Advocating for Palestinian Rights in conformity with International Law

Guidelines

An outcome document of the conference
"Options and Strategies for the Palestinian People in International Law"

Birzeit University Institute of Law, May 2013

International law supports the Palestinian cause. It is essential that Palestinians are familiar with the rules of international law that are violated by Israel and the procedures that may be followed to enforce these rights. A greater awareness on the part of Palestinians of their rights is necessary to ensure that the Palestinian Authority and the PLO take full advantage of the mechanisms afforded by international law for the redress of Palestinian rights.

John Dugard, Professor of International Law, former UN Special Rapporteur on Human Rights in the OPT

International law, when integrated with broader popular resistance, can challenge the apartheid system that Israel has imposed on the Palestinian people since 1948. Unfortunately, international law is not self-executing, and Palestinian officialdom has been lax in exploiting it. Thus it falls to civil society to ensure that principles of international law and human rights are realized in Palestine today.

George Bisharat, Professor of Law, expert in criminal law

Despite Israel's defiant refusal to uphold its legal obligations toward the Palestinian people and the world, international law offers a litmus test of what is reasonable and permissible in relations between states and peoples, and for this reason alone its guidelines make crucial contributions to the Palestinian struggle for fundamental rights.

Richard Falk, Professor Emeritus of International Law, outgoing UN Special Rapporteur on Human Rights in the OPT

Advocating for Palestinian Rights in conformity with International Law: Guidelines

An outcome document of the conference "Law and Politics: Options and Strategies in International Law for the Palestinian People", Birzeit University Institute of Law, 8 -9 May 2013: http://lawcenter.birzeit.edu/userfiles/Public_Report_BZU_Conference_FINAL.pdf

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Advocating for Palestinian Rights in conformity with International Law

Guidelines

This guide is an outcome of the conference "Options and Strategies of International Law for the Palestinian People" held at the Birzeit University Institute of Law in May 2013.[1] It aims to help non-lawyers understand and apply international law to Israel's oppressive regime over the entire Palestinian people: those in the Occupied Palestinian Territory since 1967 (OPT), Palestinian citizens of Israel and the refugees since 1948. It explains briefly:

1) Why speaking only about "occupation" is not enough;
2) Why we should rather speak about **(settler) colonialism**, **population transfer (ethnic cleansing)** and **apartheid**, in addition to occupation;
3) How we can do so **in accordance with international law**; and,
4) Why colonialism, population transfer and apartheid, as legal frameworks, are **helpful for building pressure on third parties** to take action against Israel's oppressive regime.

1. Why "Occupation" alone is not good enough

Speaking about the "occupation" has some important advantages, mainly because:

- Occupation is defined by international humanitarian law (IHL) - i.e., the laws of war - as a **temporary** regime for maintaining public order in a territory seized during armed conflict, until that territory is returned to the sovereign;
- The rules of IHL (Hague Convention & Regulations of 1907; Fourth Geneva Convention of 1949) limit the powers of the temporary occupation regime and protect the occupied civilian population.

In the case of Palestine and the Palestinian people, "Occupation" alone, however, is insufficient because:

- Occupation exists only in the OPT, i.e. the 1967 occupied West Bank, including East Jerusalem, and the Gaza Strip. By talking exclusively about "the occupation", we **suggest that Israeli violations of Palestinian rights under international law are limited to the OPT**.
- Whereas Palestinians struggle to achieve their right to self-determination, **IHL doesn't provide rules for ending the occupation and is silent on the right to self-determination**.
- Under IHL, the occupying power may impose certain (proportional, temporary) limitations on the human rights of the occupied population on grounds of "military necessity" and "security". Calling Israel's 46-years-old control regime in the OPT simply "the occupation" is misleading: it **disregards the fact that Israel reinterprets and violates IHL for the purpose of taking permanent control of Palestinian land;** it even suggests that Israel's regime in the OPT may be lawful.

[1] For the full conference report in English, see:
http://lawcenter.birzeit.edu/userfiles/Public_Report_BZU_Conference_FINAL.pdf

2. Why Colonialism, Apartheid and Population Transfer/Ethnic Cleansing: 10 Good Reasons

(Settler) Colonialism, population transfer/ethnic cleansing and apartheid

(1) Capture the historical experience of the **entire** Palestinian people. They can be used to transcend the separation between "Israel and the OPT" and the fragmentation of the Palestinian people;

(2) Prevent distraction by the latest Israeli atrocity. They put the focus on the **core issues** and **root causes** which must be addressed and resolved;

(3) Resonate negatively worldwide, can **mobilize public opinion and political support** and result in **special legal responsibilities for all states,** in addition to their obligations under the Fourth Geneva Convention and other treaties (see section 4). As such, they strengthen initiatives for accountability, such as the BDS Campaign and efforts to bring those responsible to court. They can help gain support from formerly colonized nations in Africa, Latin America and elsewhere, whose political backing is urgently needed, for example, in the UN General Assembly for an ICJ advisory opinion, and for bringing a case to the ICC.

