



Rule of Law

A Hardening of Illegality in Israel and the oPt 2014-2017

Diakonia International Humanitarian Law Resource Centre
December 2017



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Acronyms

OP	Occupation Power
oPt	Occupied Palestinian Territory
IHL	International Humanitarian Law
IHRL	International Human Rights Law
GRM	Gaza Reconstruction Mechanism
GoI	Government of Israel
ICJ	International Court of Justice
OHCHR	Office of the High Commissioner for Human Rights
EU	European Union
OTP	Office of the Prosecutor
ARA	Access Restricted Areas
GPP	Gaza Strip sole power plant
PA	Palestinian Authority
MK	Member of Knesset
MoFA	Ministry of Foreign Affairs'
URP	Universal Periodic Review
ICCPR	International Covenant on Civil and Political Rights
CAT	Committee Against Torture
ICC	International Criminal Court
UNESCO	United Nations Educational, Scientific and Cultural Organization
MAG	Military Advocate General

Executive Summary

The concept of the rule of law, understood as the principle of governance demanding that “all persons, institutions and entities, public and private, including parties to the conflict and third States are accountable to laws that are consistent with international human rights and humanitarian norms and standards”,¹ provides a critical and instructive framework for assessing the conduct of Israel as the Occupying Power (OP) in the occupied Palestinian territory (oPt).

The rule of law confirms, indeed, the primacy and equal application of international legal standards as fundamental constitutive elements of a given society, and brings to the fore the necessity of universal access to meaningful justice. With this in mind, and building on the analysis conducted by Diakonia for the period 2010-2013,² the present report considers Israeli compliance with the rule of law in its occupation of Palestinian territory during 2014-2017.

The analysis is driven by the principle that, under international law, the primary duty for administration of the oPt lies with Israel, the OP. Specifically, the OP is obligated to ensure public order and public life for the occupied population, understood as a duty of good governance. The rule of law – and the norms it enshrines, including supremacy of law, equality before the law, accountability to the law and fairness in the application of the law – must therefore reside at the core of all Israeli conduct as it relates to the oPt.

Despite this, Palestinians within the oPt, consisting of the Gaza Strip and the West Bank, including East Jerusalem, continue to face a multitude of violations of International Humanitarian Law (IHL) and International Human Rights Law (IHRL) resulting from the conduct of the OP. During the period of review, a broad array of Israeli violations – some of which constitute serious violations of international law and are prosecutable as international crimes – have been documented by international organisations, including organs and agencies of the United Nations, as well as by international and local non-governmental organisations.

Selected Israeli Conduct during the Period of Review

The Gaza Strip

2017 marked ten years of Israel’s devastating closure of the Gaza Strip, characterised by crippling restrictions on movement, and large-scale military offensives, which have resulted in thousands of civilian deaths and physical destruction on a vast scale. The closure is maintained by way of sea, land and air blockade, and has grossly exacerbated pre-existing restrictions on the movement of people and essential goods to and from the Gaza Strip, with disastrous humanitarian consequences.

One such consequence is chronic electricity shortages, with rolling blackouts lasting up to 20 hours. This in turn has had severe, negative implications for business and agriculture, as well as the functioning of water and sanitation facilities. Although internal Palestinian disputes have contributed to the deteriorating humanitarian situation inside the Gaza Strip, the primary legal obligation for addressing this crisis lies with the OP.

Meanwhile, the humanitarian environment inside the Gaza Strip has been drastically shaped by the widespread physical destruction resulting from Israel’s 2014 military offensive, ‘Operation Protective Edge’. Although some reconstruction has taken place, administered through the

¹ UN Secretary-General, “Guidance Note of the Secretary-General, UN Approach to Rule of Law Assistance”, April 2008.

² Diakonia International Humanitarian Law Resource Centre, “Rule of Law: A Veil of Compliance in Israel and the oPt 2010-2013”, March 2014, available at: https://www.diakonia.se/globalassets/documents/ihl/ihl-resources-center/rule-of-law_final_mar5.pdf.

much-criticised temporary Gaza Reconstruction Mechanism (GRM), the level of construction falls far short of the needs of the occupied population. As of September 2017, 29,000 Palestinians remained internally displaced as a result of the 2014 hostilities, while there also exists a mass housing shortage throughout the Gaza Strip, currently estimated at 120,000 housing units.

East Jerusalem

In East Jerusalem, through a variety of policies, the OP continues to deepen its control of the city it formally annexed – contrary to international law – in 1980. Such policies include the forcible transfer of the occupied population and the destruction and appropriation of private property, with the effect that the demographic composition is manipulated in favour of a Jewish majority. At the time of publication, 100,000 Palestinians in East Jerusalem are at risk of displacement.

Other Israeli policies, equally incompatible with international law, include acts of collective punishment such as punitive revocation of permanent residency status, mass arrests, closures of Palestinian neighbourhoods and demolishing the homes of family members of those alleged to have conducted attacks against Israeli armed forces and civilians.

More widely, there exist chronic issues surrounding the provision of basic services in Palestinian neighbourhoods of East Jerusalem generally, fundamentally undermining the wellbeing of the occupied population. This is particularly true of those Jerusalem localities isolated by the construction of the Wall.

All such policies contribute to the establishment of a coercive environment which in turn facilitates the forcible transfer of the occupied population, steadily eroding Palestinian presence – both physical and cultural – in East Jerusalem. These policies must be considered in conjunction with the unlawful transfer by the OP of thousands of its own citizens into occupied East Jerusalem. At the time of writing, the current settler population in East Jerusalem exceeds 200,000 people, while in April 2017, the Government of Israel (GoI) announced plans for the construction of 15,000 additional settlement housing units in East Jerusalem.

Area C & the West Bank in General

In Area C of the West Bank, through settlement construction and the extension of legislative competence, the OP remains engaged in extensive efforts to secure the territory's unlawful annexation. The scale of the problem is vast, with the current settler population in Area C estimated to exceed 325,000, and with the beginning, in June 2017, of work on the construction of the first new Israeli settlement in Area C in 25 years. As well as constituting a breach of the Fourth Geneva Convention, Israeli settlements and the systems and practices that accompany them also constitute breaches of a variety of international law provisions including the prohibition of racial discrimination and the prohibition of destruction and confiscation of private property by an OP. Similarly, Israel continues to maintain and build the Wall despite the finding of the 2004 International Court of Justice advisory opinion that it should be dismantled in those places where it is constructed on Palestinian territory.

In Area C, an extensive program of demolitions of Palestinian homes and other infrastructure essential to maintaining Palestinian presence remains a central factor in the OP's creation of a highly coercive environment. These demolitions are underpinned by the OP's implementation of an illegal planning regime, which seeks to justify the denial of building permits to the occupied population in Area C and, consequently, the destruction of Palestinian structures in affected areas on those same grounds. Of particular concern is the situation of 46 Palestinian Bedouin communities identified by the UN as being at imminent risk of forcible transfer. The impact of such demolitions is also exacerbated by the OP's arbitrary denial of external assistance, manifested in restricted access for relief personnel and materials and the destruction or confiscation of relief

supplies. The result of these policies and their associated measures is an environment in which Palestinian presence in Area C is made increasingly untenable.

Throughout the West Bank as a whole, meanwhile, grave concerns exist as to the excessive use of force by Israeli military and police personnel. Such use of force has been regularly criticised for exceeding that permitted by international law, resulting in a number of cases of alleged wilful killings of members of the occupied population. Acts of collective punishment against the occupied civilian population are also commonplace, including punitive home demolitions, village closures and mass arrests.

Further, the OP continues to unlawfully exploit, and facilitate the unlawful exploitation of, Palestinian natural resources on a large scale.

Israeli Domestic Legislation and Policy Developments

The period of review has seen a spate of domestic Israeli legislative measures and governmental policies that serve to further entrench the occupation and to establish and consolidate unlawful annexation of Palestinian territory, severely undermine the human rights of the occupied population and curtail the work of human rights bodies covering issues pertaining to the occupation. This includes the passing of legislation drafted with the express objective of retroactively ‘legalising’ settlements in the West Bank, while separate legislative attempts have been made to incorporate West Bank settlement areas into the Jerusalem municipality. This domestic legalisation of the unlawful acquisition of occupied territory has been coupled with attempts to codify the automatic extraterritorial application of Israeli domestic legislation to West Bank settlement jurisdictions, amounting to a *de jure* annexation of occupied territory by the OP.

In addition, Israel has also cited deteriorations in the security situation to ‘justify’ a number of Israeli domestic laws that have significantly weakened human rights protections as applicable to members of the occupied population. These include ‘anti-terror’ legislation that serves to criminalise legitimate political activities and expression and removes procedural safeguards; legislation which permits the stopping and searching of individuals at random and which affects Palestinians disproportionately; and legislation which imposes mandatory minimum custodial sentences for stone-throwing. More widely, efforts have been made to enshrine in law the principle that the right of self-determination in Israel is reserved exclusively for the Jewish people, while in the past three years there have also been concerted attempts to reduce the space available for the effective operation of civil society actors who criticise Israeli actions pertaining to the occupation.

These extensive legislative measures have been combined with the adoption by the GoI, as a matter of policy, of the position that the West Bank constitutes ‘disputed’ rather than ‘occupied’ territory, trying in such a way to render the Geneva Conventions inapplicable to Israel’s control over the territory. Such a position directly contradicts internationally-accepted opinion on the legal status of the West Bank, including East Jerusalem, and the Gaza Strip as provided by, *inter alia*, the 2004 ICJ advisory opinion, multiple resolutions of the UN General Assembly and most recently by Resolution 2334 of the UN Security Council.

Findings of External Bodies

In response to practices and policies of the OP, a range of international bodies have levelled strong criticism at Israel and its occupation of the oPt. This has been the case with mechanisms of the UN Human Rights Council, including Special Rapporteurs, independent commissions of inquiry, the Office of the High Commissioner for Human Rights (OHCHR) reviews concerning implementation of previous Council recommendations, and the Universal Periodic Review

process. Criticism has included the OP's repression of rights and erosion of the rule of law, questioning of the very legality of the occupation and accusing the GoI of complicity in war crimes. For its part, Israel has, to varying degrees, refused to cooperate with these mechanisms while also acting to directly undermine their functioning.

During the period of review, UN Treaty Bodies have also provided substantial and far-ranging critical reviews of Israeli conduct as it pertains to the oPt. Common areas of concern include Israel's stances that IHRL is inapplicable to the oPt, and that IHRL does not apply in situations where IHL is applicable. More specific concerns have been raised by Treaty Bodies in relation to alleged human rights violations committed during the State party's military operations in the Gaza Strip, the lack of codification of the principles of equality and non-discrimination in Israeli constitutional law; instances of torture; evictions and demolitions based on discriminatory planning policies, and continued forced eviction and forcible transfer in the West Bank, including East Jerusalem.

The European Union (EU) has also regularly criticised Israeli policies and practices in the oPt, and has proposed measures of potential redress, including the issuing of guidelines on the labelling of products originating from Israeli settlements. This represents part of a developing policy of 'differentiation', which draws a distinction in the dealings of the EU and its member States between Israeli sovereign territory and that of Palestinian territory occupied by Israel. A subject of particular EU focus has been the OP's regular demolition and confiscation of EU-funded structures, delivered as relief in Area C.

Further, in January 2015, Palestine acceded to the Rome Statute of the International Criminal Court and in doing so established an additional avenue for the pursuit of justice and accountability for violations of international law in the oPt. In accordance with the Regulations of the Office of the Prosecutor (OTP), and as a matter of practice, the OTP opened a preliminary examination into the situation in Palestine on 16 January 2015. At the time of publication, the OTP is engaged in a thorough factual and legal assessment of the information available so as to establish whether there exists a reasonable basis to believe that war crimes and/or crimes against humanity have been committed, with a specific focus on allegations of international crimes perpetrated by all parties during 'Operation Protective Edge', and alleged international crimes relating to the presence of Israeli settlements in the West Bank.

Israeli Domestic Accountability and Israeli Response to International Criticism

Meaningful accountability for wrongful acts attributable to State organs is a central requirement for satisfactory adherence to the rule of law, and the need for accountability becomes increasingly pronounced in the context of armed conflict, including Israel's occupation of Palestinian territory, where the vulnerability of civilian populations is substantially increased.

Yet, rather than allow its actions to be subject to continual and effective scrutiny, the OP has instead made concerted efforts to create an environment in which its security apparatus and civilians can act with impunity. This is achieved through the robust rejection of criticism issued by independent international bodies – married with attempts to actively undermine the functioning of these bodies – and the employment of flawed internal investigative processes which serve to protect those responsible for violations of IHL and IHRL rather than deliver justice for victims.

An uncompromising zero-sum approach has been adopted by the GoI in response to statements from international bodies that accuse the State of serious violations of international law, or that adopt a position contrary to the State's interests. Rather than rectify its conduct in accordance with international standards, the GoI, when confronted with such scenarios, seeks instead to attack the external institution concerned. Attacks in this instance typically consist of accusations of 'anti-Israel' bias or similarly political motivations, with specific targets including UN organs

and agencies, including the Secretary-General, the General Assembly, the Human Rights Council and UNESCO. Accusations made by Israel against such bodies include anti-Semitism and the inciting of terrorism.

Israel's aggressive rejection of critical findings of external bodies concerning its conduct in the oPt is buttressed by its insistence that its own internal investigative mechanisms provide for full and effective accountability, as required under the rule of law. However, consideration of the efforts of the OP to assess its own conduct – including that of its military forces and commanders, as well as civilian leaders – against international legal standards suggests, at a minimum, an institutionalised resistance on behalf of Israel to ensure, *inter alia*, supremacy of law, and accountability to the law.

Conclusion

During the period spanning 2014 to 2017, the conduct of the OP, in its administering of the oPt and in its treatment of the protected civilian population, has fallen consistently and grossly below that demanded by international law.

Although some of the developments outlined may be new, they merely represent a continuation and extension of a pre-existing phenomenon: a prolonged belligerent military occupation characterised by severe violations of IHL and IHRL. Indeed, placing the contemporary situation in the oPt into its appropriate historical context reveals an unerring trajectory of illegality, manifested in, *inter alia*, *de jure* and *de facto* annexation; racial discrimination; continuous expansion of Israel's settlement project; and the creation of a highly coercive environment leading to the forcible transfer of the occupied civilian population. This hardening illegality – bundled within which are breaches of peremptory norms of international law and grave breaches of the Geneva Conventions – coupled with the OP's institutionalised avoidance of accountability, demands a fundamental change in the exercise of power by third States.

Third States and relevant actors must therefore realise their legal obligations and pursue all practical measures to ensure Israel's full compliance with the rule of law in its governance of the oPt. Failure to do so is to render irreversible the severe violations of international law and associated destructive impacts identified in the report, while also establishing a wider precedent to the effect that violations of this nature will be tolerated by the international community.

Introduction

As we mark 50 years of Israel’s occupation of Palestinian territory, there arises an urgent need to not only review individual Israeli practices and policies through the lens of international law, but to also consider the wider trends reflected in the nature and trajectory of control exercised by the Occupying Power (OP) over the occupied Palestinian territory (oPt), consisting of the Gaza Strip and West Bank, including East Jerusalem.

This report, which explores adherence of Israel to the rule of law in its governance of the oPt during the period 2014-2017, follows a similar exercise undertaken by Diakonia spanning the period 2010-2013. That process, culminating in the report *A Veil of Compliance in Israel and the oPt*,³ identified a broad array of severe violations of international law perpetrated by Israel in the course of the occupation. Moreover, the report concluded that Israel’s occupation had become characterised by an aura of legality, which served to obscure such violations. As with its predecessor, the present report adopts the definition of the rule of law as provided in a guidance note issued by then-UN Secretary-General, Kofi Annan. The guidance note defined the rule of law as:

A principle of governance in which all persons, institutions and entities, public and private, including parties to the conflict and third States are accountable to laws that are consistent with international human rights and humanitarian norms and standards.⁴

As such, the concept of the rule of law provides a critical and instructive framework for assessing the conduct of Israel as the OP. It confirms the primacy and equal application of international legal standards as fundamental constitutive elements of a given society, and brings to the fore the necessity of universal access to meaningful justice. This is particularly important in conflict-affected societies, given “the heightened vulnerability of minorities, women, children, prisoners and detainees, displaced persons, refugees and others...[which adds] an element of urgency to the imperative of restoration of the rule of law.”⁵

The primary duty for administration of the oPt lies with Israel, the OP. Specifically, the OP is obligated to ensure public order and public life for the occupied population, understood as a duty of good governance.⁶ The rule of law – and the norms it enshrines, including supremacy of law, equality before the law, accountability to the law and fairness in the application of the law – must therefore reside at the core of all Israeli conduct as it relates to the oPt.

In the Palestinian context, faithful application of the rule of law by the OP can serve to protect the human rights of the occupied population prior to the realisation of a just and durable solution to the Israel/Palestine ‘question’, and will also help lay the ground for such a solution. However, as the present report will highlight, not only are the severe violations of international law identified in the preceding report still prevalent throughout the oPt, but the policies, processes and mechanisms, which underpin and shield them have been further supplemented, broadened and deepened. Such developments indicate a move beyond mere entrenchment of these violations, and instead reveal a form of intended – if not yet realised – permanency. This is particularly true in relation to the OP’s existing and planned *de jure* and *de facto* annexation of Palestinian territory, bundled within which are a range of other violations of International Humanitarian Law (IHL) and International Human Rights Law (IHRL).

³ See: Diakonia, “Rule of Law: A Veil of Compliance in Israel and the oPt 2010-2013”, March 2014.

⁴ UN Secretary-General, “Guidance Note of the Secretary-General, UN Approach to Rule of Law Assistance”, April 2008.

⁵ UN Secretary-General, “Report of the Secretary-General, The rule of law and transitional justice in conflict and post-conflict societies”, S/2004/616, August 2004.

Although the primary duty for ensuring the well-being of the occupied population resides with Israel, this in no way absolves other third States or parties of their respective duties as prescribed under international law. Such obligations are engaged by a number of Israeli practices and policies that stand in breach of international law, and require third party actors to intervene and actively pursue the cessation and redress of such conduct.

This report therefore serves as a non-exhaustive consideration of Israeli compliance with the rule of law. Relevant events and developments in the Gaza Strip and throughout the West Bank, including East Jerusalem and Area C, are mapped, before a number of themes are used to explore Israeli compliance with rule of law principles. These themes include: domestic Israeli legislation and policy positions; the findings of international organisations pertaining to Israel's occupation of Palestinian territory; Israeli response to external mechanisms of review; Israel's own internal investigative procedures.

In light of the scope of the issue at hand, the present report does not set out to provide specific policy recommendations, but rather seeks to establish a firm analytical foundation upon which further research and concrete remedial measures from relevant parties can be based. That such measures are adopted is of critical importance, given the apparent motivation of the OP to render permanent its severe violations of international law and the attendant, destructive impact on the occupied population. Diakonia takes this opportunity to reiterate that the framework of international law must form the dominant paradigm in any review and address of the OP's policies and practices affecting the oPt, and that this framework cannot be permitted to bend or give way in favour of political considerations.

Chapter 1: Selected Israeli Conduct during the Period of Review

Palestinians within the oPt continue to face a multitude of violations of IHL and IHRL resulting from the conduct of the OP. During the period of review, a broad array of Israeli violations – some of which constitute severe violations of international law and are prosecutable as international crimes – have been documented by international organisations such as the UN and its various bodies and agencies, as well as by international and local non-governmental organisations. For clarity, this chapter separates Israeli non-compliance with central tenets of international law into a number of geographic categories, though such classifications should not obscure the often intertwined and mutually supportive nature of unlawful Israeli practices and policies in the oPt.

1. The Gaza Strip

2017 marked ten years of Israel’s devastating closure of the Gaza Strip, characterised by crippling restrictions on movement and large-scale military offensives. Most prominent among the latter was ‘Operation Protective Edge’, launched in July 2014 and resulting in the deaths of at least 1,462 Palestinians.⁷ Some 18,000 Palestinian homes were destroyed in the offensive, displacing 500,000 people at the height of hostilities (28 percent of the population)⁸, while essential infrastructure including water and sewage networks was destroyed or badly damaged.⁹ Although ‘Operation Protective Edge’ formally concluded in August 2014, the Gaza Strip and its residents are still struggling to recover from its destructive and wide-ranging effects.

