

# **CREEPING ANNEXATION: A PILLAR OF THE ZIONIST-ISRAELI COLONIZATION OF MANDATORY PALESTINE**



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**Creeping Annexation: A Pillar of the Zionist-Israeli Colonization of Mandatory Palestine**

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## I. INTRODUCTION

In order to establish [*sic*] a state, Zionists needed to do two things: first, transform many kinds of Jews into a homogenized national category [...]; and second, obtain from a colonial power a territory to settle. For Herzl and other European Zionists, this necessity was not controversial nor particularly cruel, as colonialism had yet to be discredited as an oppressive and immoral system of governance. The *modus operandi* of the time, whereby Europeans subjugated non-Europeans, was fundamental in shaping Zionist ambitions.<sup>1</sup>

Latter-day threats of *de jure* annexation of large swathes of the West Bank uttered by Israeli officials have widely been approached as a sudden and exceptional incident to happen overnight. While they admittedly mark the progress of the creeping Zionist-Israeli annexation of the occupied Palestinian territory of the West Bank, annexation is nothing new, but has followed the pattern of a historic and systematic process of colonization of Mandatory Palestine.

The prohibition of annexation as a means of acquiring territory by force, whatever form it takes, is an uncontested well-entrenched peremptory norm of international law, enshrined in Article 2(4) of the Charter of the United Nations as early as 1945, and reaffirmed in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States.<sup>2</sup> International law identifies two forms of annexation. *De jure* annexation is traditionally achieved through an official act of incorporation and the formal assertion of permanent sovereignty.<sup>3</sup> This form of annexation has been

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1 Noura Erakat, *Justice for Some: Law and the Question of Palestine* (Stanford: Stanford University Press, 2019), 27-28

2 “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.” United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, Article 2(4), available at: <https://www.un.org/en/sections/un-charter/chapter-i/index.html> [accessed 4 December 2020]; “No territorial acquisition resulting from the threat or use of force shall be recognized as legal.” General Assembly, 2625 (XXV). Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, A/RES/25/2625, 24 October 1970, available at: <http://www.un-documents.net/a25r2625.htm> [accessed 4 December 2020]; on the customary nature of the prohibition on annexation, see Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 ICJ 131, 9 July 2004, para. 87, available at: <https://www.icj-cij.org/public/files/case-related/131/131-20040709-ADV-01-00-EN.pdf> [accessed 4 December 2020]

3 Rainer Hofmann, “Annexation,” in *Max Planck Encyclopedia of Public International Law* (Oxford: Oxford University Press, 2013), para. 21

consistently condemned by the Security Council as illegal under international law.<sup>4</sup> In the Palestine context, east Jerusalem and the Syrian Golan Heights were *de jure* annexed into Israel — through the enactment of the 1967 Law and Administration Ordinance (Amendment No.11) Law as well as the 1980 Jerusalem Basic Law and the 1981 Golan Heights Law.<sup>5</sup> *De facto* annexation, while also unlawful, has a more subtle form of undeclared sovereignty claims through the gradual and indirect implementation of a series of political, demographic, institutional and legislative initiatives aimed at establishing facts on the ground.<sup>6</sup> Its gradual nature makes *de facto* annexation less directly discernible by external actors and thus less likely to be condemned.

Both *de facto* and *de jure* annexation are tools of colonialism, which entails the subjection of non-Western peoples by Western peoples from the 16th century onwards, as reflected in *de facto* and *de jure* land confiscation, the denial of peoples' self-determination, and the domination, subjugation and exploitation of the peoples, their lands and their natural resources to the benefit of the colonizers.<sup>7</sup> Relatively lately codified, the prohibition of colonization is derived from the preminent Declaration on the Granting of Independence to Colonial Countries and Peoples as it results from the United Nations General Assembly Resolution 1514 (XV) of 14 December 1960 [Decolonization Declaration].<sup>8</sup>

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4 See notably on the inadmissibility of annexation, Security Council, Security Council Resolution 242, S/RES/242, 22 November 1967, available at: <https://unispal.un.org/unispal.nsf/0/7D35E1F729DF491C85256EE700686136> [accessed 4 December 2020]; on the inadmissibility of the annexation of east Jerusalem in particular, see Security Council, Security Council Resolution 478, S/RES/478, 20 August 1980, available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/DDE590C6FF232007852560DF0065FDDB> [accessed 4 December 2020]

5 Law and Administration Ordinance - Amendment No.11 Law, Publications by the Ministry of Justice, 75 (9167), 1967, available at: <https://mfa.gov.il/mfa/foreignpolicy/mfadocuments/yearbook1/pages/13%20law%20and%20administration%20ordinance%20-amendment%20no.aspx> [accessed 3 December 2020]; Basic Law: Jerusalem, Capital of Israel, 30 July 1980, available at: [https://www.knesset.gov.il/laws/special/eng/basic10\\_eng.htm](https://www.knesset.gov.il/laws/special/eng/basic10_eng.htm) [accessed 4 December 2020]; Golan Heights Law - 5742/1981, 14 December 1981, available at: <https://mfa.gov.il/mfa/foreignpolicy/mfadocuments/yearbook5/pages/83%20the%20golan%20heights%20law%20-%205742-1981-%2014%20december.aspx> [accessed 4 December 2020]

6 Human Rights Council, Situation of Human Rights in the Palestinian Territories Occupied Since 1967: Note by the Secretary-General, A/73/45717, 22 October 2018, paras. 29-31

7 See Virginia Tilley (ed.), *Occupation, Colonialism, Apartheid? A Re-assessment of Israel's Practices in the Occupied Palestinian Territories under International Law* (Cape Town: Human Sciences Research Council of South Africa, 2009), 41, available at: [http://sro.sussex.ac.uk/id/eprint/43295/1/Occupation\\_Colonialism\\_Apartheid-FullStudy\\_copy.pdf](http://sro.sussex.ac.uk/id/eprint/43295/1/Occupation_Colonialism_Apartheid-FullStudy_copy.pdf)

8 General Assembly, Declaration on the Granting of Independence to Colonial Countries and Peoples, A/RES/1514(XV), 14 December 1960, available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Independence.aspx> [accessed 4 December 2020]

In its Preamble, the Decolonization Declaration acknowledges “that the peoples of the world ardently desire the end of colonialism in *all its forms and manifestations* [emphasis added].”<sup>9</sup> Annexation, whether *de jure* or *de facto*, constitutes such form and manifestation of the long-standing colonization of Mandatory Palestine. The colonization of Palestine has been based on the fragmentation of its historical territory into different political-legal entities and exposed to gradual annexation to which additional colonial practices are applied. The purpose of such a colonial enterprise is to attempt to conceal the colonial intents of the Zionist-Israeli project, whilst benefitting from the implicit inertia of the international community.

The multilayered colonization of Palestine is reflected in the following political-legal regimes to which all Palestinian land is subjected to: **the Palestinian lands dominated and subjugated as of 1948**, so far recognized by the international community as Israel, including an additional 23 percent of Mandatory Palestine that was designated for the Arab state, not Israel, as described in Resolution 181 of 1947,<sup>10</sup> fully colonized since the creation of the state of Israel; **Jerusalem**, with its western side fully colonized, and its eastern side under *de jure* annexation since 1967; **the West Bank**, its Areas A-B-C inherited from the Oslo Accords, formally under military occupation, with Area C under full Israeli civil and military control and *de facto* annexation, but under current threats of *de jure* annexation; **the Gaza Strip**, under a blockade-shaped military occupation. The entrenchment of such a multifaceted Israeli regime over the Palestinian people and their homeland has become a normalized political-legal reality that ultimately facilitates Israel’s colonial aspirations.

Consequently, the most recent developments of the annexation of large spans of the West Bank are a continuity of the Zionist-Israeli colonization of Mandatory Palestine since the late 19<sup>th</sup> century, culminating in the creation of the state of Israel in 1948. This paper identifies the prohibition of colonization as a customary law long before the 1960 Decolonization Declaration and its application to Palestine within its historical borders. Departing from this prohibition prior to 1948, it becomes compelling that the creation of Israel - a state inherently grounded in colonialism - is *per se*

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9 *Ibid.*

10 UN General Assembly, Resolution 181 (II), Future Government of Palestine, A/RES/181(II), 29 November 1947, available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/7F0AF2BD897689B785256C330061D253> [accessed 4 December 2020]

unlawful under international law. Thereby, the legal status of Palestine and its people could only be characterized within the political-legal framework that pre-existed the creation of Israel, namely Mandatory Palestine. The paper further contextualizes the phenomenon of annexation as one pillar of a broader Zionist-Israeli apartheid-colonial system gradually constructed under the aegis of European colonial powers, subsequently endorsed by the post-World War II nascent United Nations, and normalized by the international community over time. Annexation has been a foremost pillar that, taken in conjunction with practices of institutionalized discrimination, has advanced the Zionist-Israeli apartheid-colonial project until today.

## **II. THE COLONIZATION OF MANDATORY PALESTINE: POLITICAL-LEGAL IMPLICATIONS OF THE CUSTOMARY PROHIBITION OF COLONIZATION**

Pre-1948 colonization of Palestine admittedly challenges the fundamentals of colonization as conceptualized under international law. Still, identifying the gradual Zionist-Israeli domination of Palestine and the Palestinian people pre-1948 as amounting to colonization is an absolutely essential framework. This is even more so when considering the specificities of Zionist-Israeli settler-colonialism, which are predominantly based on the implantation of colonizers in Palestine, as well as on the appropriation of self-determination and decolonization claims to the benefit of the colonizers. This colonial phenomenon has been dubbed “colonialism of a special type” in the context of apartheid South Africa, and rests on two components: the self-indigenization of the Zionist-Israeli colonizers and the framing of the Zionist-Israeli movement as a decolonization movement in order to appropriate the right to self-determination and territorial rights at the expense of the Palestinian people.<sup>11</sup>

It remains that Zionist settler implantation to Palestine since the late 19<sup>th</sup> century, and later facilitated and reinforced by the British Mandate regime, constitutes colonization, and was defined as such from its very inception.<sup>12</sup>

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11 Tilley, in *supra* 7, 45

12 “I don’t know of a single example in history where a country was colonized with the courteous consent of the native population.” Ze’ev Jabotinsky, founder of the Betar Zionist movement, 1921, cited in Neil Caplan, *Palestine Jewry and the Arab Question, 1917-1925* (New York: Routledge, 2016), 113



One of the specific features of Zionist colonization lies in the fact that the colonizer was not properly a state but rather an ideological movement of Zionist settlers backed by imperialist Britain under the guise of an internationally-sanctioned mandate. European colonial powers' endorsement and support of the Zionist project proved to be paramount in its realization, and continues to be so. Colonial France and Britain noticeably planned the colonization of Palestine prior to the birth of Zionism. In 1799, Napoleon Bonaparte foreran the Zionist ideology, calling for the establishment of a Jewish colony in Palestine.<sup>13</sup> In 1840, Lord Palmerston – later British Prime Minister from 1859 to 1865 – advocated for the so-called “Jews dispersed over Europe[’s] return to Palestine” before the British ambassador in Constantinople.<sup>14</sup> Only in 1948 did the Zionist project climax into the creation of the colonial state of Israel on a significant part of Palestine. Consistent with other European settler-colonies, the Zionist colonial movement originated from the implantation of European colonizers that ultimately separated from their original colonial powers, while maintaining historical ties and endorsement from the latter. Contrary to exploitative colonies, where local populations were acknowledged and subjugated, settler colonies often needed to legitimize their enterprise under a *terra nullius* discourse that erased the presence of local populations. Notable examples include the United States, Canada and Australia. It remains that this colonial movement of Zionist settlers operated under the approval and support of the British Mandate that designated the Jewish Agency as its main administrative partner.<sup>15</sup> As a consequence, and taken in conjunction with what follows, all provisions enclosed in the British Mandate for Palestine relevant to the enabling of Zionist implantation to Palestine should be analyzed through the lens of the illegal practice of settler-colonization.