(Settler) Colonialism and apartheid

(4) Are defined as **racist *regimes* which are absolutely prohibited in their *entirety***. Under IHL in comparison, occupation *per se* is lawful, and an occupation regime may remain lawful even if certain policies and practices of the occupying power are illegal or constitute war crimes.

(Settler) colonialism

(5) Reasserts that the Palestinian cause is a cause of **freedom and self-determination**;

(6) Explains the aim and motivation of Israel's settlement enterprise in the OPT and exposes the fact that **Israel is not a "normal" occupying power,** but violates IHL for the purpose of exploiting and taking permanent control of occupied Palestinian land and its resources;

(7) Although colonialism, just like "occupation", is applicable only to the OPT in international law, reference to Israel's settler colonial founding history exposes the **systemic** elements of Israel's regime, which have been constants since 1948 and are common for states founded by settler colonial movements, i.e., ethnic cleansing and apartheid.

Apartheid and population transfer/ethnic cleansing

(8) Are legally applicable to the Israeli regime and practices on **both sides of the "green line", and back to 1948**;

(9) Put the spotlight on the **criminal** character of Israel's regime over the Palestinian people and on the **individual legal responsibility** of those involved (see section 4);

(10) Forced transfer (ethnic cleansing) of Palestinians is a systemic element of Israeli settler colonialism and **an inhumane act of apartheid**. It highlights the **legal right and claim of all Palestinian victims** – those in the OPT, citizens of Israel and the refugees – **to reparation**, i.e., return, housing and property restitution, compensation, satisfaction (guarantees of non-repetition, prosecution) and rehabilitation.[2]

[2] See, for example, UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005): http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/60/147

Table 1: Internationally recognized Israeli violations according to most authoritative sources (examples)

Violation	*Most authoritative sources*	*Body of law violated (as stated by the sources)*
Israel as the occupying power in the OPT		
Acquisition of territory by force	UNSC,[3] UNGA, ICJ	Customary international law, UN Charter
Population transfer (transfer of Israeli civilians into the OPT, forced transfer of Palestinians)	UNSC, UNGA, ICJ HRC/FFM-settlements	IHL (Geneva IV, Art. 49), war crime
Permanent changes in laws and institutions of the OPT that deprive Palestinians of Geneva IV protections	UNSC, UNGA, ICJ	IHL (Geneva IV, Art. 47)
Denial of right to self-determination	UNGA, ICJ	Customary international law, UN Charter, ICCPR
Indiscriminate/wanton killing of civilians; Destruction and expropriation of civilian, infrastructure and property without military necessity	UNGA/Goldstone Report ICJ	IHL (Hague Regulation 46, Geneva IV, Art. 53), war crimes
Systematic infringement against civil, political, social, economic and cultural rights (e.g. freedom of movement, right to adequate standard of living)	UNGA, ICJ HRC/FFM-settlements[4]	Human Rights treaties (ICCPR. ICESCR, ICERD, CRC)
Systematic/institutionalized discrimination; segregation and apartheid	HRC/FFM-settlements[5] UN human rights treaty committees: CERD,[6] CESCR, CRC UN Special Rapporteurs	IHL, HR-treaties (ICERD, Article 3; ICESCR, CRC), Customary international law, UN Charter
Colonialism	UN Special Rapporteurs	Customary international law, UN Charter
Israel, the State vis-à-vis its Palestinian citizens and refugees		
Systematic infringements against civil, political, social, economic and cultural rights (e.g. equality, return, citizenship, family and property rights, freedom of expression)	HR-treaty committees: CESCR, CERD, CRC	Human rights treaties (ICESCR, ICERD, CRC)
Forced displacement of Palestinians	HR-treaty committees: CESCR, CERD	Human rights treaties (ICESCR, ICERD)
Systematic/institutionalized discrimination, segregation and apartheid	HR-treaty committees: CERD,[7] CESCR[8]	Human rights treaties (ICERD, Article 3; ICESCR)