Meanwhile, the closure is maintained by way of sea and air blockade, and through just three land terminals available for the passage of people or goods – Erez, Kerem Shalom and Rafah. Although the operation of the latter terminal is overseen by Egypt, for more than a decade it has been subject to prolonged periods of non-operation, often correlating with political developments on the ground.¹⁰ As such, the OP’s closure has grossly exacerbated pre-existing restrictions on the movement of people and essential goods to and from the Gaza Strip,¹¹ including between the Gaza Strip and the West Bank, including East Jerusalem, which are regarded by the international community as forming a single occupied entity. Although internal Palestinian disputes have contributed to the deteriorating humanitarian situation inside the Gaza Strip, it should be noted that the primary legal obligation for addressing this crisis lies with the OP.

These restrictions represent a clear violation of the fundamental human right to freedom of movement, in particular the right to leave and enter one’s own country,¹² but have also had disastrous humanitarian impacts. According to OCHA, the restrictions “disrupt family and

⁶ See: Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, Article 43; Bothe, M., Legal Expert Opinion on the Right to Provide and Receive Humanitarian Assistance in Occupied Territories. July 2015, p. 9; Maruhn, T., Stegmiller, I., “The Obligation to Provide, and the Right to Receive, Development assistance in Occupied Territories, including in Situations of Prolonged Occupation”, 6 November 2016, p. 25.

⁷ UN General Assembly, “Report of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1”, A/HRC/29/52, 24 June 2015, para. 20.

⁸ *Ibid.*, para. 23.

⁹ The findings of an independent UN Commission of Inquiry on the legalities of conduct of all parties to the 2014 Gaza conflict are considered later in this report.

¹⁰ Between January and August 2017, the Rafah Crossing opened for 23 out of 243 days. See: OCHA, “Gaza Crossings’ Operations Status: Monthly Update – August 2017”, 14 September 2017, available at: <https://www.ochaopt.org/content/gaza-crossings-operations-status-monthly-update-august-2017>. In 2016, the crossing was open for 48 non-consecutive days in total. See: Gisha, “Movement of people via Rafah Crossing”, updated March 2017, available at: <http://gisha.org/graph/2399>.

¹¹ Israel has imposed movement restrictions on Palestinian residents of the Gaza Strip since the 1990s. See: OCHA, “The Gaza Strip: The Humanitarian Impact of the Blockade”, 14 November 2016, available at: <https://www.ochaopt.org/content/gaza-strip-humanitarian-impact-blockade-november-2016>; Al Jazeera, “History of Israeli blockade on Gaza”, 2 November 2011, available at: <http://www.aljazeera.com/indepth/features/2011/10/20111030172356990380.html>.

¹² UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, Articles 12(2) & 12(4).

social life and undermine Palestinians' enjoyment of their economic, social and cultural rights, undermine livelihoods and compound the fragmentation of the oPt."¹³ The field of healthcare has been particularly affected. In 2016, Israel's approval rate for Palestinian applications for medical treatment outside of the Gaza Strip fell to 64 percent, compared to 77 percent in 2015.¹⁴ ¹⁵ In August 2015, the health of an estimated one-third of patients in Gaza was threatened by a severe shortage of medicine and medical supplies,¹⁶ while in September 2017, the Palestinian Health Ministry warned that Gaza's hospitals had run out of 40 percent of essential medicines.¹⁷

Movement restrictions also apply inside the territory of the Gaza Strip – both on land and at sea – through Israel's imposition of 'Access Restricted Areas' (ARAs). At times lethally enforced, ARAs are areas into which Palestinians are prohibited from entering, including fishing grounds and a strip of land stretching the full length of the perimeter fence separating the Gaza Strip from Israel. Over 178,000 Palestinians, accounting for nine percent of Gaza's almost two million inhabitants, are directly affected by ARAs.¹⁸

The closure of the Gaza Strip has also significantly compounded deficits in electricity supply. During the period of review, this supply has fluctuated but has always fallen far below the level of demand. The Gaza Strip's sole power plant (GPP) began operation in 2002 but its functioning – which at full capacity could in theory generate 140 megawatts, though in practice is restricted to a maximum of 60 to 80 megawatts¹⁹ – has been severely compromised and, at times, entirely curtailed, by a range of external factors. These include its targeting by Israeli air strikes in 2006 and 2014, as well as the impossibility of importing the necessary parts to conduct subsequent repairs.²⁰ The GPP has also suffered from crippling fuel shortages. Even accounting for its reduced practical output, roughly 350,000 litres of diesel fuel are required on a daily basis to support its operation.²¹ Provision of this fuel has been complicated during the past decade by the involvement of multiple donors, closure of black market tunnels linking Gaza with Egypt and the imposition of costly taxes.²²

In 2015, less than 45 percent of the Gaza Strip's electricity requirements (estimated at 470 megawatts) were met, with rolling blackouts of 12 to 16 hours each day.²³ Power outages ranging from 8 to 12 hours a day continued into 2016²⁴ and then worsened significantly in 2017, with the average number of hours of blackout per day ranging from 17 to 20 from January to November.²⁵ In April 2017, the GPP ceased operation entirely as a result of internal Palestinian disputes over the funding and taxation of fuel, exacerbating the blackouts.²⁶ In June 2017, following the decision of the Palestinian Authority (PA) to end payments to Israel for electricity supplied to

¹³ OCHA, "Fragmented lives: Movement and Access Restrictions", 13 June 2016, available at: <https://www.ochaopt.org/content/2015-overview-movement-and-access-restrictions>.

¹⁴ OCHA, "Access to medical care outside Gaza", 4 July 2017, available at: <https://www.ochaopt.org/content/access-medical-care-outside-gaza>.

¹⁵ Internal Palestinian disputes have also contributed to this issue, with more than 2,000 referrals for medical treatment outside of the Gaza Strip said to have been affected by apparent withholding of payments by the Palestinian Authority in Ramallah. See: OCHA, "Access to medical care outside Gaza", 4 July 2017, available at: <https://www.ochaopt.org/content/access-medical-care-outside-gaza>.

¹⁶ Al-Monitor, "Gaza struggles with shortage of medical supplies", 6 August 2015, available at: <https://www.al-monitor.com/pulse/iw/originals/2015/08/palestine-gaza-medicine-shortage-pharmacy-israel-blockade.html>.

¹⁷ The Palestinian Information Center, "Official warns of acute medicine shortage in blockaded Gaza", 10 September 2017, available at: <https://english.palinfo.com/news/2017/9/10/Official-warns-of-acute-medicine-shortage-in-blockaded-Gaza>.

¹⁸ Medecins du Monde, "Access Restricted Areas in Gaza: Civilians at Risk", November 2016, available at: <http://www.medecinsdumonde.org/en/actualites/publications/2017/01/16/access-restricted-areas-gaza-civilians-risk>.

¹⁹ Gisha, "Hand on the Switch: Who's responsible for Gaza's infrastructure crisis?", January 2017, p. 3-4, available at: http://gisha.org/User-Files/File/publications/infrastructure/Hand_on_the_Switch-EN.pdf.

²⁰ Ibid., p. 6.

²¹ Ibid., p. 4.

²² Ibid., p. 5.

²³ OCHA, "The Humanitarian Impact of Gaza's Electricity and Fuel Crisis", July 2015, available at: <https://www.ochaopt.org/content/humanitarian-impact-gaza-s-electricity-and-fuel-crisis-july-2015>.

²⁴ OCHA, "Gaza's sole power plant shut down triggering up to 20 hours of outage a day", 11 April 2016, available at: <https://www.ochaopt.org/content/gaza-s-sole-power-plant-shut-down-triggering-20-hours-outage-day>.

²⁵ OCHA, "Gaza Strip electricity supply", 2017, available at: <https://www.ochaopt.org/page/gaza-strip-electricity-supply>.

²⁶ OCHA, "Energy crisis takes its toll on Palestinian farmers in Gaza", 11 September 2017, available at: <https://www.ochaopt.org/content/energy-crisis-takes-its-toll-palestinian-farmers-gaza>.

the Gaza Strip – apparently in an attempt by the PA to apply pressure to the Hamas *de facto* administration²⁷ – Israel reduced supply by one third.²⁸ As of late October 2017, despite the presence of a reconciliation agreement between Fatah (the dominant political faction in the PA) and Hamas, electricity supply remained limited to just four hours per day.²⁹

Cumulatively, the above factors have contributed to a perpetual and critical shortfall in electricity provision, which in turn has – prior to and during the period of review – grievously undermined Palestinian quality of life, including the provision of essential health care services³⁰ and the maintenance of Gaza’s agricultural sector.³¹ This shortfall has also compounded Gaza’s existing water and sanitation crisis, severely limiting the ability of energy-intensive seawater desalination and sewage treatment facilities to function. In May 2017, in excess of 100,000 cubic meters of raw sewage or poorly treated effluent was being discharged into the sea on a daily basis,³² creating grave health and environmental risks. In addition, overexploitation has led to Gaza’s sole freshwater aquifer becoming contaminated with seawater. It is currently estimated that 96 percent of Gaza’s drinking water is unsafe.³³

Meanwhile, the humanitarian environment inside the Gaza Strip has been drastically shaped by the widespread physical devastation resulting from ‘Operation Protective Edge’. Although some reconstruction has taken place, administered through the temporary Gaza Reconstruction Mechanism (GRM), the level of construction falls far short of the needs of the occupied population. Under the terms of the GRM, Israel is afforded final say over any reconstruction project or materials, in effect prioritizing the OP’s security interests over the wellbeing of the civilian population of the Gaza Strip. As a result, Israel has severely limited the delivery of materials essential for reconstruction. For instance, as of May 2016, of the estimated combined 6.4 million tonnes of cement required for post-conflict reconstruction and to meet Gaza’s housing shortfall, just 1.9 million tonnes had been delivered.³⁴ As of September 2017, 29,000 Palestinians remained internally displaced as a result of the 2014 hostilities,³⁵ highlighting the brutal and long-term impact of Israeli military offensives coupled with the effects of the closure. At the same time, there exists a chronic housing shortage in the Gaza Strip currently estimated at 120,000 housing units, driven in large part by natural population growth but exacerbated by restrictions on the importing of materials.³⁶

Given these grave shortcomings, the GRM has been criticised as having created “a cumbersome bureaucracy, which, after three years, represents at best, a system of conflict management, not resolution; and at worst, an institutionalization of the Israeli siege of Gaza.”³⁷ The GRM has also been highlighted as contributing to, inter alia, Gaza’s escalating water crisis, and “failing

²⁷ Reuters, “Palestinian Authority halts payments for Israeli electricity to Gaza: Israel”, 27 April 2017, available at: <https://www.reuters.com/article/us-israel-palestinians-gaza-electricity/palestinian-authority-halts-payments-for-israeli-electricity-to-gaza-israel-idUSKBN17T151>.

²⁸ OCHA, “Appeal for funding to stabilize Gaza’s deteriorating humanitarian conditions”, 5 August 2017, available at: <https://www.ochaopt.org/content/appeal-funding-stabilize-gaza-s-deteriorating-humanitarian-conditions-0>.

²⁹ Al Jazeera, “Gaza still faces electricity crisis despite reconciliation”, 30 October 2017, available at: <http://www.aljazeera.com/news/2017/10/gaza-faces-electricity-crisis-reconciliation-171030163230616.html>.

³⁰ OCHA, “The Humanitarian Impact of the Gaza Electricity Crisis, May 2017”, 4 May 2017, available at: <https://reliefweb.int/report/occupied-palestinian-territory/humanitarian-impact-gaza-electricity-crisis-may-2017>.

³¹ OCHA, “Energy crisis takes its toll on Palestinian farmers in Gaza”, 11 September 2017, available at: <https://www.ochaopt.org/content/energy-crisis-takes-its-toll-palestinian-farmers-gaza>.

³² OCHA, “The Humanitarian Impact of the Gaza Electricity Crisis, May 2017”, 4 May 2017, available at: <https://reliefweb.int/report/occupied-palestinian-territory/humanitarian-impact-gaza-electricity-crisis-may-2017>.

³³ Oxfam, “Timeline: the humanitarian impact of the Gaza blockade”, 2017, available at: <https://www.oxfam.org/en/occupied-palestinian-territory-and-israel/timeline-humanitarian-impact-gaza-blockade>.

³⁴ Shelter Cluster Palestine, “Key Facts (May 2016)”, 8 June 2016, available at: https://www.sheltercluster.org/sites/default/files/docs/one_page_factsheet_final_may.pdf.

³⁵ OCHA, “Three years on from the 2014 conflict, 29,000 people remain displaced”, 11 September 2017, available at: <https://www.ochaopt.org/content/three-years-2014-conflict-29000-people-remain-displaced>.

³⁶ UNSCO, “Gaza Ten Years Later Report”, July 2017, p. 12, available at: <https://unsco.unmissions.org/gaza-ten-years-later-report-july-2017>.

³⁷ Brookings Doha Center, “Still in Ruins: Reviving the Stalled Reconstruction of Gaza”, August 2017, p. 6, available at: https://www.brookings.edu/wp-content/uploads/2017/08/paper_reviving-reconstruction-of-gaza_english_web.pdf.

to operate at the pace or scale necessary to meet the levels of [water and sanitation] need.”³⁸ Reconstruction efforts have been further undermined by unfulfilled pledges of financial support from international donors,³⁹ while the access of humanitarian personnel is subject to severe restriction by the OP, which in turn hampers delivery of humanitarian assistance and wider recovery efforts.

Moreover, these areas of grave concern must also be considered in the context of the Gaza Strip’s dire economic health, with a 2015 World Bank report observing that 43 percent of the labour force was unemployed. This figure rises to 60 percent among Gaza’s youth, while 40 percent of the population live in poverty.⁴⁰ The same report concluded that Israel’s blockade had eroded Gaza’s GDP by 50 percent, with the manufacturing and construction sectors reduced by 60 percent and 83 percent respectively.⁴¹

2. East Jerusalem

East Jerusalem, which is internationally recognised as a politically contiguous part of the West Bank, was occupied by Israel in 1967. Following occupation, Israel moved to expand Jerusalem’s municipal boundaries by 70,000 dunams (27 square miles), which in turn incorporated the lands of 28 Palestinian villages into the new, extended municipality. In 1980, the OP formally annexed East Jerusalem through the passing of The Basic Law: Jerusalem, the Capital of Israel. Although the validity of this legislation and the acquisition of territory by force – prohibited under Article 2(4) of the UN Charter and serving to deny the right of the Palestinian people to self-determination – that the legislation sought to justify was immediately and unequivocally rejected by the international community, including by the UN Security Council,⁴² the OP continues to illegally exercise sovereign powers over East Jerusalem.

In extending its full legislative competence into occupied territory, Israel is acting in direct contravention of IHL, which requires the OP to respect existing legislation unless absolutely prevented.⁴³ Further, as this section will highlight, through exercise of legislative competence the OP has established legal and administrative platforms from which to pursue policies that discriminate against the occupied Palestinian population and directly contribute to population transfer. The cumulative effect of these policies is to alter the demographic composition of the affected area in favour of a Jewish majority.

A primary means by which Palestinian residents of East Jerusalem are coerced into leaving their homes and communities is the imposition of planning restrictions, which curtail the necessary growth of Palestinian neighbourhoods. Building permits are regularly denied to Palestinians living in East Jerusalem, leading to construction without permits in affected areas, naturally rendering such construction illegal under Israeli law. The scale of the issue is vast, with at least one third of Palestinian homes in East Jerusalem believed to lack a building permit,⁴⁴ leaving them vulnerable to demolition and 100,000 people at risk of displacement.⁴⁵ Between January and August 2017, 107 structures in East Jerusalem were demolished by the OP due to a lack of building permit, leaving 179 people displaced.⁴⁶ At least 79 Palestinian structures in East

³⁸ Oxfam, “Treading Water: the worsening water crisis and the Gaza Reconstruction Mechanism”, March 2017, p. 3, available at: <https://www.oxfam.org/sites/www.oxfam.org/files/bp-treading-water-gaza-reconstruction-mechanism-220317-en.pdf>.

³⁹ Supra note 37, p. 3.

⁴⁰ The World Bank, “Gaza Economy on the Verge of Collapse, Youth Unemployment Highest in the Region at 60 Percent”, 21 May 2015, available at: <http://www.worldbank.org/en/news/press-release/2015/05/21/gaza-economy-on-the-verge-of-collapse>.

⁴¹ Ibid.

⁴² UN Security Council Resolution 478 of 1980, S/RES/478, (1980).

⁴³ See: Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, Article 43; Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), Article 64. For further address of this topic, see: Boutruche, T., Sassoli, M. “Expert Opinion on the Occupier’s Legislative Power over an Occupied Territory Under IHL in Light of Israel’s On-going Occupation”, June 2017, available at: <https://www.nrc.no/globalassets/pdf/legal-opinions/sassoli.pdf>.

⁴⁴ OCHA, “Increase in risk of displacement in East Jerusalem”, 11 September 2017, available at: <https://www.ochaopt.org/content/significant-increase-risk-displacement-east-jerusalem>.

⁴⁵ Ibid.

⁴⁶ Ibid.

Jerusalem were demolished in total in both 2014 and 2015.⁴⁷ In 2016, this figure more than doubled to 190.⁴⁸ According to OCHA, 2017 saw a slight increase in the monthly average number of people displaced in East Jerusalem as a result of demolitions compared to 2016.⁴⁹

Other Israeli policies also exert a powerful coercive effect on the occupied population. Such measures include acts of collective punishment, such as punitive revocation of permanent residency status,⁵⁰ mass arrests⁵¹ (including of children⁵²), closures of Palestinian neighbourhoods⁵³ and punitive home demolitions.⁵⁴ Concerning the latter, an Israeli military committee established in 2005 to examine the policy of punitive home demolitions concluded that there existed no proof that the policy provided effective deterrence against future attacks, and recommended that such demolitions cease.⁵⁵ This recommendation was largely adopted by the Israeli military and the number of demolitions dropped significantly until reimplementation of the illegal policy in 2014.⁵⁶

In November 2014, human rights groups petitioned the Israeli High Court of Justice to review the legality of the State's policy of punitive demolition of Palestinian homes in the oPt. The petition argued that the legal basis for such demolitions had not been reviewed since the 1980s and failed to reflect subsequent developments in international law. Further, the petition argued that "the punitive house demolition policy constitutes a grave breach of international humanitarian law, the international laws of occupation and international human rights law, and that it contradicts the fundamental tenet in Israeli law whereby people cannot be punished for actions other than their own."⁵⁷ The petition was rejected by the Court, which held that Israel had legal authority to execute home demolitions, but that such an authority was to be exercised in a proportionate manner and only in relation to perpetrators of acts of particular severity.⁵⁸ In addition, the ruling "incorporated quotes from Hebraic law, which explicitly support collective punishment." Such a position – so glaringly at odds with the letter and spirit of provisions of international law, which prohibit discrimination and collective punishment⁵⁹ – is deeply problematic from a rule of law perspective.⁶⁰

Similar concerns have been raised in relation to the Court's conduct on matters extending beyond East Jerusalem, particularly in relation to the Court's avoidance of ruling on the legality of Israeli settlement construction in the oPt generally. As has been noted, this avoidance "has no doubt enabled the Court to avoid a head-on clash with the government and a large segment of public opinion. Understandable as this may be on the political level, [...] the Court's refusal to rule on

⁴⁷ OCHA, "Monthly Figures: Conflict-related casualties and violence", 2017, available at: <https://www.ochaopt.org/content/monthly-figures>.

⁴⁸ *Ibid.*

⁴⁹ *Supra* note 44.

⁵⁰ Israel's revocation of Palestinians' residency status has been identified as an act of forcible transfer. See: Human Rights Watch, "Israel: Jerusalem Palestinians Stripped of Status", 8 August 2017, available at: <https://www.hrw.org/news/2017/08/08/israel-jerusalem-palestinians-stripped-status>.

⁵¹ Haaretz, "Israel Arrests 33 in East Jerusalem Over Temple Mount Riots", 31 July 2017, available at: <https://www.haaretz.com/israel-news/1.804317>.

⁵² According to data of the Monitoring and Reporting Mechanism established under the UN mandate on Children in Armed Conflict confirmed by OCHA, in 2016, 712 cases of child detention were documented in East Jerusalem.

⁵³ Times of Israel, "Police Given Authority to Impose East Jerusalem Closures", 14 October 2015, available at: <https://www.timesofisrael.com/police-given-authority-to-impose-jerusalem-closures-surround-arab-areas/>.

