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

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

#### **Note by the Secretary-General**

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

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



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

*Summary*

The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, hereby submits his sixth report to the General Assembly. The report is based primarily on information provided by victims, witnesses, civil society representatives and United Nations agencies. The report contains a number of concerns pertaining to the situation of human rights in the West Bank, including East Jerusalem, and in Gaza, and an in-depth analysis of the responsibility and performance of international actors.

## I. Introduction

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

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

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

4. In the present report, the Special Rapporteur focuses on an in-depth analysis of the responsibilities and performance of international actors.

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

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

## II. Current human rights situation

### A. Excessive use of force by Israel

7. According to the Office for the Coordination of Humanitarian Affairs of the Secretariat, 55 Palestinians have been killed by Israeli forces in the West Bank in 2021, all by live ammunition.<sup>1</sup> In one such recent example, on 15 August, five Palestinians were killed by Israeli forces during search-and-arrest operations in the Jenin refugee camp. They were reportedly killed following an armed clash between Palestinians and an Israeli undercover unit, which entered the camp to arrest a Palestinian reportedly affiliated with Hamas.<sup>2</sup> On 28 July, an 11-year-old boy was killed in Bayt Ummar. He was in a car that was slowly driving away from soldiers when some of them started running after the vehicle and opened fire. At his funeral,

<sup>1</sup> See United Nations, Office for the Coordination of Humanitarian Affairs, "Protection of civilians: Occupied Palestinian Territory", 10–23 August 2021 (as at 27 August).

<sup>2</sup> Ibid.

held on 29 July, during protests against his killing, Palestinians threw stones and Israeli forces opened fire, shooting and killing another Palestinian man.<sup>3</sup>

8. Many incidents of killing and injuries to Palestinians occurred as a result of demonstrations and clashes between demonstrators and security forces, many of which were held to protest against settlements and settlement expansion. On 6 August, for example, during a demonstration in Bayta, Palestinians threw stones at Israeli forces, who fired live ammunition, rubber bullets and canisters of tear gas, killing a Palestinian man.<sup>4</sup>

9. Palestinian journalists who report on human rights violations in the Occupied Palestinian Territory faced harassment and violence in an attempt to intimidate them and prevent media coverage of peaceful Palestinian protests. On 27 August 2021, Israeli security forces arrested seven Palestinian journalists who were covering a peaceful demonstration against the establishment of new outposts and violence by settlers in the southern hills of Hebron. The journalists were arrested and their equipment confiscated when they headed to their cars shortly after the protest ended, although they identified themselves as journalists to the soldiers. They were handcuffed, left to sit in the scorching sun for an hour, and later taken to the Qiryat Arba' police station, where they were interrogated. Two of the journalists claimed that they were attacked and beaten by the soldiers during the arrest.<sup>5</sup>

## B. Gaza

10. During the 11-day escalation of hostilities in Gaza in May 2021, 260 Palestinians were killed, including 66 children. A total of 129 of those were killed were civilians. More than 2,200 Palestinians were injured during the hostilities, including 685 children and 480 women, some of whom may suffer a long-term disability requiring rehabilitation.<sup>6</sup> The escalation in hostilities resulted in 113,000 internally displaced persons seeking shelter and protection at schools run by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) or with families.<sup>7</sup> During the escalation of hostilities, 290 water, sanitation and hygiene facilities were damaged or destroyed, including water wells, water pumping stations and distribution networks.<sup>8</sup> As of July 2021, most electricity lines had been reconnected and supplies of Qatari-funded fuel entered Gaza again, resulting in the availability of electricity for an average of 14 hours per day across Gaza.<sup>9</sup>

11. In August 2021, demonstrations resumed along the Gaza fence and were met with force by Israel. On 21 August, a “day of rage” was announced and hundreds of Palestinians held a mass demonstration at the Gaza perimeter fence. During the protest, demonstrators hurled stones and other objects towards Israeli forces while Israeli forces fired live ammunition and canisters of tear gas. Another demonstration followed on 23 August. A 31-year-old man and a 12-year-old child were killed by Israeli fire in these demonstrations and more than 100 Palestinians were injured.<sup>10</sup>

<sup>3</sup> United Nations, Office for the Coordination of Humanitarian Affairs, “Protection of civilians: Occupied Palestinian Territory”, 27 July–9 August 2021.

<sup>4</sup> Ibid.

<sup>5</sup> Human Rights Defenders Fund update, 30 August 2021 (on file).

<sup>6</sup> United Nations, Office for the Coordination of Humanitarian Affairs, “Response to the escalation in the Occupied Palestinian Territory: situation report No. 8”, 8–28 July 2021.

<sup>7</sup> Ibid.

<sup>8</sup> WASH Cluster–State of Palestine, “Gaza WASH sector damage assessment”, 28 June 2021.

<sup>9</sup> United Nations, Office for the Coordination of Humanitarian Affairs, “Response to the escalation in the Occupied Palestinian Territory: situation report No. 8”.

<sup>10</sup> United Nations, Office for the Coordination of Humanitarian Affairs, “Response to the escalation in the Occupied Palestinian Territory: situation report No. 9”, August 2021.

12. Gaza humanitarian aid worker Mohammad el-Halabi, who was accused of diverting funds from World Vision International to armed groups, continues to be detained by the Israeli authorities. His trial concluded in August and his verdict is pending from the District Court. The prosecution relied on secret evidence and did not initially allow him access to a lawyer. On numerous occasions, Mr. el-Halabi was reportedly pressured to accept a plea bargain in exchange for a mitigated list of charges and a lenient sentence, which he repeatedly rejected. According to information received, heavy restrictions were imposed on his defence lawyer, the decision of the Court regarding the admissibility of the reported confession extracted under duress was classified and the Court held all hearings behind closed doors. The Special Rapporteur reiterates his concern that Mr. el-Halabi was not granted a fair trial (A/HRC/47/57, para. 17),<sup>11</sup> and calls on Israel to immediately release him.

### C. Freedom of movement

13. Restrictions on freedom of movement continued throughout the Occupied Palestinian Territory as a method for Israel to enforce its regime of occupation. Restrictions were imposed on the movement of Palestinians between the West Bank, including East Jerusalem, the Gaza Strip and with regard to travelling abroad. Some 593 Israeli checkpoints and roadblocks continue to effectively obstruct Palestinians' access to rights and services, including health, education and work. In addition, Palestinians in the West Bank are barred from using roads built for Israeli settlers.<sup>12</sup> Those who attempt to cross checkpoints are routinely harassed and obstructed, severely hindering their freedom of movement. For example, on 5 July 2021, two Palestinian women travelled from a medical appointment to one of their homes in Hebron. Some 200 meters before they reached the woman's house, the two were stopped and Israeli border police refused to open the gate and let them through. While they were held at the checkpoint, settlers came and attacked one of the women, who was later taken to the hospital to treat her injuries. The Israeli border patrol reportedly did not intervene during this incident.<sup>13</sup> This incident is indicative of the situation in Hebron in particular, which is littered with checkpoints, severely restricting the movement of Palestinians, and in the West Bank more generally.

14. Palestinians were also killed and injured in incidents involving checkpoints and roadblocks. In a particularly egregious incident, on the night of 6 April 2021, Israeli security forces erected a temporary checkpoint between Bi'r Nabala and Al-Jib north of Jerusalem. At the checkpoint, security forces stopped the car of a Palestinian couple, parents of five children, who were driving home from a medical appointment. Soldiers opened fire at the car when the couple drove away, resulting in the death of the man and the wounding of his wife.<sup>14</sup> According to B'Tselem, the Israeli security forces announced the launch of a military police investigation into the incident. However, given the widespread impunity surrounding similar incidents, human rights organizations expressed concerns over a similar outcome in this case.<sup>15</sup>

<sup>11</sup> See also Office of the United Nations High Commissioner for Human Rights, "Gaza aid worker must be given fair trial or released, say UN experts", 12 November 2020.