The prohibition of colonization is said to have been consecrated as customary law with the 1960 Decolonization Declaration. The absence of formal and general condemnation and prohibition of such colonial practices under international law before the 1960s is readily understandable, and is due to the prevailing balance of power at the time of the construction of international norms that now form the arsenal of international law. The very concept of

13 “Napoleon Bonaparte’s Letter to the Jews,” 20 April 1799, available at: <http://www.mideastweb.org/napoleon1799.htm> [accessed 4 December 2020]

14 Isaiah Friedman, “Lord Palmerston and the Protection of Jews in Palestine 1839-1851,” *Jewish Social Studies* 30, no. 1 (1968), 31

15 League of Nations, Mandate for Palestine, C.529.M.314.1922.VI., 12 August 1922, Article 4, available at: <https://unispal.un.org/UNISPAL.NSF/0/2FCA2C68106F11AB05256BCF007BF3CB> [accessed 4 December 2020] [Mandate for Palestine]

decolonization was hardly considered prior to World War II. The decolonization wave that paved the way for the Decolonization Declaration, just like the preceding decolonization waves, did not result from the humane realization on part of the colonizers that colonization constituted an infringement on the peoples' legitimate right to self-determination. Quite the contrary, and without seeking to over-generalize a decolonization phenomenon that evidently took very diverse forms and even, rather than constituting the 'end of history,' revived through new forms, "[...] decolonization was a violent, fiercely contested process that pitted imperial rulers against colonial subjects."<sup>16</sup> Decolonization resulted in the alignment of different parameters including global wars between imperialist states that contributed to their weakening; peoples' struggle for their right to self-determination; economic and political crises that, while weakening colonial states, provided purposes and favorable circumstances for peoples to legitimately seek their independence.

**However, there exists sufficiently authoritative legal basis for the application of the prohibition of colonization to the Zionist-Israeli enterprise in Palestine from the 19<sup>th</sup> century onwards.** On the one hand, a review of waves of decolonization of peoples prior to the 1960s decolonization wave, and in particular of their legal implications, suggests the existence of a legal precedent outlawing colonization as a means of territorial expansion, in both state practice and *opinio juris*.<sup>17</sup> On the other hand, an analytical examination of the Decolonization Declaration reveals that significant provisions were, on an individual basis, legally sanctioned prior to the creation of the state of Israel in 1948. The following will elaborate on these arguments and draw adequate conclusions with respect to Palestine.

## **II.1. The Formation of State Practice and *Opinio Juris* Prior to 1948: Prohibition of Colonization as a Customary Principle**

The first convincing avenue in support of the application of the prohibition of colonization as a customary norm of international law prior to the creation of

<sup>16</sup> Dane Kennedy, *Decolonization: A Very Short Introduction* (Oxford: Oxford University Press, 2016), 2

<sup>17</sup> Customary international law is a source of international law derived from a general practice accepted as law, as found in official accounts of military operations, military manuals, national legislation or jurisprudence - *state practice*, and accepted as law - *opinio juris*. Customary rules of international law are binding on states. See Legal Information Institute, "Customary International Law," available at: [https://www.law.cornell.edu/wex/customary\\_international\\_law](https://www.law.cornell.edu/wex/customary_international_law) [accessed 8 December 2020]

Israel and of the subsequent Decolonization Declaration is the occurrence of previous waves of decolonization between 1776 and the 1820s in the Americas, and between 1917 and the 1920s in central and eastern Europe, formalized by bilateral and multilateral treaties between colonial states and their colonies. Such treaties reveal a pattern of preexisting state practices and *opinio juris* inclined to recognize the illegality of colonialism. Without attempting an exhaustive survey, it is worth mentioning some significant examples.

In parallel to South American states' independence, and in reaction of the resurgence of European hegemonic interests in the Americas, United States President James Monroe, in office from 1817 to 1825, articulated the Monroe Doctrine in 1823, which notably bound the United States to a policy of non-colonization and a hands-off policy on behalf of Europeans in the Americas.<sup>18</sup> The concept of 'non-colonization' constituted a seminal step to the reprobation of colonization and the promotion of decolonization. One landmark of decolonization was that of Haiti, which culminated in the 1824 Franco-Haitian Agreement, conditioning France's recognition of the independence of its former colony.<sup>19</sup> Later, in 1836, the Spanish *Cortes* authorized the Spanish government to "conclude peace and friendship treaties with the new States of Spanish America based on the recognition of their independence, and waive any territorial or sovereignty rights by the Old Metropolis."<sup>20</sup> It constituted the legal basis that paved the way for Spain's *de jure* recognition of decolonization and the establishment of formal diplomatic relations, with more than fifteen former colonies.<sup>21</sup> Portugal also acknowledged the independence of Brazil

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18 "[T]he American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects to future colonization by any European powers.[...] [A]ny attempt [by the Europeans to] extend their system to any portion of this hemisphere [would appear as] dangerous to our peace and safety [...]" See Mark Gilderhus, "The Monroe Doctrine: Meanings and Implications," *Presidential Studies Quarterly* 36, no. 1 (2006), 8, available at: <http://maihold.org/mediapool/113/1132142/data/Gilderhus.pdf>

19 U.S. Department of State Archive, "U.S. Invasion and Occupation of Haiti, 1915-34," available at: <https://2001-2009.state.gov/r/pa/ho/time/wwi/88275.htm> [accessed 4 December 2020]

20 "España Reconoce la Independencia Americana," in *Cuadernos Hispanoamericanos* (Madrid, 2004), 20

21 Peace and Friendship treaties notably included the Treaty of Mexico on 28 December 1836, the Treaty of Ecuador on 16 February 1840, the Treaty of Chile on 25 April 1844, the Treaty of Venezuela on 30 March 1845, the Treaty of Bolivia on 21 July 1847, the Treaty of Costa Rica on 10 of May 1850, the Treaty of Nicaragua of 25 July 1850, the Treaty of Dominican Republic on 18 February 1855, the Treaty of Guatemala on 29 Mayo 1863, the Treaty of El Salvador on 24 June 1865, the Treaty of Peru in 1879, the Treaty of Paraguay on 10 September 1880, the Treaty of Colombia on 30 January 1881, the Treaty of Uruguay in 1882, the Treaty of Honduras on 17 November 1894 and the Treaty of Panama on 10 May 1904. See *id.*, 21-22

through the Treaty of Rio de Janeiro signed in 1825.<sup>22</sup> Altogether, these notable examples signify the gradual development of a state practice, on the part of colonizing states, to *de jure* recognize the decolonization of their former colonies by means of treaties.

Although the very concept of “decolonization” did not break through until the 1960s, the recognition of colonies’ “independence” by their former colonizers was a first indication of imperialist Europe’s retreat from their colonial design. The granting of independence to colonies is inevitably associated with the abandonment of colonial supremacy by colonizers, even if not formulated in terms of peoples’ rights, and only guided by calculated choices to maintain their worldwide hegemony. It should be mentioned that similar processes were at play in the framework of the second decolonization wave that resulted in the independence of former colonies of the Ottoman, German, Habsburg and Russian Empires through multilateral treaties that featured main European colonial powers. Besides, in 1918, United States President Woodrow Wilson’s Fourteen Points constituted a decisive principled statement in the gradual realization by powerful colonial states that colonization is a wrong. The Fifth Point emphasizes that “[a] free, open-minded, and absolutely impartial adjustment to all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined.”<sup>23</sup> Often misconstrued as a plea for national self-determination, the fifth point rather epitomizes peoples’ right to self-government – that is most of all understood in terms of participation in public affairs.<sup>24</sup> It did not entail the abandonment of colonialism as such, but simply “adjustments” to colonial rule, as long as European powers served the peoples under their rule’s interests, and until the latter attained the European-set standard for complete self-governance. Wilson’s sympathy towards the

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22 Interestingly enough, the independence of Brazil was largely mediated by the British in an effort to maintain their trade interests. It is not to deny, however, that Britain’s support for Brazilian independence rather hinged on the realization that a powerful monarchy was necessary in South America to counterbalance the increasing power of the United States on the international stage, which supposedly threatened European commercial and political hegemony. In other words, Britain’s recognition of Brazil’s independence sought to maintain and enhance European imperialism worldwide. See Alan Manchester, “The Recognition of Brazilian Independence,” *The Hispanic American Historical Review* 31, no. 1 (1951)

23 Woodrow Wilson, “Fourteen Points,” 8 January 1918, Fifth Point, available at: <https://www.britannica.com/event/Fourteen-Points> [accessed 4 December 2020]

24 Trygve Throntveit, “The Fable of the Fourteen Points: Woodrow Wilson and National Self-Determination,” *Diplomatic History* 35, no. 3 (2011), 446

mandate system confirms that the latter constituted such an adjustment.<sup>25</sup> Nonetheless, Wilson's Fifth Point marks the existence of an *opinio juris*, that is the beginning of colonial powers' recognition of colonization as an international wrong, at least in that it deprives people of participation in their own public affairs.