UNSC: UN Security Council; UNGA: UN General Assembly
ICJ: ICJ Advisory Opinion on the Wall, 2004
HRC: Human Rights Council
FFM-settlements: UN Fact Finding Mission on the Israeli settlements and impacts on human rights (2013)
ICCPR: International Covenant on Civil and Political Rights
CERD: Committee reviewing state performance under the Convention on the Elimination of Racial Discrimination (ICERD)
CESCR: Committee reviewing states under the International Covenant on Economic, Social and Cultural Rights (ICESCR)
CRC: Committee reviewing states under the Convention on the Rights of the Child (CRC)

[3] For example, UN Security Council Resolutions 298 (1971), 446 (1979), 452 (1979), 465 (1980), 467 (1980) and 478 (1980).
[4] http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/FFM/FFMSettlements.pdf
[5] Supra, para. 103 and 105.
[6] http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.ISR.CO.14-16.pdf
[7] Supra.
[8] http://www.refworld.org/publisher,CESCR,,ISR,3f6cb4367,0.html

3. How to Apply Colonialism, Population Transfer/Ethnic Cleansing and Apartheid in accordance with International Law

(Settler) Colonialism

General background

Today, colonialism, including settler colonialism, is absolutely prohibited. Colonialism, however, was not expressly prohibited by international law at the time Israel was established. The normative shift began only in the 1950s as result of anti-colonial liberation movements, and colonialism became expressly prohibited in 1960, when the UN adopted the Declaration on Granting Independence to Colonial Countries and Peoples. Since the prohibition does not apply retroactively, earlier colonial processes in which settler colonial societies had established themselves as nation-states were *de facto* immunized and normalized by UN-led decolonization. As a result, the dominant legal opinion is that the legal framework of colonialism is **not applicable *within*** the borders of existing states, even where founded through aggression, colonization, ethnic cleansing or genocide, such as the United States, Australia and Israel.

Legal definition

There is no international treaty defining colonialism. The main instruments of international law codifying colonialism are UN resolutions, especially the *Declaration on the Granting of Independence to Colonial Countries and Peoples* (UN General Assembly Resolution 1514 of 1960).[9] The Declaration affirms the right of all peoples to self-determination and condemns "colonialism in all its forms and manifestations". Based on the Declaration,

> the **right to self-determination** is the *right of all peoples to freely to determine, without external interference, their political status and to pursue their economic, social and cultural development.*
>
> **Colonialism** is defined as *the subjection of peoples to alien subjugation, domination and exploitation, [which] constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.*

Box-1:

When presenting your argument that Israel's regime in the OPT is settler colonialism, you should prove that:

1) The violations of international law committed by Israel in the OPT, such as those listed in Table 1, are **acts of colonialism.** The most relevant acts of colonialism are:[10]
   - Violation of the territorial integrity of the OPT, e.g.: Israeli acquisition of territory by force and the fragmentation of the OPT through the settlements, settler roads, the Wall, the annexation and

[9] UN General Assembly Resolution 2625 (XXV) of 24 October 1970, at: http://www.un.org/en/decolonization/declaration.shtml. The GA does not have legislative power, but its resolutions can be taken as evidence of customary international norms. Customary international law - what nations do in practice that other nations accept as lawful - is as binding as any other form of international law, such as that formed by treaties.

[10] See, Human Sciences Research Council of South Africa, "Occupation, Colonialism, Apartheid?"(2009). Executive summary at: http://www.alhaq.org/attachments/article/232/occupation-colonialism-apartheid-executive.pdf

closure of occupied East Jerusalem for Palestinians, the blockade of Gaza and the treatment of Gaza as a separate entity;

- Violation of Palestinian sovereignty over natural resources, for example, Israeli expropriation and exploitation of land and water;
- Integration of the OPT economy into the Israeli economy, e.g., Israeli measures (taxes, import-export restrictions, etc.) which have transformed the Palestinian economy into a dependent economy and a main consumer of Israeli goods;
- Denying Palestinians the right to freely express, develop and practice their culture, e.g.: the renaming in Hebrew of Palestinian sites and landmarks in the OPT; destruction/closure of cultural sites/institutions; repression of freedom of expression;
- Depriving Palestinians of the capacity for self-governance, e.g., through the permanent changes in the institutions, laws and administrative system in the OPT caused by the extension of Israeli civil law to the OPT (settlers and East Jerusalem), military orders/laws which oppress Palestinians and privilege the settlers, the closure/separation of Gaza and East Jerusalem, the closure of Palestinian institutions in East Jerusalem, etc.