<sup>12</sup> Amnesty International, *Amnesty International Report 2020/21: The State of the World's Human Rights* (London, 2021).

<sup>13</sup> B'Tselem, "Border police and settlers attack family in Hebron during argument over crossing a checkpoint, arrest member and demand he not complain against a settler in exchange for releasing him", 8 August 2021.

<sup>14</sup> B'Tselem, "Not an attack or a car-ramming: soldiers at checkpoint shoot and injure Palestinian parents of five, killing father", 27 April 2021.

<sup>15</sup> Ibid.

15. The ability of Palestinians to leave the Gaza Strip continued to be severely impaired, and to a much greater degree following the escalation of hostilities in May 2021. In early July, more than six weeks after the ceasefire, Israel continued to severely restrict travel to and from Gaza through the Erez crossing point.<sup>16</sup> Measures relating to COVID-19 also contributed to enhanced restrictions. In March 2020, Israel announced that it would further reduce the already small number of people granted permits to leave Gaza for medical purposes. As the pandemic progressed, Israel removed some of the movement restrictions imposed on the West Bank (allowing Palestinians work permits to enter Israel, for example), however, the restrictions imposed on Gaza largely remained.<sup>17</sup> The Palestinian Authority's cessation of security coordination with Israel in May 2020, in response to the intention of Israel to annex parts of the West Bank, also contributed to further restrictions. As a result, applications for permits dropped and in March 2021, for example, traffic at the Erez crossing point was significantly reduced to some 6 per cent of its volume in previous months.<sup>18</sup> In May 2021, 1,000 people were recorded leaving the Gaza Strip; the lowest number of exits in the entire year.<sup>19</sup> While it has been reported that the Israeli authorities have eased some movement restrictions for Palestinian patients since the ceasefire, two of every three patients who apply for such permits are not approved by the time of their scheduled appointment.<sup>20</sup>

#### D. Settler violence

16. Despite the election of a new Government in Israel in June 2021, which includes more “centrist” politicians – some of whom have spoken out in the past against the settlements enterprise<sup>21</sup> – the expansion of settlements has continued, and settler violence has shown no signs of abating. Increasingly egregious cases have been documented in 2021, as well as cases involving active support and collaboration between settlers and Israeli security forces. As at 24 September 2021, the Office for the Coordination of Humanitarian Affairs had documented 246 incidents of settler violence resulting in property damage and 93 incidents resulting in injuries.<sup>22</sup> Violence is predominantly ideologically motivated and designed to deny access of Palestinians to their land and to terrorize them. Besides physical violence against Palestinians, many incidents involve targeting the livelihoods of Palestinians in rural areas, including by vandalizing livestock, agricultural lands, trees and homes.<sup>23</sup>

17. In one particularly heinous incident that took place on 17 August 2021, settlers reportedly struck a 15-year-old boy with their vehicle near Silat ad-Dhahr village on the Nablus-Jenin road, kidnapped him and transported him to the previously evacuated Israeli settlement Homesh, tied him to a tree and beat him and inflicted burns on his feet until he lost consciousness. An Israeli military jeep found the boy

<sup>16</sup> Gisha, “Israel’s restrictions at Gaza crossings are impairing civilian infrastructure, crushing the economy, and violating human rights”, 12 July 2021.

<sup>17</sup> B’Tselem, “Since pandemic, has Israel allowed almost no Palestinians out of Gaza for medical treatment”, 3 May 2021.

<sup>18</sup> Ibid.

<sup>19</sup> United Nations, Office for the Coordination of Humanitarian Affairs, Gaza Crossings database. Available at [www.ochaopt.org/data/crossings](http://www.ochaopt.org/data/crossings).

<sup>20</sup> United Nations, Office for the Coordination of Humanitarian Affairs, “Response to the escalation in the Occupied Palestinian Territory: situation report No. 8”.

<sup>21</sup> For example, see Walla News, “*Michaeli v. Yachimovich*: there is nothing more to build in the settlements”, 23 December 2012. Available at <https://news.walla.co.il/item/2599418>. In Hebrew.

<sup>22</sup> United Nations, Office for the Coordination of Humanitarian Affairs, “Protection of civilians: Occupied Palestinian Territory”, 7–20 September 2021.

<sup>23</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), “Israel/OPT: UN experts warn of rising levels of Israeli settler violence in a climate of impunity”, 14 April 2021.

two hours later and handed him over to an ambulance. The boy was taken to the hospital, where he was treated for contusions and burns. He continues to suffer from serious psychological trauma.<sup>24</sup>

18. Several incidents have been documented of Israeli security forces actively assisting settlers in their attacks. According to B'Tselem, in two separate incidents on 14 May 2021, settlers and soldiers raided two villages, Urif and Iskaka. The settlers, some of whom were armed, threw stones at homes and local residents. Settlers and soldiers jointly opened fire, injuring a total of 12 Palestinians and killing 2.<sup>25</sup>

19. The atmosphere of impunity surrounding attacks by settlers is deeply concerning and sends an affirmation to settlers that there will be no consequences for their illegal and egregious acts against Palestinians. Israeli human rights non-governmental organization Yesh Din analysed 63 incidents of settler violence that took place between 2017 and 2020, including violent offences, property damage and the desecration of mosques. While police complaints were filed in 60 of the incidents, the police concluded its investigations in 38 incidents. No indictments were filed in any of the incidents.<sup>26</sup> Settler violence has an inescapable impact on Palestinians' lives in the West Bank, creating a lingering sense of terror and intimidation.

## E. Palestinian Authority and the de facto authorities in Gaza

20. On 24 June 2021, the long-time critic of the Palestinian Authority, Nizar Banat, died in the custody of Palestinian security forces. Since the killing of Mr. Banat in late June, protests have taken place in Hebron, Bethlehem and Ramallah and have been met with excessive force by Palestinian security forces, whether deployed in their regular uniforms or in civilian clothes.<sup>27</sup> On 21 August 2021 in Ramallah, Palestinian security forces arrested 23 Palestinians on the grounds that they were holding a public protest. Those arrested were part of a protest demanding the prosecution of those responsible for the killing of Nizar Banat in June. The majority of those arrested were detained before any protest had started. The planned protest had been reported in advance to authorities as required by law.<sup>28</sup> More arrests appear to be taking place. Most have been charged with participating in an illegal gathering, inciting sectarian strife and the defamation of the higher authorities. Several of those arrested are well-known human rights defenders and political activists. The arrests sparked a wave of condemnation from the United Nations, the European Union and human rights organizations, which warned against a dangerous decline in rights and public freedoms. The Special Rapporteur would like to reiterate that the obligation to respect, protect and fulfil human rights rests with the competent authority exercising power. Notwithstanding a harsh occupation by Israel, Palestinian civil society has every right to demand that its own political and security leaders live up to their solemn promises to abide by international human rights commitments.

21. Anger was also fuelled by the decision to indefinitely postpone elections that were scheduled for May and July 2021, and would have been the first Palestinian elections in 15 years.<sup>29</sup> The President of the State of Palestine, Mahmoud Abbas, announced the indefinite postponement of the elections on 29 April 2021, owing to

<sup>24</sup> Gideon Levy and Alex Levac, "Shackled, beaten, strung up on a tree: Palestinian teen brutally attacked by settlers", *Haaretz*, 26 August 2021.

<sup>25</sup> B'Tselem, "May 2021: two Palestinians were fatally shot in two joint attacks by settlers and soldiers in the villages of Iskaka and Urif – Awad Harb and Nidal Safadi", 24 August 2021.

<sup>26</sup> Yesh Din, "Settler crime and violence inside Palestinian communities, 2017–2020", May 2021.

<sup>27</sup> OHCHR, "Occupied Palestinian Territory: attacks against critics must stop, those responsible arrested – UN experts", 6 July 2021.

<sup>28</sup> Amira Hass, "The Palestinian authority is quashing legal protests – again", *Haaretz*, 22 August 2021.