Given the exceptionally complex determinants at stake in the decolonization process throughout history, it would be farfetched to pretend to fully grasp such a convoluted phenomenon. However, the few elements outlined above display a consistent pattern of state practice and *opinio juris* tending towards the rejection of colonization of peoples, at least from the late 17<sup>th</sup> century onwards. The logic behind its lack of full apprehension by international law until the 1960s lies in the fact that public international law, at its outset, has been thought through and codified under the authority of international powers, whose influence was chiefly based on their colonial hegemony.

## **II.2. The Prohibition of Components of Colonization Enshrined in International Law Prior to 1948**

The second avenue to identify a consistent pattern of illegality of colonialism prior to its official consecration through the Decolonization Declaration of 1960 is derived from an analysis of its very provisions. Indeed, an in-depth review of the constitutive features of colonization enshrined in the Decolonization Declaration shows that they have been common practices and policies in Palestine. Amongst these practices, denial of self-determination, armed action or repressive measures against peoples, and partial or total disruption of national unity and territorial integrity were already compellingly prohibited under international law before the creation of Israel in 1948.

### *II.2.a. Alien Subjugation, Domination and Exploitation (Article 1 of the Decolonization Declaration)*

The current Israeli regime is grounded in illegal practices of apartheid, prolonged occupation, annexation and systemic discrimination falling within the scope of Article 1. It is necessary to place these practices within the context

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<sup>25</sup> *Id.*, 469-470



of the gradual takeover of the Zionist apparatus over Palestine since the end of the 19<sup>th</sup> century, and how this constitutes *per se* colonization. Practices of Zionist-alien subjugation, domination and exploitation constitutive of colonization have not only formed the basis of Zionist settler implantation to Palestine, but have also assisted in the entrenchment of Zionist colonization in Palestine.

In the late 19<sup>th</sup> century, Zionism grew as a colonial movement that aimed to further entrench the scramble for colonies in the Arab region undertaken by European colonial powers, starting with Britain and France.<sup>26</sup> Since its inception, Zionism has always been and claimed to be a European settler-colonial movement to appropriate Palestine and create a settler colony at the expense of the Palestinian population.<sup>27</sup> Far from being the *terra nullius* that was so fantasized about, Palestine has always been home to a Palestinian population. The Ottoman census of 1878 for the Jerusalem, Nablus and Acre districts recorded 473,000 inhabitants, of which 3.2 percent were Palestinian-Jews.<sup>28</sup> Before the Nakba, successive waves of Zionist-Jewish settler implantation to Palestine exponentially increased the proportion of foreign Jews, to whom Palestinian-Jews were incorporated, as reflected in estimates that 32.4 percent of Palestine's population were Jewish and 67.6 percent were Palestinian-Arabs.<sup>29</sup> Jewish presence in Palestine from the late 19<sup>th</sup> century onwards was overwhelmingly the result of massive Zionist-Jewish settler implantation from European countries to Palestine.

The very premise of Zionism has always been to entrench a process of foreign settler implantation, control over the Palestinian people, and appropriation and exploitation of Palestinian lands for the purpose of economic, social, cultural and political dominance. One distinctive characteristic has been the Zionist

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26 Fayeze Sayegh, "Zionist Colonialism in Palestine (1965)," *Settler Colonial Studies* 2, no. 1 (2012), 207, available at: <https://www.tandfonline.com/doi/pdf/10.1080/2201473X.2012.10648833>

27 Zionist colonization differed from European colonization on different fronts: Zionist colonization was not only driven by economic and political-imperialist motives, but most of all by the building of a Jewish nation-state; contrary to other European colonizing movements, it was not satisfied with exploiting and dominating the Palestinian people as their very existence constituted a threat to the settler project. See Sayegh, *id.*, 208-209

28 "Factsheet: Demographics of Historic Palestine Prior to 1948," Factsheet no. 7, *Canadians for Justice and Peace in the Middle East*, 2004, available at: <https://d3n8a8pro7vhmx.cloudfront.net/cjpme/pages/2116/attachments/original/1470170922/07-En-Demographics-Factsheet.pdf?1470170922>

29 In 1946, British-American commission of inquiry found that Palestine was inhabited by 1,269,000 Palestinian-(Arabs) and 608,000 Jews. *Ibid.*

reliance on the international recognition of the British Mandate of Palestine to gradually expand on Palestinian lands and assert territorial control prior to the Nakba, instead of by means of a proper aggressive war, which was then deemed unlawful under international law according to Article 11 of the Covenant of the League of Nations as well as Article 1 the Kellogg-Briand Treaty.<sup>30</sup> This was possible by British-backed means of practices and policies of subjugation, domination and exploitation, subsequently prohibited under Article 1 of the Decolonization Declaration.

Such practices included:

- **The alteration of the demographic composition of Palestine:** through the facilitation of foreign settler implantation and the naturalization of more than 130,000 Jews while denying more than 60,000 Palestinians residing outside of Mandatory Palestine prior to 1925 access to Palestinian citizenship;<sup>31</sup>
- **The illegal transfer of land use and ownership:** through forced transfer of Palestinian land titles to Zionist organizations, through the intermediary of the Jewish National Fund founded in 1901,<sup>32</sup> resulting in the acquisition of 6 percent of the total surface of Mandatory Palestine, including 12 percent of arable lands, by Zionist colonizers in 1948,<sup>33</sup> and the eviction of more than 1,000 Palestinian tenant households from their confiscated lands in 48 localities between 1939 and 1945;<sup>34</sup>
- **The support of Zionist institutionalization in Palestine:** through granting Zionist requests to establish modern Hebrew as a language with

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30 “Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League [...]” League of Nations, Covenant of the League Nations, 28 April 1919, Article 11, available at: [https://avalon.law.yale.edu/20th\\_century/leagcov.asp](https://avalon.law.yale.edu/20th_century/leagcov.asp) [accessed 4 December 2020]; see also Kellogg-Briand Pact, 27 August 1928, Article 1, available at: <https://iilj.org/wp-content/uploads/2016/08/General-Treaty-for-the-Renunciation-of-War-Kellogg-Briand-Pact.pdf>

31 “Table 2.18 – The Population of Palestine by Religion, 1870 to 1946” in Justin McCarthy, *The Population of Palestine: Population History and Statistics of the Late Ottoman Period and the Mandate* (New York: Columbia University Press, 1990), 37; BADIL Resource Center for Palestinian Residency and Refugee Rights [BADIL], *Survey of Palestinian Refugees and Internally Displaced Persons 2016-2018*, vol. 9 (Bethlehem: BADIL, 2019), 3, available at: <http://www.badil.org/phocadownloadpap/badil-new/publications/survey/survey2016-2018-eng.pdf>

32 BADIL, *Id.*, 4

33 Mohamed Seif El Nasr, “Palestine: How the Land was Lost,” *Your Middle East*, 28 November 2015, available at: <https://yourmiddleeast.com/2015/11/28/palestine-how-the-land-was-lost/> [accessed 4 December 2020]

34 BADIL, in *supra* 31, 4

equal status to Arabic;<sup>35</sup> the designation of the World Zionist Organization as a representative “Jewish agency;”<sup>36</sup>

- **The development of Zionist colonies and the de-development of Palestinian communities:** through condoning discrimination in wages and excluding Palestinian workers from the job market, monopolizing the dairy market by the new Zionist dairy company Tnuva,<sup>37</sup> supporting exclusive Jewish labor in kibbutzim, and inducing the de-development of Palestinian rural communities, that, by the early 1940s, could dispose, on average, of less than half of the agricultural land necessary for their subsistence,<sup>38</sup>
- **The support of Zionist militias:** through the creation of the Haganah, Stern Gang and Irgun paramilitary organizations and training of the mobile Zionist striking forces Palmach,<sup>39</sup> while suppressing Palestinian resistance to Zionist domination by imposing a set of sanctions on Palestinians for armspossession.<sup>40</sup>

This was all done with the purpose of entrenching Zionist presence on the Palestinian lands, while excluding the Palestinian people, as expressed in the following quote by Israel’s first Prime Minister, David Ben-Gurion.

We who came here over the past fifty years could not be absorbed in the existing economy, but we were obliged to create new sources of livelihood. We did not settle in Arab villages or in the occupied towns, but founded new settlements and built new urban quarters and suburbs. We did not look for work in Arab vineyards and groves, nor in Arab shops and factories; we planted and erected our own. We came not as immigrants but as settlers, not to ancient Palestine, but to a new land we made ourselves.<sup>41</sup>

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35 Mandate for Palestine, in *supra* 15, Article 22

36 “An appropriate Jewish agency shall be recognized as a public body for the purpose of advising and co-operating with the Administration of Palestine [...]. The Zionist Organization, so long as its organization and constitution are in the opinion of the Mandatory appropriate, shall be recognized as such agency [...].” Mandate for Palestine, in *supra* 15, Article 4

37 World Zionist Organization, “In Those Days – Tnuva,” *The Central Zionist Archives*, available at: <http://www.zionistarchives.org.il/en/tags/Pages/Tnuva.aspx> [accessed 4 December 2020]

38 Sayegh, in *supra* 26, 212 ; BADIL, in *supra* 31, 5

39 John Louis Peeke, “Jewish-Zionist Terrorism and the Establishment of Israel” (Master’s Thesis, Naval Postgraduate School, 1977), 19-103, available at: <https://apps.dtic.mil/dtic/tr/fulltext/u2/a047231.pdf>

40 BADIL, in *supra* 31, 4

41 David Ben-Gurion, *Rebirth and Destiny of Israel* (Philosophical Library, 1954), 42

## *II.2.b. Denial of Right to Self-Determination (Article 2 of the Decolonization Declaration)*

Recognized as an *erga omnes* principle of international law in Article 1(2) and Article 55 of the United Nations Charter as of 1945,<sup>42</sup> the right to self-determination evolved into a full-fledged peremptory norm through the decolonization process of the 1960s, explicitly as a right owed to all peoples experiencing colonial subjugation.<sup>43</sup> Irrespectively, the stirrings of the principle of peoples' self-determination can be traced back to the French and American Revolutions and especially to mid-19<sup>th</sup> century Europe.