⁵⁴ OCHA, "Concern About Collective Punishment: New Measures Targeting the Residency Rights of East Jerusalem Palestinians", 13 April 2017, available at: <https://www.ochaopt.org/content/concern-about-collective-punishment-new-measures-targeting-residency-rights-east-jerusalem>.

⁵⁵ Haaretz, "IDF Panel Recommends Ending Punitive House Demolitions for Terrorists' Families", 17 February 2005, available at: <https://www.haaretz.com/idf-panel-recommends-ending-punitive-house-demolitions-for-terrorists-families-1.150620>.

⁵⁶ Haaretz, "Immoral, Ineffective: Destroying Terrorists' Homes is Nothing but Empty Revenge", 20 November 2014, available at: <https://www.haaretz.com/israel-news/.premium-1.627383>.

⁵⁷ Hamoked, "HaMoked heads group of human rights organizations in HCJ petition: Instruct the state to cease the illegal practice of punitive house demolitions in the OPT, including East Jerusalem", 27 November 2014, available at: <http://www.hamoked.org/Document.aspx?dID=Updates1387>.

⁵⁸ Hamoked, "Petition Update", 1 January 2015, available at: <http://www.hamoked.org/Document.aspx?dID=Updates1429>.

⁵⁹ *Ibid.*

⁶⁰ See: Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land, Article 50; Fourth Geneva Convention, Article 33; ICRC, Customary International Law, Rule 103.

this question has somewhat compromised its position.”⁶¹ In addition, recent appointments to the Court – pushed by Justice Minister, Ayelet Shaked, and including a current resident of a West Bank settlement – have prompted what has been described as a significant shift to the right in the body’s outlook.⁶² Therefore, on account of both its rulings (and absence of rulings) and the background of some of its members, significant doubts exist as to whether the Court can act as an effective arbiter of the legality of Israeli policies applied in the oPt. Judicial independence, it should be noted, is an essential component in establishing and maintaining the rule of law.

More widely, there exist chronic issues surrounding inadequate investment in basic services in Palestinian neighbourhoods of East Jerusalem generally, deepening the coercive environment and fundamentally undermining the wellbeing of the occupied population.⁶³ Palestinian neighbourhoods cut off from central Jerusalem by Israel’s construction of the Wall, such as Shu’fat refugee camp, are particularly badly affected.⁶⁴ Here, prohibitions on construction, restrictions on residency rights, uncertainty of the camp’s legal status, lack of provision of essential services such as waste management and education, combined with overcrowding and virtually absent civil infrastructures result in the denial and violation of an extensive range of human rights of Palestinians.⁶⁵

Meanwhile, steps have been taken by the OP that serve to weaken Palestinian identity in East Jerusalem. For instance, Israel is gravely interfering with the curriculum of Palestinian schools through the provision of Israeli public funding and benefits to schools willing to substitute their curriculum for that of Israel. Speaking in 2016, Israel’s Minister of Education, Naftali Bennett, announced that he would “provide a strong tailwind to any school that chooses the Israeli curriculum. My policy is clear: I want to aid the process of Israelization.”⁶⁶ In addition, the period of review has seen the continuation of efforts to introduce Hebrew street names in Palestinian neighbourhoods⁶⁷ and prohibit the Islamic dawn call-to-prayer in some areas of the city,⁶⁸ while legislation has been tabled which strips Arabic of its national language status throughout Israel, and thus in occupied East Jerusalem, in light of its illegal *de jure* annexation by the OP. These moves to undermine Palestinian cultural rights and identity in East Jerusalem come amid criticism that the OP, under the pretext of security considerations, is exercising *ultra vires* sovereign rights, including by introducing measures, which alter the status quo relating to the Haram al-Sharif/Temple Mount complex in the Old City.⁶⁹

⁶¹ Kretzmer, D., “The law of belligerent occupation in the Israeli Supreme Court”, *International Review of the Red Cross*, Volume 94 Number 885, Spring 2012, p. 214, available at: <https://www.icrc.org/eng/assets/files/review/2012/irrc-885-kretzmer.pdf>.

⁶² Middle East Eye, “Israel supreme court lurches to right with four new judges”, 23 February 2017, available at: <http://www.middleeasteye.net/news/israel-appoints-new-right-wing-supreme-court-judges-1396601313>.

⁶³ For further information on public service delivery for Palestinian residents of East Jerusalem, see: The Association for Civil Rights in Israel, “East Jerusalem: Facts and Figures 2017”, 21 May 2017, available at: <http://www.acri.org.il/en/wp-content/uploads/2017/05/Facts-and-Figures-2017-1.pdf>.

⁶⁴ For more information on the humanitarian impact of the Wall on Palestinian Jerusalem residents see: OCHA, “The impact of the barrier on the Jerusalem area”, 4 July 2017, available at: <https://www.ochaopt.org/content/impact-barrier-jerusalem-area>.

⁶⁵ See: UNRWA, “Profile: Shu’fat Camp”, available at: https://www.unrwa.org/sites/default/files/shufat_refugee_camp.pdf; UNRWA, “Community Cooperation Cleaning Up Shu’fat Camp”, 29 April 2015, available at: <https://www.unrwa.org/newsroom/features/community-cooperation-cleaning-shu%E2%80%99fat-camp>; EducAid, “Shu’fat: A community left behind [the Wall]. Access to Education and Sanitation”, April 2017.

⁶⁶ Jonathan Cook, “How Israel is ‘turning Palestinians into Zionists’”, *Al Jazeera*, 18 February 2016, available at: <http://www.aljazeera.com/news/2016/02/israel-turning-palestinians-zionists-160218084338003.html>. See also: BADIL, “Forced Population Transfer: the Case of Palestine: Suppression of Resistance”, December 2016, p. 97, available at: <http://www.badil.org/phocadownloadpap/badil-new/publications/research/working-papers/wp19-Suppression-of-Resistance.pdf>.

⁶⁷ 972 Magazine, “East Jerusalem streets given Hebrew names amid tensions”, 21 September 2015, available at: <https://972mag.com/east-jerusalem-streets-given-hebrew-names-amid-tensions/111873/>.

⁶⁸ The Independent, “Israel bill to limit Muslim call to prayer passes parliamentary first reading”, 9 March 2017, available at: <http://www.independent.co.uk/news/world/middle-east/israel-bill-mosque-call-to-prayer-muslim-islam-mosque-pass-first-reading-parliament-a7620336.html>.

⁶⁹ Muftah, “Israel is Undermining the Status Quo at Jerusalem’s al-Aqsa Mosque”, 20 July 2017, available at: <https://muftah.org/palestinians-accuse-israel-undermining-status-quo-jerusalem-al-aqsa-mosque/#.WcoZtkuGO3A>.

These policies steadily erode Palestinian presence – both physical and cultural – in East Jerusalem, and must be considered in conjunction with the transfer by the OP of thousands of its own citizens into occupied East Jerusalem. At the time of writing, the current settler population in East Jerusalem exceeds 200,000 people,⁷⁰ while in April 2017, the GoI announced plans for the construction of 15,000 additional settlement housing units in East Jerusalem.⁷¹ These two strands of population transfer cannot be separated from one another, clearly illustrated in September 2017 with the eviction – following lengthy legal proceedings in Israeli courts – of the Shamasneh family from their East Jerusalem home in which they had lived for more than 50 years. Shortly afterwards, Israeli settlers were seen moving into the building,⁷² located in an area slated for settlement development.⁷³

The prohibition of transfer of members of the OP's civilian population into an occupied territory is codified under Article 49 of the Fourth Geneva Convention, as is the prohibition of unlawful transfer of the occupied population within the occupied territory, while the latter is also considered a grave breach under Article 147 of the same treaty.⁷⁴ In addition, both acts may also engage individual criminal responsibility and be prosecuted as war crimes.⁷⁵

The temporal period considered in this report saw a marked deterioration in the security situation throughout East Jerusalem and the West Bank generally, characterised by a sharp and prolonged escalation in violence between September 2015 and mid-2016.⁷⁶ Although Israel has a duty to ensure the safety of its own citizens, all efforts taken in this respect by its security forces must comply with international standards. There exists credible evidence, however, that during this period the use of force by Israeli law enforcement officials regularly exceeded that permitted by international law. In September 2016, Amnesty International issued a memorandum detailing 20 incidents which took place during this period – including several in East Jerusalem – and featured the apparently wilful killings of Palestinians in the West Bank by Israeli security officials. According to the memorandum, “[i]n at least 15 of the cases, Palestinians were deliberately shot dead, despite posing no imminent threat to life, in what appear to be extrajudicial executions.”⁷⁷ The same report noted that “Israeli forces continue to display an appalling disregard for human life by using reckless and unlawful lethal force against Palestinians.”⁷⁸

Attention has also come to focus on whether Israel can be said to have provided its forces with fit-for-purpose guidelines and training on the use of lethal force in non-combat situations. For instance, Israeli live fire regulations – relaxed in an Israeli Security Cabinet decision of September 2015⁷⁹ and partially published in June 2016 – appear to permit the use of lethal force as a matter of first resort in response to the throwing of rocks, firebombs and firework.⁸⁰

⁷⁰ B'Tselem, “Statistics on Settlements and Settler Population”, updated 11 May 2017, available at: <http://www.btselem.org/settlements/statistics>.

⁷¹ Reuters, “Israel planning 15,000 more settlement homes in Jerusalem”, 28 April 2017, available at: <https://www.reuters.com/article/us-israel-palestinians-settlements/israel-planning-15000-more-settlement-homes-in-jerusalem-idUSKBN17U1OS>.

⁷² The New Arab, “Palestinian family evicted from Jerusalem home of 50 years”, 5 September 2017, available at: <https://www.alaraby.co.uk/english/news/2017/9/5/palestinian-family-evicted-from-jerusalem-home-of-50-years>.

⁷³ Nickolay Mladenov, Special Coordinator for the Middle East Peace Process, “Briefing to the Security Council on the Situation in the Middle East Report of Special Coordinator”, 25 September 2017, available at: <https://reliefweb.int/report/occupied-palestinian-territory/nickolay-mladenov-special-coordinator-middle-east-peace-3>.

⁷⁴ Grave breaches are recognised as being a particularly egregious form of war crime, and as such engage an obligation for third States to detain suspected perpetrators and either prosecute them in the State's domestic courts under the doctrine of universal jurisdiction, or extradite the suspect(s) to a third party for the purpose of prosecution.

⁷⁵ UNGA, Rome Statute of the International Criminal Court, Article 8(2)(b)(viii).

⁷⁶ More than 225 Palestinians and three foreign nationals were killed by Israeli forces between September 2015 and September 2016, with the majority linked to attacks against Israeli soldiers, police and civilians. During the same period, at least 35 Israelis and two foreign nationals were killed by Palestinians. See: Amnesty International, “Israel/OPT: Pattern of unlawful killings reveals shocking disregard for human life”, 28 September 2016, available at: <https://www.amnesty.org/en/latest/news/2016/09/israel-opt-pattern-of-unlawful-killings-reveals-shocking-disregard-for-human-life/>.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ The Times of Israel, “Ministers toughen measures against stone-throwers”, 24 September 2015, available at: <https://www.timesofisrael.com/ministers-okay-tougher-measures-against-stone-throwers/>.

⁸⁰ Amnesty International, “Lethal force and accountability for unlawful killings by Israeli forces in Israel and the Occupied Palestinian Territories”, 28 September 2016, p.12, available at: <https://www.amnesty.org/en/documents/mde15/4812/2016/en/>.

Such a position is a clear and grievous breach of Israel's obligations under international law. In September 2017, the Supreme Court published its June ruling, which upheld an appeal by the Israeli police, preventing publication of sensitive aspects of the force's live fire regulations.⁸¹ According to Adalah, in upholding the appeal the Supreme Court had "assumed an opposing position that is intended to shield police directives from public criticism, thus hindering efforts to bring officers to justice for violations of the regulations."⁸²

Such failings are further compounded by the absence of meaningful scrutiny of the actions of Israeli law enforcement officials and private contractors acting as State agents, including in relation to alleged wilful killings of members of the occupied civilian population. In the context of belligerent military occupation, and where there does not exist a situation of active hostilities, the use of force is to be considered through the paradigm of law enforcement and the associated regime of IHRL,⁸³ whereby lethal force may only be employed as a measure of absolute last resort. Moreover, unlawful killings of Palestinians by law enforcement officials of the OP may also be said to constitute wilful killings of members of the protected occupied population: a war crime that amounts to a grave breach of the Geneva Conventions. This is on account of the nexus to the armed conflict, which is represented by the function exercised by such officials within the regime of a military occupation.⁸⁴

Despite the gravity of these alleged offences, however, according to human rights groups, investigations by the Israeli Police Internal Investigations Department into alleged unlawful killings fall short of international standards on account of failures to ensure impartiality or transparency of proceedings.⁸⁵ These failures contribute to a critical accountability deficit and an environment of impunity.

3. Area C

Consideration of the practices and policies of the OP inside Area C – the land classification under the Oslo Accords that accounts for approximately 60 percent of the West Bank and is subject to full Israeli security and administrative control – reveals a number of striking parallels with that of East Jerusalem. Specifically, the OP, through physical construction and the extension of legislative competence, remains engaged in extensive efforts to secure the territory's annexation.

Israel's settlement enterprise represents perhaps the most conspicuous method by which the OP exercises sovereign-like power over Area C. At the time of writing, the settler population in Area C estimated to exceed 325,000, spread across more than 120 settlements and 100 additional 'outposts'.⁸⁶ ⁸⁷ In addition to constituting a breach of Article 49 of the Fourth Geneva Convention,

⁸¹ Adalah, "Israeli Supreme Court allows police to keep open-fire regulations concealed from public scrutiny", 8 October 2017, available at: <https://www.adalah.org/en/content/view/9264>.

⁸² Ibid.

⁸³ See: The Oxford Handbook of International Law in Armed Conflict, edited by Clapham, A., Gaeta, P., p. 200.

⁸⁴ For further information on the interplay between IHL and IHRL in relation to unlawful killings during law enforcement operations in the oPt, see: Diakonia, "Law Enforcement under Occupation: The Case of Willful Killings in the West Bank", August 2015, available at: <https://www.diakonia.se/globalassets/blocks-ihl-site/ihl-file-list/ihl---briefs/the-case-of-wilful-killings-in-the-west-bank.pdf>

⁸⁵ See: Amnesty International, "Lethal force and accountability for unlawful killings by Israeli forces in Israel and the Occupied Palestinian Territories", 28 September 2016, p.10, available at: <https://www.amnesty.org/en/documents/mde15/4812/2016/en/>; Yesh Din, "December 2016 Data Sheet: Law Enforcement on IDF soldiers suspected of harming Palestinians – Summary of 2015 data", 2 January 2017, available at: <https://www.yesh-din.org/en/december-2016-data-sheet-law-enforcement-idf-soldiers-suspected-harming-palestinians-summary-2015-data/>

⁸⁶ B'Tselem, "Area C", available at: http://www.btselem.org/topic/area_c; although some sources claim the figure to be closer to 380,000. See, <https://www.haaretz.com/israel-news/.premium-1.794730>

⁸⁷ 'Outposts' are settlements unrecognised by the GoI. There exists no legal distinction between Israeli settlements and 'outposts' under international law.

Israeli settlements and the systems and practices that accompany them also constitute breaches of a breadth of international law provisions including the prohibition of racial discrimination (on account of separate legal systems and institutions for Israeli citizens unlawfully present in the oPt – settlers – and Palestinian communities in the same territory, movement restrictions and inherently discriminatory planning and zoning policies, for example);⁸⁸ the prohibition of acquisition of territory through the use of force;⁸⁹ and the prohibition of destruction and confiscation of private property by an OP.⁹⁰

In December 2016, the UN Security Council adopted Resolution 2334, reiterating the illegality of Israel's settlement enterprise in the oPt and its related IHL and IHRL violations, including land confiscation, destruction of private property and altering the demographic composition of the territory by way of population transfer. The same resolution also demanded "that Israel immediately and completely cease all settlement activities in the occupied Palestinian territory, including East Jerusalem, and that it fully respect all of its legal obligations in this regard".⁹¹ However, reporting to the Security Council in September 2017, the Special Coordinator for the Middle East Peace Process, Nikolay Mladenov, announced that Israel had manifestly failed to comply with this requirement and that "[s]ince 20 June, Israel's illegal settlement activities have continued at a high rate, a consistent pattern over the course of this year."⁹² In June 2017, work began on the construction of the first new Israeli settlement in Area C in 25 years.⁹³ In August 2017, Israeli Prime Minister, Benjamin Netanyahu, publicly reaffirmed his commitment to maintaining and strengthening the presence of West Bank settlements.⁹⁴

Similarly, Israel continues to maintain and continue construction of the Wall despite the finding of the 2004 International Court of Justice (ICJ) advisory opinion that the Wall should be dismantled in those places where it is constructed on Palestinian territory. Prominent examples include the March 2016 decision of the Security Cabinet to renew construction in and around Jerusalem,⁹⁵ as well as the routing of the Wall through the Cremisan Valley, separating the Palestinian town of Beit Jala from the settlements of Gilo and Har Gilo. The planned route would serve to annex large areas of occupied territory – spanning territory in Areas B and C⁹⁶ – and allow for the connecting of the settlements of Gilo and Har Gilo. In doing so it would deprive 58 Palestinians of their land, a Salesian convent of 75 percent of its land, and also restrict the access of 400 Palestinian families to their lands.⁹⁷ An April 2015 ruling from the Israeli Supreme Court held that the proposed route caused disproportionate harm to Palestinian landowners, and called for a rerouting of the Wall. Despite this ruling, construction, and its associated acquisition and destruction of Palestinian private property, recommenced in August 2015 along a route materially identical to the original.⁹⁸ At the time of writing, construction of this section is significantly advanced.

⁸⁸ For further information on the link between Israeli settlements and racial discrimination, see: Diakonia, "Same Game, Different Rules: Practices and Policies of Racial Discrimination by the Occupying Power in the Occupied Palestinian Territories", May 2016, available at: <https://www.diakonia.se/globalassets/documents/ihl/ihl-in-opt/briefs/same-game-different-rules-practices-and-policies-of-racial-discrimination-by-the-occupying-power-in-the-opt.pdf>.

⁸⁹ U.N., "Charter of the United Nations", 24 October 1945, Article 2(4).

⁹⁰ Destruction or appropriation of private property by an OP, not justified by military necessity, is prohibited under Article 54 of the Fourth Geneva Convention, while extensive destruction or appropriation of property carried out unlawfully and wantonly is listed as a grave breach of the same Convention and may be prosecuted as a war crime under Article 8(2)(a)(iv) of the Rome Statute.

⁹¹ UN Security Council Resolution 2334 of 2016, S/RES/2334, 23 December 2016, para. 2.

⁹² Nikolay Mladenov, Special Coordinator for the Middle East Peace Process, "Briefing to the Security Council on the Situation in the Middle East Report of Special Coordinator", 25 September 2017, available at: <https://reliefweb.int/report/occupied-palestinian-territory/nikolay-mladenov-special-coordinator-middle-east-peace-3>.

⁹³ The Guardian, "Israel begins work on first settlement in 25 years as Jared Kushner flies in", 20 June 2017, available at: <https://www.theguardian.com/world/2017/jun/20/israel-new-settlement-benjamin-netanyahu-jared-kushner-amichai-omona>.

⁹⁴ Haaretz, "Netanyahu Vows to Never Remove Israeli Settlements from West Bank: 'We're Here to Stay, Forever'", 29 August 2017, available at: <http://www.haaretz.com/israel-news/1.809444>.

⁹⁵ The Jerusalem Post, "Security Cabinet Approves Completion of Barrier around Jerusalem", 10 March 2016, available at: <http://www.jpost.com/Arab-Israeli-Conflict/Security-cabinet-approves-completion-of-barrier-around-Jerusalem-447571>

⁹⁶ See: B'Tselem, "Interactive Map", available at: <http://www.btselem.org/map>.

⁹⁷ EAPPI, "A Timeline: How the Separation Barrier came to the Cremisan Valley", 26 April 2016, available at: <https://blog.eappi.org/2016/04/26/a-timeline-how-the-separation-barrier-came-to-the-cremisan-valley/>.

⁹⁸ The Guardian, "Israel resumes work on controversial separation wall in Cremisan valley", 18 August 2015, available at: <https://www.theguardian.com/world/2015/aug/18/israel-resumes-work-controversial-separation-wall-cremisan-valley>.