2) The **systematic and deliberate manner** in which Israel carries out these acts of colonialism in the OPT today - and has carried out similar acts against Palestinians before 1967 and as part of its founding history:

- Mention Israeli military rule over Palestinians inside the "green line" (1948 – 1966) and the establishment of an Israeli military government for the OPT already in 1964;[11]
- Make reference to Israeli laws, official statements, mandates of Zionist/Israeli institutions and historical documents which expose: the **intent of colonization**, e.g. the "unification of Jerusalem" (annexation of East Jerusalem); the incorporation into Israeli law of the Zionist claim of sovereignty over the entire area of British Mandate Palestine;[12] statements illustrating the intention to annex the "settlement blocs"; the self-definition of the Zionist movement as colonizing force (Palestine Jewish Colonization Agency/PJCA, 1924 - 1957), and the **racist official Israeli ideology** (Zionism) that denies a right of the indigenous Palestinian people to its country.

Population Transfer, "Ethnic Cleansing"

General background

Historically, population transfer was accepted in international law and often recommended as a means of resolving ethnic conflicts and tensions involving national minorities, including in the aftermath of both world wars. However, **it can be argued that by the time of Israel's first massive ethnic cleansing operation in 1948, states already considered population transfer to be a serious violation and a crime under customary international law**, because the Charter of the Nuremberg International Military Tribunal (1945) listed deportation of civilians as a war crime and crime against humanity, and some Nazi criminals were prosecuted on this basis. Subsequently, certain acts of population transfer were also prohibited and criminalized under the Fourth Geneva Convention (1949) and the Rome Statute of the ICC (2002), and prosecuted, among others, by the International Criminal Tribunal for the Former Yugoslavia (ICTY).

[11] Tom Segev, *1967. Israel, the War, and the Year that Transformed the Middle East;* Metropolitan Books, 2007, p. 458.
[12] See, Area of Jurisdiction and Powers Ordinance, No. 29 of 5708-1948, at: http://israellawresourcecenter.org/israellaws/fulltext/areajurisdictionpowersord.htm. This law is still valid, although an amendment of another law enacted by the Knesset on 27June 1967 (Section 11B of the Law and Administration Ordinance) gave the government a choice whether or not to incorporate the 1967 occupied areas into the state.

Legal definition

The most comprehensive and widely used legal definition of the serious violation and crime of **"population transfer"** is provided in a UN report of 1993:

> *the 'systematic, coercive and deliberate … movement of population into or out of an area … with the effect or purpose of altering the demographic composition of a territory in accordance with policy objectives or prevailing ideology, particularly when that ideology or policy asserts the dominance of a certain group over another. The objective of population transfer can involve the acquisition or control of territory, military conquest or exploitation of an indigenous population or its resources.'*[13]

International treaties (Fourth Geneva Convention, Rome Statute of the ICC), however, do not define and criminalize population transfer in this comprehensive form. They rather define **certain acts of population transfer** as international crimes (see below). **"Ethnic cleansing" does not have a clear legal definition and is not a separate, stand-alone crime in international law.** The term has been used varyingly to designate population transfer in its broad and comprehensive meaning or certain criminal acts related to population transfer and defined in these treaties.[14]

Under the Fourth Geneva Convention and the Rome Statute of the ICC, the following are defined as **war crimes** in a **situation of international armed conflict**, i.e., in the OPT:

- *Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country*, except of temporary evacuation on grounds of safety or imperative military necessity (Fourth Geneva Convention, Article 49(1)), and, *unlawful deportation or transfer or unlawful confinement* (Rome Statute, Article 8.2 (a) (vii));
- *Transfer of the civilian population of the occupying power into occupied territory*, i.e. settler implantation (Fourth Geneva Convention, Article 49(6), Rome Statute, Article 8.2 (b)(viii));
- *A large number of additional grave breaches of the Fourth Geneva Convention (Art. 147) and war crimes which may also result in forcible displacement* during an international armed conflict (e.g., illegal destruction/confiscation of property) are listed in the Rome Statute, Article 8.2.[15]

In a situation where there is **no international armed conflict** (i.e., Israel pre-1967), the following are defined as **crimes against humanity**:

- *Deportation or forcible transfer of population*, meaning the "forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law" (Rome Statute, Article 7.1 (d) and 7.2 (d)). The rules for permitted vs. prohibited forced displacement are summarized in the *Guiding Principles on Internal Displacement* (Principles 5 – 9).[16]

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[13] 'The human rights dimensions of population transfer, including the implantation of settlers: Preliminary report prepared by Mr. A.S. Al-Khasawneh and Mr. R. Hatano', UN Doc. E/CN.4/Sub.2/1993/17, 6 July 1993, para. 15, 17.