In the specific case of Palestine, the Palestinians have been the people of Palestine well before the 20<sup>th</sup> century and the rise of Zionism. Their right to self-determination has been acknowledged and recognized *de jure* long before the creation of Israel in 1948. Even amongst Zionist circles, the Palestinian people's right to self-determination was raised and discussed on a number of occasions.<sup>44</sup> More importantly, according to Article 22 of the Covenant of the League of Nations, peoples formerly governed by the Turkish Empire were recognized as "independent nations [that could] be *provisionally* [...] subject to the rendering of administrative advice and assistance by a Mandatory *until such time as they are able to stand alone* [emphasis added]," which amounts to a form of external right to self-determination, namely a right to define their own political status, including a state of their own.<sup>45</sup> The United Nations has subsequently recognized the right of self-determination of the Palestinian people in numerous resolutions, including Resolution 2672(XXV) of 1970, Resolution 3236(XXIX) of 1974, Resolution 66/146 of 2012; Resolution 67/158 of 2013.<sup>46</sup>

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42 Charter of the United Nations, in *supra* 2, Articles 1(2) and 55

43 See Declaration on the Granting of Independence to Colonial Countries and Peoples, in *supra* 8, para.2; See Declaration on Principles of International Law concerning Friendly Relations, in *supra* 2; Western Sahara, Advisory Opinion, 1975 ICJ 12, 16 October 1975, para. 55, available at: <https://www.icj-cij.org/public/files/case-related/61/061-19751016-ADV-01-00-EN.pdf>

44 "[T]he Arab in Palestine has the right to self-determination. This right is not limited, and cannot be qualified by our own [Zionist] interests... It is possible that the realization of the aspirations (of the Palestinian Arabs) will create serious difficulties for us but this is not a reason to deny their rights." Lecture by David Ben Gurion, Berlin, 1931, cited in John Collins, "Self-Determination in International Law: The Palestinians," *Case Western Reserve Journal of International Law* 12, no. 1 (1980), 137, available at: <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?referer=https://scholar.google.com/&httpsredir=1&article=1914&context=jil>

45 Covenant of the League Nations, in *supra* 30, Article 22

46 See also Wall Advisory Opinion, para. 122

Further, the Palestinian people have been recognized a nationality. The *de jure* recognition of the Palestinian nationality under international law dates back to the Treaty of Lausanne signed in 1923.<sup>47</sup> By virtue of Article 30 of the Treaty of Lausanne, all Palestinians previously subject to Ottoman rule and habitual residents of Palestine as of 6 August 1924 qualified for the Palestinian nationality. This is consistent with similar nationality provisions enshrined in post-World War I treaties, and the *de jure* acknowledgment of the Palestinian nationality is no exception.<sup>48</sup> It is also of particular relevance that Palestinian nationality was codified like any other nationality of the Arab-speaking mandated-countries, namely Iraq, Transjordan, Syria, Lebanon and Egypt, that all granted their respective nationalities to their permanent residents living in these areas during the Ottoman period.<sup>49</sup> As a result, the allocation of the Palestinian nationality to the people of Mandatory Palestine, conferred in Article 30, is to be considered both state practice and international law. It was further confirmed and codified in the 1925 Palestinian Citizenship Order that, as amended in 1941, constituted the applicable nationality legal instrument when the Mandate terminated.<sup>50</sup> Having been issued by the King of the British Empire in Council and enacted under the Foreign Jurisdiction Act of 1890 applicable to British colonies, it bestows a superior constitutional value to the Order,<sup>51</sup> which was specifically aimed at executing Article 7 of the Mandate for Palestine.<sup>52</sup> Although an instrument of

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47 “Turkish subjects habitually resident in territory which in accordance with the provisions of the present Treaty is detached from Turkey will become *ipso facto*, in the conditions laid down by the local law, nationals of the State to which such territory is transferred.” League of Nations, Treaty of Peace, signed at Lausanne, B.E.-Fr.-It.-Jp.-Gr.-Tr., 28 UNTS 701, 24 July 1923, Article 30, available at: [http://sam.baskent.edu.tr/belge/Lausanne\\_ENG.pdf](http://sam.baskent.edu.tr/belge/Lausanne_ENG.pdf)

48 Other peoples were conferred with nationalities pursuant to similar provisions. See German nationality, Treaty of Peace with Germany (Treaty of Versailles), signed at Versailles, 28 June 1919, Article 278; Polish nationality, Minorities Treaty Between the Principal Allied and Associated Powers and Poland, signed at Versailles, 28 June 1919, Articles 4 and 6, available at: <http://www.forost.ungarisches-institut.de/pdf/19190628-3.pdf>; Romanian nationality, Treaty Between the Principal Allied and Associated Powers and Roumania, signed at Paris, 9 December 1919, Articles 4 and 6; Austrian nationality, Treaty of Peace Between the Principal Allied and Associated Powers and Austria, signed at Saint Germain-en-Laye, 10 September 1919, Articles 64-65, available at: <http://www.forost.ungarisches-institut.de/pdf/19190910-1.pdf>; Bulgarian nationality, Treaty of Peace Between the Allied and Associated Powers and Bulgaria, and Protocol and Declaration, signed at Neuilly-sur-Seine, 27 November 1919, Articles 51-52; Hungarian nationality, Treaty of Trianon, signed at Trianon, 4 June 1920, Articles 56-57

49 Mutaz Qafisheh, “The International Law Foundations of Palestinian Nationality: A Legal Examination of Palestinian Nationality under the British Rule” (PhD Thesis, University of Geneva, 2007), 90-91, available at: <https://doc.rero.ch/record/9065/files/these.pdf>

50 Qafisheh, *id.*, 97

51 Qafisheh, *id.*, 102-103

52 “The Administration of Palestine shall be responsible for enacting a nationality law. There shall be included in this law provisions framed so as to facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine.” Mandate for Palestine, in *supra* 15, Article 7



Zionist colonization and imperialism over Palestine, as it was also purported to “facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine,”<sup>53</sup> the Mandate for Palestine specifically refers to a “Palestinian” citizenship.

Taken altogether, the existence of a Palestinian national people of Palestine that predated the creation of Israel has been a factual reality, further *de jure* recognized by international law. This also entails that the **Palestinian people’s right to self-determination cannot be reduced to its internal aspect – namely self-governance at the community level – but should expand to its external aspect, which is the right to their own independent state, as the only way to gain liberation from alien domination.**<sup>54</sup> Yet, in practice, the Palestinian people have been denied the enjoyment of their legitimate right to self-determination, although consistently recognized by multiple United Nations General Assembly resolutions,<sup>55</sup> as well as by the International Court of Justice in the *Wall* decision.<sup>56</sup> In particular, the Palestinian people constitute the “one case in which the rule restricting self-determination to colonial peoples has not been followed by the U.N.”<sup>57</sup>

### *II.2.c. Armed Action or Repressive Measures of All Kinds Directed Against Peoples (Article 4 of the Decolonization Declaration)*

The Zionist settler-colonization of Palestine found expression in the gradual appropriation of Palestinian lands for the purpose of Zionist settlement, with the forced displacement of the Palestinian people being a necessary condition. Throughout the British Mandate period, the combination of Zionist repressive and coercive actions and legitimate Palestinian resistance escalated to a situation of

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<sup>53</sup> *Ibid.*

<sup>54</sup> On the distinction between internal and external self-determination, see “Legal Aspects of Self-Determination,” *Encyclopedia Princetoniensis*, Princeton University, available at: <https://pesd.princeton.edu/node/511> [accessed 4 December 2020]

<sup>55</sup> See *inter alia*, General Assembly, United Nations Relief and Works Agency for Palestine Refugees in the Near East, A/RES/2672(XXV), 8 December 1970, available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/E7C4B66C913EC0DC852560DE006E8F1B> [accessed 4 December 2020]; General Assembly, Question of Palestine, A/RES/3236(XXIX), 22 November 1974, available at: <https://unispal.un.org/UNISPAL.NSF/0/025974039ACFB171852560DE00548BBE> [accessed 4 December 2020]; General Assembly, Right of the Palestinian People to Self-Determination, A/RES/67/158, 26 February 2013, available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/9EBA2C881717F7D485257B32004E7D4C> [accessed 4 December 2020]

<sup>56</sup> Wall Advisory Opinion, para. 122

<sup>57</sup> Schoenberg, cited in Collins, in *supra* 44, 163

protracted armed confrontations,<sup>58</sup> perpetrating massacres such as in Dair Yaseen, Ain ez-Zaitoun and Salah ed-Deen in April 1948, in pursuance of “eviction-by-terrorization.”<sup>59</sup> Zionist militias’ armed actions and repressive measures geared towards the Palestinian people from the 1920s up until the creation of Israel in the late 1940s violated multiple rules of customary humanitarian law already applicable back in the time, including: the prohibition of the destruction or seizure of the property of an adversary under Article 23(g) of the Hague Regulations;<sup>60</sup> the prohibition of pillaging under Articles 28 and 47 of the Hague Regulations and recognized as a war crime by the Charter of the International Military Tribunal of Nuremberg;<sup>61</sup> and the prohibition on displacement of the civilian population, in whole or in part under Article 23 of the Lieber Code.<sup>62</sup>

58 “In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties [...]” International Committee of the Red Cross, Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 75 UNTS 287, 12 August 1949, available at: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=A4E145A2A7A68875C12563CD0051B9AE> [accessed 4 December 2020]; we argue here that the Zionist hostilities reached a significant level of intensity, and that Zionist paramilitary armed groups benefited from a certain command structure and capacities to sustain military operations for the hostilities to qualify as a non-international armed conflict under international humanitarian law according to subsequent Common Article 3 of the Geneva Conventions. See International Committee of the Red Cross, “How is the Term “Armed Conflict” Defined in International Humanitarian Law?,” Opinion Paper, March 2008, available at: <https://www.icrc.org/en/doc/assets/files/other/opinion-paper-armed-conflict.pdf>

59 Dair Yaseen, Ain ez-Zaitoun, Salah ed-Deen in April 1948, Iqrith in December 1951, Al-Tirah in July 1953, Abu Gosh in September 1953, Kafr Qasim in October 1956 and Acre in June 1965. See Sayegh, in *supra* 26, 218-219

60 See Lieber Code, 24 April 1863, Articles 15-16, available at: <https://ihl-databases.icrc.org/ihl/INTRO/110> [accessed 4 December 2020]; Project of an International Declaration concerning the Laws and Customs of War, Brussels, 27 August 1874, Article 13(g), available at: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=31364F80ED69E269C12563CD00515549> [accessed 4 December 2020]; Convention respecting the Laws and Customs of War on Land and its Annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907, Article 23(g), available at: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=61CDD9E446504870C12563CD00516768> [accessed 4 December 2020]; see also International Committee of the Red Cross, Customary International Humanitarian Law, Volume 1: Rules, 2005, Rule 50, available at: <https://www.icrc.org/en/doc/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf>

