bank ([A/73/447](#), para. 58). In September 2019, the Prime

⁸² Nickolay Mladenov, Special Coordinator for the Middle East Peace Process, statement at the Security Council briefing on the situation in the Middle East, 20 June 2019; and Nickolay Mladenov, Special Coordinator for the Middle East Peace Process, statement at the Security Council briefing on the implementation of resolution [2334 \(2016\)](#), 20 September 2019.

⁸³ Foundation for Middle East Peace, “Comprehensive settlement population, 1972–2011”, available at <https://fmep.org/resource/comprehensive-settlement-population-1972-2010/>.

⁸⁴ Peace Now, “Population”, Settlements Watch database, available at <https://peacenow.org.il/en/settlements-watch/settlements-data/population>; Peace Now, “Jerusalem”, Settlements Watch database, available at <https://peacenow.org.il/en/settlements-watch/settlementsdata/jerusalem>.

Minister of Israel, Benjamin Netanyahu, announced that, if returned to office, his Government would annex the Jordan Valley and “other vital areas”.⁸⁵

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

United Nations calls for accountability

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

66. In four major independent reports commissioned by the Human Rights Council since 2009, the constant theme has been the serious violations of human rights and humanitarian laws by Israel, the necessity to ensure Israeli accountability and the prevailing culture of exceptionalism.⁸⁶ It was stated in the report on the conflict in Gaza in 2008 and 2009 that: “Justice and respect for the rule of law are the indispensable basis for peace. The prolonged situation of impunity has created a justice crisis in the Occupied Palestinian Territory that warrants action” (A/HRC/12/48, para. 1958). In its report of 2013 on the implications of the Israeli settlements, the independent international fact-finding mission called upon Israel “to ensure full accountability for all violations ... and to put an end to the policy of impunity” (A/HRC/22/63, para. 114). In the report on the conflict in Gaza in 2014, concern was expressed that “impunity prevails across the board for violations of international humanitarian and human rights law allegedly committed by Israeli forces Israel must break with its recent lamentable track record in holding wrongdoers accountable” (A/HRC/29/CRP.4, para. 664). Furthermore, in the report of 2019 on the protests in Gaza in 2018, it was found that “to date, the Government of Israel has consistently failed to meaningfully investigate and prosecute commanders and soldiers for crimes and violations” and that “scarce accountability measures arising out of Operations Cast Lead and Protective Edge ... cast doubt over the State’s willingness to scrutinize the actions of military and civilian leadership” (A/HRC/40/74, para. 111).

67. The General Assembly and the Human Rights Council have both accentuated the necessity for accountability by Israel, the occupying Power, in recent years. In a resolution on the Israeli settlements, the Assembly called for the consideration of measures of accountability, in accordance with international law, in the light of continued non-compliance [by Israel] with the demands for a complete and immediate cessation of all settlement activities (General Assembly resolution 73/98, para. 6). Similarly, the Human Rights Council, in March 2019, expressed its alarm and

⁸⁵ *Times of Israel*, “Netanyahu: after Jordan Valley and settlements, I’ll annex other ‘vital areas’”, 16 September 2019.

⁸⁶ Alessandro Tonutti, *International Commissions of Inquiry and Palestine: Overview and Impact – Study Analysis* (Ramallah, Al-Haq Centre for Applied International Law, 2016).

emphasized “the need for States to investigate and prosecute grave breaches of the Geneva Conventions of 1949 and other serious violations of international humanitarian law, to end impunity, to uphold their obligations to ensure respect and to promote international accountability” (see Human Rights Council resolution 40/13).

68. Impunity and the lack of accountability by Israel in its conduct of the occupation have also been addressed by the Secretary-General. In 2016, the former Secretary-General, Ban Ki-Moon, stated that

the lack of any significant movement towards a political resolution and ongoing violations of international human rights and humanitarian law were exacerbated by the lack of accountability for previous violations. and that tackling impunity must be the highest priority ([A/71/364](#), para. 6).

69. The lack of accountability has also been a central concern of the United Nations High Commissioner for Human Rights. In a comprehensive report on accountability issued in June 2017 ([A/HRC/35/19](#)), the former High Commissioner, Zeid Ra’ad Al Hussein, reviewed 551 recommendations issued since 2009 by relevant Human Rights Council mechanisms to determine the degree of compliance and cooperation by Israel with respect to the human rights situation in the Occupied Palestinian Territory. Of the 178 recommendations issued regarding accountability and access to justice, Israel had implemented 2, had partially implemented 8 and had not implemented 168 (90 per cent). A similarly sparse record of compliance by Israel regarding the implementation of recommendations on the arrest and detention of Palestinians (91 per cent not implemented and 8 per cent partially implemented), on settlements (100 per cent not implemented) and on freedom of movement (97 per cent not implemented) was also reported. In total, Israel had fully implemented less than 0.5 per cent of the human rights recommendations presented to it. In his conclusions, the High Commissioner reminded the international community that “all stakeholders must recognize that compliance with international law is a sine qua non condition for peace” (*ibid.*, para. 81).

70. In a report published in March 2019 on accountability ([A/HRC/40/43](#)), the current High Commissioner, Michelle Bachelet, gave details of the long pattern of impunity throughout the Israeli occupation, including:

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

In the report, the High Commissioner addressed the international community’s responsibility to take measures to prompt States to act in compliance with international humanitarian law. She concluded by observing that the “lack of accountability compromises chances for sustainable peace and security” and urged that addressing impunity should be the “highest priority” (*ibid.*, para. 54).