<sup>29</sup> Al-Jazeera, "UN, EU condemn Palestinian authority over activist arrests", 24 August 2021.

concerns about Palestinians' ability to vote in East Jerusalem. The Special Rapporteur has noted that the Palestinian elections present an opportunity to renew the democratic process, to address long-standing internal political divisions, to strengthen accountable institutions and to take an important step towards achieving the fundamental national and individual rights of the Palestinian people. For the elections to take place, it is important for Israel to clearly state that it will allow the full democratic participation of Palestinians in East Jerusalem. As the occupying power in East Jerusalem, it must interfere as little as possible with the rights and daily lives of the Palestinians.<sup>30</sup>

22. On 22 July, an explosion took place in a three-story building in a popular market in the Al Zawiya area. It killed a 68-year-old man and injured 14 others, including 6 children. The de facto authorities' follow-up committee announced that they had instructed the Ministry of Interior to investigate the matter. A number of human rights organizations have called for a prompt investigation into the incident and expressed concerns regarding an increase in explosions in residential areas causing harm to civilians.<sup>31</sup> As of the time of writing, the investigation is still ongoing.

### III. Responsibility and performance of international actors

23. The international community – and particularly, but not only, the United Nations – has long accepted that it bears a special responsibility for supervising the question of Palestine, fully ending the Israeli occupation, realizing Palestinian self-determination and ensuring that all issues related to the conflict are brought to a just and durable resolution.<sup>32</sup> These issues have understandably taken on an immense political, legal and popular resonance, which ripples well beyond the Levant. Kofi Annan, the former Secretary-General of the United Nations, recalled in his memoirs that: “The Israeli-Palestinian conflict is not simply one unresolved problem among many. No other issue carries such a powerful symbolic and emotional charge affecting people far from the zone of conflict.”<sup>33</sup>

24. It was the United Nations that voted to partition Palestine and enable the creation of the State of Israel,<sup>34</sup> cared for millions of Palestinian refugees for seven decades,<sup>35</sup> established multiple peacekeeping missions in the region<sup>36</sup> and closely monitored the ongoing conflict and occupation through the issuance of hundreds of resolutions and myriad reports.<sup>37</sup> The international community has been intimately engaged in the conflict through numerous diplomatic ceasefire and peace initiatives, massive arms sales and significant quantities of aid, trade, grants and investment. This has long been the most widely documented and reported conflict zone in the world. Whenever the conflict between Israelis and Arabs over the Palestine question has reached an acute stage, the United Nations has served as the diplomatic cockpit to

<sup>30</sup> OHCHR, “Palestinian election: free, fair, democratic and credible vote must include East Jerusalem – UN experts”, 26 July 2021.

<sup>31</sup> Al Mezan Center for Human Rights, “Al Mezan calls for investigation into house explosion in Gaza that killed one person and injured 14 others”, 22 July 2021.

<sup>32</sup> See General Assembly resolution 75/23 (“Reaffirming that the United Nations has a permanent responsibility towards the question of Palestine”).

<sup>33</sup> Kofi Annan, *Interventions: A Life in War and Peace* (New York, Penguin Books, 2012), p. 254.

<sup>34</sup> See General Assembly resolution 181 (II). See, generally, Avi Shlaim, *The Iron Wall: Israel and the Arab World*, 2nd ed. (New York, Norton, 2014).

<sup>35</sup> Francesca P. Albanese and Lex Takkenberg, *Palestinian Refugees in International Law*, 2nd ed. (Oxford, Oxford University Press, 2020).

<sup>36</sup> Karim Makdisi and Vijay Prashad, eds., *Land of Blue Helmets: The United Nations and the Arab World* (Oakland, University of California Press, 2017).

<sup>37</sup> Ardi Imseis, *The United Nations and the Question of Palestine: A Study in International Legal Subalternity* (Cambridge, United Kingdom, Cambridge University Press, forthcoming).

address the crisis. The conflict has become, in many ways, the most international of international conflicts, and it will almost certainly remain at or near the top of the international community's political agenda until peace with justice has been accomplished.

25. Given this special responsibility of the international community, how can we assess its actual performance in seeking to successfully end the Israeli occupation? This is especially important given the occupation's inordinate length – it is the longest occupation in the modern era – and the fact that leading international actors appear resigned to the fact that the end of the occupation is nowhere in sight, and that they have run out of ideas and energy on how to challenge the strategic patience of Israel and enable genuine Palestinian self-determination.

26. In his report dated 21 October 2019 (A/74/507), the Special Rapporteur addressed the issue of international accountability obligations, pointing to the legal and political duties under the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), the articles on responsibility of States for internationally wrongful acts adopted in 2001 and Article 25 of the Charter of the United Nations. In his report dated 22 October 2020 (A/75/532), the Special Rapporteur critically reviewed the role of the Security Council in supervising the occupation, pointing out that the Council had failed to impose any meaningful costs on Israel for deepening its occupation of Palestine in defiance of its own resolutions and international law. In the present report, the Special Rapporteur examines the role of four international actors, the United States of America, the European Union, the World Bank and the Quartet, which have played various influential roles as mediators, funders, facilitators and/or supervisors during part or all of the Madrid-Oslo process overseeing the Israeli occupation.

### **A. International responsibility for the deepening occupation**

27. In recent years, the now 54-year-old Israeli occupation of Palestine – always repressive, always acquisitive – has been metastasizing into something much harsher and more entrenched: the permanent alien rule of one people over another, encased in a two-tiered system of unequal laws and political rights. More than 680,000 Israeli settlers living in segregated and privileged settlements amid 5 million stateless Palestinians; asymmetrical wars; geographic fragmentation; a smothered and heavily aid-dependent economy; separate networks of roads and utilities; impoverished and fenced-in ghettos unique in the modern world; a coercive environment; the growing amount of violence required to maintain the occupation; the denial of self-determination; the deeply lopsided access to property and to social, health and employment rights. All of this based entirely on nationality and ethnicity.<sup>38</sup> All of this should be unthinkable in the twenty-first century.

28. Legal scholars, including Israeli academics, have confirmed that, under international law: (a) an occupation must be short-term and temporary; (b) an occupation must be strictly conducted in good faith and for the best interests of the population under occupation; (c) the occupying power acquires absolutely no right to settle any of its civilian population in, or to annex any part of, the occupied territory; and (d) the territory must be returned in toto to the sovereign – the people under

<sup>38</sup> See the recent reports of Al-Haq, B'Tselem, Human Rights Watch, Amnesty International and the West Bank Protection Consortium.

occupation – as soon as reasonably possible.<sup>39</sup> Israel is in long-standing breach of all of these foundational principles, with its occupation having crossed a bright red line into illegality under international law (see A/72/556).<sup>40</sup>

29. However, the international community has been perplexingly unwilling to meaningfully challenge, let alone act decisively to reverse, the momentous changes that Israel has been generating on the ground. This is a political failure of the first order. This very same international community – speaking through the principal political and legal organs of the United Nations – has established the widely accepted and detailed rights-based framework for the supervision and resolution of the Israeli occupation of Palestine.<sup>41</sup> Accordingly, the protracted Israeli occupation must fully end.<sup>42</sup> Both the Palestinians and Israelis are entitled to live in peace and security and enjoy the right to self-determination, including sovereign, secure and viable States, within the boundaries of Mandate Palestine, based on the 1967 border.<sup>43</sup> Annexation of occupied territory is illegal.<sup>44</sup> All of the more than 280 Israeli settlements in East Jerusalem and the West Bank are flagrant violations of international law.<sup>45</sup> East Jerusalem has been illegally annexed by Israel and remains occupied territory.<sup>46</sup> The Palestinian refugees from the 1948 and 1967 wars have the right to choose to return to their homeland.<sup>47</sup> Gaza is an integral part of Palestine, it remains occupied, and the Israeli blockade is a prohibited form of collective punishment.<sup>48</sup> The political and legal duty of accountability means that the international community bears the responsibility of challenging and vanquishing serious violations of international law and human rights,<sup>49</sup> for which it possesses abundant political and legal powers to sanction violators until they have complied with their obligations.<sup>50</sup>

30. Insisting upon international law and a rights-based framework as the basis for supervising and ending the Israeli occupation, and for the creation of a just and durable resolution for Palestinians and Israelis alike, is neither a flight from reality nor an inflexible impediment to engaged diplomacy. Rather, such a framework establishes the clear political boundaries for permissible and impermissible behaviour that all States and international actors – large and small, strong and weak, democratic and authoritarian – have committed themselves to follow through their ratification of

<sup>39</sup> Orna Ben-Naftali, Michael Sfard and Hedi Viterbo, *The ABC of the OPT: A Legal Lexicon of the Israeli Control over the Occupied Palestinian Territory* (Cambridge, United Kingdom, Cambridge University Press, 2018); and Aeyal Gross, *The Writing on the Wall: Rethinking the International Law of Occupation* (Cambridge, United Kingdom, Cambridge University Press, 2017).