Indeed, consideration of the route of the Wall in totality – notably in its encircling of West Bank settlement ‘blocs’ – highlights an intent of the OP to annex vast swathes of Palestinian territory and virtually bisect the West Bank. During the period of review there have been explicit calls from senior Israeli officials to formally annex Area C, beginning with the settlement of Maale Adumin.⁹⁹ Inextricably linked with physical annexation are efforts to roll out Israeli law to settlements and their residents,¹⁰⁰ removing any legislative or administrative distinction between sovereign Israeli territory and occupied territory. In late October 2017, a vote by the Knesset Ministerial Committee on the so-called ‘Greater Jerusalem bill’, which would see several large Israeli settlements and their 150,000 inhabitants incorporated into the Jerusalem municipality, was postponed indefinitely due to external diplomatic pressure.¹⁰¹

As with East Jerusalem, within Area C the OP maintains a planning policy that is contrary to international law and fails to ensure the basic needs and public order, safety and civil life of the Palestinian population.¹⁰² Israeli Military Order 418 strips Palestinian representation from the planning process and in turn facilitates the unlawful and widespread destruction of Palestinian private property (including homes and other essential infrastructure such as solar panels, animal pens and educational facilities) by way of demolitions. According to B’Tselem, in 2016 Israel demolished 274 Palestinian homes in the West Bank, excluding East Jerusalem, leaving 1,134 individuals homeless, including 591 minors. These figures exceeded that of 2014 and 2015 combined.¹⁰³ Areas of particular vulnerability are those bordering Israeli settlements, or in areas slated for settlement construction, including the central West Bank – home to 46 Palestinian Bedouin communities identified by the UN as being at imminent risk of forcible transfer¹⁰⁴ – and the village of Susiya in the South Hebron Hills.¹⁰⁵

The impact of demolitions in Area C is exacerbated by the OP’s arbitrary denial of external assistance, manifested in restricted access for relief personnel and materials and the destruction or confiscation of relief supplies. In periods of military occupation, the primary duty for meeting the needs of the occupied population falls upon the OP, though if the primary duty bearer is for any reason unable or unwilling to fulfil this obligation, access must be afforded to impartial humanitarian agencies.¹⁰⁶ However, Israel continues to deem the external provision of relief structures in Area C as unlawful on account of such relief lacking the requisite building permits. At least 308 constructions amounting to almost 30 percent of the structures demolished throughout the West Bank in 2016 were donor-funded structures. This figure is nearly three times higher than that of 2015 (108 structures) and the value of the structures destroyed or seized exceeded €655,000.¹⁰⁷ At least 50 EU-funded structures – valued at €110,000 – were demolished by the OP in the first two months of 2017 alone, while in the same period another 50 EU-funded structures – valued at €500,000 – were placed under threat of demolition through issuance of stop-work and demolition orders.¹⁰⁸ In October 2017, several EU States called upon the OP to

⁹⁹ The Jerusalem Post, “Bennett: We Will Annex Ma’aleh Adumim First and then All of Area C”, 2 January 2017, available at: <http://www.jpost.com/Arab-Israeli-Conflict/Bennett-We-will-annex-Maaleh-Adumim-first-and-then-the-rest-of-Area-C-477236>.

¹⁰⁰ The Guardian, “Far-right Israeli minister plans bill to annex one of biggest settlements”, 3 January 2017, available at: <https://www.theguardian.com/world/2017/jan/03/far-right-israel-minister-naftali-bennett-bill-annex-maale-adumim-settlement-palestinian-territories>.

¹⁰¹ Reuters, “U.S. pressure delays Israel’s ‘Greater Jerusalem’ bill: legislator”, 29 October 2017, available at: <https://www.reuters.com/article/us-israel-palestinians-settlement/u-s-pressure-delays-israels-greater-jerusalem-bill-legislator-idUSKBN1CYoCB>.

¹⁰² For more information, see: Diakonia, “The Planning Regime”, 19 November 2013, available at: <http://www.diakonia.se/en/ihl/occupied-palestinian-territory/administration-of-occupation/house-demolitions1/administrative/>.

¹⁰³ B’Tselem, “Planning & building in Area C”, 14 February 2017, available at: http://www.btselem.org/planning_and_building/20170213_2016_demolitions.

¹⁰⁴ OCHA, “Tightening of coercive environment on Bedouin communities around Ma’ale Adumin settlement”, 11 March 2017, available at: <https://www.ochaopt.org/content/tightening-coercive-environment-bedouin-communities-around-ma-ale-adumim-settlement>.

¹⁰⁵ OCHA, “Susiya: a community at imminent risk of forced displacement, June 2015”, 8 June 2015, available at: <https://www.ochaopt.org/content/susiya-community-imminent-risk-forced-displacement-june-2015>.

¹⁰⁶ ICRC, Fourth Geneva Convention, Article 59.

¹⁰⁷ OCHA, “Record number of demolitions and displacements in the West Bank during 2016”, 10 February 2017, available at: <https://www.ochaopt.org/content/record-number-demolitions-and-displacements-west-bank-during-2016>.

¹⁰⁸ Office of the European Union Representative (West Bank and Gaza Strip, UNRWA), “Six-Month Report on Demolitions and Confiscations of EU funded structures in Area C, September 2016 – February 2017”, 5 April 2017, available at: https://eeas.europa.eu/sites/eeas/files/2017_six-months_report_on_demolitions_of_eu_funded_structures_in_area_c_september_16-february_17.pdf.

pay compensation for certain structures destroyed.¹⁰⁹ This was not a formal legal measure, but rather a political demarche. Israel has so far refused to publically comply with these claims.

The result of these policies and their associated measures is a highly coercive environment in which Palestinian presence is made increasingly untenable. During the period of review, case studies of forcible transfer have been recorded in Area C. Specifically, such cases have stemmed from demolitions, lack of access to essential services and grazing lands, as well as acts of harassment and violence from Israeli military and police personnel and settlers.^{110 111}

4. Other Violations throughout the West Bank

As well as apparent willful killings of Palestinians by Israeli law enforcement officials in East Jerusalem, Amnesty International flagged similar incidents throughout the rest of the West Bank during the period of review.¹¹² Meanwhile, grave concerns have also been raised relating to the excessive use of force by Israeli military and police personnel against non-violent protestors generally. Rights groups have observed Israeli use of a range of weaponry in such instances, including “teargas, [...] stun grenades, rubber-coated bullets, and live ammunition, which frequently results in the killing and injury of civilians.”¹¹³ In 2014 and 2015, 57 and 43 Palestinians were killed during demonstrations respectively,¹¹⁴ while allegations of unnecessary use of lethal force by Israeli armed forces in such scenarios continue.¹¹⁵ In addition, the employment of lethal and less-lethal weaponry as a response to protests also violates the right of the occupied population to freedom of expression. Similarly, Israeli military authorities have “detained Palestinian protestors, including those who advocated nonviolent protest against Israeli settlements and the route of the separation barrier.”¹¹⁶

During the period of review, the OP has also pursued measures of collective punishment against the occupied civilian population throughout the West Bank. These include punitive home demolitions,¹¹⁷ village closures¹¹⁸ and mass arrests.¹¹⁹ Meanwhile, the systematic and unlawful exploitation by the OP of the natural resources of the oPt – which has formed an integral part of Israel’s occupation since 1967 – continues. This is particularly notable in relation to Israeli exploitation of water sources¹²⁰ and extraction of stone and aggregate in the West Bank, as well as mineral extraction in the northern Dead Sea area and the surrounding Jordan Valley.¹²¹

¹⁰⁹ The National, “EU countries demand compensation from Israel over West Bank demolitions”, 19 October 2017, available at: <https://www.thenational.ae/world/mena/eu-countries-demand-compensation-from-israel-over-west-bank-demolitions-1.668713>.

¹¹⁰ BADIL, “Coercive Environments: Israel’s Forcible Transfer of Palestinians in the Occupied Territory”, February 2017, p. 28-45, available at: <http://www.badil.org/phocodownloadpap/badil-new/publications/research/in-focus/FT-Coercive-Environments.pdf>.

¹¹¹ A September 2015 report of the UN Special Rapporteur on the human rights situation in the oPt highlighted the GoI’s policy of settlement expansion and widespread impunity for settler attacks on Palestinians as key factors in continuing instances of settler violence. See: UN Secretary General, “Note by the Secretary General on the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967”, A/70/392, 25 September 2015, para. 47.

¹¹² Amnesty International, “Israel/OPT: Pattern of unlawful killings reveals shocking disregard for human life”, 28 September 2016, available at: <https://www.amnesty.org/en/latest/news/2016/09/israel-opt-pattern-of-unlawful-killings-reveals-shocking-disregard-for-human-life/>.

¹¹³ Al-Haq, “Israel’s Excessive Use of Force resulting in the Killing of Non-Violent Palestinian Protestors and Demonstrators during 2014 and 2015”, May 2016, p. 4-5, available at: <http://www.alhaq.org/publications/papers/Excessive.Use.of.Force.pdf>.

¹¹⁴ *Ibid.*, p. 5.

¹¹⁵ Defense for Children International Palestine, “Israeli forces kill 17-year-old amid clashes over access to holy site”, 21 July 2017, available at: http://www.dci-palestine.org/israeli_forces_kill_17_year_old_amid_clashes_over_access_to_holy_site.

¹¹⁶ Human Rights Watch, “Israel/Palestine: Events of 2016”, 2017, available at: <https://www.hrw.org/world-report/2017/country-chapters/israel/palestine>.

¹¹⁷ B’Tselem, “House Demolitions as Punishment: Statistics on punitive house demolitions”, updated 8 October 2017, available at: http://www.btselem.org/punitive_demolitions/statistics.

¹¹⁸ Aljazeera, “Israel’s arrests of Palestinians ‘highest in years’”, 9 August 2017, available at: <http://www.aljazeera.com/indepth/features/2017/08/israel-arrests-palestinians-highest-years-170809090949701.html>.

¹¹⁹ Ma’an News Agency, “Palestinian village sealed for 2nd day, Ramallah-area roads closed”, 27 January 2016, available at: <https://www.alaraby.co.uk/english/news/2017/7/20/israel-launches-huge-operation-across-west-bank>.

¹²⁰ Aljazeera, “Water deal tightens Israel’s control over Palestinians”, 1 August 2017, available at: <http://www.aljazeera.com/indepth/features/2017/07/water-deal-tightens-israel-control-palestinians-170730144424989.html>.

¹²¹ See, for example: Yesh Din, “The Great Drain: Israeli quarries in the West Bank: High Court Sanctioned Institutionalized Theft”, 14 September 2017, available at: <https://www.yesh-din.org/en/great-drain-israeli-quarries-west-bank-high-court-sanctioned-institutionalized-theft/>; Al-Haq, “Pillage of the Dead Sea: Israel’s Unlawful Exploitation of Natural Resources in the Occupied Palestinian Territory”, 2012, available at: <http://www.alhaq.org/publications/publications-index/item/pillage-of-the-dead-sea-israel-s-unlawful-exploitation-of-natural-resources-in-the-occupied-palestinian-territory>.

Considered in totality, conduct attributable to the OP in its administering of the oPt reveals widespread non-compliance with central tenets of IHL and IHRL. Israeli practices and policies have clearly and actively contributed, and continue to contribute, to a steady deepening of the occupation and its deeply destructive impact upon the occupied population. As such, the conduct of the OP extends far beyond that permitted by the corpus of law that regulates military occupation. Far from being a temporary administration of Palestinian territory, conducted in such a way as to maintain public order and safety, Israel's military occupation of Palestinian territory instead exhibits incontestable qualities of permanence, manifested in grave violations of international law.

Chapter 2. Domestic Legislation and Gol Policy Developments

1. Legislation in the Israeli Knesset

In addition to Israeli conduct on the ground, the period of review has seen a spate of domestic Israeli legislative measures and governmental policies that serve to further entrench the occupation, severely undermine the human rights of the occupied population, and curtail the work of human rights bodies covering issues pertaining to the occupation. Critically, it should be noted that a State does not escape international responsibility for breaches of international law simply because it acts in conformity with domestic legislation. The legality of Israeli actions, therefore, must be assessed by the international community against international law.¹²² What follows is a non-exhaustive overview of notable Israeli legislative and policy efforts during the period of review.

A. ‘Validation’/‘Regularization’ Law and ‘Norms Law’

The ‘Validation Law’, also known as the ‘Regularization Law’, was drafted with the express objective to “regularize settlement in Judea and Samaria [the term by which Israel refers to the West Bank], and to enable it to continue to strengthen and develop.”¹²³ Approved by the Knesset in February 2017, the law ‘legalises’ previous Israeli settlement construction by way of retroactive expropriation, planning and zoning regulations. In doing so, this legislation – announced in the wake of UNSC Resolution 2334 – effectively legitimises breach of Article 49 of the Fourth Geneva Convention under Israeli domestic law. In response, the EU reiterated “its strong opposition, in line with the position of the Middle East Quartet, to Israel’s settlement policy and all actions taken in this context,”¹²⁴ and the then U.S administration considered the legislation an “advancement of the settlement enterprise, which is already [...] greatly endangering the prospects for a two-state solution.”¹²⁵ The administration also raised concerns that, in light of statements from senior Israeli officials, the legislation would serve as a “first step toward annexation” of the West Bank.¹²⁶

This domestic legalisation of the unlawful acquisition of occupied territory has been coupled with attempts to codify the automatic extraterritorial application of Israeli domestic legislation to West Bank settlement jurisdictions. Such attempts are reflected in the ‘Norms Law’, initially approved by the Israeli Ministerial Committee for Legislative Affairs in November 2014 and subsequently re-tabled in June 2015. If passed, this mechanism would replace the current process of ‘channelling’, whereby domestic Israeli legislation may apply to settlement areas only upon the issuing of a military order to that effect by the Israeli Military Commander of the West Bank. This bill would therefore render the separate legislative landscapes of Israel and settlement areas as one and the same, amounting to a *de jure* annexation of occupied territory by the OP. This has been noted by Israeli Members of the Knesset (MKs), with prominent politicians concluding that “the right-wing government is quietly beginning the process of annexation in order to impose its ideology.”¹²⁷ Despite such criticism, in June 2016, Israeli Justice Minister, Ayelet Shaked,

¹²² See: International Law Commission (ILC), Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), 2001, Article 3.

¹²³ “Law for the Regularization of Settlement in Judea and Samaria, 5777-2017”, February 2017, (English Translation by Adalah), p. 1, available at: https://www.adalah.org/uploads/uploads/Settlement_Regularization_Law_English_FINAL_05032017.pdf.

¹²⁴ European Union External Action, “Statement by the Spokesperson on the ‘Regularization Bill’ in Israel”, 8 December 2016, available at: https://eeas.europa.eu/topics/water-diplomacy/16735/statement-by-the-spokesperson-on-the-regularisation-bill-in-israel_en.

¹²⁵ U.S. Department of State, “Daily Press Briefing – December 6, 2016”, 6 December 2016, available at: <https://2009-2017.state.gov/r/pa/prs/dpb/2016/12/264912.htm>.

¹²⁶ Ibid.

¹²⁷ The Jerusalem Post, “Ayelet Shaked: Apply Israeli Law to West Bank within 1 Year”, 2 May 2016, available at: <http://www.jpost.com/Arab-Israeli-Conflict/Justice-Minister-Shaked-Apply-Israeli-law-to-West-Bank-within-1-year-452847>.

asserted her commitment to the ‘Norms Law’ and pledged to ensure the legislation’s passage within 12 months.¹²⁸ At the time of writing, the bill remains under consideration.

B. ‘Anti-terror Law’

The sharp escalation in violence throughout the West Bank, including East Jerusalem, and within Israel which began in late 2015 was cited as justification for a number of Israeli domestic laws which significantly weakened human rights protections as applicable to members of the occupied population.

In June 2016, the Knesset approved the ‘Anti-terror Law’; an extensive piece of legislation which severely violates fundamental human rights. The law, consisting of administrative and penal aspects, includes, *inter alia*, ambiguous definitions of terrorism and terrorist organisations with the effect of criminalising legitimate political activities and expression; permits extensive use of secret evidence in court; dilutes evidentiary requirements of the State in terror cases; significantly increases possible maximum sentences and establishes new criminal offences, including public support for – or sympathy with – a terrorist group.¹²⁹ Of particular concern is the detaching of the legislation from any declared existence of a state of emergency. As such, Israel would be able to revoke the existing state of emergency declaration – heavily criticised for allowing State bodies to bypass certain human rights safeguards¹³⁰ – with no practical or legal impact. According to Adalah, the law, which applies formally to the territory of Israel (including, according to Israeli law, East Jerusalem) “is liable to result in serious human rights violations and to further undermine democratic principles”.¹³¹ In August 2017, Israeli MKs moved to propose an amendment to the anti-terror law which would allow for the imposing of the death penalty on convicted terrorists.¹³²

C. Stop-and-Frisk Law

In February 2016, through Amendment number 5 to the Power for Maintaining Public Security Law, the Knesset passed a bill permitting Israeli police to stop and search individuals at random. As with the above ‘anti-terror law’, and the below legislation concerning mandatory minimum sentences for stone-throwing, this legislation applies only to Israeli territory and to East Jerusalem due to its illegal annexation. Previously, searches were permitted only when an individual was suspected of carrying a weapon, yet the new legislation allows for the searching of any individual in areas designated by district police commanders as potential targets for “hostile destructive actions”.¹³³ Such designations can be declared for 21 days, and are extendable by a further two months at the discretion of the Police Inspector-General.¹³⁴ Prior to its passing, the bill met significant opposition from across the Israeli political spectrum, with concerns raised that the legislation sought to offer a security pretext and legal foundation for racial profiling and harassment of members of the occupied civilian population.¹³⁵

¹²⁸ Ibid.

¹²⁹ Adalah, “‘Anti-Terror’ (Counter-Terrorism) Law”, 2016, available at: <https://www.adalah.org/en/law/view/598>.

¹³⁰ 972 Magazine, “Will Israel be in a ‘state of emergency’ forever?” 20 June 2016, available at: <https://972mag.com/how-administrative-detention-could-keep-israel-in-a-state-of-emergency-forever/120159/>.

¹³¹ Supra note. 129.

¹³² Jewish Press, “Knesset to Debate New Death Penalty for Terrorists Bill”, 2 August 2017, available at: <http://www.jewishpress.com/news/israel/the-knesset/knesset-to-debate-new-death-penalty-for-terrorists-bill/2017/08/02/>.

¹³³ Israeli Knesset, “Knesset passes ‘stop-and-frisk law’”, 2 February 2016, available at: https://www.knesset.gov.il/spokesman/eng/PR_eng.asp?PRID=11918.

¹³⁴ Ibid.

¹³⁵ Ibid.. See also: The National, “Israel introduces new stop and frisk law”, 2 February 2016, available at: <https://www.thenational.ae/world/israel-introduces-new-stop-and-frisk-laws-1.226156>.

D. Mandatory Minimum Sentence for Stone-Throwing Law, and other Legislation Concerning Security Offences

In November 2015, the Knesset passed Amendment Number 120 to the Israeli Penal Code, establishing mandatory minimum sentences for stone-throwers. The amendment requires that, for the three-year period following the amendment's passage, sentences issued must be no less than one-fifth of the maximum sentence prescribed for the offence (20 years).¹³⁶ This formal codification followed a temporary order issued in September 2015 by the Israeli security cabinet establishing a four-year minimum sentence for throwers of stones and firebombs.¹³⁷ In the same year, Amendment Number 163 to the National Insurance Act was passed, revoking child benefit payments from the parents of children convicted of security offences for the duration of the child's incarceration. According to Adalah, the law "creates arbitrary discrimination between minors who are convicted of security offenses (overwhelmingly Palestinians), and other minors convicted of other criminal charges, in breach of the principle of equality."¹³⁸

2015 also saw the 12-month extension – through Amendment Number 4 to the Criminal Procedure Law – of legislation which removes critical procedural safeguards from detainees suspected of security offences. The law provides for, *inter alia*, the detention of security suspects for up to 96 hours prior to being brought before a court of law, compared to 48 hours for other cases, and up to 35 days without indictment (compared to 30 days). Adalah notes that "[w]hile neutral on its face, in practice the law is used almost exclusively against Palestinians, who make up the overwhelming majority of detainees classified as 'security' detainees."¹³⁹

Indeed, detention of members of the occupied population by the OP generally remains a subject of severe concern, particularly in relation to the OP's routine use of administrative detention,¹⁴⁰ deportation of detainees to facilities outside of the occupied territory¹⁴¹ and employment of practices which may amount to torture or cruel, inhuman and degrading treatment. According to rights groups, Israeli authorities "use psychological and physical methods and forms of torture and ill-treatment during interrogation, most notably [...] stress positions, shouting, insults and humiliation, lengthy hours of interrogation, threats of arrests of family members, sleep deprivation, denial of access to lawyers or imprisonment in an interrogation center lacking the minimum conditions for human life, in order to pressure them with a view toward extracting a confession in order to secure a subsequent conviction."¹⁴² The Public Committee Against Torture in Israel claims that 1,000 formal complaints were made of torture during interrogations by Israeli intelligence bodies between 2001 and 2016.¹⁴³

¹³⁶ Global Legal Monitor - Library of Congress, "Israel: Penalties for Attempting to Cause Grievous Harm by Throwing Stones", 19 November 2016, available at: <http://www.loc.gov/law/foreign-news/article/israel-penalties-for-attempting-to-cause-grievous-harm-by-throwing-stones/>.