61 See Lieber Code, *ibid.*; Project of an International Declaration concerning the Laws and Customs of War, *id.*, Article 13(g); Laws of War on Land, Oxford, 9 September 1880, Article 32, available at: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=2C00F78A0449E3DAC12563CD0051592C> [accessed 4 December 2020]; Convention respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, *id.* Articles 28 and 47; United Nations, Charter of the International Military Tribunal – Annex to the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, 8 August 1945, Article 6(b), available at: [https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.2\\_Charter%20of%20IMT%201945.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.2_Charter%20of%20IMT%201945.pdf); see also Customary International Humanitarian Law, Volume 1: Rules, *id.*, Rule 52

62 “Private citizens are no longer [...] carried off to distant parts [...]” Lieber Code, *id.*, Article 23; see also Customary International Humanitarian Law, Volume 1: Rules, *id.*, Rule 129

From 1922 to 1947, between 100,000 and 150,000 Palestinians were expelled, denationalized or compelled to leave their homes.<sup>63</sup> Zionist-Israeli crimes reached a climax during the Nakba between 1947 and 1949, which resulted in the expulsion of between 750,000 and 900,000 Palestinians from their original homes in lands seized first by the Zionist militia and then by Israel, representing 85 percent of the Palestinian people living in the land that became Israel, and the destruction of more than 600 towns and villages.<sup>64</sup> Given their intentional execution in a widespread and systematic manner directed towards Palestinian civilians, these crimes qualify as forcible transfer of a population, which is considered a crime against humanity under Article 7(1)(d) of the Rome Statute,<sup>65</sup> first codified under Article 6(c) of the Nuremberg Charter in 1945.<sup>66</sup>

#### *II.2.d. Partial or Total Disruption of National Unity and Territorial Integrity (Article 6 of the Decolonization Declaration)*

The consecration of the principle of territorial integrity can be drawn from Article 2(4) of the 1945 United Nations Charter that stipulates that “[a]ll Members shall refrain in their international relations from the threat or use of force against the *territorial integrity* or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations. [emphasis added]”<sup>67</sup>

When it comes to Palestine, under Article 22 of the League of Nations, Palestine was considered as one of those “communities formerly belonging to the Turkish Empire hav[ing] reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone [...]”<sup>68</sup> Pursuant to the ensuing Mandate for Palestine, Article 5 prescribes that Britain, “the Mandatory[,]

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63 BADIL, in *supra* 31, 3

64 *Id.*, 6

65 General Assembly, Rome Statute of the International Criminal Court, 17 July 1998, Article 7(1)(d), available at: <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>

66 Charter of the International Military Tribunal, in *supra* 61, Article 6(c)

67 Charter of the United Nations, in *supra* 2, Articles 2(4) and 55; see also Nada Awad and Rania Muhareb, “Annexation as a Symptom of Israeli Apartheid,” *This Week in Palestine*, available at: <https://www.thisweekinpalestine.com/annexation-as-a-symptom-of-israeli-apartheid/> [accessed 4 December 2020]

68 Covenant of the League Nations, in *supra* 30, Article 22

shall be responsible for seeing that no Palestine territory shall be ceded or leased to, or in any way placed under the control of, the Government of any foreign Power.”<sup>69</sup> It follows that the integrity of the Palestinian territory, from the Jordan River to the Mediterranean Sea, has been recognized under international law since the British Mandate of 1922.

**Departing from there, there are two different legal arguments that support the contemporary decolonization of Palestine within its mandatory borders by virtue of the principle of territorial integrity.** First, the international acknowledgement and recognition of the Palestinian people’s right to self-determination that is inextricably linked with the preservation of Palestine’s territorial integrity. Second, the application of the customary principle of *uti possidetis juris* [as you possess under law, defined below] provides a sound legal justification for the decolonization of Palestine within its mandatory borders.

- **The Interdependence of Self-Determination and Territorial Integrity**

The principle of territorial integrity as enshrined in Article 2(4) of the United Nations Charter,<sup>70</sup> interlaced with the prohibition of the threat or use of force and the right to self-determination, renders United Nations General Assembly Resolution 181 (II),<sup>71</sup> embodying the partition of Palestine for the purpose of imposing a Jewish state in part of its lands, unlawful under international law. The United Nations’ disregard for its own norms is no doubt due to its political composition. Leading powers in the aftermath of World War II were colonial states committed to the colonial cause and therefore supportive of the idea of a Zionist state — itself the product of the European colonial ideology, movement and interests.

There are multiple implications of the fact that the Palestinians are the national people of Palestine as their qualification as such is intrinsically linked to the land they have historically been residing in and developing numerous economic, social and cultural connections. The land where the Palestinian

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69 Mandate for Palestine, in *supra* 15, Article 5

70 “[A]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.” Charter of the United Nations, in *supra* 2, Article 2(4)

71 General Assembly Resolution 181 (II), in *supra* 10

people have been entitled to exert their right to self-determination has been recognized within the borders defined under the British Mandate. Even after the creation of Israel, the recognition of the Palestine Liberation Organization as the official representative of the Palestinian people in the United Nations General Assembly resolutions 3210 and 3237<sup>72</sup> confirmed that the Palestinian territory is still to be construed as the surface area from the Jordan river to the Mediterranean sea, as per Article 2 of the Palestine National Charter.<sup>73</sup>

There have been arguments according to which the principles of self-determination, territorial integrity - coupled with *uti possidetis juris* - conflict with each other and questions have been raised on which of them should prevail.<sup>74</sup> It has been argued that the principle of self-determination, which supports peoples' right to determine their political status and sovereignty without interference, would lead to an escalation of independence claims, inducing border changes and eventually threatening the integrity of established territories. However, when the people entitled to the right to self-determination are located in a clearly defined, complete and cohesive territory, not to mention recognized as such by international law, there is no contradiction between the two principles. As such, the concept of self-determination has to be construed with regard to an indivisible community and territorial unit. In fact, both principles reinforce and legitimize each other as two sides of the same coin. As such, the principle of territorial integrity of Palestine reinforces the Palestinian people's legitimate claims to exert their right to self-determination on the entirety of Mandatory Palestine. The existence of a Palestinian people on the totality of the Palestinian territory also qualifies them to exert their social, economic, cultural and political right to self-determination on this very territory. On another note, arguing for the respect of a so-called 'territorial integrity of the state of Israel' is of no relevance. The very purpose of such arguments is to impede and invalidate the exercise of the Palestinian people's right to self-determination on the entire Mandatory Palestine. It has to be argued that the principle of territorial integrity could not be advanced as a legal tool by Israel, whose foundations were precisely based on

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72 General Assembly, Invitation to the Palestine Liberation Organization, A/RES/3210(XXIX), 14 October 1974; General Assembly, Observer Status for the Palestine Liberation Organization, A/RES/3237(XXIX), 22 November 1974

73 "Palestine, with its boundaries at the time of the British Mandate, is a indivisible territorial unit." Palestinian Liberation Organization, Palestine National Charter, 28 May 1964, Article 2, available at: <https://web.archive.org/web/20101130144018/http://www.un.int/wcm/content/site/palestine/pid/12363> [accessed 4 December 2020]

74 See notably Case concerning the Frontier Dispute (Burkina Faso/Republic of Mali), Judgment of 22 December 1986, 1986 ICJ 554, 22 December 1986, 566-567, available at: <https://www.icj-cij.org/public/files/case-related/69/069-19861222-JUD-01-00-EN.pdf>



the violation of this very principle which was owned by the Palestinian people in the first place.

- ***Uti Possidetis Juris and the Decolonization of Mandatory Palestine***

The decolonization of Palestine within its mandatory borders is further confirmed and supported by the customary legal principle of *uti possidetis juris*,<sup>75</sup> which provides that states rising out of decolonization should inherit the former colonial administrative borders. This principle was often misinterpreted to serve the lure of continuing control of former colonizing states vis-a-vis newly independent states.<sup>76</sup> Still, the doctrine of *uti possidetis juris* has been consistently mobilized to solve border disputes concerning decolonized borders in general, starting with Latin America and Africa.<sup>77</sup> Interestingly enough, the principle has been subsequently applied to settle border disputes between former mandatory states, attributing the city of Mosul to Iraq, setting the Iraqi-Kuwaiti border along the mandatory lines, and giving the Walvis Bay enclave to Namibia.<sup>78</sup>

By becoming independent, a new State acquires sovereignty with the territorial base and boundaries left to it by the colonial power. [...] International law - and consequently the principle of *uti possidetis* - applies to the new State (as a State) not with retroactive effect, but immediately and from that moment onwards. It applies to the State as it is, i.e., to the “photograph” of the territorial situation then existing. The principle of *uti possidetis* freezes the territorial title ; it stops the clock, but does not put back the hands..<sup>79</sup>

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75 The principle emerged in the wake of the first decolonization wave in South American. See Case concerning the Frontier Dispute, *id.*, 565-567, available at: <https://www.icj-cij.org/public/files/case-related/69/069-19861222-JUD-01-00-EN.pdf>

76 On the formation of international law within a colonial context, see Frederic Megret, “From ‘Savages’ to ‘Unlawful Combatants’: a Postcolonial Look at International Humanitarian Law’s ‘Other,’” in Anne Orford (ed.), *International Law and its Others* (Cambridge: Cambridge University Press, 2006), 270-272

77 Steven Ratner, “Drawing a Better Line: UTI Possidetis and the Borders of New States,” *American Journal of International Law* 90, no. 4 (1996), 593-595; Organization of African Unity, Border Disputes Among African States, AHG/Res.16(1), 17-21 July 1964, available at: [https://au.int/sites/default/files/decisions/9514-1964\\_ahg\\_res\\_1-24\\_i\\_e.pdf](https://au.int/sites/default/files/decisions/9514-1964_ahg_res_1-24_i_e.pdf)

78 See League of Nations, Question of the Frontier Between Turkey and Iraq: Report Submitted to the Council of the League of Nations by the Commission Instituted by the Council Resolution, 30th September 1924, available at [https://biblio-archiv.unog.ch/Dateien/CouncilMSD/C-400-M-147-1925-VII\\_BI.pdf](https://biblio-archiv.unog.ch/Dateien/CouncilMSD/C-400-M-147-1925-VII_BI.pdf); United Nations Secretary General, Letter dated 21 May 1993 from the Secretary-General to the President of the Security Council, para. 27-40, S/25811, 21 May 1993; United Nations Security Council, Security Council Resolution 432, S/RES/432, 27 July 1978, available at: <https://digitallibrary.un.org/record/71635?ln=en> [accessed 4 December 2020]

79 Case concerning the Frontier Dispute, in *supra* 74, 568, para. 30

In the Palestinian context, the application of the principle of *uti possidetis juris* would support the transfer of the borders of Mandatory Palestine, as the latest recognized colonial administrative borders, to the newly independent state of Palestine, at the expiration of the British Mandate in 1948, which serves as the latest recognized legal title. It is also consistent with the ultimate purpose of the League of Nations' mandate system: to eventually achieve the independence and self-determination of peoples under trust.