<sup>40</sup> See also Ardi Imseis, “Negotiating the illegal: on the United Nations and the illegal occupation of Palestine, 1967–2020”, *European Journal of International Law*, vol. 31, No. 3 (August 2020).

<sup>41</sup> Kofi Annan stated in 2002: “There is no conflict in the world today whose solution is so clear, so widely agreed upon, and so necessary to world peace as the Israeli-Palestinian conflict.” See UN News, “At Arab summit, Annan urges Sharon, Arafat to lead their peoples ‘back from brink’”, 27 March 2002.

<sup>42</sup> Security Council resolution 476 (1980) (“Reaffirms the overriding necessity for ending the prolonged occupation of Arab territories occupied by Israel since 1967, including Jerusalem”).

<sup>43</sup> Security Council resolution 1850 (2008).

<sup>44</sup> Security Council resolution 2334 (2016).

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> General Assembly resolutions 73/92 and 73/93.

<sup>48</sup> Security Council resolution 1860 (2009). See also Ban Ki-Moon, Secretary-General of the United Nations, remarks at a press encounter, 28 June 2016.

<sup>49</sup> See General Assembly resolution 56/83, annex (Responsibility of States for internationally wrongful acts, arts. 40 and 41). See also James Crawford, *State Responsibility: The General Part* (Cambridge, United Kingdom, Cambridge University Press, 2013).

<sup>50</sup> Jeremy Matam Farrall, *United Nations Sanctions and the Rule of Law* (Cambridge, United Kingdom, Cambridge University Press, 2009); and International Committee of the Red Cross, “Geneva Conventions of 1949 and Additional Protocols and their Commentaries”, Customary IHL database, available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreaties1949.xsp>.

modern treaties, conventions and covenants, and their membership in the United Nations.<sup>51</sup> Obeying international law is not only a duty among international actors but has actually been a widespread practice among States, demonstrated by the flow of international investment and trade, the respect for borders and sovereignty, the proliferation of international institutions that monitor compliance and promote cooperation and the regulation of such ordinary features of daily life as travel, mail, custody rights and technology.<sup>52</sup>

31. Regarding the occupation of Palestine, among the clear advantages for the international community to demand the compliance of Israel with international legal obligations are the following:

(a) First, it would level out some of the vast disparities in power between Israel and the Palestinians that have plagued the entire peace process, and thereby make the realization of a lasting and equitable agreement more likely;<sup>53</sup>

(b) Second, it would provide well-defined ground rules as to what is legitimately negotiable (such as trade, security, labour migration and equitable adjustments to the 1967 lines) and what is not (such as the retention of settlements, the continuation of annexation and the abuse of sovereignty), in accordance with the long-standing legal principle of *ex turpi causa non oritur actio*;<sup>54</sup>

(c) Third, it would enhance the chances that an agreement to end the occupation and create a final peace would endure, given that the rules-based international order would provide both predictability and accountability mechanisms in addressing any subsequent difficulties;

(d) Fourth, it would clearly signal to future would-be abusive occupiers that the international community will not accept “no-go zones” for human rights, humanitarian and criminal law. In the modern world, international law cannot be treated as a menu à la carte, with the choice to decide what to obey and what to scorn.

32. Regrettably, the international community’s remarkable tolerance for Israeli exceptionalism in its conduct of the occupation has allowed realpolitik to trump rights, power to supplant justice and impunity to undercut accountability. This has been the conspicuous thread throughout the Madrid-Oslo peace process, which began in 1991. Israel, with little resistance from major international actors, has been able to successfully insist that negotiations with the Palestinians are to be conducted outside of the framework of applicable international law and the prevailing international consensus,<sup>55</sup> notwithstanding the imperatives of the rules-based international order. This has enabled Israel to maintain an obdurate bargaining stance, with the endgame of formalizing its claims to East Jerusalem and to most, if not all, of its West Bank settlements, while acquiescing to a Potemkin statelet for the Palestinians that would enjoy neither meaningful territory nor sovereignty.<sup>56</sup> For the international community, this has created a troubling paradox: while there is no conflict zone in the world where the United Nations has pronounced with as much frequency and detail on the framework for conflict resolution, this framework has rarely informed the various

<sup>51</sup> Zaha Hassan and others, “Breaking the Israel-Palestine status quo”, 2021.

<sup>52</sup> Harold Hongju Koh, “Why do nations obey international law?”, *Yale Law Journal*, vol. 106, No. 8 (1997).

<sup>53</sup> Susan Akram and others, eds., *International Law and the Israeli-Palestinian Conflict: A Rights-Based Approach to Middle East Peace* (London, Routledge, 2011).

<sup>54</sup> Rights cannot arise from illegal acts.

<sup>55</sup> Khaled Elgindy, *Blind Spot: America and the Palestinians from Balfour to Trump* (Washington, D.C., Brookings Institution, 2019).

<sup>56</sup> Seth Anziska, *Preventing Palestine: A Political History from Camp David to Oslo* (Princeton, New Jersey, Princeton University Press, 2018); and Jeremy Sharon, “Netanyahu calls for Palestinian ‘state-minus’”, *The Jerusalem Post*, 24 October 2018.

Oslo-related peace process initiatives – including the 1993 Declaration of Principles on Interim Self-Government Arrangements, the 1995 Oslo II agreement, the 2000 Camp David negotiations, the 2001 Clinton parameters, the 2003 Quartet principles, the 2007 Annapolis formula, the 2013/14 Kerry initiative and the 2020 Trump Peace to Prosperity plan – that have successively collapsed in the absence of any sturdy legal scaffolding and political will to sustain a rights-based resolution.

33. The cost of the international community's failure to insist upon its own rights-based framework and to enforce its many resolutions has been the evaporation of what lingering possibilities remain for a genuine two-State solution. In its place has emerged what the European Union has acknowledged to be a one-State reality of unequal rights,<sup>57</sup> and what regional and international human rights groups have declared to be apartheid.<sup>58</sup> The Security Council warned in 2016 that Israeli settlement activities were dangerously imperilling the viability of the two-State solution based on the 1967 lines.<sup>59</sup> Former Secretary-General Ban Ki-Moon stated in June 2021 that: "Israel has pursued a policy of incremental de facto annexation in the territories it has occupied since 1967, to the point where the prospect of a two-State solution has all but vanished."<sup>60</sup> The minimalist pink lines that the international community has drawn for Israel – no further de jure annexations, no new settlements, no destruction of Palestinian communities – have hardly slowed down the growth of its settler population, the expansion of its transportation and utility infrastructure linking the settlements, its hermetic sealing of Gaza or the regularity of declarations by many in its political leadership that East Jerusalem and the West Bank belong to Israel by right and will never be yielded. The ritual avowals by major international actors that they remain committed to a two-State solution have become a diplomatic pantomime, a cover for paralysis rather than a declaration of resolve, which is occurring with everyone's eyes wide open about the dynamic reality on the ground.