[14] Max Planck Encyclopedia of Public International Law: http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e789?rskey=oRAKSW&result=1&prd=EPIL

[15] http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

[16] http://www.idpguidingprinciples.org/ Forced displacement is **arbitrary and always prohibited when**: (a) based on policies of apartheid, ethnic cleansing or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population; (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand; (c) In cases of large-scale development projects, which are not justified by

- *A list of additional crimes against humanity which may also result in forcible displacement* is provided in the Rome Statute, Article 7.1 and 7.2.

Application to Israel

In the historical context of Israeli settler colonialism, population transfer/ethnic cleansing stand for the dispossession and forced transfer of indigenous Palestinians and the implantation of Jewish settlers that have facilitated the process of colonization. **Israeli violations and crimes of population transfer after 1967 have been internationally recognized - especially but not only in the OPT (see Table 1) – but awareness of this fact has remained limited.**

Box-2:

When presenting your argument that Israel - with its current acts of colonialism (Box-1) and its history of settler colonialism - **is carrying out population transfer/ethnic cleansing, you should prove:**

1) That Israel is **changing the status and demographic composition** of (certain areas) of the country on both sides of the "green line".

In the OPT through:

- *transfer of Israeli civilians (settlers) into the OPT* (Fourth Geneva Convention, Article 49(6); Rome Statute, Art. 8.2 (b)(viii), and,
- *unlawful transfer/deportation/confinement of Palestinians* (Fourth Geneva Convention, Article 49(1); (Rome Statute, Art. 8.2. (a) (vii). This requires that we show that common Israeli practices (house demolitions/evictions, confiscation/denial of access to land and water, denial of freedom of movement/residency/family unity, excessive/indiscriminate armed force, etc.) are discriminatory, violate IHL and/or human rights law **and result in the forcible displacement** of Palestinians in/from certain areas for the benefit of Jewish settlers.

Inside the "green line" through:

- *unlawful deportation/forcible transfer of Palestinian citizens* (Rome Statute, Art. 7.2 (d). This requires that we show that the common Israeli practices (inadequate services, land confiscation, home demolitions, non-recognition of existing communities, forced resettlement, etc.) are discriminatory, violate human rights **and cause forcible displacement** for the benefit of Israel's Jewish population.[17]

2) **The systematic and gross character of Israeli population transfer**, i.e., the widespread use of the above practices, past and present and on both sides of the 'green line'); the dramatic scope of demographic change affected; the large number of Palestinian victims, including the refugees.

3) **The element of intent**, i.e., Israeli laws, official plans and declared policies adopted (pre-48 until today) for the stated purpose of removing Palestinians, preventing return of displaced Palestinians (including IDPs, 48 and 67 refugees), regulating the demographic composition along racial lines and ensuring a majority of Jewish population (e.g., occupied East Jerusalem, Galilee, Naqab); the racist official Israeli ideology and policy objective of Jewish domination in "Eretz Israel" (Israel and the OPT).

compelling and overriding public interests; (d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and (e) when it is used as a collective punishment (Principle 5.2).

[17] See, for example, the "Prawer Plan": http://adalah.org/eng/?mod=articles&ID=1589

Apartheid

General Background

Apartheid is a system of institutionalized racial discrimination and domination, typically arising in a settler colonial context. Unlike forced population transfer which can be carried out by state and non-state actors, apartheid is a system of discrimination which can **only be practiced by states**. As a severe form of racial discrimination, apartheid has been prohibited under customary law at least since the end of WWII. Subsequently, "segregation and apartheid" became expressly prohibited by the Convention on the Elimination of Racial Discrimination (1965, Article 3), and apartheid was criminalized – as a crime against humanity - by the Apartheid Convention (1973) and the Rome Statute of the ICC (2002). As illustrated by the example of the South African apartheid regime in Namibia, apartheid can apply **within and outside the sovereign territory of a state**, e.g. in Israel and the OPT. Moreover, **apartheid does not necessarily end with a "one-state solution" in the entire territory that was controlled by an apartheid system.** This is also illustrated by the example of Namibia, whose people achieved self-determination through independence as a result of their struggle against the South African apartheid regime that had controlled and colonized their country. **The solution to apartheid is ending institutionalized racial discrimination in order to allow exercise of the full set of human rights by the oppressed group, including the right to self-determination of oppressed peoples.**

Legal definition

Although derived from the particular experience in South Africa, apartheid does **not** require that the conditions are the same as in South Africa. Apartheid has a **legal definition which is universally applicable**. The crime of apartheid is defined by two international treaties in similar and non-exclusive terms.