It should be clarified that the British Mandate's provisions claiming to "establish in Palestine [a] national home for the Jewish people" and "facilitate Jewish immigration,"<sup>80</sup> precisely sought to further colonial efforts in Palestine, and should be discarded as *ultra vires*, exceeding state power, as they violate the fundamental principle of self-determination owned solely by the Palestinian people. This analysis — concerned with matters of unlawful population transfer and violation of the people's right to self-determination — does not, however, invalidate our analysis on border provisions which mostly deal with the principle of territorial integrity. The borders in question were drawn up under the oversight of the British mandatory and tacitly validated through the British Mandate for Palestine.<sup>81</sup> In September 1922, the British resorted to Article 25 of the British Mandate for Palestine to exclude Transjordan from the Mandate's provisions regarding Jewish colonies,<sup>82</sup> therefore sanctioning the administrative division between Palestine and Transjordan. The external boundaries of Palestine remained stable until the end of the British Mandate on 15 May 1948. The United Nations General Assembly Resolution 181 (II),<sup>83</sup> it is worth noting that it has never been implemented and that its implementation would have, in absolute terms, raised serious legal issues regarding peremptory principles of self-determination and territorial integrity. The borders of Palestine as they result from the mandatory period remain the latest executed administrative borders and should therefore be relied on, according to the principle of *uti possidetis juris*.

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80 See Mandate for Palestine, in *supra* 15, Article 6

81 Palestine's northern and eastern borders with Syria and Saudi Arabia were decided through a series of agreements including the Anglo-French Convention of 23 December 1920. Palestine's southwestern borders with Egypt were inherited from the Ottoman Empire. The British delineated eastern borders between Palestine and Iraq, which were both under British Mandates.

82 See Mandate for Palestine, in *supra* 15, Article 25; Transjordan Memorandum Approval at the Council of the League of Nations, 16 September 1922, available at: [https://commons.wikimedia.org/wiki/File:Transjordan\\_memorandum\\_approval\\_at\\_the\\_Council\\_of\\_the\\_League\\_of\\_Nations,\\_16\\_September\\_1922.jpg](https://commons.wikimedia.org/wiki/File:Transjordan_memorandum_approval_at_the_Council_of_the_League_of_Nations,_16_September_1922.jpg) [accessed 4 December 2020]

83 General Assembly Resolution 181 (II), in *supra* 10

On the whole, it is to be concluded from the above that **the prohibition of colonization and colonial practices finds sound, continuous and prevalent support prior to its enshrinement in the Decolonization Declaration of 1960, and well before the creation of Israel.** Its main components had already been legally condemned and the principle of decolonization in itself had already been acknowledged, through both *opinio juris* and state practice. The fact that colonization, *per se*, had not been the object of codified prohibition prior to 1960 is easily understandable: international laws, and the emergence of international legal norms, were and, to some extent, remain the product of the international balance of power. These powerful states whose contributions shaped international norms in the late 19<sup>th</sup> to mid-20<sup>th</sup> century were, for the most part, imperial Western states, largely committed to settler- and exploitation-colonialism that sought to exclude those peoples they deemed ‘uncivilized’ from legal protection.<sup>84</sup> Although, as demonstrated above, even these powerful states had shown that they tolerated decolonization only when it aligned with their interests; colonization proper was not perceived as an international wrong as long as it contributed to the reinforcement of their own power. These newly decolonized states did not benefit from a sufficient platform to impose the prohibition of decolonization as an internationally recognized norm.<sup>85</sup>

All in all, this entails that the Zionist gradual domination over Palestine and its people has constituted an unlawful act of colonization from the onset at the end of the 19<sup>th</sup> century. It further demonstrates that the consecration of Israel as a state, as fundamentally grounded in colonial practices, should be considered as illegal in view of international law as applicable at the time, and that international law supports the decolonization of Palestine within its mandatory borders.

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84 “To suppose that the same international customs, and the same rules of international morality, can obtain between one civilized nation and another, and between civilized nations and barbarians, is a grave error, and one which no statesman can fall into.” John Stuart Mill, cited in Megret, in *supra* 76, 279; it also suffices to refer to the Martens Clause enshrined in the Preamble to the 1899 Hague Convention (II) with Respect to the Laws and Customs of War on Land: “Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from *the usages established between civilized nations* [emphasis added], from the laws of humanity and the requirements of the public conscience.” See Convention (II) with Respect to the Laws and Customs of War on Land and its Annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 29 July 1899, Preamble, available at: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=9FE084CDAC63D10FC12563CD00515C4D> [accessed 4 December 2020]

85 See for example Megret, in *supra* 76

### III. POLITICAL ADVANCEMENT OF *DE JURE* AND *DE FACTO* ANNEXATION AS A TOOL OF COLONIZATION

Since its creation on Palestine 1948 lands, Israel has pursued its Zionist colonial enterprise through a combination of old and modern colonial practices, including that of territorial *de facto* and *de jure* annexation. The following contextualizes the ongoing annexation practices and announcements within the colonial framework. It is argued that **the ongoing *de jure* and *de facto* annexation of the West Bank constitutes unlawful practices that, taken in conjunction with apartheid acts, are aimed at advancing the colonization of Palestine.**

#### III.1. *De Jure* and *De Facto* Annexation as a Pillar to Israeli Colonization

As legal concepts, as well as political realities, *de facto* and *de jure* annexation are mechanisms that emulate and reinforce the broader colonization process. Territorial annexation has been commonly practiced throughout history as a means of territorial conquest, which is an intrinsic goal of colonialism. Associated with the denial of the people's self-determination, the annexation of a territory by a state turns the latter into a colonial power.

##### *III.1.a. Imposing de jure Annexation on Mandatory Palestine*

Israel has managed to gradually entrench multi-tiered *de jure* annexation of Mandatory Palestine with Article 11(b) of the 1948 Law and Administration Ordinance, providing for the extension of Israeli jurisdiction “to any area of Eretz Israel,”<sup>86</sup> namely:

- **Palestinian lands dominated and subjugated as of 1948 which were unlawfully allocated to a Jewish state under the United Nations Partition Plan:** It is exemplified by the 1950 Absentee Property Law that placed movable and immovable properties of Palestinian refugees and internally displaced persons after 29 November 1947 as state-controlled.<sup>87</sup>

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86 Law and Administration Ordinance (Amendment No. 11), 5708-1948, available at: <http://www.geocities.ws/savepalestinnow/israelaws/fulltext/lawandadministrat670627.htm> [accessed 4 December 2020]

87 Absentees' Property Law, 5710-1950, translation available at: <https://www.adalah.org/uploads/oldfiles/Public/files/Discriminatory-Laws-Database/English/04-Absentees-Property-Law-1950.pdf>

- **An additional 23 percent of Palestine annexed as of 1948 that had been allocated to an Arab state under the United Nations Partition Plan:** This annexation has been *de jure* condoned by the international community through United Nations Security Council Resolution 69 and General Assembly Resolution 273(III) which recognized the state of Israel within the Green Line.<sup>88</sup> As defined by the 1949 Armistice Agreements between Israel, Egypt, Lebanon, Jordan and Syria,<sup>89</sup> and supervised under the United Nations Truce Supervision Organization,<sup>90</sup> the Green Line encompasses an additional 23 percent of Palestine that were intended to constitute a proposed “Arab” state pursuant to General Assembly Resolution 181 of 29 November 1947.<sup>91</sup> Thus, this indicates that the United Nations recognized *de facto* the illegal annexation of 23 percent of Palestine that had been confiscated by Israel as a result of the Nakba.
- **East Jerusalem:** Domination over Jerusalem was rapidly achieved with the *de jure* annexation of west Jerusalem in 1948, and east Jerusalem in 1967.<sup>92</sup>
- **West Bank:** The West Bank’s colonization process through annexation has taken a slower and more gradual form that attempts to ensure limited and controlled international condemnation and normalizing Israel’s colonial presence. Israel was able to manipulate its status as an occupier to gradually entrench annexation practices in the occupied territory of the West Bank. This intent is well-illustrated by the succession of annexation plans: the 1967 Allon Plan to annex the Jordan Valley and Jerusalem, the 1977 Sharon Plan, and the 1978 Drobles Plan expanding Jewish-Israeli

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88 Security Council, Resolution 69 of 4 March 1949, S/1277, 4 March 1949, available at: <http://unscr.com/en/resolutions/doc/69> [accessed 4 December 2020]; General Assembly, Resolution 273(III). Admission of Israel to Membership in the United Nations, A/RES/273(III), available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/83E8C29DB812A4E9852560E50067A5AC> [accessed 4 December 2020]

89 See Egyptian-Israeli General Armistice Agreement, 24 February 1949, available at: [https://avalon.law.yale.edu/20th\\_century/arm01.asp](https://avalon.law.yale.edu/20th_century/arm01.asp) [accessed 4 December 2020]; Jordanian-Israeli General Armistice Agreement, 3 April 1949, available at: [https://avalon.law.yale.edu/20th\\_century/arm03.asp](https://avalon.law.yale.edu/20th_century/arm03.asp) [accessed 4 December 2020]; Lebanese-Israeli General Armistice Agreement, 23 March 1949, available at: [https://avalon.law.yale.edu/20th\\_century/arm02.asp](https://avalon.law.yale.edu/20th_century/arm02.asp) [accessed 4 December 2020]; Israeli-Syrian General Armistice Agreement, 20 July 1949, available at: [https://avalon.law.yale.edu/20th\\_century/arm04.asp](https://avalon.law.yale.edu/20th_century/arm04.asp) [accessed 4 December 2020]

90 United Nations Truce Supervision Organization, “Background,” available at: <https://untso.unmissions.org/background> [accessed 4 December 2020]