34. The political trends during the summer of 2021 have been dispiriting, if unsurprising. The new Prime Minister of Israel, Naftali Bennett, expressly stated in September that he opposed the creation of a Palestinian State.<sup>61</sup> The Israeli Minister for Defence, Benny Gantz, said that peace negotiations were impossible because of the Palestinian Authority's opposition to Israeli settlements in East Jerusalem and the West Bank: "We're not taking down settlements."<sup>62</sup> The new Israeli Minister for Foreign Affairs, Yair Lapid, told a meeting of European Union foreign ministers in July that there was no present prospect for a peace process.<sup>63</sup> None of this has been receiving serious international pushback.<sup>64</sup> Instead, with the apparent blessing of

<sup>57</sup> Barak Ravid, "EU foreign policy chief: Israel's land-grab law entrenches one-State reality of unequal rights", *Haaretz*, 7 February 2017.

<sup>58</sup> Human Rights Watch, *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution* (2021); Susan Power, "The legal architecture of apartheid", *Al-Haq*, 12 April 2021; and B'Tselem, "A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: this is apartheid", January 2021.

<sup>59</sup> Security Council resolution 2334 (2016).

<sup>60</sup> Ban Ki-Moon, "US should back a new approach to the Israeli-Palestinian conflict", *The Financial Times*, 29 June 2021.

<sup>61</sup> "I oppose a Palestinian state. I think it would be a terrible mistake that would take the terrible situation in Gaza and recreate it in Judea and Samaria." See Tovah Lazaroff, "Palestinian statehood would be a 'terrible mistake' – Bennett", *The Jerusalem Post*, 15 September 2021.

<sup>62</sup> Neri Zilber, "Israel can live with a new Iran nuclear deal, Defense Minister says", *Foreign Policy*, 14 September 2021.

<sup>63</sup> Jonathan Lis, "Israel's Lapid to EU's top diplomats: two-state solution is unfeasible", *Haaretz*, 12 July 2021.

<sup>64</sup> Anshel Pfeffer, "Israel's Prime Minister now pretends the Palestinians don't exist. It's a brilliant move", *Haaretz*, 30 September 2021. ("In the past three and a half months since he became prime minister, Bennett has noticed how seldom the Palestinian issue came up in his conversations with foreign leaders and how half-hearted they sounded when they did bring it up.")

major international actors,<sup>65</sup> the focus of the new Government is to “shrink the conflict”<sup>66</sup> and remove some existing irritants for the Palestinians, such as allowing the construction of a modest number of Palestinian homes in Area C, increasing the number of Palestinians allowed to work in Israel and creating more advanced mobile phone networks.<sup>67</sup> Such an economic peace is understood by Israeli political leaders not as a path to genuine Palestinian statehood<sup>68</sup> but as a substitute in order to sustain the status quo.<sup>69</sup> Mairav Zonszein of the International Crisis Group has remarked that: “You can’t have economic peace or stability under occupation, because occupation prioritizes Israeli interests, resources and expansionism over all else.”<sup>70</sup>

35. The present report is focused on the effectiveness of four of the influential international actors involved in the Middle East process and the supervision of the Israeli occupation. The purpose of focusing on the United States, the European Union, the World Bank and the Quartet is to assess whether they have been assiduously advancing, or effectively retarding, the stated goal of the international community to end the occupation, enable Palestinian self-determination and provide peace, security and a prosperous and shared future for both Israelis and Palestinians.

36. To assess their effectiveness, the Special Rapporteur is proposing five foundational criteria to measure the role of these leading actors. These criteria are important to emphasize, because they go to the heart of the disparate relationship between Israel and Palestine. Any efforts by the international community, collectively or individually, to create a framework for supervising and ending the occupation that does not place these criteria at or near the core of its endeavours will almost certainly crash upon the shoals of Middle East realism:

(a) **Because of the vast asymmetry in power between Israel and the Palestinians, active international intervention is indispensable.** Militarily, Israel has the strongest armed forces in the region. Economically, Israel enjoys a European-level gross domestic product per capita that is 12 times higher than that of the Palestinians. Diplomatically, Israel relies upon the enduring support of major international actors. Territorially, Israel enjoys complete military freedom of action between the Mediterranean Sea and the Jordan River. Only on demography do the Palestinians have the edge: they now constitute a slight majority of the population between the Mediterranean Sea and the Jordan River. Without active and decisive international accountability measures to counter the abuse of this overwhelming power, the vast advantages of Israel will continue to dictate what happens on the ground and at any negotiating table;

(b) **The framework for fully ending the occupation must employ a rights-based approach, anchored in international law and human rights.** Yesterday’s

<sup>65</sup> President of the United States Joseph Biden, in remarks before the seventy-sixth session of the General Assembly on 21 September 2021, said that he continues to believe in a two-State solution, but “we’re a long way from that goal at the moment”.

<sup>66</sup> Patrick Kingsley, “‘Shrinking the conflict’: what does Israel’s new mantra really mean?”, *The New York Times*, 30 September 2021.

<sup>67</sup> Adam Rasgon, “In reversal, Israel’s new government engages with Palestinian authority”, *The New York Times*, 25 September 2021.

<sup>68</sup> After expressing his opposition to a Palestinian state, Prime Minister Bennett added that: “My outlook is a very business-like one. If we create more business, strengthen the economy and improve living conditions for everyone in Judea and Samaria, that would be better.” See Lazaroff, “Palestinian statehood would be a ‘terrible mistake’ – Bennett”.

<sup>69</sup> In reporting on this new approach by the Israeli government, the *New York Times* noted that: “Even as the Israeli government takes steps to improve the Palestinian economy and security, it has pledged to continue expanding settlements in the West Bank. It has also continued to demolish Palestinian homes built without permits in areas where permits are rarely issued, and to use a heavy hand against Palestinians at protests and clashes.” See Rasgon, “In reversal”.

<sup>70</sup> Kingsley, “‘Shrinking the conflict’”.

peace process playbook – relying on the realpolitik of Israeli “facts on the ground”, Palestinian weakness and the absence of law – has only led to repeated diplomatic cul-de-sacs, while enabling the patterns of human rights abuses and an endless occupation to continue largely unimpeded.<sup>71</sup> Ignoring the established international framework on occupation and rights only accelerates this downward trajectory.<sup>72</sup> Only a rights-based approach can engage the considerable tools of accountability and the already widely endorsed body of international law, including human rights and humanitarian law, to end impunity and advance the interests of both Palestinians and Israelis;

(c) **The end goal must be the realization of Palestinian self-determination. Israel already exists, and has since 1948.** The missing key to enduring peace has always been the denial of Palestinian self-determination.<sup>73</sup> But the de facto and de jure annexation of occupied territory by Israel, primarily led by the relentless expansion of its settlements, has undercut any meaningful exercise of self-determination on what remains of Palestinian land. Self-determination is at the heart of modern human rights, and it is the sine qua non for a just and final peace. Palestinian self-determination must be based on the 1967 borders and the realization of authentic sovereignty if a genuine two-State solution remains a possibility. If not, then self-determination must be centred on individual and collective equality rights for all those living between the Mediterranean Sea and the Jordan River;

(d) **Israel is a bad-faith occupier.** This is the inescapable conclusion from the way it has conducted its 54-year occupation of the Palestinian territory. Its non-compliance with hundreds of United Nations resolutions from the Security Council, the General Assembly and the Human Rights Council regarding the occupation, and its refusal to apply the Fourth Geneva Convention, is not an honest policy difference with the world but a sustained show of defiance meant to preserve the fruits of its conquest. To assume that Israel is a responsible occupier, whose intentions are marred only by an errant and unfortunate policy towards the Palestinians, is to indulge in the magical thinking that has led to the past diplomatic failures;

(e) **The occupation must end with all deliberate speed.** Occupations are designed by international law to be temporary: to last only for the period of time necessary for the occupying power to re-establish State and social institutions and civic life in the occupied territory and for the territory to then be returned to the displaced sovereign (the people under occupation).<sup>74</sup> Alien rule in the twenty-first century can only be justified in exceptional and highly conditioned circumstances. Modern international law and effective international statecraft do not tolerate an indeterminate point in time for when injustice will end, particularly with regard to an avaricious occupation that long ago slipped the restraining bonds of legitimacy.