¹³⁷ Haaretz, "Israel's Security Cabinet Sets 4-year Minimum Sentence for Stone-throwers", 24 September 2015, available at: <https://www.haaretz.com/israel-news/.premium-1.677421>.

¹³⁸ Adalah, "Israel: New Discriminatory and Anti-Democratic Legislation", September 2016, available at: https://www.adalah.org/uploads/uploads/New_Discriminatory_Laws_and_Bills_24.09.16.pdf.

¹³⁹ Adalah, "Order stripping essential procedural safeguards from 'security' detainees – Amendment No. 4 to the Criminal Procedure Law (Detainee Suspected of Security Offence) (Temporary Order)", 2015, available at: <https://www.adalah.org/en/law/view/596>.

¹⁴⁰ Administrative detainees are held for extended periods without charge or trial, based on secret evidence. See: Addameer, "On Administrative Detention", July 2017, available at: http://www.addameer.org/israeli_military_judicial_system/administrative_detention.

¹⁴¹ Addameer, "Deportation as Policy: Palestinian Prisoners & Detainees in Israeli Detention", 18 April 2016, available at: <http://www.addameer.org/publications/deportation-policy-palestinian-prisoners-detainees-israeli-detention>.

¹⁴² Addameer, "Joint report estimates that 388 Palestinians arrested in June 2017", 16 July 2017, available at: <http://www.addameer.org/news/joint-report-estimates-388-palestinians-arrested-june-2017>.

¹⁴³ Public Committee Against Torture in Israel, "Independent Report to the UN Committee Against Torture Towards the Review of the Fifth Periodic Report on Israel", 1 March 2016, p. 7, available at: http://stoptorture.org.il/wp-content/uploads/2016/06/INT_CAT_NGO_ISR_23475_E-Last.pdf.

E. Jewish Nation-state Law

In May 2017, a draft of the Basic Law: Israel as the Nation-State of the Jewish People, passed its preliminary Knesset reading. The legislation declares Israel as “the national home of the Jewish people” and asserts that the right of self-determination in the State is reserved exclusively for the Jewish people.¹⁴⁴ As a basic law, if passed this legislation would effectively assume constitutional status. At the time of writing, the precise wording of the bill is still being formulated, though it is believed that it will establish a distinction in status between Hebrew and Arabic, relegating the latter to a ‘special status’ below that of official State language.¹⁴⁵ In addition, it is believed that the final text may remove reference to Israel as both a ‘Jewish and democratic’ State, omitting any express reference to democracy.¹⁴⁶ This codification of the primacy of majority religious values over democratic principles raises grave concerns for the treatment of members of the occupied population illegally subjected to the jurisdiction of Israeli domestic law.

In July 2016, Amendment Number 44 to Basic Law was approved, permitting members of the Knesset – through a majority vote of 90 MKs – to remove from office any MK who demonstrates support for armed struggle against Israel or incites racial hatred, even if such acts are not themselves unlawful. Opponents to the law have criticised it on the basis that it “violates basic democratic and constitutional principles, including the right to vote and be elected, separation of powers, and the Arab minority’s right to representation and equality.”¹⁴⁷ Further, concerns have been raised that such a process is susceptible to abuse, and may be used by the political majority to expel minority opponents.¹⁴⁸

F. NGO ‘Funding Transparency’ Law, and NGO ‘smear campaign’

In July 2016, the Knesset approved the NGO ‘Funding Transparency’ Law, requiring that NGOs which receive 50 percent or more of their funding from foreign government make declaration of this fact in the course of their work. This legislation disproportionately affects NGOs working on the promotion of Palestinian human rights – including B’Tselem, Yesh Din and Breaking the Silence – and excludes right-wing pro-settlement bodies which typically rely on private, and opaque, sources of finance.¹⁴⁹ A statement issued by the EU highlighted the law’s undermining of democratic values, criticising the reporting requirements imposed by the legislation as “go[ing] beyond the legitimate need for transparency and seem[ingly] aimed at constraining the activities of these civil society organisations working in Israel.”¹⁵⁰

The ‘transparency law’ comes in the context of what has been labelled as a wider ‘war on NGOs’ working on issues pertaining to the occupation,¹⁵¹ characterised by denials of entry/exit of humanitarian personnel,¹⁵² secret trials of aid workers,¹⁵³ and a ‘smear campaign’ against NGOs

¹⁴⁴ Haaretz, “Israeli Lawmakers Back Contentious Jewish Nation-state Bill in Heated Preliminary Vote”, 10 May 2017, available at: <https://www.haaretz.com/israel-news/1.788393>.

¹⁴⁵ Haaretz, “New Nation-state Bill Will Not Define Israel as ‘Jewish and Democratic’ State”, 7 July 2017, available at: <https://www.haaretz.com/israel-news/.premium-1.800157>.

¹⁴⁶ Ibid.

¹⁴⁷ The Association for Civil Rights in Israel, “High Court Petition Against the Expulsion Law”, 8 January 2017, available at: <http://www.acri.org.il/en/2017/01/08/high-court-petition-against-the-expulsion-law/>.

¹⁴⁸ Ibid.

¹⁴⁹ The Guardian, “Israel passes law to force NGOs to reveal foreign funding”, 12 July 2016, available at: <https://www.theguardian.com/world/2016/jul/12/israel-passes-law-to-force-ngos-to-reveal-foreign-funding>.

¹⁵⁰ European Union External Action, “Statement by the Spokesperson on the passage of the new NGO law in the Israeli Knesset”, 12 July 2016, available at: https://eeas.europa.eu/headquarters/headquarters-homepage/7228/statement-spokesperson-passage-new-ngo-law-israeli-knesset_en.

¹⁵¹ Al Jazeera, “Israel slammed over its ‘war on NGOs’”, 22 November 2016, available at: <http://www.aljazeera.com/news/middleeast/2016/11/israel-slammed-war-ngos-16110115337497.html>

¹⁵² Ibid.

¹⁵³ Amnesty International, “Israel/OPT: ‘Secret trial’ of Gaza aid worker will not deliver justice”, 29 August 2016, available at: <https://www.amnesty.org/en/latest/news/2016/08/israel-opt-secret-trial-of-gaza-aid-worker-will-not-deliver-justice/>.

in which senior Israeli officials are implicated.¹⁵⁴ ¹⁵⁵ In February 2017, Israel initially refused to issue visas to the staff of Human Rights Watch, accusing the NGO of an “extreme, hostile and anti-Israel agenda,”¹⁵⁶ before reversing this decision two months later.¹⁵⁷ Later that same year Israel temporarily suspended the issuing of visas for all new humanitarian personnel in the country.¹⁵⁸ As a result of such actions, in September 2017 Israel was included in a list issued by the United Nations which identified States which in the past 12 months had implemented retaliatory measures against citizens who cooperated with the United Nations.¹⁵⁹ The cumulative effect of Israeli measures of constraint is to reduce scrutiny of Israeli practices and policies pertaining to the occupation of Palestinian territory, and to limit avenues of potential accountability. Moreover, third States find themselves having to negotiate with the OP merely to ensure a humanitarian presence in the oPt, which in turn further reduces already insufficient diplomatic pressure applied to Israel to cease its multitude violations of international law.

2. De Facto Endorsement by the GoI of the Levy Report Principles

In addition to the introduction of domestic legislation which fails to comply with international standards, the period of review has also witnessed the apparent *de facto* incorporation into Israeli governmental policy of the position that settlement construction in the oPt is lawful. This incorporation followed the public release of the report of the Levy Commission in 2012,¹⁶⁰ established by Israeli Prime Minister, Benjamin Netanyahu, to examine means of legalising Israeli settlement in the West Bank.¹⁶¹ The Levy Report concluded – relying on the so-called ‘missing reversioner’ doctrine¹⁶² – that the West Bank could not be considered as occupied territory under international law but as ‘disputed’ territory and subject to competing claims. Accordingly, the report asserted that there exists no legal basis for the application of the corpus of law regulating situations of occupation, including the Fourth Geneva Convention, to the oPt. According to such logic, Israeli settlement construction in the West Bank would not therefore be prohibited, and the report provided a list of recommendations to sustain and facilitate such construction.

As such, the report’s underpinning rationale directly contradicts internationally-accepted opinion on the legal status of the West Bank, including East Jerusalem, and the Gaza Strip as

¹⁵⁴ FIDH, “Open Letter to UN Secretary General Re Slandering statements against Palestinian NGOs Al-Haq and Al-Mezan”, 4 July 2017, available at: <https://www.fidh.org/en/issues/human-rights-defenders/open-letter-to-un-secretary-general-re-slandering-statements-against>. See also: Middle East Eye, “Palestinian rights groups accuse Israel of ‘smear campaign’”, 2 July 2017, available at: <http://www.middleeasteye.net/news/palestinian-human-rights-groups-struggle-remain-afloat-amid-israeli-smear-campaign-1552795311>.

¹⁵⁵ The period of review also witnessed a number of public statements made by members of the Israeli executive, including the Prime Minister, which were of an inflammatory nature and may represent breach of Article 20(2) of the ICCPR and Article 4 of the International Convention on Elimination of All Forms of Racial Discrimination (“ICERD”). Under these provisions, States are required to prohibit expression that amounts to “incitement” to discrimination, hostility or violence. See: for example: The Times of Israel, “Netanyahu: No Palestinian state on my watch”, 16 March 2015, available at: <https://www.timesofisrael.com/netanyahu-no-palestinian-state-under-my-watch/>; The New York Times, “Netanyahu Apologizes; White House is Unmoved”, 23 March 2015, available at: <https://www.nytimes.com/2015/03/24/world/middleeast/netanyahu-apologizes-for-comments-about-israeli-arabs.html>; The Washington Post, “Israel’s new justice minister considers all Palestinians to be ‘the enemy’”, 7 May 2015, available at: https://www.washingtonpost.com/news/worldviews/wp/2015/05/07/israels-new-justice-minister-considers-all-palestinians-to-be-the-enemy/?utm_term=.1cae057b0a20; Haaretz, “Lieberman: Disloyal Israeli Arabs Should Be Beheaded”, 9 March 2015, available at: <https://www.haaretz.com/israel-news/elections/1.646076>

¹⁵⁶ The Guardian, “Israel denies visas to staff from ‘hostile’ Human Rights Watch”, 24 February 2017, available at: https://www.theguardian.com/world/2017/feb/24/israel-denies-visa-to-hostile-human-rights-watch-and-warns-it-is-assessing-other-groups?CMP=tw_t_gu

¹⁵⁷ Human Rights Watch, “Israel: Human Rights Watch Granted Work Permit”, 26 April 2017, available at: <https://www.hrw.org/news/2017/04/26/israel-human-rights-watch-granted-work-permit>

¹⁵⁸ The Times of Israel, “A id workers: Israel not granting work visas for new employees”, 5 September 2017, available at: <https://www.timesofisrael.com/aid-workers-israel-not-granting-work-visas-for-new-employees/>

¹⁵⁹ YNet News, “Israel on UN list of states punishing human rights activism”, 21 September 2017, available at: <https://www.ynetnews.com/articles/0,7340,L-5019401,00.html>

¹⁶⁰ The Levy Commission, “The Levy Commission Report on the Legal Status of Building in Judea and Samaria”, 21 June 2012, available at: <https://israelipalestinian.procon.org/sourcefiles/The-Levy-Commission-Report-on-the-Legal-Status-of-Building-in-Judea-and-Samaria.pdf>

¹⁶¹ B’Tselem, “Levy Committee Report: Where are the Palestinians?”, 11 July 2012, available at: http://www.btselem.org/settlements/20120711_levy_committee_report

¹⁶² For discussion on the ‘missing reversioner’ argument, see: Jurist – University of Pittsburgh, “Academic Commentary: The US-Israel Standoff over Settlements”, 7 April 2010, available at: <http://www.jurist.org/forum/2010/04/us-israel-standoff-over-settlements.php>

provided by, *inter alia*, the 2004 ICJ advisory opinion, multiple resolutions of the UN General Assembly¹⁶³ and Resolution 2334 of the UN Security Council. In response to the report, the ICRC issued a rare public intervention and confirmed that “the West Bank is occupied by Israel” and that “the Israeli settlements in the West Bank are unlawful”.¹⁶⁴ Yet despite the clarity and consistency of rejection of settlements’ legality by the international community, the findings of the Levy Report appear to have received the informal endorsement of the GoI, and have clearly informed the latter’s official position and policy. This is evidenced in the Israeli Ministry of Foreign Affairs’ (MoFA) issuing of a position note¹⁶⁵ in November 2015 that adopted the report’s legal reasoning, refuting the existence of a military occupation in the West Bank and concluding that the presence and construction of settlements in this area was lawful.

As noted by Yesh Din, this official channelling of the Levy Report’s legal analysis has been coupled with an apparent implementation of a number of the report’s recommendations.¹⁶⁶ Chief among which, and as previously addressed, Israel has passed legislation allowing the retroactive legalisation of settlements and outposts and, in turn, afforded legal ‘justification’ to mass population transfer and expropriation of private Palestinian land. Further, the MoFA position note also cited provisions of the Oslo Accords pertaining to Israeli legal jurisdiction over West Bank settlements as evidence of the legitimacy of the settlement project generally. This not only misrepresents the intended purpose of the respective provisions, but also contravenes Article 47 of the Fourth Geneva Convention, which determines that protected persons cannot be deprived of Convention benefits by “any agreement concluded between the authorities of the occupied territories and the Occupying Power”.¹⁶⁷

In this light, from its inception through to the apparent adoption of its core rationale and policy recommendations, the Levy Commission appears a cynical attempt by the OP to circumvent the established body of international law and jurisprudence. In establishing the Commission and informally adopting its conclusions, the GoI seeks to apply a veneer of legality to its own conduct which operates in direct contravention of the UN Charter and the Palestinian right to self-determination, and which underpins a grave breach of the Fourth Geneva Convention.

¹⁶³ See, for example: UN General Assembly, “69/92. Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan”, A/RES/69/92, 16 December 2014; UN General Assembly, “Resolution 70/89. Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan”, A/RES/70/89, 15 December 2015.

¹⁶⁴ Haaretz, “The Levy Report vs. International Law”, 4 November 2012, available at: <https://www.haaretz.com/opinion/the-levy-report-vs-international-law-1.474129>.

¹⁶⁵ Israel Ministry of Foreign Affairs, “Israeli Settlements and International Law”, 30 November 2015, available at: <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/israeli%20settlements%20and%20international%20law.aspx>.

¹⁶⁶ Yesh Din, “From Occupation to Annexation: the Silent Adoption of the Levy Report on Retroactive Authorization of Illegal Construction in the West Bank”, 2 February 2016, available at: <https://www.yesh-din.org/en/from-occupation-to-annexation-the-silent-adoption-of-the-levy-report-on-retroactive-authorization-of-illegal-construction-in-the-west-bank/>.

¹⁶⁷ ICRC, Fourth Geneva Convention, Article 47.

Chapter 3: Findings of External Bodies

Given the broad range of apparent violations of international law evident in the oPt, it is unsurprising that external international bodies mandated to monitor and report on compliance with international law have strongly criticised Israeli conduct relating to the ongoing occupation. The following section explores key findings of relevant international bodies from the period of review.

1. United Nations Human Rights Council

The UN Human Rights Council provides a number of mechanisms which have been active in monitoring and reporting on the level and nature of Israel's adherence to both IHL and IHRL in its occupation of Palestinian territory.

A. Special Procedures

The special procedures of the Human Rights Council consist of independent human rights experts or groups of experts tasked to work on specific thematic or geographic areas. Their purpose is to report and advise on these respective areas, highlighting areas of non-compliance with IHRL and – where appropriate, IHL¹⁶⁸– norms and standards, and suggesting means of closing these compliance gaps. Since the previous reporting period, Israel has continued to refuse to cooperate with the special procedures framework. For instance, consideration of country visit requests submitted by various Special Rapporteurs during the reporting period reveals a pattern of non-cooperation and obfuscation.¹⁶⁹ This is particularly apparent in relation to the mandate of the UN Special Rapporteur assigned to assessing the human rights situation in the oPt. Lack of Israeli cooperation with this mandate has been manifested, in part, in denying mandate-holders access to the oPt and Israel. This has been the case for the incumbent mandate-holder, Michael Lynk, his predecessor, Makarim Wibisono – despite the issuing of assurances to the contrary prior to his selection in 2014¹⁷⁰– and previous mandate-holders.¹⁷¹

Indeed, the lack of access to the oPt and Israel's refusal to respond to oral and written requests for information prompted Mr Wibisono to resign from his position as Special Rapporteur for the oPt in January 2016.¹⁷² Reports issued by Mr Wibisono in his capacity as Special Rapporteur highlighted, *inter alia*, Israel's apparently deliberate targeting of civilians and civilian objects during 'Operation Protective Edge', excessive use of force by Israeli military and police personnel in the West Bank and the forcible transfer of Palestinian Bedouin communities.¹⁷³ From his initial appointment, Mr Wibisono faced criticism from Israel and resistance to his work on the basis of what the GoI regarded as his 'pro-Palestinian' views.¹⁷⁴ Similar obstructions have been

¹⁶⁸ IHRL and IHL enjoy a complementary and mutually interrelated relationship. In instances of armed conflict, including periods of belligerent occupation, IHL forms the dominant legal paradigm as *lex specialis*, though complemented and supplemented by the provisions of IHRL. See, for example: International Court of Justice, "Legal Consequences of the Construction of a Wall", Advisory Opinion of 9 July 2004, para. 106.

¹⁶⁹ UNOHCHR, "View Country visits of Special Procedures of the Human Rights Council since 1998", available at: http://spinternet.ohchr.org/_Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en&country=ISR.

¹⁷⁰ Falk, "Wibisono's Resignation as UN Special Rapporteur on Occupied Palestine", 6 January 2016, available at: <https://richardfalk.wordpress.com/tag/human-rights-council/>.

¹⁷¹ See: UN General Assembly, "Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk", A/HRC/25/67, 13 January 2014, para. 2, available at: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Pages/ListReports.aspx>.

¹⁷² Al Jazeera, "UN Special Rapporteur for occupied Palestine quits", 4 January 2016, available at: <http://www.aljazeera.com/news/2016/01/special-rapporteur-occupied-palestine-quits-160104141856801.html>.

¹⁷³ See: UN General Assembly, "Report of the Special Rapporteur in the situation of human rights in the Palestinian territories occupied since 1967, Makarim Wibisono", A/HRC/28/78, 22 January 2015, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/G1500827.pdf>.