91 General Assembly Resolution 181 (II), in *supra* 10

92 Law and Administration Ordinance, in *supra* 5



colonies in the internal lands of the West Bank.<sup>93</sup> More recently, the annexation enterprise has been exemplified by intents to *de jure* annex the colonies in the West Bank, including the Etzion colonial bloc around Bethlehem.<sup>94</sup>

This outlined annexation strategy has been key to advance and normalize a permanent annexation-centered colonial framework, and has been ongoing since the very beginning of the Zionist-Israeli domination and subjugation of Palestine within the Green Line in 1948, and of the occupied Palestinian territory in 1967. In continuity, the current political strategy advanced by Israel and the Trump administration seeks to topple the legal regime of temporary military occupation officially applicable to the occupied Palestinian territory of the West Bank — an effort entirely faithful to its consistent attempts to blur the legal lines, thereby depriving the Palestinian people from the protection attached to the occupation legal regime.<sup>95</sup> In fact, Israel has never considered the West Bank — so-called “Judea and Samaria” — as an occupied territory but as part and parcel of “Eretz Israel.”<sup>96</sup>

### *III.1.b. The Surreptitious de facto Annexation of the West Bank*

There exists another strategy on the part of Israel to pursue its annexation enterprise without formally announcing it, through the imposition of facts on the ground that, taken together, creates a situation of *de facto* annexation. This form of annexation has been advanced by Israel conjointly with formal, *de jure*, annexation since the very historical inception of its colonial enterprise in Palestine. *De facto* annexation relies on the combination of factors involving (1) effective control of the occupied territory, (2) foreign sovereignty on

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93 See The Applied Research Institute – Jerusalem / Society, “40 Years of Israeli Occupation 1967-2007,” available at: <https://www.arij.org/atlas40/chapter4.2.html> [accessed 4 December 2020]

94 See BADIL, *Israeli Annexation: The Case of Ezion Colonial Bloc* (Bethlehem: BADIL, 2019), available at: <http://www.badil.org/phocadownloadpap/badil-new/publications/research/in-focus/EtzionBloc-IsraeliAnnexation.pdf>

95 It was pointed out that the Trump plan on annexation completely endorses the Zionist narrative, substituting the legal terminology of “occupation” and “occupied territory” by “captured,” “seized,” or “controlled” territory. See Muhannad Mustafa, “The American Israeli Plan Textual and Political Analysis,” *MADAR The Palestinian Forum for Israeli Studies*, 6-7, available at: <http://www.rosaluxemburg.ps/wp-content/uploads/2020/06/The-American-Israeli-Plan-to-eliminate-the-Palestinian-Question.pdf>

96 See Israel Ministry of Foreign Affairs, “Israeli Settlements and International Law,” available at: <https://mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/israeli%20settlements%20and%20international%20law.aspx> [accessed 4 December 2020]

parts or the whole territory through legal incorporation, amendments to local laws, demographic manipulation through population transfers, modification of legal statuses, (3) political expression of annexation intentions, and (4) denial of the applicability of international law, including occupation law, human rights and humanitarian law.<sup>97</sup> All these features are encapsulated in common Israeli practices in the West Bank through the imposition of facts on the ground aimed at creating a *fait accompli* of territorial sovereignty, namely: the continuous construction and legalization of colonies, including installment of developed infrastructures for the use of the colonizers and the colonies; the illegal amendments of pre-1967 local laws to alter the legislative applicable framework, for instance Military Order 418 that abolished local participation in planning,<sup>98</sup> the extraterritorial application of Israeli laws to the colonizers in the West Bank – that includes voting rights and the application of Israeli court’s jurisdiction – while subjecting Palestinians to military rule; the erection of checkpoints, roads and the Apartheid Wall;<sup>99</sup> land appropriation and expansion of colonies in Area C; the exploitation and depravation of Palestinian natural resources – in particular, water, extractive resources, and agricultural lands — at the expense of the Palestinian people; the monopoly of Palestinian profitable industries, including tourism. These practices have virtually erased the Green Line recognized by the international community, allowing Israel to exercise colonial sovereignty on all of Mandatory Palestine. They foster an enabling environment for the transfer of colonizers and the simultaneous forced displacement of Palestinians from their lands.

Moreover, since 1967, Israel has been relentless in its attempts to transition into a *de jure* annexation of the Palestinian territory. Between 2015 and 2019 alone, more than 60 bills proposing annexation projects were submitted before the Knesset.<sup>100</sup> These elements are only exemplary evidence that *de facto* annexation did not wait until the year 2020 for Netanyahu’s announcements to unravel and produce impacts on the ground. In fact, Israel has proved its

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97 Note by the Secretary-General, in *supra* 6, para. 31

98 See BADIL, *Forcible Transfer: The Case of Palestine - Discriminatory Zoning and Planning*, working paper no.17 (Bethlehem: BADIL, 2014), 30, available at: <https://www.badil.org/phocadownloadpap/badil-new/publications/research/working-papers/wp17-zoninig-plannig-en.pdf>

99 The annexation set of practices is designed to consolidate “a ‘fait accompli’ on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to *de facto* annexation.” Wall Advisory Opinion, para. 121

100 State of Palestine – Palestine Liberation Organization: Negotiations Affairs Department, “Palestine’s Denied Potential: Israel’s Annexation Policies in the Occupied Jordan Valley,” available at: <https://www.nad.ps/en/publication-resources/publications/palestine%E2%80%99s-denied-potential-israel%E2%80%99s-annexation-policies> [accessed 4 December 2020]

salient unwillingness to respect basic principles of occupation law, especially administering the territory for the benefit of the local population, protecting, respecting and enhancing the rights of the occupied people, as well as refraining from any act of sovereignty on the occupied territory.<sup>101</sup>

As a form of colonial practices, the creeping annexation of the occupied Palestinian territory of the West Bank through land grabs, colonizers' implantation, and the Palestinians' forced transfer must be considered in direct contravention with the Decolonization Declaration that condemns colonization in "all forms and manifestations."<sup>102</sup> Alongside this, the United Nations itself has commonly described the above mentioned annexation practices as intertwined with colonization. In Resolution 3240(XXIX) of 29 November 1974, the United Nations General Assembly:

3. *Expresses the gravest concern* at [...] (a) [t]he annexation of parts of the occupied territories; (b) [t]he establishment of Israeli settlements therein and the transfer of an alien population thereto; [...] (d) [t]he confiscation and expropriation of Arab property in the occupied territories and all other transactions for the acquisition of land involving the Israeli authorities, institutions or nationals on the one hand, and the inhabitants or institutions of the occupied territories on the other; [...] (i) [t]he illegal exploitation of the natural wealth, resources and population of the occupied territories;

7. *Demands* that Israel desist forthwith from the annexation and colonization of the occupied Arab territories as well as from all the policies and practices referred to in paragraph 3 [...];<sup>103</sup>

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101 Convention Respecting the Laws and Customs of War on Land and its Annex: Regulations concerning the Laws and Customs of War on Land, in *supra* 60, Article 43

102 See Declaration on the Granting of Independence to Colonial Countries and Peoples, in *supra* 8

103 General Assembly, Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories, A/RES/3240(XXIX), 29 November 1974, available at: <https://www.refworld.org/docid/3b00f1c74.html> [accessed 4 December 2020]; generally speaking, the United Nations used to refer to Israeli practices in the West Bank as amounting to colonization. "4. *Strongly condemns* those Governments that do not recognize the right to self-determination and independence of all peoples still under colonial domination and alien subjugation, notably the peoples of Africa and the Palestinian people." See General Assembly, Importance of the Universal Realization of the Right of Peoples to Self-Determination and of the Speedy Granting of Independence to Colonial Countries and Peoples for the Effective Guarantee and Observance of Human Rights, A/RES/3817, 22 November 1983, para. 4, available at: [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/38/17](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/38/17) [accessed 4 December 2020]

### **III.2. The Contribution of *De Jure* and *De Facto* Annexation in the Advancement of the Israeli Apartheid-Colonial Regime**

To further entrench its colonization, Israel has compounded its pillar of annexation with apartheid. Israel's apartheid practices and by virtue institutionalized discrimination have proven instrumental and essential for maintaining a system of domination, subjugation and exploitation within the annexed territory, as described under Article 2 of the Apartheid Convention.<sup>104</sup> In essence, the maintenance of an Israeli regime based on institutionalized discrimination and apartheid enables Israel to achieve its Zionist colonial design of "self-segregation,"<sup>105</sup> notably through means of annexation. Apartheid is an outstanding feature of Zionist colonization compared to other European settler-colonial states.

Most European settler-colonial supremacists found it possible to maintain colonial domination through coexistence with the local peoples, while Zionism is premised on racial separateness and forcible transfer of the Palestinians.<sup>106</sup> It ensures the perpetuation of the colonizers' system of domination over Palestinians and appropriating their lands while also denying their rights.

In the Palestinian context of multilayered, evolving, and aggressive *de facto* annexation of the West Bank, annexation and practices of forcible transfer of the Palestinian people are in and of themselves tools of apartheid that initiate, pursue and reinforce policies of racial segregation and discrimination towards the Palestinian people. *De jure* and *de facto* annexation of various Palestinian areas has enabled the maintenance of a system of apartheid according to the Apartheid Convention. Israeli laws, policies and practices fortify domination over the Palestinian people, specifically through a set of laws, policies and practices that strive to:

#### **■ Rationalize and normalize grave infringements on the Palestinian**

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<sup>104</sup> United Nations, International Convention on the Suppression and Punishment of the Crime of Apartheid, A/RES/3068(XXVIII), 30 November 1973, available at: [https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.10\\_International%20Convention%20on%20the%20Suppression%20and%20Punishment%20of%20the%20Crime%20of%20Apartheid.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.10_International%20Convention%20on%20the%20Suppression%20and%20Punishment%20of%20the%20Crime%20of%20Apartheid.pdf)

<sup>105</sup> See Sayegh, in *supra* 26, 215

<sup>106</sup> See *id.*, 215-216

**people's basic human rights**,<sup>107</sup> including the right to work, the right to education, **the right to leave and to return to their country** through the denial of Palestinian refugees' return, **the right to a nationality, and the right to freedom of movement and residence** through increasingly restrictive criteria to retain residency rights in Jerusalem, restrictive planning and zoning policies in Jerusalem translated into a seven percent building permit approval in Jerusalem and only 1.5-percent in Area C of the West Bank, in addition to the issuance of more than 14,000 administrative home demolition orders directed at Palestinian structures in Area C between 1988 and 2014.<sup>108</sup> Similar home demolition policies are applied in Palestinian lands subjugated as of 1948, especially targeting Palestinian Bedouin communities in the Naqab: in 2019, 2,241 Bedouin structures had been demolished by the Israeli colonial regime.<sup>109</sup>