<sup>71</sup> “Editorial: Israel’s final warning from the ICC”, *Ha’aretz*, 22 December 2019. (“Even harder to understand is the claim that the issue of the Israeli-Palestinian conflict must be left for dialogue and negotiations and the legal process will only harm it, while it is clear to all that there is no such process on the table because the Israeli government is not interested in it.”)

<sup>72</sup> Dimitris Bouris and Nathan J. Brown, “The Middle East Quartet’s quest for relevance”, Carnegie Europe, 20 July 2016.

<sup>73</sup> General Assembly resolution [75/172](#).

<sup>74</sup> Security Council resolution [1483 \(2003\)](#), which welcomed the commitment of the powers occupying Iraq to restore sovereignty to the people of Iraq “as soon as possible”, and that it “must come quickly”. See also General Assembly resolution [75/172](#) (“Stressing the urgency of achieving without delay an end to the Israeli occupation”).

## B. The four international actors

### United States of America

37. The United States has played an outsized role in the Middle East peace process over the past 50 years, leading virtually every significant international peace initiative, while at the same time delivering enormous amounts of cutting-edge military aid to Israel and acting as that country's diplomatic patron at the United Nations and other international forums. This two-hatted role of the United States in the peace process has been an overriding reason why the Israeli occupation stays intact and the quest for Palestinian self-determination remains unfulfilled. Kofi Annan spoke of the "unhealthy possessiveness" that the United States has had over the peace process, and its "reluctance to share it meaningfully with others".<sup>75</sup> Ban Ki-Moon has lamented the "political cover provided by successive [United States] governments to Israel", which is "partly to blame for this lack of accountability".<sup>76</sup> In many ways, the role of the United States in defending Israel has been to give permission for the Israeli occupation to continue, while tarnishing the global reputation of the United States. In his memoirs, former President of the United States Barack Obama observed that the shielding by the United States of Israeli violations of international law meant that: "Our diplomats found themselves in the awkward position of having to defend Israel for actions that we ourselves opposed."<sup>77</sup>

38. In May 2021, tensions in Jerusalem escalated over attempts by Israeli settlers to displace Palestinians from their homes, leading to rockets fired by Hamas at Israeli civilian targets and a disproportionate military response by Israel, culminating in 11 days of intense violence with heavy civilian casualties and property destruction in Gaza. The diplomatic role of the United States during this violence was discouragingly familiar: at the Security Council, it successively blocked both a draft resolution seeking a ceasefire and the issuance of a Council press statement, arguing that it would only alienate Israel.<sup>78</sup> This buffer allowed Israel to sustain its assault on Gaza until it had achieved most of its military goals, in the face of diplomatic and public opinion seeking to end the violence much earlier. Since the Israeli occupation began in June 1967, the United States has regularly allowed the Council to adopt resolutions critical of Israel – 77 in total – but it has also used its threat of a veto to thwart the ability of the Council – the most powerful international political forum – to enforce any of these resolutions. In addition, it has vetoed 32 resolutions critical of Israel since 1973.

39. The United States has developed an extraordinary military relationship with Israel, with its annual aid unmatched by any other bilateral relationship in the world. Since the early 1950s, it has delivered more than \$100 billion dollars in military aid (along with \$35 billion in economic aid).<sup>79</sup> Its military aid has enabled the Israeli armed forces to become one of the most technologically sophisticated militaries in the world. American aid has also allowed Israel to establish a major domestic defence industry, which has permitted it to become one of the world's leading exporters in arms and cybersecurity technology. Indeed, observers have noted that Israeli prowess as a major arms and cybersecurity exporter is due in considerable part to its weapons and security testing as an experienced occupier that regulates the lives of 5 million Palestinians.<sup>80</sup> This American military assistance is provided notwithstanding the fact

<sup>75</sup> Annan, *Interventions*, p. 290.

<sup>76</sup> Ban, "US should back a new approach".

<sup>77</sup> Barack Obama, *A Promised Land* (New York, Crown, 2020), p. 627.

<sup>78</sup> International Crisis Group, *Beyond Business as Usual in Israel-Palestine*, Middle East report No. 225 (Brussels, 2021).

<sup>79</sup> Congressional Research Service, United States, "US foreign aid to Israel", November 2020.

<sup>80</sup> Matt Kennard, "The cruel experiments of Israel's arms industry", Pulitzer Center, 28 December 2016).

that congressional laws governing weapons exports from the United States state that recipient countries cannot be engaged in consistent patterns of gross violations of human rights.<sup>81</sup> A recent poll of American public opinion indicated that a slim majority (50 per cent in favour to 45 per cent opposed) favoured restricting military aid to Israel in order to prevent it from being used in military operations against Palestinians.<sup>82</sup>

40. Given the *sui generis* relationship between the world's one superpower and a small regional power, one might ask, as Shibley Telhami, a professor at the University of Maryland, has: "If an American president cannot leverage this extraordinary and unprecedented support to advance core American values, what hope is there for succeeding anywhere else?"<sup>83</sup> The United States has played a fundamental role in the shaping of modern international law and the rules-based international order, yet it has stained that achievement by consistently excluding those things from the Israeli-Palestinian peace process. It regularly endorses the two-State solution, but it also insists that there must be no consequences for Israeli practices that have made that objective impossible. It proclaims human rights as a cornerstone of its foreign policy, but does not apply this yardstick to Israeli conduct. The disturbing reality in the Occupied Palestinian Territory is contrary to everything that the United States proclaims it stands for, yet its close identification with the Israeli occupation says otherwise.

### European Union

41. In 1980, the then nine-member European Community issued its influential Venice Declaration, which endorsed the right of the Palestinian people to fully exercise their right to self-determination. In the early 1990s, the European Commission was an active participant in the Madrid-Oslo process, declaring that lasting peace between Israel and the Palestinians was of vital importance for Europe. Throughout the 1990s and 2000s, the European Union provided substantial political and economic support for the peace process (including significant funding to the Palestinian Authority), issued sometimes sharp criticisms of Israeli conduct and, beginning in 1999, promoted the creation of a democratic, viable and peaceful Palestinian State. However, as the European Union joined the Quartet and became part of its policies regarding the road map and the 2006 Palestinian elections, its policies and statements regarding the occupation became more cautious, even as its substantial levels of funding continued.<sup>84</sup>

42. Over the past decade, five features have dominated the approach of the European Union towards the Israeli occupation. First, it remains a substantial funder of the Palestinian Authority, UNRWA and other major organizations that provide capacity-building and social services in the occupied territory. Second, the European Union has maintained close political and economic relationships with Israel, even as points of tension have occasionally arisen. Israel is a member of several significant scientific and economic cooperation agreements initiated by the European Union, the European Union is its largest trading partner and several key members of the European Union are major weapons suppliers to Israel. Third, the European Union has developed a "differentiation" policy regarding the Israeli settlements in the occupied territory. This policy states that European Union agreements with Israel are inapplicable beyond the 1967 Green Line, while it has been left to individual member

<sup>81</sup> Josh Ruebner, Salih Booker and Zaha Hassan, "Bringing assistance to Israel in line with rights and U.S. laws", Carnegie Endowment for International Peace, 12 May 2021.

<sup>82</sup> Chicago Council on Global Affairs, "Americans split on military aid to Israel, say political status quo unacceptable", 25 August 2021.

<sup>83</sup> Shibley Telhami, "Biden's bungled response on the Israel-Palestinian conflict", *Boston Globe*, 19 May 2021.

<sup>84</sup> Anders Persson, *EU Diplomacy and the Israeli-Arab Conflict, 1967–2019* (Edinburgh University Press, 2020).