In the Apartheid Convention (1973), Article II:[18]

> *Policies and practices of racial segregation and discrimination similar to those practised in southern Africa, i.e., inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over another racial group of persons and systematically oppressing them.*
>
> Inhuman acts are defined as:
>
> - Denial of the right to life and liberty of person (murder, torture, illegal arrest/detention)
> - Deliberate imposition of living conditions calculated to cause physical destruction in whole or in part
> - Legislative or other measures calculated to prevent participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of the oppressed group (denial of basic human rights and freedoms, including the right to return to their country)
> - Any measures designed to divide the population along racial lines (e.g., reserves, ghettos, prohibition of mixed marriages, expropriation of land)
> - Exploitation of labour

[18] http://treaties.un.org/doc/Publication/UNTS/Volume%201015/volume-1015-I-14861-English.pdf

- Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.

In the Rome Statute of the ICC, Article 7.2 (h):

Inhumane acts of a character similar to those referred to in paragraph 1 (see below)*, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime*.

Among the inhumane acts listed in Article 7, paragraph 1, are:

- Murder (unlawful killing)
- **Deportation or forcible transfer of population**
- Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law
- Torture
- Persecution, i.e., systematic denial of fundamental human rights and freedoms because of affiliation with a particular racial group
- Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Application to Israel

The apartheid framework is applicable to Israel, because **Palestinians and Jewish Israelis are "racial groups" in the broad** (sociological rather than biological) **meaning of this term in international law** which includes elements of common national/ethnic origin, shared history and experience, self-identification as a distinct group as well as external perception.[19] Since 1991, when the "Zionism = racism resolution" was revoked by the UN,[20] the entire official international community has been reluctant to address Israel's institutionalized racial discrimination/apartheid against Palestinians, and the ICJ Advisory Opinion (2004) did not examine racial discrimination. More recently, however, substantial findings on systematic discrimination, segregation and apartheid on both sides of the "green line" have been issued, among others, by the UN Committee on the Elimination of Racial Discrimination and the Fact Finding Mission on the Israeli settlements (see Table 1).

Based on the legal definition of apartheid (see above, Rome Statute), the Israeli policy of forced population transfer (ethnic cleansing) can be incorporated into this framework as an inhumane act of apartheid. Historically, Israeli apartheid can, therefore, be conceptualized as a movement of settler colonialism whose racist policies of ethnic cleansing became "institutionalized", i.e. transformed into the law and institutions of the State of Israel. **Contemporary Israeli apartheid is best defined as the institutionalized regime of racial discrimination and domination whereby Israel, as State and Occupying Power, systematically privileges Jews, oppresses the entire Palestinian people and colonizes the OPT, with the intent of maintaining and consolidating this regime in the entire territory of pre-1948 Palestine. Population transfer/ethnic cleansing is an inhumane act of oppression and a pillar of Israeli apartheid.**

[19] See, for example, *Russell Tribunal on Palestine*, Full Findings of the Capetown Session, para. 5.11, 5.12, 5.18 – 5.20, at: http://www.russelltribunalonpalestine.com/en/sessions/south-africa/south-africa-session-%E2%80%94-full-findings

[20] UN General Assembly Resolution 3379 (1975) revoked in UN General Assembly Resolution 46/86 (1991).

Box-3:

When presenting your argument that Israel, as State and Occupying Power, is a regime of <u>apartheid</u> that oppresses the entire Palestinian people and colonizes the OPT, you should prove that:

1) Israel's system of discrimination, oppression and domination over Palestinians is **institutionalized, i.e.: legislated into Israeli law and mandates of Zionist organizations that perform public functions** (Jewish Agency, World Zionist Organizations and affiliates, such as the JNF). Examples concerning Israeli law are: the absence of a firmly established (quasi-constitutional) right to equality in Israeli law; Israeli laws which establish superior status, rights and services for "Jewish nationals and citizens", sever the legal ties of Palestinian refugees to their country and prevent their return, and provide inferior status, rights and services for Palestinians who are classified merely as "citizens"; laws used to "nationalize" (i.e., expropriate for Jewish "nationals") the land of indigenous Palestinians.[21]
   With regard to the OPT, you should explain that Israeli military orders have been modeled to match these discriminatory laws, and that discrimination is institutionalized, in addition, through the application of the discriminatory dual legal system in the OPT (domestic Israeli law for Jewish settlers, military rule for Palestinians).
2) Israel oppresses Palestinians through **specific inhumane acts of apartheid** which are prohibited by international law but applied **systematically** (widely and across time, affecting a large number of Palestinians and causing serious injury), for example:
   - **Forced population transfer**, including deportation/forcible transfer/confinement of Palestinians on both sides of the "green line", as well as transfer of Israeli civilians (settlers) into the OPT (see Box-2);
   - **Murder, torture, unlawful imprisonment and other severe deprivation of physical liberty,** e.g., through indiscriminate/deliberate use of armed force against civilians (Gaza), extrajudicial killings, mass arrests, collective punishment, administrative detention, etc.
   - **Systematic deprivation of fundamental human rights,** including the right of return of the refugees, through **discriminatory laws**, **racial segregation, expropriation/destruction of Palestinian property** (on both sides of the "green line") and **acts of colonialism** (in the OPT, see Box-1), preventing development, political participation and self-determination of Palestinians as a people.
3) Israel commits these inhumane acts with the **intention of maintaining and consolidating its discriminatory regime** in the entire territory of pre-1948 Palestine. You need to refer to official Israeli plans/policy statements which affirm that a specific inhumane act serves, e.g., to "strengthen the Jewish/weaken the Palestinian presence/claims in the country/area", "protect Israel as the State of Jewish people", or "prevent Palestinian claims/resistance/a Palestinian majority" (see also the examples for "intent" in Box-1 and Box-2).

[21] The Law of Return (1950), the Israeli Citizenship Law (1952), the World Zionist Organization-Jewish Agency "Status" Law (1952), the Absentee Property Law (1950), and a large number of subsequent laws. See: http://adalah.org/eng/Israeli-Discriminatory-Law-Database

4. How Does this Analysis Help Build Pressure on 3rd Parties?

Under IHL, States, signatories to the Fourth Geneva Convention have a legal obligation to ensure Israel's respect of the Convention in the OPT. The combination of the legal frameworks of occupation, (settler) colonialism, population transfer/ethnic cleansing and apartheid increases the scope of responsibility of all states and individuals.

The rules of international law prohibiting colonialism, population transfer and apartheid are binding for the entire international community and must be respected by all states. The same applies to the prohibition of acquisition of territory by force and the right of self-determination of the Palestinian people found to be violated by Israel in the ICJ Advisory Opinion of 2004 (see Table-1).

Israel, the state directly responsible for violation of these universally binding norms, must not only perform its obligations under relevant international treaties,[22] but has the additional obligations to,
(1) cease the violation, and,
(2) provide full reparation to the Palestinian victims.

All states and inter-state organizations faced with these serious Israeli violations have two duties in addition to their obligations under specific treaties:
(1) to cooperate to bring to an end these serious Israeli violations, and,
(2) not to recognise as lawful the illegal situation created by Israel, nor render aid or assistance in maintaining that situation.[23]

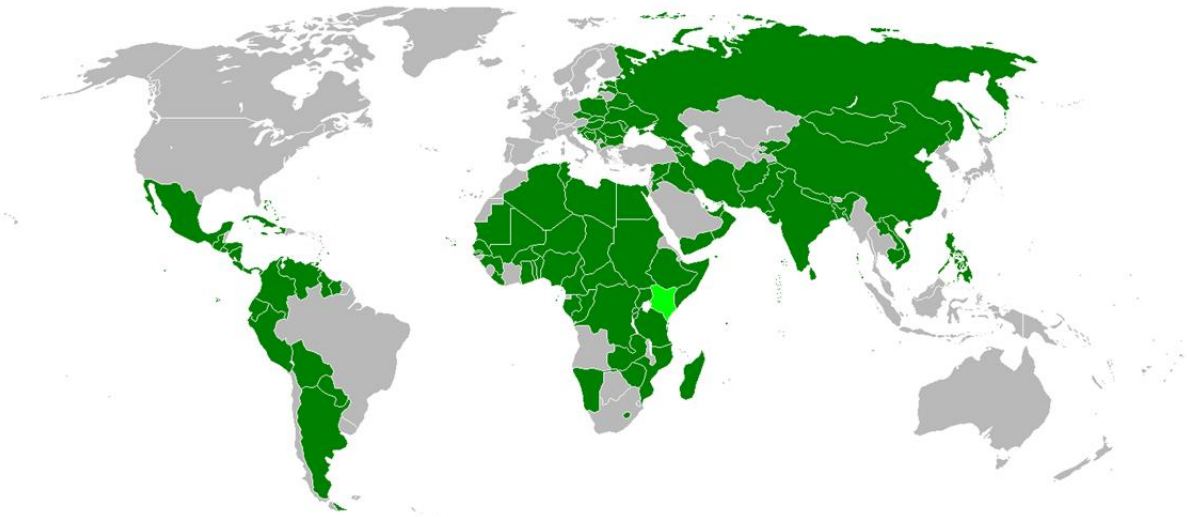
Private entities, including business companies, must respect international humanitarian and human rights law, abstain from/terminate involvement in these serious Israeli violations, and are legally, including criminally, liable (via their representatives, CEOs) if they don't do so.[24]