71. The paradox of accountability is as striking as it is tragic. The international community has knowingly, on countless occasions, either voted for resolutions in United Nations forums or accepted public reports from independent commissions of inquiry and from senior United Nations officials in which the acute lack of

accountability, coupled with the abundant impunity that has characterized Israeli conduct of the five-decade-long occupation, have been recognized. It has also displayed extraordinary lethargy in enforcing what its own laws and decisions, its binding humanitarian obligations and its political precedents would compel it to do. It is therefore necessary to ask whether it is simply to be accepted that, with this occupation, international law is closer to power than it is to justice.

C. Countermeasures as the remedy for impunity

72. Countermeasures are a legitimate, effective and commonly used tool of international politics and diplomacy to compel recalcitrant States and organizations to comply with international law and to cease the significant harm that they are inflicting on others. The use of countermeasures is intended as a response to a prior intentionally wrongful act, and not as a form of punishment or reprisal for wrongful conduct. They must be targeted against the offending State, they should be reversible upon a significant reform in State behaviour, they must respect the Charter (including all humanitarian and human rights obligations) and they must be proportionate and effective.⁸⁷ In the case of a serious violation by a State or an organization of an obligation owed to the international community, other States have not only the power but also the obligation to initiate countermeasures. Serious violations would include contraventions of the peremptory norms of international law, including grave breaches of international humanitarian law, many of which are widespread in the Occupied Palestinian Territory.

73. Countermeasures commonly employed in the modern world would include: (a) diplomatic démarches and public statements; (b) diplomatic sanctions; (c) trade sanctions; (d) the reduction or suspension of cooperation and aid; (e) financial and economic sanctions; (f) flight bans; (g) arms embargoes; and (h) travel restrictions. Countermeasures have been applied in recent years to promote democracy and human rights, advance the rule of law, oppose annexation and aggression, combat terrorism, address threats to international peace and security, rectify serious humanitarian crises, protect vulnerable minorities and end conflicts and civil wars.

74. Scholars have identified three principal purposes of countermeasures and sanctions: (a) to coerce a change in the behaviour of the targeted State or organization; (b) to constrain a targeted State or organization from engaging in a prohibited activity; and (c) to signal and/or stigmatize a targeted State or organization regarding its violations of international laws or norms. Countermeasures and sanctions have been found to be the most effective in the following instances:⁸⁸

- **Targeting friends and close trading partners.** These States have more to lose than those with limited or adversarial relations. This reflects the willingness of States in a broad alliance to bow to pressure from allies because of the importance of the larger relationship.
- **Democracies are more responsive to countermeasures than autocrats.** Democratic leaders have to pay more attention to domestic public opinion and independent domestic institutions, which often value good international relations.
- **Sanctions with maximum impact work best.** If the goal is to change policies of behaviour, high economic costs imposed by the countermeasures or sanctions

⁸⁷ See, generally, Jeremy Matam Farrall, *United Nations Sanctions and the Rule of Law* (New York, Cambridge University Press, 2007).

⁸⁸ Gary Clyde Hufbauer and others, *Economic Sanctions Reconsidered*, 3rd ed. (Washington, D.C., Peterson Institute for International Economics, 2007).

work best. Minor sanctions may work well as initial signals, but they have to escalate swiftly if they do not modify the targeted behaviour.

- **Significant international cooperation is important, but is not always a guarantee of success.** The cooperation of an international organization in which the alliance of countries and the targeted State are members increases the chances of success.
- **Choosing the appropriate countermeasures is key.** Not just any sanction will do. Understanding the susceptible pressure points of the targeted State or organization is key to success.
- **The purposes of the sanctions should be well articulated.** This enables stronger public support, clarifies what countermeasures should be used and explains when success has been achieved or changes have to be made.

75. In its 2016 commentary on the Geneva Conventions, ICRC listed a series of non-exhaustive measures that may be taken individually and/or collectively by the High Contracting Parties to ensure respect for international humanitarian law:⁸⁹

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

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

⁸⁹ See https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=72239588AFA66200C1257F7D00367DBD#_Toc452378926, para. 181.

opportunity to expand upon this issue in a future report. Suffice it to say for now that the international community possesses a great deal of power to ensure a positive, durable and just solution to the occupation. Indeed, it will not end without the international community acting decisively in support of international law and its common values to compel Israel to fulfil its obligations. As Hagai El-Ad, the executive director of B'Tselem, a leading Israeli human rights organization, stated to the Security Council in 2016: "Israel will not cease being an oppressor simply by waking up one day and realizing the brutality of its policies. ... We need your help".⁹⁰

IV. Conclusion

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

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

V. Recommendations

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

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

(a) **In line with common article 1 to the Geneva Conventions, the articles of responsibility of States for internationally wrongful acts and Article 25 of the Charter of the United Nations, take all measures, including countermeasures and sanctions, necessary to ensure the respect by Israel, and all other relevant parties, of their obligations under international law to end the occupation;**

⁹⁰ Hagai El-Ad, Executive Director of B'Tselem, statement to the Security Council, 18 October 2018.

(b) **Seek to hold Israel to the international standards that all States are required to obey;**

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

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

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