States to decide how to apply the differentiation policy in their bilateral relations with Israel. Fourth, in recent years, the European Union has spoken with an increasingly less united and softer voice on the Israeli occupation, as some member States from Eastern Europe have developed close relationships with Israel and a common European position on the occupation has become more difficult.<sup>85</sup> During the recent Israeli violence in Gaza in May 2021, the European Union acted largely as a bystander, unable to issue a common statement of the Council of the European Union because of its “unanimity rule”.

43. The fifth and most significant feature of contemporary European Union policy has been its aversion to employing its considerable economic and political clout to impose substantive costs on Israel for its failure to comply with its international obligations and fully end the occupation.<sup>86</sup> To its credit, the European Union’s diplomatic opposition to the de jure annexation plans made by Israel in 2020 contributed greatly to the shelving of the proposals of the Peace to Prosperity plan put forward by former President of the United States Donald Trump. This was an important defensive accomplishment, but it has done little to alter the thickening occupation and the reality of de facto annexation. Beyond this, however, the European Union has been largely risk-averse. Among its major agreements involving Israel is the European Union-Israel Association Agreement of 1995, which included human rights obligations and respect for common values, breaches of which would entitle the European Union to suspend the Agreement, but the European Union has taken no steps to do so. The most glaring gap in European Union policy is its passive approach towards the Israeli settlements. Its differentiation policy is exacting a small cost that Israel is willing to bear, with no noticeable changes to the permanence of the occupation or to the growth of settlements. The settlements, which are a presumptive war crime under the Rome Statute, are the product of Israeli State policy, and there is no hope of dismantling them until European accountability measures meaningfully target Israel itself (see [A/HRC/47/57](#)).

44. European Union policy towards the occupation is ultimately hindered by two interrelated propensities: its commitment to the dead star that is the Madrid-Oslo process, and its unwillingness to separate itself from the United States, no matter how partial and ineffective American policy has been. Whatever its original promise, the Madrid-Oslo process has become a cover for the maintenance of the occupation and the avoidance of hard decisions. With imagination and courage, European diplomacy could create a qualitatively new approach to securing Middle East peace, based on rights and international law.<sup>87</sup> To do this would require an honest reckoning with Israeli intransigence and American dominance. But to do anything less would continue to implicate Europe in one of the greatest diplomatic failures of the past half-century.

### **World Bank**

45. The World Bank has been intimately involved in the development of economic policy in Palestine since the dawn of the Madrid-Oslo process. In 1993, it published a significant six-volume study – *Developing the Occupied Territories: An Investment in Peace* – which set out a strategy to reform, reorganize and advance the economic and social capacities of the Palestinian territory. Its stated emphasis was technical: to

<sup>85</sup> Omar Dajani and Hugh Lovatt, *Rethinking Oslo: How Europe Can Promote Peace in Israel-Palestine* (London, European Council on Foreign Relations, 2017); and Hugh Lovatt and Mattia Toaldo, *EU Differentiation and Israeli Settlements* (London, European Council on Foreign Relations, 2015).

<sup>86</sup> Beth Oppenheim, “Can Europe overcome its paralysis on Israel and Palestine?”, Centre for European Reform, February 2020.

<sup>87</sup> Hugh Lovatt, *The End of Oslo: A New European Strategy on Israel-Palestine* (London, European Council on Foreign Relations, 2020).

focus on Palestinian institution-building, private sector investment and optimal economic planning, while leaving the issues of security, international law and final status issues to the political arena. A disquieting feature of that report was that its description of the dilapidated Palestinian economy in 1993 – high unemployment, stagnant income, deep poverty, overstretched public institutions and services, a deep dependence on the Israeli economy, vulnerability to Israeli political retaliation and enormous economic disparities between Israelis and Palestinians – remains entirely accurate today even after 28 years of substantive institution-building and billions of dollars in aid.

46. In the years since 1993, the World Bank has issued dozens of reports on the Palestinian economy, many of them highly technical reviews of specific sectors, and some of them containing understated observations on the myriad ways that Israel stunts and throttles the Palestinian economy. In particular, the World Bank presents comprehensive twice-yearly economic reports to the Ad Hoc Liaison Committee for the Coordination of the International Assistance to Palestinians, a body of States and institutions (including the United States and the European Union) that coordinates international aid to the Palestinian Authority and for which the World Bank acts as secretariat.

47. At their best, the World Bank reports depict the encumbering patterns of economic and social control imposed by Israel on the West Bank and Gaza, including the tight enclosures, the restrictions on freedom of movement, the withholding of taxes and clearance revenues, the growth of the settlements, the blockade of Gaza, the restriction of dual-use products and the constraints on Palestinian telecommunications.<sup>88</sup> In addition, some of these reports – particularly those issued in the 2000s – linked these many constraints to wider patterns of distress in Palestinian society, including declines in school enrolment, food insecurity, depression among schoolchildren and fragmenting social cohesion.<sup>89</sup> In 2013, the World Bank released one of its more impactful reports, focusing on Area C (the 61 per cent of the West Bank completely under Israeli security and civil control, where all of its settlements are located). In its report, the World Bank persuasively detailed how the alienation of this critical land resource from the Palestinians was crippling its economy, obstructing freedom of personal and commercial movement and closing the possibility of independent development.<sup>90</sup>

48. But even at its best, the technocratic approach of the World Bank misses the forest for the trees. The punishing features of the smothering Israeli control over the Palestinian economy are not the result of regrettable Israeli policy, and are susceptible to change on the basis of empirically richer data and more comprehensive recommendations by the World Bank. Nor will enhanced institutional capacity for the Palestinians significantly alter the disfiguring reality on the ground. The reports focus on the troublesome symptoms of an economy and society encased in an ossified occupation, while ignoring the larger morbidity. This misdiagnosis is as fatal to a desperate political situation as it is in medicine. The term “occupation” never appears in any of the World Bank reports. Even more troubling, the World Bank’s reports on the “Palestinian territories” only reference the West Bank and Gaza; although East Jerusalem has long been designated by the United Nations as occupied territory that has been illegally annexed by Israel, it is never included in the World Bank’s coverage, apparently because this would require the World Bank to “pre-judge its

<sup>88</sup> See, for example, World Bank, “West Bank and Gaza update”, June 2008; and World Bank, “Economic monitoring report to the Ad Hoc Liaison Committee”, 27 September 2018 and 2 June 2020.

<sup>89</sup> See, for example, World Bank, “West Bank and Gaza update”, November 2004, November 2007 and March 2008.

<sup>90</sup> World Bank, *Area C and the Future of the Palestinian Economy*, report No. AUS2922 (Washington, D.C., 2013).

status”, hardly a neutral position.<sup>91</sup> And the World Bank does not attribute Israeli policies and practices towards the Palestinians to a strategy of de facto annexation and permanent control over the Palestinian territory, notwithstanding the plentiful economic and political evidence.

49. It does not have to be this way. In comparison to the World Bank’s sotto voce approach, the biannual reports from the United Nations Conference on Trade and Development (UNCTAD) employ a much sharper analysis, attributing the ravaging of the Palestinian economy directly to the Israeli occupation. In recent years, UNCTAD has issued substantive reports on the cumulative economic costs of the Israeli occupation on the Palestinian people,<sup>92</sup> the barriers posed by the occupation to the realization of Palestine’s oil and natural gas potential,<sup>93</sup> the relationship between the growth of the settlements and widening Palestinian poverty (see [TD/B/67/5](#)) and the economic collapse of Gaza behind an airtight blockade (see [TD/B/EX\(68\)/4](#)). By naming the actual phenomena, the UNCTAD reports deliver a more authentic understanding of the economic reality in Palestine and provide a fuller understanding as to why the billions in international aid and the institutional capacity-building for the Palestinians have perversely achieved close to the opposite of the stated goals of the international community: not a state-in-the-making, but a broken territory in formaldehyde.