¹⁷⁴ The Jerusalem Post, "UNHRC president replaces Falk with pro-Palestinian Indonesian diplomat", 8 May 2014, available at: <http://www.jpost.com/Diplomacy-and-Politics/UNHRC-President-replaces-Falk-with-pro-Palestinian-Indonesian-diplomat-351707>.

encountered by the present mandate-holder, Michael Lynk,¹⁷⁵ who was appointed in May 2016 and at the time of writing has not been permitted access to Israel or the oPt, nor have his requests to meet with the Permanent Representative of Israel to the United Nations been accepted.¹⁷⁶ As with a number of predecessors, Mr Lynk has also been the subject of criticism for alleged ‘pro-Palestinian’ bias.¹⁷⁷

In the first report issued by Mr Lynk in his capacity as mandate-holder, he confirmed the illegality of Israel’s settlement enterprise in the West Bank, including East Jerusalem, and the associated forcible transfer of Palestinian individuals and communities, and highlighted the closure of the Gaza Strip as amounting to collective punishment.¹⁷⁸ Further, the report considered the oPt as an “environment in which human rights are increasingly subverted by a prolonged occupation”.¹⁷⁹ Most notably, the Special Rapporteur considered Israel’s domination of Palestinian territory as a broad and destructive phenomenon, consisting of a range of severe violations of IHL and IHRL that have had grave and far-reaching implications for the occupied population, and for human rights defenders (some of whom, as members of the occupied population, also constitute protected persons for the purpose of international law). According to his report, the occupation:

“becomes more pervasive by the day with no end even remotely in sight, [and] has been profoundly corrosive of human rights and democratic values. How could it be otherwise? To perpetuate an alien rule over almost 5 million people, against their fervent wishes, inevitably requires the repression of rights, erosion of the rule of law, the abrogation of international commitments, the imposition of deeply discriminatory practices, the hollowing-out of well-accepted standards of military behaviour, subjugation of the humanity of the “other”, denial of trends that are plainly evident, the embrace of illiberal politics and [...] the scorning of those civil society organizations that raise uncomfortable truths about the disfigured state of human rights under occupation.”¹⁸⁰

The OP has also rejected requests issued by the Special Rapporteur on extrajudicial, summary or arbitrary executions to visit Israel,¹⁸¹ a rejection which is particularly concerning given the aforementioned accusations of unlawful killings of Palestinians by Israeli law enforcement officials. Although the State of Palestine issued a standing invitation to all special procedure mandate holders in 2014, Israel retains control over all legal access to the oPt. In denying access to the oPt by UN Special Procedures, the OP also severely and negatively impacts the ability of the PA to meet its own human rights treaty obligations.¹⁸² Meanwhile, communications sent to Israel by Special Procedures, on freedom of expression, freedom of peaceful assembly and association, human rights defenders, among others, continue to go unanswered.¹⁸³

B. Independent Commission of Inquiry on Gaza 2014

In response to the large-scale physical destruction and loss of life resulting from ‘Operation Protective Edge’, an independent, international commission of inquiry was established under UN Human Rights Council resolution A/HRC/RES/S-21/1. The Commission of Inquiry was issued a mandate to:

¹⁷⁵ The Jerusalem Post, “UNHRC nominates pro-Palestinian Canadian legal expert as special investigator on Israel”, 24 March 2016, available at: <http://www.jpost.com/Diplomacy-and-Politics/UNHRC-President-replaces-Falk-with-pro-Palestinian-Indonesian-diplomat-351707>.

¹⁷⁶ UN Secretary-General, “Note by the Secretary General: Situation of human rights in the Palestinian territories occupied since 1967”, A/72/43106, 23 October 2017, para. 2, available at: <http://www.ohchr.org/EN/HRBodies/SP/CountriesMandates/PS/Pages/SRPalestine.aspx>.

¹⁷⁷ The Jerusalem Post, “Suspend UN Rights Envoy for Undisclosed Tie to Palestinians, NGO Says”, 28 October 2016, available at: <http://www.jpost.com/Israel-News/UN-human-rights-investigators-false-statements-makes-appointment-illegal-says-NGO-471120>.

¹⁷⁸ See: UN General Assembly, “Report of the Special Rapporteur in the situation of human rights in the Palestinian territories occupied since 1967”, A/HRC/34/70, 13 April 2017, para. 18, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/G1500827.pdf>.

¹⁷⁹ *Ibid.*, para. 7.

¹⁸⁰ *Ibid.*, para. 62.

¹⁸¹ *Ibid.*

¹⁸² Palestine acceded to seven core international human rights treaties in May and July 2014. See: UNHCHR, “Press briefing notes on Palestine”, 2 May 2014, available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/o/262AC5B8C25B364585257CCF006C010D>.

¹⁸³ UNOHCHR, “Communications report of Special Procedures: Communications sent, 1 December 2015 to 29 February 2016; Replies received, 1 February to 30 April 2016,” A/HRC/32/53, 27 May 2016, available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/53.

“investigate all violations of international humanitarian law and international human rights law in the Occupied Palestinian Territory, including East Jerusalem, particularly in the occupied Gaza Strip, in the context of the military operations conducted since 13 June 2014, whether before, during or after, to establish the facts and circumstances of such violations and of the crimes perpetrated and to identify those responsible, to make recommendations, in particular on accountability measures, all with a view to avoiding and ending impunity and ensuring that those responsible are held accountable, and on ways and means to protect civilians against any further assaults [...]”.¹⁸⁴

The eventual report of the Commission of Inquiry reached a number of significant conclusions, including the identification of Israeli conduct which constituted *prima facie* war crimes; namely, apparent directing of attacks against civilians (which may also amount to wilful killings) or civilian objects,¹⁸⁵ or attacks which caused excessive civilian casualties or damage to civilian objects.¹⁸⁶ The Commission also observed that, in many incidents, “the weapons used, the timing of attacks, and the fact that the targets were located in densely populated areas indicate that the Israel Defense Forces may not have done everything feasible to avoid or limit civilian casualties.”¹⁸⁷

Of particular significance, however, were the conclusions of the Commission which suggested that serious violations of IHL were rooted in GoI policy. Specifically, the Commission noted that strikes which targeted civilians and civilian objects “may have constituted military tactics reflective of a broader policy, approved at least tacitly by decision-makers at the highest levels of the Government of Israel.”¹⁸⁸ In addition, the Commission raised “concerns that Israel’s interpretation of what constitutes a ‘military objective’ may be broader than the definition provided for by international humanitarian law.”¹⁸⁹

From the outset, the GoI refused to cooperate with the work of the Commission, including preventing its members from accessing the Gaza Strip or the West Bank. In response to the inquiry’s findings, Prime Minister Benjamin Netanyahu labelled the report “biased” and written “under a committee that does everything but protect human rights.”¹⁹⁰ Similarly, the MoFA asserted that the report failed “to recognize the profound difference between Israel’s moral behavior during Operation Protective Edge and the terror organizations it confronted”, and was “politically motivated and morally flawed from the outset.”¹⁹¹

C. Office of the High Commissioner for Human Rights (OHCHR) - Implementation Review

In March 2016, the Human Rights Council passed a resolution which called for the High Commissioner for Human Rights to undertake a comprehensive review of the implementation of the recommendations addressed to all parties since 2009 by the relevant UN human rights mechanisms.¹⁹² The resulting report, which built upon an earlier, more narrowly-focused report,¹⁹³ was presented at the 35th session of the Human Rights Council in June 2017 and

¹⁸⁴ UN General Assembly, “Ensuring respect for international law in the Occupied Palestinian Territory, including East Jerusalem”, A/HRC/RES/S-21/1, 24 July 2014, para. 13.

¹⁸⁵ Supra note 7, para. 38.

¹⁸⁶ Ibid., para. 42.

¹⁸⁷ Ibid., para. 41.

¹⁸⁸ Ibid., para. 44.

¹⁸⁹ Ibid., para. 45.

¹⁹⁰ The Guardian, “UN accuses Israel and Hamas of possible war crimes during 2014 Gaza conflict”, 22 June 2015, available at: <https://www.theguardian.com/world/2015/jun/22/un-accuses-israel-and-hamas-of-possible-war-crimes-during-2014-gaza-war>.

¹⁹¹ Israel Ministry of Foreign Affairs, “Israeli response to the UNHRC Commission of Inquiry”, 22 June 2015, available at: <http://mfa.gov.il/MFA/PressRoom/2015/Pages/Israeli-response-to-the-UNHRC-Commission-of-Inquiry-22-Jun-2015.aspx>.

¹⁹² UNHRC, “Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem”, A/HRC/31/L.38, 22 March 2016, para. 8, available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/L.38.

¹⁹³ UNGA, “Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S/91 and S-12/1; Addendum-Implementation of the recommendations contained in the reports of the independent commission of inquiry on the 2014 Gaza conflict and of the United Nations Fact-Finding Mission on the Gaza Conflict”, A/HRC/31/40/Add.1, 7 March 2016, available at: <http://undocs.org/A/HRC/31/40/Add.1>.

considered, inter alia, implementation of 551 recommendations issued to Israel – and pertaining to the oPt – by the Secretary-General, High Commissioner for Human Rights, fact-finding missions and commissions of inquiry, special procedures mechanisms and treaty bodies.¹⁹⁴ These recommendations were separated into seven themes: accountability and access to justice, international engagement, arrest and detention, settlements, freedom of movement, other civil and political rights, and economic, social and cultural rights.

The report observed that the overall rate of “full implementation” of recommendations issued to Israel stood at 0.4 percent. According to the same report, “lack of implementation correlates with Israel’s continued rejection of the applicable legal framework and of its obligations in the Occupied Palestinian Territory.”¹⁹⁵ This observation was coupled with the urging of Israel to seek technical assistance from the UN in implementing the recommendations it has received from the relevant bodies, including the creation of mechanisms at the national level which allow for reporting and following up on these recommendations. Further, the High Commissioner for Human Rights reminded “Israel of its obligations under the international human rights instruments that it has ratified, and under the Geneva Conventions, to which it is a High Contracting Party, and calls on Israel to fully comply with them in the Occupied Palestinian Territory.”¹⁹⁶

The report drew particular attention to critical structural deficits, which undermine the extent to which Israel can claim to uphold the rule of law. Specifically, it cited the State’s “repeated failure to comply with the calls for accountability made by the entire human rights system” and flagged the urgent need for Israel “to conduct prompt, impartial and independent investigations of all alleged violations of international human rights law and all allegations of international crimes.” Furthermore, the High Commissioner called upon Israel to “ensure that all victims have access to remedies and reparation.”¹⁹⁷

D. Universal Periodic Review

In late 2013, Israel opted to re-engage with the Universal Periodic Review (UPR) mechanism, having previously withheld its cooperation and failing to appear before the Working Group as scheduled.¹⁹⁸ Israel’s then permanent representative to the United Nations in Geneva announced Israel had “come to the UPR out of respect, but we demand full respect, full equality, and an end to the unfair treatment of Israel.”¹⁹⁹ The Working Group’s report was filed in March 2014, to which Israel responded by way of an addendum in the same month.²⁰⁰ In its response, Israel maintained the position that its obligations owed under human rights conventions did not apply to the oPt on the grounds of extraterritoriality.²⁰¹ In addition, Israel noted that, of the recommendations received from the Working Group, some could not be implemented due to “legal, policy, or other reasons”, while it “categorically denounce[d]” other recommendations as they were, according to Israel, “based on gross misrepresentation or perversion of facts.”²⁰² According to the addendum, “[c]ertain countries chose to include in their recommendations inaccurate assumptions, inflammatory rhetoric, and false or misleading factual claims”.²⁰³ Israel is next scheduled to appear before the UPR working group, for its third cycle, in January 2018.

¹⁹⁴ UNHRC, “Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem: comprehensive review on the status of recommendations addressed to all parties since 2009”, A/HRC/35/19, 12 June 2017.

¹⁹⁵ *Ibid.*, para. 60.

¹⁹⁶ *Ibid.*, para. 67.

¹⁹⁷ *Ibid.*, para. 69.

¹⁹⁸ UPR Info, “Israel absent from its own UPR”, 30 January 2013, available at: <http://www.upr-info.org/en/news/israel-absent-its-own-upr>.

¹⁹⁹ Israel Ministry of Foreign Affairs, “Israel’s Universal Periodic Review at the UN Human Rights Council”, 29 October 2013, available at: <http://mfa.gov.il/MFA/InternatlOrgs/Speeches/Pages/Israel-UPR-UN-Human-Rights-Council-29-Oct-2013.aspx>.

²⁰⁰ “Report of the Working Group on the Universal Periodic Review. Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review”, A/HRC/25/15/Add.1, 20 March 2014.

²⁰¹ *Ibid.*, para. 56. Israel squares this position with its ongoing exercise of de facto sovereign power in the West Bank on the basis of the assertion, previously addressed, that the territory is ‘disputed’, and subject to competing claims.

²⁰² *Ibid.*, para. 4(c).

²⁰³ *Ibid.*, para. 5.

2. United Nations Treaty Bodies

During the reporting period, UN Treaty Bodies continued to adopt strong language in relation to Israeli non-compliance with IHRL and IHL obligations, and reiterated many of the concerns and recommendations made during previous reporting periods.

A. Human Rights Committee

The Human Rights Committee monitors the implementation of the International Covenant on Civil and Political Rights (ICCPR), and in late 2014 undertook its fourth periodic review of Israel. The Committee's Concluding Observations were issued in November 2014, and highlighted a range of Israeli failings that have serious implications for the State's compliance with the rule of law. In particular, the Committee reiterated that the Israeli standpoint that the ICCPR is inapplicable to the oPt is contrary to the established views of treaty bodies, the jurisprudence of the ICJ and State practice. The Committee further noted with concern Israel's position that IHRL does not apply when IHL is applicable.²⁰⁴

The Conclusions also referenced a substantial number of other concerns, namely: alleged human rights violations committed during the State party's military operations in the Gaza strip,²⁰⁵ the lack of codification of the principles of equality and non-discrimination in the Israel's Basic Law: Human Dignity and Liberty,²⁰⁶ punitive demolitions, evictions and demolition orders based on discriminatory planning policies,²⁰⁷ and continued destruction of property, forced eviction and forcible transfer in the West Bank, including East Jerusalem.²⁰⁸ In addition, the Committee stated its concern at restrictions on Palestinian access to land, natural resources, water and sanitation, and failure to respect the freedom of movement for Palestinians throughout the oPt.²⁰⁹ The Committee also recommended the lifting of the ongoing blockade of the Gaza strip,²¹⁰ the taking of all measures to prevent incidents of excessive use of force during law enforcement operations,²¹¹ and to prevent violence perpetrated by settlers against Palestinians in the West Bank, including East Jerusalem.²¹²

The Committee restated its concerns at Israel's formal maintaining of a state of emergency²¹³ and the continued practice of administrative detention of Palestinians. Similarly, the Committee called for legislation governing counter-terrorism measures to be in compliance with Israel's obligations under the ICCPR, and flagged an absence of specific definitions of 'terrorism' and procedural safeguards in relevant legislation as a point of concern.²¹⁴ In addition, the Committee noted that juvenile justice reforms were not being effectively implemented, exposing Palestinian children to arbitrary arrest and detention, without full procedural rights.²¹⁵

The Committee was also critical regarding Israeli practice on freedom of opinion and expression, and freedom of association. Stating that the Boycott Law, which imposes mandatory disclosure of foreign funds received by any association or company, and lists as a civil offence a call for economic, cultural, or academic boycott of people or institutions for political reasons, will have a chilling effect.²¹⁶ The Committee therefore recommended that any such restrictions comply with the strict requirements of the ICCPR.

²⁰⁴ Human Rights Committee, "Concluding observations on the fourth periodic report of Israel", CCPR/C/ISR/CO/4, 21 November 2014, para. 5.

²⁰⁵ Ibid., para. 6.

²⁰⁶ Ibid., para. 7.

²⁰⁷ Ibid., para 9.

²⁰⁸ Ibid., para.17.

²⁰⁹ Ibid., para. 17.

²¹⁰ Ibid., para 12.

²¹¹ Ibid., para. 13.

²¹² Ibid., para. 16.

²¹³ Ibid., para. 10.

²¹⁴ Ibid., para. 11.

²¹⁵ Ibid., para. 19.

²¹⁶ Ibid., para. 22.

B. Committee Against Torture

The Committee Against Torture (CAT) monitors the implementation of the International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and in May 2016 undertook its fifth periodic review of Israel.

In its Concluding Observations, the Committee rejected Israel's claim of inapplicability of the Convention and IHRL generally to the oPt, and urged their application to all individuals under Israel's jurisdiction.²¹⁷ The Committee also noted with regret Israel's failure to implement previous recommendations pertaining to "basic safeguards for detainees, allegations of torture and ill-treatment by Israeli interrogators, and house demolitions."²¹⁸ In addition, the urgency of Israel incorporating a specific offense of torture into domestic law, coupled with punitive sanctions commensurate with its grave nature, was also highlighted.²¹⁹ This was especially in reference to allegations of torture and other cruel, inhuman or degrading treatment or punishment by personnel acting on behalf of the State, or cases of excessive use of force, including lethal force, against Palestinians in the West Bank, including East Jerusalem, and the Gaza strip, and at checkpoints.

The Committee noted with concern that existing legislation still provided for delays in detainees being permitted access to their legal representatives, and in the case of detainees accused of security-related offences, up to 21 days in Israel, and up to 60 days under the law applicable in the West Bank.²²⁰ The Committee also remained concerned at allegations that Israeli interrogators continued to employ interrogation methods contrary to the Convention, such as sleep deprivation and stress positions, and "regrets the lack of clarity about the use of restraints during interrogations."²²¹ The lack of information on available forms of redress for victims of torture and ill-treatment was also highlighted.²²²

Similar issues of torture and ill-treatment were also raised in the Human Rights Committee's concluding observations during its fourth periodic report of Israel, discussed above. Furthermore, Israeli practices, which may constitute torture and other cruel or degrading treatment or punishment, were addressed at length by the UN Committee on the Rights of the Child in July 2013.²²³

3. EU Statements, Reports and Policy Positions

In November 2015, in response to "a demand for clarity from consumers, economic operators and national authorities" on the subject of EU legislation as it applied to origin information of products from territories occupied by Israel, the EU announced the issuing of guidelines on the labelling of products originating from Israeli settlements.²²⁴ These guidelines were based on the EU's refusal to "recognise Israel's sovereignty over the territories occupied by Israel since June 1967, namely the Golan Heights, the Gaza Strip and the West Bank, including East Jerusalem," and its refusal to "consider them to be part of Israel's territory, irrespective of their legal status

²¹⁷ *Ibid.*, para. 8.

²¹⁸ Committee against Torture, "Concluding observations on the fifth periodic report of Israel", CAT/C/ISR/CO/5, 3 June 2016, para. 7.

²¹⁹ *Ibid.*, para. 13.

²²⁰ *Ibid.*, para. 16.

²²¹ *Ibid.*, para. 30.

²²² *Ibid.*, para. 48.

²²³ Committee on the Rights of the Child, "Concluding observations on the second to fourth periodic reports of Israel, adopted by the committee at its sixty-third session (27 May – 14 June 2013)", CRC/C/ISR/CO/2-4, 4 July 2013, para. 35-44.

²²⁴ European Commission, "Interpretative Notice on indication of origin of goods from the territories occupied by Israel since June 1967", 11 November 2015, para. 2, available at: https://eeas.europa.eu/sites/eeas/files/20151111_interpretative_notice_indication_of_origin_en.pdf.

under domestic Israeli law.”^{225 226} In response, Israel suspended elements of cooperation with the EU, deeming the issuing of guidelines a politically motivated and discriminatory step,²²⁷ while Yuval Steinitz, Israel’s minister for national infrastructure, energy and water resources, called the move an act of “disguised anti-Semitism”.²²⁸

The labelling guidelines represented a significant statement of intent from the EU. Prior to their issuing, the EU response to continued Israeli settlement activity in the oPt could be best described as a “constellation of ad-hoc initiatives” which “steadily crystallised into an unarticulated policy of ‘differentiation’”.²²⁹ This need to ‘differentiate’ in legal and practical terms between the sovereign territory of Israel and that of Palestinian territory occupied by Israel has gradually established itself as a central concern in informing EU policy relating to the oPt. In January 2016, for instance, the European Council, through its conclusions on the Middle East Peace Process, restated the commitment of the EU and members states to ensuring “continued, full and effective implementation of existing EU legislation and bilateral arrangements applicable to settlements products.”²³⁰ In particular, the conclusions noted the need to ensure that “all agreements between the State of Israel and the EU must unequivocally and explicitly indicate their inapplicability to the territories occupied by Israel in 1967.”²³¹ Further, in a May 2017 resolution, the European Parliament asserted “its strong support for the two-state solution to the Israeli-Palestinian conflict on the basis of the 1967 borders, with Jerusalem the capital of both states”.²³²

At the same time, the differentiation principle was being developed conceptually – though ultimately not in practice – in an EU Heads of Mission report on Jerusalem. This confidential report, completed in early 2016 and leaked to the media in July 2016, made a number of important recommendations, including pursuing the full and effective implementation of settlement labelling guidelines and developing additional EU guidelines on differentiating between Israeli sovereign territory and Israeli settlements in other relevant fields.²³³ These recommendations, however, were not implemented. The same report also noted “the polarisation and violence” witnessed in Jerusalem in 2015, and concluded that “at the root of the negative trends [...] is the occupation [...] and a long-standing policy of political, economic and social marginalisation of Palestinians in Jerusalem in violation of Israel’s obligations under international humanitarian law”.²³³

More widely, the aforementioned Conclusions of the European Council also laid out other significant policy positions, including the EU’s observation that a “fundamental change of policy by Israel with regard to the occupied Palestinian territory, particularly in Area C, will significantly increase economic opportunities, empower Palestinian institutions and enhance stability and security for both Israelis and Palestinians.”²³⁵ In addition, the Council reiterated its position that Israeli settlements are illegal under international law, and stated its strong opposition to practices

²²⁵ *Ibid.*, para. 1.