All states, in particular the parties to the Rome Statute of the ICC and other **treaties requiring universal jurisdiction of international crimes**, such as the International Convention against Torture (CAT)[25] and the Apartheid Convention, have an obligation to **suppress Israeli war crimes and crimes against humanity**, such as apartheid and acts of population transfer, and must ensure that **responsible individuals are brought to justice**.

States that have ratified the **Apartheid Convention** have a legal responsibility under the treaty, for example, to: (i) to adopt legislative or other measures necessary to suppress or prevent any encouragement of the crime of apartheid and similar segregationist policies or their manifestations, and to investigate, prosecute and punish those responsible irrespective of where the crime was committed or the nationality of the person charged (Article IV); and, (ii) to co-operate in the implementation of decisions adopted by the UN Security Council or other competent organs of the

[22] Israel is a party to the Fourth Geneva Convention, all major human rights conventions, but not the Apartheid Convention and Rome Statute of the ICC.
[23] For more detail, see: http://www.alhaq.org/advocacy/topics/settlements-and-settler-violence/603-legal-memorandum-on-state-responsibility-in-relation-to-israels-illegal-settlement-enterprise-
[24] See for example, FFM/Israeli settlements, para. 117. For an overview of business obligations under IHL and International human rights law, see the *UN Guiding Principles on Business and Human Rights*: http://www.business-humanrights.org/UNGuidingPrinciplesPortal/Home
[25] Convention Against Torture and other cruel, inhuman or degrading treatment or punishment; adopted by the UN General Assembly on 10 December 1984: http://untreaty.un.org/cod/avl/ha/catcidtp/catcidtp.html

United Nations with a view to achieving the purposes of the Convention (Article VI). Any State Party to the Convention may, moreover, call upon any competent UN organ to take such action under the UN Charter as it considers appropriate for the prevention and suppression of the crime of apartheid (Article VIII).



Countries in dark green are parties to the Apartheid Convention

<u>For further reading</u> (in English):

United against Apartheid, Colonialism and Occupation – Dignity and Justice for the Palestinian People, Palestinian civil society's strategic position paper for the Durban Review Conference
BDS National Committee, 2008, at:
http://bdsmovement.net/files/English-BNC_Position_Paper-Durban_Review.pdf

Applicability of the Crime of Apartheid to Israel, Karin Mac Allister, in al Majdal (summer 2008), BADIL
http://www.badil.org/en/component/k2/item/72-applicability-of-the-crime-of-apartheid-to-israel

Occupation, Colonialism, Apartheid? Human Sciences Research Council of South Africa, 2009; Executive summary at: http://www.alhaq.org/attachments/article/232/occupation-colonialism-apartheid-executive.pdf

Russell Tribunal on Palestine, Capetown Session on Israeli Apartheid (2012). Full findings at:
http://www.russelltribunalonpalestine.com/en/sessions/south-africa/south-africa-session-%E2%80%94-full-findings

Adalah database of discriminatory Israeli laws: http://adalah.org/eng/Israeli-Discriminatory-Law-Database

International law supports the Palestinian cause. It is essential that Palestinians are familiar with the rules of international law that are violated by Israel and the procedures that may be followed to enforce these rights. A greater awareness on the part of Palestinians of their rights is necessary to ensure that the Palestinian Authority and the PLO take full advantage of the mechanisms afforded by international law for the redress of Palestinian rights.

John Dugard, Professor of International Law, former UN Special Rapporteur on Human Rights in the OPT

International law, when integrated with broader popular resistance, can challenge the apartheid system that Israel has imposed on the Palestinian people since 948. Unfortunately, international law is not self-executing, and Palestinian officialdom has been lax in exploiting it. Thus it falls to civil society to ensure that principles of international law and human rights are realized in Palestine today.

George Bisharat, Professor of Law, expert in criminal law

Despite Israel's defiant refusal to uphold its legal obligations toward the Palestinian people and the world, international law offers a litmus test of what is reasonable and permissible in relations between states and peoples, and for this reason alone its guidelines make crucial contributions to the Palestinian struggle for fundamental rights.

Richard Falk, Professor Emeritus of International Law, outgoing UN Special Rapporteur on Human Rights in the OPT

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