#### Quartet

50. The Quartet – made up of the United States, the European Union, the United Nations and the Russian Federation – was created in 2002 to enable a more multinational dimension in the search for lasting peace between Israel and the Palestinians. It was formed in the aftermath of the second Palestinian intifada and the collapse of the 2000 Camp David peace process. At its inception, the benefits of such a unique organization were thought to be its small but influential membership, its adaptability and informality, its ability to make swift decisions and the political buy-in from both Israel and the Palestinians.<sup>94</sup>

51. Today, the Quartet is a shell of what it once was. It has been without a high-profile political envoy since the resignation of former Prime Minister of the United Kingdom of Great Britain and Northern Ireland, Tony Blair, in 2015. It conducts low-level technical and economic improvement projects for the Palestinians, including water, energy, movement and trade, telecommunications and rule of law initiatives.<sup>95</sup> Its most recent statement, issued in March 2021 by the envoys of the four members (after not meeting for more than four years), was brief and antiseptic, expressing concern about the unsustainable economic disparity between Israelis and Palestinians and urging the parties to refrain from unilateral actions.<sup>96</sup> The Quartet’s published strategy for 2021–2023 does not once mention the term “occupation” or reference settlements and their destructive role, does not provide any critical analysis of the harsh control of Israel over the Palestinians and provides no explanation as to how the Quartet’s economic improvement projects can flourish in an economy suffocated

<sup>91</sup> World Bank, *Developing the Occupied Territories: An Investment in Peace*, vol. 1 (Washington, D.C., 1993), note 45, and table 1.1. In this 1993 report, the World Bank acknowledged the central economic importance of East Jerusalem to the Palestinian economy.

<sup>92</sup> *The Economic Costs of the Israeli Occupation for the Palestinian People: The Impoverishment of Gaza under Blockade* (United Nations publication, 2019).

<sup>93</sup> *The Economic Costs of the Israeli Occupation: Unrealized Oil and Natural Gas Potential* (United Nations publication, 2019).

<sup>94</sup> Khaled Elgindy, *The Middle East Quartet: A Post-Mortem*, analysis paper No. 25 (Washington, D.C., Brookings Institution, 2012).

<sup>95</sup> Office of the Quartet, “Annual report: January–December 2020”, December 2020.

<sup>96</sup> United Nations Special Coordinator for the Middle East Peace Process, “Statement by the Middle East Quartet envoys”, 23 March 2021.

by barriers, walls, tariffs and checkpoints and without geographic trading access to the outside world.<sup>97</sup>

52. The source of the Quartet's ineffectiveness can be traced to two important and fateful turning points early in its existence. In 2003, it issued its road map to peace in the Middle East, with a declared goal of ending the occupation and enabling a two-State solution by 2005, based on detailed performance measures. While the road map placed demands on both parties, the greater demands were borne by the Palestinians (an end to the intifada, elections, new institutions, a reformed government, the acceptance of provisional borders). The final status issues were to be negotiated by the parties, but without reference to international law (particularly with regard to the settlements and the annexation of Jerusalem) and without accounting for the vast disparities in power. Israel ostensibly accepted the road map, but was permitted by the Quartet members to issue 14 reservations, which effectively undercut its viability. According to the most comprehensive appraisal of the Quartet's performance, the United States discarded the road map in 2005 to support the unilateral withdrawal of Israel from Gaza, with the reluctant acquiescence of the other three members.<sup>98</sup>

53. The Quartet's second fateful turning point was the decision in 2006 to boycott the Palestinian Government after the election of Hamas. One can regard Hamas as an organization that had and has committed odious acts, but still recognize that the 2006 Palestinian election was free and fair and that the Quartet's imposition of demands on the new Government, absent any corresponding demands on Israel to comply with its considerable international obligations, debilitated its authority and purpose. Some members of the Quartet supported economic sanctions on the new Palestinian Government, something they had never considered imposing on Israel for its serious violations. This decision contributed to the Palestinian political split which persists today. The then United Nations Special Coordinator for the Middle East Peace Process and Personal Representative of the Secretary-General to the Palestine Liberation Organization and the Palestinian Authority subsequently noted that this post-election position: "effectively transformed the Quartet from a negotiation-promoting foursome guided by [the road map] into a body that was all but imposing sanctions on a freely elected government of a people under occupation as well as setting unattainable preconditions for dialogue."<sup>99</sup>

54. An overriding lesson arising from the Quartet's predicament is that the acceptance by the other three members of American dominance meant that, in these circumstances, the Quartet's positions frequently reflect the lowest common denominator: that of the United States. Hence the quip: "the Quartet *sans trois*."<sup>100</sup> Given the extraordinary political, diplomatic and military relationship between the United States and Israel, the result was that international law had no place in the Quartet's policies, the United States assumed the sole role of monitoring compliance by Israel with the road map, and the Quartet rarely took positions critical of the role of Israel as a covetous occupier, which might have once salvaged the vanishing two-State solution.<sup>101</sup> This imbalance has not only seriously diminished any potential effectiveness of the Quartet, but it has tarnished the image and role of the United Nations, whose foremost responsibility is to uphold international law and United Nations resolutions.

<sup>97</sup> Office of the Quartet, "Strategy 2021–2023", December 2020.

<sup>98</sup> Elgindy, *The Middle East Quartet*.

<sup>99</sup> Álvaro de Soto, *End of Mission Report* (2007).

<sup>100</sup> Patrick Müller, "Informal security governance and the Middle East Quartet", *International Peacekeeping*, vol. 21, No. 4 (August 2014).

<sup>101</sup> De Soto, *End of Mission Report*.

## IV. Conclusion and recommendations

55. The international community bears a significant responsibility for the persistence of the Israeli occupation of Palestine and the failure to secure a just and lasting peace in the region. The occupation is more embedded than ever. The living conditions of the Palestinians, let alone their political future, have become even more precarious. The defiance of Israel has gone almost completely unchecked. The peace process is moribund, if not comatose, and there is no serious talk about reviving it. In this post-colonial era, in the third decade of the twenty-first century, the world is tolerating the intolerable: the imposition of a colonial reality in Palestine. All of this favours the acquisitive occupier. All of this works against the rights of the subjugated, who are long overdue for restitution.

56. Measured against the five criteria proposed in the present report, none of the four international actors, all of whom have influence on the Israeli occupation of Palestine, come close to incorporating what is necessary to create a viable new foundation for genuine Middle East peacemaking. The door remains open, however. The United States can make good on its promise to stand up for human rights everywhere.<sup>102</sup> The European Union can display diplomatic courage in charting an independent course anchored on a rights-based approach.<sup>103</sup> The World Bank can address the economic reality of the occupation through a human rights lens that will lead to much better policy recommendations. And the Quartet can elevate its impact by insisting upon the established international framework for peace with justice in the Middle East.

57. It should be clear that the realpolitik playbook for the Middle East peace process is well past its best-by date. More of the same is not working, and will not work. The new diplomatic playbook must be endowed with rights and legality at its core. While these are necessary preconditions, they are, by themselves, insufficient. Imaginative and brave diplomacy, and a willingness to finally ask the honest questions as to why this five-decade-old occupation has become indistinguishable from annexation and apartheid, is also indispensable. All of these things, together with the international application of accountability, could finally enable Palestinians and Israelis to enjoy the prosperity of a shared future together.

58. The Special Rapporteur recommends that the Government of Israel fully comply with its obligations under international law and completely end the occupation of the Palestinian territory with all deliberate speed.

59. The Special Rapporteur recommends to the international community, including international actors who are deeply involved in supervising the occupation, that it:

(a) Develop a comprehensive list of accountability measures to be applied to Israel until it complies with all relevant United Nations resolutions and accepts the international direction respecting the administration and termination of the occupation;

(b) Fully support the work of the Office of the Prosecutor of the International Criminal Court with respect to its investigation of the situation in Palestine;

(c) Adopt the five criteria developed in the present report to guide its future work in supervising the question of Palestine in all its aspects.

<sup>102</sup> Agence France-Presse in Washington, D.C., “Antony Blinken says the US will ‘stand up for human rights everywhere’”, *The Guardian*, 30 March 2021.

<sup>103</sup> Lovatt, *The End of Oslo*.