²²⁶ Article 41(2) of the International Law Commission’s 2001 Draft Articles on State Responsibility for Internationally Wrongful Acts provides that all serious breaches of peremptory norms, including the acquisition of territory through the use of force, give rise to a legal obligation of non-recognition by third parties.

²²⁷ The Guardian, “EU issues guidelines on labelling products from Israeli settlements”, 11 November 2015, available at: <https://www.theguardian.com/world/2015/nov/11/eu-sets-guidelines-on-labelling-products-from-israeli-settlements>.

²²⁸ The Times of Israel, “Top minister: Labeling settlement products is veiled anti-Semitism”, 10 November 2015, available at: <https://www.timesofisrael.com/top-minister-labeling-settlement-products-is-veiled-anti-semitism/>.

²²⁹ European Council on Foreign Relations, “EU Differentiation and Israeli Settlements”, July 2015, p. 4, available at: <http://www.ecfr.eu/page/-/EuDifferentiation-final3.pdf>.

²³⁰ European Council, “Council conclusions on the Middle East Peace Process”, 18 January 2016, para. 8, available at: <http://www.consilium.europa.eu/en/press/press-releases/2016/01/18/fac-conclusions-mepp/>.

²³¹ *Ibid.*, para. 8.

²³² European Parliament, “Resolution of 18 May 2017 on achieving the two-state solution in the Middle East”, 2016/2998(RSP), 18 May 2017, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0226+0+DOC+XML+Vo//EN>.

²³³ See: The Guardian, “Israeli settlements: EU fails to act on its diplomats’ report”, 12 July 2016, available at: <https://www.theguardian.com/world/2016/jul/12/israeli-settlements-eu-fails-to-act-on-its-diplomats-report>.

²³⁴ *Ibid.*

²³⁵ *Supra* note 230, para. 3.

and policies tied to the settlement project, including “building the separation barrier beyond the 1967 line, demolitions and confiscation – including of EU funded projects – evictions, forced transfers including of Bedouins, illegal outposts and restrictions of movement and access.”²³⁶

Of these issues, the demolition and confiscation of EU-funded structures by Israeli forces in Area C has grown in prominence. In its April 2017 report on the issue, the EU identified an “exceptional upsurge” in the targeting of EU funded structures.²³⁷ Between September 2016 and April 2017, 117 structures (including homes, animal shelters, latrines, water infrastructure and livelihood assets) funded by the EU or EU Member States – accounting for a value of €311,692 – were demolished or confiscated.²³⁸ This represented an increase in financial loss of 28.5 percent compared to the previous reporting period, with total financial losses resulting from such practices accounting for an average of one percent of ECHO’s total humanitarian aid budget for the West Bank between 2014 and 2016.²³⁹ In response, the European Court of Auditors has recommended that the European Commission and the EU’s diplomatic mechanisms adopt stronger measures in relation to Israel so as to prevent further demolitions and confiscations. In a February 2017 review, the Court of Auditors concluded that,

“The Commission/EEAS have not used their leverage via the framework of broader EU-Israeli dialogue and cooperation to reinforce their position and encourage Israel to cooperate constructively and tangibly with the EU on matters crucial to the effectiveness – as well as to the sound financial management - of EU/Pegase support to Palestine. The Commission’s/EEAS’ relevant input to the competent EU decision makers to facilitate the adoption of a more resolute stance vis-à-vis Israel is still missing, in spite of the fact that the EU’s efforts have remained fruitless for more than four years.”²⁴⁰

4. International Criminal Court

Palestine acceded to the Rome Statute of the International Criminal Court (ICC) on 2 January 2015. This created an additional avenue for the pursuit of justice and accountability for violations of international law in the oPt. The Rome Statute entered into force for the State of Palestine on 1 April 2015, making Palestine the 123rd State Party to the ICC.²⁴¹ On 1 January 2015, the Government of Palestine also lodged a declaration under article 12(3) of the Rome Statute, accepting on an *ad hoc* basis the ICC’s retroactive jurisdiction over alleged crimes committed “in the occupied Palestinian territory, including East Jerusalem, dating back to June 13, 2014.”²⁴² In accordance with the Regulations of the Office of the Prosecutor (OTP), and as a matter of practice, upon the receipt of an article 12(3) declaration the OTP opened a preliminary examination into the situation in Palestine on 16 January 2015.²⁴³

A preliminary examination is intended to examine available information and determine whether there is a “reasonable basis to proceed” to a formal investigation. Specifically, under Article 53(1) of the Rome Statute, the Prosecutor engages in an initial assessment and must consider issues of jurisdiction, admissibility and the interests of justice.²⁴⁴ According to the most recent update

²³⁶ Ibid., para. 7.

²³⁷ Office of the European Union Representative (West Bank and Gaza Strip, UNRWA), “Six-month Report on Demolitions and Confiscations of EU funded structures in Area C September 2016-February 2017”, 5 April 2017, p. 1, available at: https://eeas.europa.eu/sites/eeas/files/2017_six-months_report_on_demolitions_of_eu_funded_structures_in_area_c_september_16-february_17.pdf.

²³⁸ Ibid., p. 1.

²³⁹ Ibid., p. 1.

²⁴⁰ European Court of Auditors, “Follow-up of the Court’s Recommendations made in its Special Report on EU direct financial support to the Palestinian Authority, SR No 14/2013”, Ares(2017)877915, 17 February 2017, p. 21, available at: http://actalliance.eu/wp-content/uploads/2017/06/Follow_up_ECA_SR_14_2013_Palestine-OR-NEAR.pdf.

²⁴¹ ICC, “The State of Palestine accedes to the Rome Statute”, ICC-ASP-20150107-PR1082, 7 January 2015, available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0145a8233e14d2b585256cbf005af141/2e25f2d53f48e6ff85257dc700558d77?OpenDocument>.

²⁴² See: ICC, “The Prosecutor of the International Criminal Court, Fatou Bensouda, opens a preliminary examination of the situation in Palestine, ICC-OTP-20150116-PR1083”, 16 January 2015, available at: <https://www.icc-cpi.int/Pages/item.aspx?name=pr1083>.

²⁴³ Ibid.

²⁴⁴ Rome Statute of the International Criminal Court, Article 53(1)(a)-(c).

from the OTP – issued in November 2016 – “the Office is continuing to engage in a thorough factual and legal assessment of the information available” relating to the situation in Palestine as part of an assessment of subject-matter jurisdiction.²⁴⁵ To this end, the Office has adopted a particular focus on alleged war crimes and crimes against humanity perpetrated by all parties during ‘Operation Protective Edge, and international crimes relating to the presence of Israeli settlements in the West Bank.²⁴⁶ This includes the planning and authorisation of settlement expansions, new construction on existing settlements, the confiscation and appropriation of land, demolition of Palestinian property and eviction of residents and incentives and subsidies that encourage migration to settlements.

The OTP also acknowledged that they have received information regarding acts of violence committed against Palestinian communities by settlers. Aside from settlements, the OTP’s examination is also looking into the “ill-treatment of Palestinians arrested, detained and prosecuted in the Israeli military court system [...] including, for example, allegations of systematic and institutionalised ill-treatment of Palestinian children in relation to their arrest, interrogation, and detention for alleged security offences in the West Bank.”²⁴⁷ Information currently being reviewed by the OTP includes submissions from the PA and Palestinian human rights groups.²⁴⁸

The GoI condemned Palestine’s accession to the Rome Statute as an act of “diplomatic terrorism”,²⁴⁹ “a political, hypocritical and cynical manoeuvre”²⁵⁰ and argued that the ICC lacked jurisdiction primarily because “there is no Palestinian state according to international law.”²⁵¹ The GoI subsequently froze over \$127 million in tax revenues collected on behalf of the PA.²⁵² Later, in July 2015, the GoI announced it would open a dialogue with the OTP over the preliminary examination, but insisted that the purpose of this dialogue was limited to making clear Israel’s position that the ICC does not have the authority to hear Palestinian complaints on the subjects addressed.²⁵³ In February 2017, it was reported that the United States would implement a number of punitive measures against the PA should the latter seek to sue Israel in international courts, including withdrawing financial aid and placing the Palestinian Liberation Organization on the list of designated terrorist organisations.²⁵⁴

²⁴⁵ See: ICC, “Report on Preliminary Examination Activities 2016”, November 2016, para. 145, available at: https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE_ENG.pdf.

²⁴⁶ *Ibid.*, paras. 109-145.

²⁴⁷ *Ibid.*, para. 133.

²⁴⁸ See, for example: Haaretz, “Palestinian Authority Submits First Documents on Alleged Israeli War Crimes to ICC”, 25 June 2015, available at: <https://www.haaretz.com/israel-news/1.663045>; Al-Haq, “Palestinian Human Rights Organisations Submit Evidence to the ICC Prosecutor on Crimes Committed in West Bank”, 20 September 2014, available at: <http://www.alhaq.org/advocacy/targets/international-criminal-court-icc/1140-palestinian-human-rights-organisations-submit-evidence-to-the-icc-prosecutor-on-crimes-committed-in-west-bank>; BADIL, “BADIL delivers its first submission to the International Criminal Court”, 7 March 2016, available at: <https://www.badil.org/en/publication/press-releases/77-2016/4553-pr-en-070316-10.html>.

²⁴⁹ Ma’an News, “ICC delegation to visit occupied Palestinian territory in February”, 14 December 2015, available at: <https://www.maannews.com/Content.aspx?id=769329>.

²⁵⁰ *Ibid.*

²⁵¹ *Ibid.*

²⁵² The Times of Israel, “Israel freezes Palestinian funds in response to ICC bid”, 3 January 2015, available at: <https://www.timesofisrael.com/israel-freezes-palestinian-funds-after-icc-bid/>.

²⁵³ Haaretz, “Exclusive: Israel decides to open dialogue with ICC over Gaza Preliminary Examination”, 9 July 2015, available at: <http://www.haaretz.com/news/diplomacy-defense/.premium-1.665172>.

²⁵⁴ Haaretz, “Palestinian Officials Say U.S. Threatens ‘Severe Steps’ if Leaders Sue Israel in World Court”, 1 February 2017, available at: <https://www.haaretz.com/middle-east-news/palestinians/.premium-1.769034>.

Chapter 4: Israeli Domestic Accountability and Israeli Response to International Criticism

Meaningful accountability for wrongful acts attributable to State organs is a central requirement for satisfactory adherence to the rule of law, and the need for accountability becomes increasingly pronounced in the context of armed conflict, including Israel's occupation of Palestinian territory, where the vulnerability of civilian populations is substantially increased.

As this report has demonstrated, Israel's conduct in the course of its occupation of Palestinian territory falls far short of international standards, having become characterised by severe violations of international law, including breaches of peremptory norms. Also known as *jus cogens*, peremptory norms of international law are defined in Article 53 of the Vienna Convention on the Law of Treaties (1969) as norms accepted and recognised by the international community of States as a whole, from which no derogation is permitted. Although the list of norms which can be said to have achieved this status is disputed, it is widely accepted that the prohibition of acquisition of territory through use of force²⁵⁵ and the prohibition of denial of the right to self-determination both qualify.²⁵⁶

Far from allowing its actions to be subject to continual and effective scrutiny, the OP has instead made concerted efforts to create an environment in which its security apparatus and civilians can act with impunity. This has been achieved through the robust rejection of criticism issued by independent international bodies – married with attempts to actively undermine the functioning of these bodies – and the employment of inherently flawed internal investigative processes, which serve to protect those responsible for violations of IHL and IHRL rather than deliver justice for victims.

1. Israeli Response to Criticism from International Bodies

The GoI appears to have adopted as official policy an uncompromising, zero-sum approach to statements from international bodies that accuse the State of serious violations of international law, or which adopt a position contrary to the State's interests. Rather than rectify its conduct in accordance with international standards, the GoI, when confronted with such scenarios, seeks instead to attack the external institution concerned. Attacks in this instance typically consist of accusations of 'anti-Israel' bias or similarly political motivations.²⁵⁷ This is particularly apparent in relation to organs and agencies of the United Nations which, as previously outlined, during the period of review have levelled a range of severe criticisms and allegations at Israeli conduct in the course of the latter's occupation of Palestinian territory. As a result, Israeli-UN relations have seen severe decline during the period of review. Such decline has, at times, been reflected in open hostility from the GoI towards the UN, accompanied by Israeli assertions of an institutional anti-Israel agenda. Indeed, some commentators attribute Israel's appointment of the hard right-wing minister, Danny Danon, as Israel's UN ambassador to this breakdown in relations. In response to a September 2015 statement from the then Secretary-General that confirmed Israeli settlements as illegal and the occupation as "stifling and oppressive", Danon – an outspoken

²⁵⁵ General agreement as to the peremptory character of this obligation was reached at the Vienna Conference on the law of treaties in 1969, see Commentary of the Draft Articles on State Responsibility, Article 40, p. 112.

²⁵⁶ See, East Timor (Portugal v. Australia), Judgment, I.C.J. Reports 1995, p. 90, at p. 102, para. 29; see also A. Cassese, International Law (2nd ed.) (OUP, Oxford, 2005), p. 65; and M. N. Shaw, International Law (6th ed.) (CUP, Cambridge, 2008), p. 808.

²⁵⁷ The accuracy of such allegations can, however, be called into question on account of the consistency – in both focus and substance – of criticism levelled at Israel by a range of actors at the international level.

proponent of settlements and Israeli annexation of large areas of the West Bank²⁵⁸– labelled the statement “distorted” and demanded that the UN should apply greater focus to Palestinian incitement and terrorism.²⁵⁹

In January 2016, the Secretary-General again became the focus of severe Israeli criticism after making a public statement which linked Palestinian attacks on Israeli citizens to the prolonged occupation of Palestinian territory. “Palestinian frustration is growing under the weight of a half century of occupation and the paralysis of the peace process”, he claimed, and that “as oppressed peoples have demonstrated throughout the ages, it is human nature to react to occupation, which often serves as a potent incubator of hate and extremism.”²⁶⁰ In response, Prime Minister Benjamin Netanyahu accused the Secretary-General of “stoking terror”, and stated that the UN had “lost its neutrality and its moral force”.²⁶¹

In addition, during the period of review the GoI has publicly attacked the reputation of the UN generally over its dealings with Israel, as well as denouncing the actions of key organs of the organisation. For instance, during a 2015 address to the General Assembly, Benjamin Netanyahu accused the UN of “obsessive bashing of Israel”, “anti-Israel fanaticism” and “slandering of Israel as a threat to peace.”²⁶² In 2017 he went further, stating that “the epicenter of global anti-Semitism has been right here at the UN”.²⁶³ These accusations follow attacks directed at the Human Rights Council. For instance, following the Council’s adoption of the report of the Independent Commission of Inquiry on Gaza, Netanyahu claimed that the Council cared “little about the facts and less still about human rights.”²⁶⁴ Similarly, the Israeli Foreign Ministry declared that “the UN Human Rights Commission again proved today its irrelevance and detachment from reality”.²⁶⁵ In March 2017, Netanyahu claimed to have encouraged the Trump Administration to cease its membership of the Human Rights Council in response to what he perceived to be an anti-Israel bias.²⁶⁶

Lobbying and overt pressure of a similar nature appears to have, at times, proven effective; a glaring example being the annual report of the Secretary-General, submitted to the Security Council, which identifies armed forces and groups which have committed grave violations of children’s rights. In June 2015, the UN Special Representative of the Secretary-General, Leila Zerrougui, recommended that Israeli armed forces, along with Hamas, be included in the list for the killing and maiming of children and attacks directed at schools.²⁶⁷ For what is understood to be the first time, the Secretary-General rejected the Special Representative’s recommendation, having reportedly come under substantial pressure from Israel and the United States. The removal of Israel’s armed forces from the draft list came despite the UN Commission of Inquiry’s earlier report in April 2015, which found Israel responsible for strikes on UN schools and shelters in

²⁵⁸ The Jerusalem Post, “Danny Danon Appointment Shows What Netanyahu Thinks of UN”, 16 August 2015, available at: <http://www.jpost.com/Israel-News/Politics-And-Diplomacy/New-ambassador-to-UN-Danon-pledges-to-surprise-his-critics-412221>.

²⁵⁹ The Jerusalem Post, “Ban Ki-Moon: Netanyahu’s ‘Ethnic Cleansing Remarks’ are Outrageous”, 15 September 2016, available at: <http://www.jpost.com/Israel-News/Politics-And-Diplomacy/Ban-Ki-moon-Netanyahus-ethnic-cleansing-remarks-are-outrageous-467844>.

²⁶⁰ The Times of Israel, “Furious Netanyahu slams Ban Ki-moon for ‘stoking’ Palestinian terrorism”, 26 January 2016, available at: <https://www.timesofisrael.com/netanyahu-un-stoking-terror-while-palestinians-want-to-destroy-us/>.

²⁶¹ Ibid.

²⁶² The Times of Israel, “Full text of Netanyahu 2015 address to the UN General Assembly”, 1 October 2015, available at: <https://www.timesofisrael.com/full-text-of-netanyahu-2015-address-to-the-un-general-assembly/>.

²⁶³ Israel Ministry of Foreign Affairs, “PM Netanyahu addresses the United Nations General Assembly”, 19 September 2017, available at: <http://mfa.gov.il/MFA/PressRoom/2017/Pages/PM-Netanyahu-addresses-the-United-Nations-General-Assembly-19-September-2017.aspx>.

²⁶⁴ The Times of Israel, “Netanyahu: UNHRC cares nothing for human rights”, 3 July 2015, available at: <https://www.timesofisrael.com/netanyahu-unhrc-cares-nothing-for-human-rights/>.

²⁶⁵ Ibid.

²⁶⁶ The New Arab, “US and Israel to punish ‘biased’ UN human-rights council”, 3 March 2017, available at: <https://www.alaraby.co.uk/english/news/2017/3/3/us-and-israel-to-punish-biased-un-human-rights-council>.

²⁶⁷ Reuters, “U.N. report cites Israel crimes against children, no consensus on listing”, 6 June 2015, available at: <http://www.reuters.com/article/us-israel-palestinians-children-un-idUSKBN0OL2DZ20150605>.

Gaza.²⁶⁸ The Secretary-General's decision set a dangerous precedent and provided tacit approval for Israeli forces to continue to perpetrate violations against children.²⁶⁹

However, the period of review did also witness meaningful action from the UN Security Council in relation to Israel. This despite the former's reputation as a body from which Israel has historically enjoyed insulation from meaningful punitive measures on account of consistent exercise of the U.S veto. In December 2016 the United States abstained in a vote on Resolution 2334. In response to the resolution's subsequent passing – the text of which confirmed Israeli settlements as having no legal validity, mirroring the content of Security Council Resolution 446 of 1979²⁷⁰ – Israel summoned 10 foreign ambassadors for reprimand, suspended working relationships with 12 of the States who voted in favour of the resolution and pledged to curtail UN funding.²⁷¹ Israel's Ambassador to the U.S accused the Obama administration of being “behind this ganging up on Israel”.²⁷²

Yet, it is with the United Nations Educational, Scientific and Cultural Organization (UNESCO) that Israeli relations have been most strained during the period of review, with the subject of Palestine a consistent point of fracture. UNESCO was the first UN agency to accept full Palestinian membership, prompting Israel to freeze \$2m in annual payments to the organisation in 2011.²⁷³ Subsequently, the agency has become a regular focus of Israeli criticism. For example, in October 2016, Benjamin Netanyahu labelled UNESCO as a “theatre of the absurd” after a resolution was passed by the agency's World Heritage Committee, which omitted references to Jewish claims to the Haram al-Sharif/Temple Mount complex.²⁷⁴ In May 2017, UNESCO's executive committee passed a resolution, which, *inter alia*, rejected the legality of Israel's annexation of East Jerusalem and confirmed Israel's status as an OP in this section of the city. Netanyahu claimed this decision was a form of ‘harassment’ and cut an additional \$1m in Israeli UN funding, following a cut of \$2m the month previously in response to the passing of a Human Rights Council resolution on settlements.

In July 2017, the agency's World Heritage Committee passed a resolution recognising Hebron's Old City and the Ibrahimi Mosque/Tomb of the Patriarchs as Palestinian heritage sites, and designating these sites as ‘endangered’. Hebron is a town of roughly 215,000 Palestinian residents,²⁷⁵ and an estimated Israeli settler population of 800.²⁷⁶ Israel's Education Minister and the chairman of Israel's committee to UNESCO, Naftali Bennett, accused the agency of “denying history and distorting reality time after time to knowingly serve those who try to wipe the Jewish state off the map”.²⁷⁷ Defence Minister Avigdor Lieberman labeled UNESCO a “politically slanted organization, disgraceful and anti-Semitic, whose decisions are scandalous.”²⁷⁸

²⁶⁸ Defence for Children International Palestine, “UN shields Israel from accountability for atrocities against children”, 8 June 2015, available at http://www.dci-palestine.org/un_shields_israel_from_accountability_for_atrocities_against_children.

²⁶⁹ Indeed, this move was followed in 2016 by another decision - again foreshadowed by significant diplomatic pressure - not to add the Saudi Arabia-led military coalition to the list despite mounting civilian casualties in Yemen. See: Amnesty International, “UN: Shameful pandering to Saudi Arabia over children killed in Yemen conflict”, 7 June 2016, available at: <https://www.amnesty.org/en/latest/news/2016/06/un-shameful-pandering-to-saudi-arabia-over-children-killed-in-yemen-conflict/>.

²⁷⁰ UN Security Council, “Resolution 446 (1979)”, S/RES/446 (1979), 22 March 1979, available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/BA123CDED3EA84A5852560E50077C2DC>.

²⁷¹ The Times of Israel, “Netanyahu said to curtail working ties with Security Council nations”, 25 December 2016, available at: <https://www.timesofisrael.com/netanyahu-said-to-curtial-working-ties-with-security-council-nations/>.

²⁷² Haaretz, “Netanyahu on UN Settlement Vote: Israel Will Not Turn the Other Cheek”, 26 December 2016, available at: <https://www.haaretz.com/israel-news/1.761470>.

²⁷³ Haaretz, “Six Key Moments in Israel's Tumultuous Relationship With UNESCO”, 12 October 2017, available at: <https://www.haaretz.com/israel-news/1.816955>.

²⁷⁴ The Jerusalem Post, “Netanyahu: ‘Theatre of the Absurd Continues at UNESCO’”, 26 October 2016, available at: <http://www.jpost.com/Breaking-News/Netanyahu-Theater-of-the-absurd-continues-at-UNESCO-470914>.

²⁷⁵ Palestinian Central Bureau of Statistics. “Localities in Hebron Governorate by Type of Locality and Population Estimates, 2007-2016”. Available at: http://www.pcbs.gov.ps/Portals/_Rainbow/Documents/hebrn.htm.

²⁷⁶ The Guardian, “Inside Hebron's pressure cooker: the West Bank's most troubled city”, 14 November 2015, available at: <https://www.theguardian.com/world/2015/nov/14/hebron-west-bank-troubled-city-palestine-israel>.

²⁷⁷ Haaretz, “UNESCO Recognizes Hebron, Tomb of the Patriarchs as Palestinian Heritage Sites”, 7 July 2017, available at: <https://www.haaretz.com/israel-news/1.800138>.

²⁷⁸ *Ibid.*

In October 2017, Israel announced its intention to withdraw from UNESCO, hours after the United States had done so, alleging an “anti-Israel bias” on behalf of the agency.²⁷⁹ Shortly afterwards, Israel announced the first new batch of settlement housing units in Hebron for 15 years; a move believed to be a direct response to UNESCO’s listing of the Old City and Tomb of the Patriarchs as Palestinian heritage sites.²⁸⁰

2. Israeli Internal Investigative Mechanisms

Israel’s aggressive rejection of critical findings of external bodies concerning its conduct in the oPt is buttressed by its insistence that its own internal investigative mechanisms provide for full and effective accountability, as required under the rule of law. In a society respectful of the rule of law and the effective protection of human rights, it is of critical importance that judicial processes and associated mechanisms be independent and impartial,²⁸¹ yet the mere presence and functioning of such systems is not sufficient. For scrutiny to be effective, and meaningful accountability delivered, the implementation of the findings and recommendations of these mechanisms and processes must be faithfully and vigorously pursued.

As will be shown, in relation to the oPt, consideration of the efforts of the OP to assess its own conduct – including that of its military forces and commanders, as well as civilian leaders – against international legal standards suggests, at a minimum, that there exists an institutionalised resistance on behalf of Israel to ensure, inter alia, supremacy of law, and accountability to the law.

A. 2014 Gaza Conflict

Following the mass loss of life and physical destruction resulting from ‘Operation Protective Edge’ – the large-scale Israeli military offensive directed at the Gaza Strip during July and August 2014 – and the global attention that followed, two prominent reviews of the lawfulness of the parties’ conduct during the operation were initiated.

In June 2015, the Israeli MoFA released a public review of the actions of Israeli forces and Palestinian armed groups during ‘Operation Protective Edge’.²⁸² The stated intention of the report was to present “detailed factual and legal information regarding the intensive hostilities that took place from July 7 to August 26, 2014 between the State of Israel and Hamas and other terrorist organisations [during] Operation “Protective Edge”.”²⁸³ In effect, the report absolved Israeli forces, commanders and civilian officials of any wrongdoing, concluding that “no matter the context in which Israel conducts its military operations, the IDF respects its obligations under international law, including the Law of Armed Conflict.”²⁸⁴ The report also asserted – without providing supporting and independently verifiable evidence – that many casualties listed as civilians were in fact militants and that armed Palestinian factions inside the Gaza Strip had made use of human shields and launched attacks from the protection of urban environments and protected objects.²⁸⁵ The report further claimed that “[h]arm to the civilian population also

²⁷⁹ The Guardian, “UNESCO: Israel joins US in quitting UN heritage agency over ‘anti-Israel bias’”, 12 October 2017, available at: <https://www.theguardian.com/world/2017/oct/12/us-withdraw-unesco-december-united-nations>.

²⁸⁰ The Times of Israel, “For first time in 15 years, Israel okays new homes for Hebron settlers”, 16 October 2017, available at: <https://www.timesofisrael.com/for-first-time-in-15-years-israel-okays-new-homes-for-hebron-settlers/>.

²⁸¹ See: UNOHCHR, “Independence and Impartiality of Judges, Prosecutors and Lawyers”, Human Rights in Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers, Chapter. 4, p. 113-158, available at: <http://www.ohchr.org/Documents/Publications/training9chapter4en.pdf>.

²⁸² Israel Ministry of Foreign Affairs, “The 2014 Gaza Conflict, 7 July – 26 August 2014: Factual and Legal Aspects”, May 2015, available at: <http://mfa.gov.il/ProtectiveEdge/Documents/2014GazaConflictFullReport.pdf>.

²⁸³ Ibid., para. 1.

²⁸⁴ Ibid., para. 40.

²⁸⁵ Ibid., para. 8.

occurred as the result of unfortunate — yet lawful — incidental effects of legitimate military action in the vicinity of civilians and their surroundings, and as a result of the inescapable constraint of commanders not being infallible, intelligence not being perfect and technological systems sometimes failing.”²⁸⁶

As such, the findings of the MoFA report stood in stark contrast to those of the aforementioned Human Rights Council-mandated independent commission of inquiry, which flagged likely Israeli war crimes, and also raised the prospect that some of the very policies on which Israeli military action was based were incompatible with international law.

The MoFA report highlighted the Military Advocate General’s Corp (‘MAG’) as the primary internal mechanism for the investigation of alleged violations of international law by Israeli forces, and concluded that Israeli systems and processes for investigating allegations of war crimes were in-line with international standards, and subject to continual review. However, human rights groups have flagged a number of inherent flaws in the operation of the MAG, including a lack of impartiality, low numbers of criminal investigations initiated compared to the volume of complaints received and material discrepancies between the findings of the MAG and publically available evidence.²⁸⁷ In September 2014, B’Tselem announced its intention “not to assist the Military Advocate General Corps in any matter concerning such investigations [on the basis of] our experience with previous military actions in Gaza, which shows that investigations led by the MAG Corps do not promote accountability among persons responsible for such violations or reveal the truth.”²⁸⁸ The NGO separately concluded that, “the [MAG’s investigations of conduct during Operation Protective Edge] continue to serve as a façade intended to block international criticism rather than uncover the truth.”²⁸⁹

B. The Ciechanover Report

In January 2014, the GoI established the Ciechanover Commission, tasked with implementation of the recommendations of the Turkel Commission, which was itself established to review whether “the mechanism for examining and investigating complaints and claims raised regarding violations of the Law of Armed Conflict, as conducted in Israel generally [...] conforms with the obligations of the State of Israel under the rules of international law.”²⁹⁰ However, as has been highlighted by Israeli human rights groups,²⁹¹ the report of the Ciechanover Commission — released in August 2015 — contained a number of grave structural failings.

Primary among them was the failure to issue “instructions for the full implementation of the first two recommendations made by the Turkel Commission with respect to legislation that incorporates norms and standards of international law into Israeli law.”²⁹² Specifically, the Turkel Commission noted the absence of domestic Israeli legislation which allows for effective prosecution of war crimes. Instead, Israel relied upon provisions of its civilian penal code for this

²⁸⁶ Ibid., para. 8.

²⁸⁷ For a detailed consideration of apparent weaknesses in Israel’s investigation of alleged war crimes and crimes against humanity, see: maybe we can add also international bodies’ criticism along with Badil’s —this would also strengthen badil’s profile. BADIL, “No Safe Place: Crimes against Humanity and War Crimes Perpetrated by High-level Israeli Officials in the course of ‘Operation Protective Edge’”, February 2016, p. 96-99, available at: <https://www.badil.org/phocadownloadpap/badil-new/publications/research/in-focus/icc-submission-badil-feb.2016.pdf>

²⁸⁸ B’Tselem, “Re: Investigation of incidents that took place during recent military action in Gaza: July-August 2014”, 4 September 2014, available at: http://www.btselem.org/download/201400904_15390_letter_to_mag_corps_regarding_protective_edge_investigations_eng.pdf

²⁸⁹ B’Tselem, “ICC jurisdiction cannot be denied based on Israel’s façade of investigation”, 16 July 2015, available at: http://www.btselem.org/press_releases/20150715_israel_claims_regarding_icc_authority_unfounded

²⁹⁰ “Report of Team for the Review and Implementation of the Second Report of the Public Commission for the Examination of the Maritime Incident of May 31st 2010 Regarding Israel’s Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Law of Armed Conflict According to International Law”, August 2015, available at: <http://www.pmo.gov.il/Documents/ReportEng.pdf>.

²⁹¹ See: Yesh Din, “The Ciechanover Report — dodging the criminalization of war crimes and practical steps toward implementation”, 1 October 2015, available at: <http://files.yesh-din.org/userfiles/Ciechanover%20Eng.pdf>.

²⁹² Ibid., p. 2.

purpose. Accordingly, the Turkel Commission recommended that Israel enact – in accordance with the rules of IHL – domestic legislation enabling effective penal sanctions for war crimes.²⁹³ Despite this, the Ciechanover report limited its recommendation to an introduction of domestic legislation, which incorporated into Israeli law the crime of torture as well as crimes against humanity.

As noted by Yesh Din, such legislation would naturally preclude review of a range of war crimes commonly alleged to have been perpetrated by Israeli forces in the context of the occupation.²⁹⁴ Yesh Din also noted that for offences committed during combat, there existed no offences of equivalent nature and or gravity in the Israeli penal code.²⁹⁵ The Ciechanover report therefore inexplicably maintains an expansive accountability gap, which simultaneously fosters an environment of impunity for perpetrators of war crimes and deprives victims of an avenue for justice.

Further, in its second recommendation, the Turkel Commission called for the imposing of special responsibility on military commanders and civilian superiors for offences committed by their subordinates. However, the Ciechanover Commission deferred on this matter, concluding only that the question of ‘special responsibility’ would remain subject to examination by ‘relevant parties’ before being determined. As such, the present situation – in which no mechanisms exist for the imposition of criminal liability on military or civilian superiors for the acts of those who answer to them – is sustained.

More generally, a number of recommendations issued by the Ciechanover Commission are not in keeping with the Commission’s stated purpose: to review implementation of the Turkel recommendations, with a particular onus on providing suggested practical steps and processes for their realisation. To the contrary, in several instances the Ciechanover report fails to address specific logistical considerations pertinent to such realisation, including matters of funding, human resources and timetabling.²⁹⁶ In light of the above, and given the lengthy delay in the release of its final report, the Ciechanover Commission has been criticised as “set[ting] out to buy time, creat[ing] the false impression that the investigation and examination mechanism is undergoing improvements and continu[ing] to grant impunity to members of the security forces and civilian superiors who violate the laws of war under international law.”²⁹⁷ This is a strong indictment of Israel’s commitment to meaningful accountability, and – coupled with similar specific criticisms of internal investigations of Israeli conduct during Operations Cast Lead, Pillar of Defense²⁹⁸ and Protective Edge – is also of significance in complementarity assessments for the purpose of establishing jurisdiction of the International Criminal Court over alleged international crimes perpetrated by Israeli citizens.²⁹⁹

In summary, although the OP continues to assert that its mechanisms for ensuring accountability for wrongful conduct pertaining to the oPt are fully compliant with international standards, there exists a wealth of evidence to the contrary. In reality, allegations of severe violations of IHL and IHRL are rejected out-of-hand by the GoI, and the sources of such criticism attacked and undermined, while internal investigative processes are manifestly unfit for purpose; obscuring

²⁹³ The Public Commission to Examine the Maritime Incident of 31 May 2010, “Israel’s Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Laws of Armed Conflict According to International Law: Second Report”, February 2013, p. 365, available at: http://www.hamoked.org/files/2013/1157610_eng.pdf.

²⁹⁴ *Supra* note 291, p. 2.

²⁹⁵ *Ibid.*, p. 3.

²⁹⁶ *Ibid.*, p. 3-4.

²⁹⁷ *Ibid.*, p. 4.

²⁹⁸ B’Tselem, “Israeli authorities have proven they cannot investigate suspected violations of international humanitarian law by Israel in the Gaza Strip”, 5 September 2014, available at: http://www.btselem.org/accountability/20140905_failure_to_investigate.

²⁹⁹ Under the principle of complementarity, the ICC may only exercise jurisdiction where domestic legal systems fail to do so, including situation where domestic systems purport to act but are in fact unwilling or genuinely unable to do so. See: ICC, “Informal expert paper: The principle of complementarity in practice”, 2003, para. 1, available at: <https://www.icc-cpi.int/NR/rdonlyres/20BB4494-70F9-4698-8E30-907F631453ED/281984/complementarity.pdf>.

truth, denying justice to victims and creating a fertile environment for further violations. More generally, the wider importance of effective accountability in the context of Israel and Palestine has been asserted by the EU, which has noted that “compliance with international humanitarian law and international human rights law by states and non-state actors, including accountability, is a cornerstone for peace and security in the region.”³⁰⁰

³⁰⁰ European Council of the European Union, “Council conclusions on the Middle East Peace Process”, 20 July 2017, para. 2, available at: <http://www.consilium.europa.eu/en/press/press-releases/2015/07/20-fac-mepp-conclusions/>.

Conclusion

This report highlights that during the period 2014 to 2017, the conduct of the OP, in its administering of the oPt and in its treatment of the protected civilian population, fell consistently and grossly below that demanded by international law.

For instance, during the period of review Israel maintained its crippling blockade of the Gaza Strip and directed a large scale military assault at the enclave during which serious violations of international law were reportedly committed, resulting in mass civilian casualties and catastrophic and long-term damage to civilian infrastructure. In East Jerusalem, the OP leverages its illegal annexation to impose inherently discriminatory practices, which are altering the demographic composition of the city. In Area C, settlement expansion and its attendant violations of international law continue largely unchecked, while the West Bank generally has witnessed unlawful killings of members of the occupied population by the armed forces of the OP, coupled with measures of collective punishment. In addition, new legislative measures have been introduced to bolster the existing corpus of domestic Israeli law which furthers strategic State interests – in particular, the annexation of large sections of the oPt – at the expense of the fundamental rights of the occupied Palestinian population, both as individuals and as a recognised people. These violations have been documented at length by national and international human rights groups, as well as UN bodies and international organisations including the European Union, and cannot be reasonably contested.

However, rather than applying or accepting meaningful scrutiny of its actions relating to the oPt, the OP has instead vigorously pursued strategies which serve to shield its conduct from effective accountability. Specifically, the OP rejects the legal analysis and positions of authoritative bodies, including the UN Security Council, ICJ and a host of international human rights institutions, while simultaneously levelling accusations of political bias at these same bodies and their representatives, and seeking to undermine their functioning. Such means of attack are further combined with ‘defensive’ actions. These include the instigation of official commissions tasked with ‘legalising’ violations of international law and the systems which give rise to them, and the maintenance of internal investigative mechanisms which effectively insulate the OP’s military forces and civilian leaders from legal sanction. The result is pervasive impunity, creating an environment in which violations enjoy, at a minimum, the tacit acceptance of the State.

Recalling the definition of the rule of law adopted by this report – “a principle of governance in which all persons, institutions and entities [...] are accountable to laws that are consistent with international human rights and humanitarian norms and standards” – it must therefore be concluded that Israel has clearly, consistently and willingly failed to adhere to the letter or spirit of the rule of law in its occupation of Palestinian territory. Indeed, the conduct of the OP indicates an active contempt for norms enshrined in the rule of law, including supremacy of law, equality before the law, accountability to the law and fairness in the application of the law. To this end, such is the scope and scale of abuses attached to Israeli conduct in the oPt that there exists a growing body of comment that the occupation is itself unlawful.³⁰¹

Moreover, it should be noted that although some of the developments outlined in this report may be new, they merely represent a continuation and extension of a pre-existing phenomenon:

³⁰¹ See: UN General Assembly, “Situation of human rights in the Palestinian territories occupied since 1967”, A/72/43106, 23 October 2017; Tilley, V. (Ed), “Beyond Occupation: Apartheid, Colonialism & International Law in the Occupied Palestinian Territories”, Pluto Press, 2012.

a prolonged belligerent military occupation characterised by severe violations of international law. Indeed, placing the contemporary situation in the oPt into its appropriate historical context reveals an unerring trajectory of illegality, manifested in, *inter alia*, *de jure* and *de facto* annexation; racial discrimination; continuous expansion of Israel's settlement project; and the creation of a highly coercive environment leading to the forcible transfer of the occupied civilian population. This hardening illegality – bundled within which are breaches of peremptory norms of international law and grave breaches of the Geneva Conventions – coupled with the OP's institutionalised avoidance of accountability, demands a fundamental change in the exercise of power by third States.

What is urgently required is concerted political action that takes as its starting point a respect for international law, and the need to address and reverse the present unlawful situation in the oPt. The window of opportunity to achieve this, however, is closing, as the unlawful conduct of the OP steadily acquires characteristics of permanency, and 'facts on the ground' are established. At the time of writing, cessation of this conduct and reversal of its destructive impacts remains possible, but this can only be realised through immediate and effective action.

Accordingly, third States and relevant actors must realise their legal obligations and pursue all practical measures of ensuring Israel's full compliance with the rule of law in its governance of the oPt. Common Article 1 of the Geneva Conventions requires all High Contracting Parties to respect and ensure respect for the Conventions,³⁰² while breaches of peremptory norms of international law impose an obligation on third States to cooperate to bring to an end the breach through lawful means, as well as to refrain from recognizing the unlawful situation or rendering assistance to the offending State.³⁰³ Failure to meet these obligations is to render permanent the severe violations of international law and associated destructive impacts identified in this report, while also establishing a wider precedent to the effect that violations of this nature will be tolerated by the international community. As previously noted, peace and security in the region is dependent on compliance with IHL and IHRL by States and non-state actors, including delivery of meaningful accountability. The guarantee of such compliance must therefore represent a primary aim for all relevant actors.

³⁰² For detailed analysis on the practical implications of Common Article 1, see: ICRC, "Commentary of 2016 to First Geneva Convention, Article 1: Respect for the Convention", para. 4.

³⁰³ International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts, 2001, Article 41.

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