- **Deliberately impose living conditions calculated to cause the physical destruction of the Palestinian people as a cohesive group**,<sup>110</sup> through the intentional fragmentation of the Palestinian people into distinct legal, political and geographic units.<sup>111</sup>
- **Appropriate land and property belonging to the Palestinian people**,<sup>112</sup> controlling land use to restrict Palestinian development and systematically exploiting Palestinian natural resources, including water, where only 11 percent of the West Bank Mountain Aquifer is accessible to Palestinians

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107 "Any legislative measures and other measures calculated to prevent a racial group [...] from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing [its] full development [...], in particular by denying to [its] members [...] basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association." International Convention on the Suppression and Punishment of the Crime of Apartheid, in *supra* 104, Article II(c)

108 Awad and Muhareb, in *supra* 67

109 Tal Avrech, *On Inequality and Demolition of Homes and Structures in Arab Bedouin Communities in the Negev/Naqab* (Negev Coexistence Forum for Civil Equality, 2020), available at: <https://www.dukium.org/wp-content/uploads/2020/07/HDR-2020-Data-on-2019-Eng-3.pdf>

110 "Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part." International Convention on the Suppression and Punishment of the Crime of Apartheid, in *supra* 104, Article II(b)

111 United Nations, "Israeli Practices towards the Palestinian People and the Question of Apartheid," Palestine and the Israeli Occupation, E/ESCWA/ECRI/2017/1, 4

112 "Any measures including measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group [...] the expropriation of landed property belonging to a racial group [...]" International Convention on the Suppression and Punishment of the Crime of Apartheid, in *supra* 104, Article II(d)

with the purpose of concentrating Palestinian urban and rural centers while expanding the colonies;<sup>113</sup>

- **Divide the population present in Palestine along racial lines through the creation of segregated, fragmented and isolated Palestinian communities with the aim** of maintaining domination by the colonizers over the Palestinian people,<sup>114</sup> by reversing the demographic balance, maintaining a colonial majority in Palestine colonized since 1948 and Jerusalem, and gradually populating the West Bank through colonies, systemic exploitation and appropriation.<sup>115</sup>

In all, *de facto* and *de jure* annexation practices, combined with apartheid, have been used by Israel as a tool to advance and entrench the colonization of Mandatory Palestine since the Nakba. Israel has mobilized and applied different annexation strategies — whether *de jure* and *de facto* — on fragmented Palestinian lands in order to detract the international community from its profoundly unlawful nature under international law. The integration of such annexation practices within an apartheid structure is essential for Israel to further the domination, subjugation and exploitation of the Palestinian people and their lands, which is a key feature of colonization.

#### IV. RESPONSIBILITY OF THE INTERNATIONAL COMMUNITY

As highlighted above, there is no doubt that Israel's process of annexation in Palestine has been ongoing over the last several decades and has generated a wide range of condemnations from several international bodies. It suffices to note the multiple resolutions on the illegality of Israel's annexation of

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113 Awad and Muhareb, in *supra* 67

114 “Any measures including measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group [...] the expropriation of landed property belonging to a racial group [...],” “[...] for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons [...]” International Convention on the Suppression and Punishment of the Crime of Apartheid, in *supra* 104, Article II

115 See BADIL, *Forced Population Transfer: The Case of Palestine - Segregation, Fragmentation and Isolation*, working paper no. 23 (Bethlehem: BADIL, 2020), available at: <https://www.badil.org/phocadownloadpap/badil-new/publications/research/working-papers/WP23-SFI.pdf>



Jerusalem,<sup>116</sup> the International Court of Justice *Wall* decision denouncing a situation of *de facto* annexation,<sup>117</sup> and General Assembly Resolution 43/31 that condemns recent *de jure* annexation plans.<sup>118</sup> The international community nevertheless has failed to provide compelling condemnations or any effective, efficient and coordinated responses.

Classified as the illicit acquisition of a territory by force, annexation constitutes an act of aggression criminalized under Article 8bis of the Rome Statute of the International Criminal Court.<sup>119</sup> As a threat to international peace and security according to Article 1 of the United Nations Charter,<sup>120</sup> the suppression of annexation as part of a colonizing system requires collective action on the part of the international community.<sup>121</sup> The crime of apartheid, which connects annexation and the maintenance of the Israeli colonizing system, constitutes a crime against humanity under Article 7(1)(j).<sup>122</sup>

Third states' responsibility arises from two specific circumstances:

- **When a state aids or assists another state in the commission of an internationally wrongful act.**<sup>123</sup> Accordingly, any third state would be rendered complicit with Israel's annexation crimes for engaging in diplomatic representation, accrediting delegations to all of Mandatory

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116 See in particular, UNSC S/RES/252 (1968), S/RES/267 (1969), S/RES/271 (1969), S/RES/298 (1971), S/RES/465 (1980), S/RES/476 (1980), S/RES/478 (1980)

117 Wall Advisory Opinion, para. 121

118 Human Rights Council, Resolution 43/31. Israeli Settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the Occupied Syrian Golan, A/HRC/RES/43/31, 29 June 2020, available at: <https://www.un.org/unispal/document/israeli-settlements-in-opt-and-occupied-syrian-golan-hrc-43rd-session-resolution-a-hrc-res-43-31/> [accessed 4 December 2020]

119 "[...] "crime of aggression" means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations." Rome Statute of the International Criminal Court, in *supra* 65, Article 8bis; *Nota bene*, Article 8bis cannot be legally enforceable against Israel, which is not a signatory to the Rome Statute

120 Charter of the United Nations, in *supra* 2, Article 1

121 See "6. [The General Assembly] urges all States to refrain from any action which Israel will exploit in carrying out its policy of colonizing the occupied territories," Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories, in *supra* 103, para. 6

122 Rome Statute of the International Criminal Court, in *supra* 65, Article 7(1)(j)

123 International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, A/56/10, November 2001, Article 16, available at: [https://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001.pdf](https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf)

Palestine and in particular West Bank colonies, recognizing Israel's sovereignty over colonized Palestine, or signing free trade agreements with Israel.

- **When the international wrong occurs in breach of a peremptory norm of international law.** <sup>124</sup> The above elaborated on the peremptory nature of principles of international law such as self-determination and territorial integrity, all of which are essential principles that demonstrate the outright illegality of Zionist-Israeli colonial practices in Palestine. Their peremptory nature involves obligations on state parties to treaties with Israel. In effect, the emergence of new peremptory norms of international law renders void any treaty. The termination of the treaty does not have any retroactive effect unless the legal situation created “is in itself in conflict with the new peremptory norm of general international law.”<sup>125</sup> This entails that all international treaties between Israel and third state parties formally recognizing the former as a state and normalizing bilateral relations should be considered void as they infringe the fundamental peremptory norms of self-determination of the Palestinian people and the territorial integrity of Palestine, and in a retroactive manner. Third states, therefore, have a legal obligation to “bring their mutual relations into conformity with the peremptory norm of general international law,” which in this specific context should be formulated in terms of recognizing the situation of multilayered colonization of Palestine by Israel and draw the necessary consequences.<sup>126</sup>

Pursuant to the Draft Articles on Responsibility of States for Internationally Wrongful Acts, serious breaches of peremptory norms prompt the liability of third states in two ways: a positive duty to “cooperate to bring to an end through lawful means any breach,” and a negative duty not to “recognize as lawful a situation created by a serious breach [...] nor render aid or assistance in maintaining that situation.”<sup>127</sup>

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<sup>124</sup> Draft Articles on Responsibility of States for Internationally Wrongful Acts, *id.*, Article 26

<sup>125</sup> United Nations General Assembly, Report of the International Law Commission, Seventy-First Session (29 April-7 June and 8 July-9 August 2019), A/74/10, Conclusion 12, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/243/93/PDF/G1924393.pdf?OpenElement> [accessed 4 December 2020]

<sup>126</sup> *Ibid.*

<sup>127</sup> Draft Articles on Responsibility of States for Internationally Wrongful Acts, in *supra* 123; see also Wall Advisory Opinion, para. 146

## V. CONCLUSION

More than a century of colonial and annexation practices in Palestine has managed to impose an internationally fragmented outlook on the land of Mandatory Palestine. The Palestinian territory occupied in 1948 and the western side of Jerusalem are now recognized as Israel, while 46 percent of the West Bank is under the complete control of Israel's colonial enterprise, with 690,000 colonizers residing in more than 400 colonies.<sup>128</sup> Sixty percent of the West Bank is classified as settlement areas, confiscated areas, state land, reserved areas, military and firing zones that render them off-limits for Palestinians.<sup>129</sup> **By normalizing a situation of settler-colonialism in Palestine, and not calling it by its name, the international community, directly or indirectly, either by positive or negative action, facilitates and advances Israel's colonial project in Palestine. With this kind of support, complicity and inaction, Israel is able to entrench its unchallenged enterprise of indigenizing the colonizing population.** This is exemplified by the recent Jewish Nation State Law in July 2018, which attributes the right to self-determination to the Jewish 'people' over the extent of Mandatory Palestine.<sup>130</sup> *De facto* annexation has been ongoing for decades, and the recent political moves are merely indicative of a pattern of incremental legalization of the illegal situation, turning *de facto* into *de jure* annexation. Key examples are the fragmentation of the West Bank into Areas A-B-C following the Oslo Accords, Trump's recognition of Jerusalem as the capital of Israel in December 2017 and of Israel's *de jure* annexation of the Syrian Golan Heights in March 2019, the inauguration of the US embassy, Trump's so-called Deal of the Century, and eventually Netanyahu's annexation plan announced in 2020.

The above proposed a legal analysis of the latest political-legal developments concerning the ongoing annexation of Palestine by engaging the legal

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128 Palestine Liberation Organization, in *supra* 100

129 Fatima Jaouni Hodali and Ashraf Khatib, "Illegal Annexation Over the Years: Focus on Current Scenarios," in State of Palestine – Palestine Liberation Organization: Negotiations Affairs Department, "Looming Annexation: Israel's Denial of Palestine's Right to Exist" (2020), available at: <https://www.nad.ps/en/publication-resources/publications/looming-annexation-israels-denial-palestines-right-exist> [accessed 4 December 2020]

130 Basic Law: Israel – the Nation State of the Jewish People, 5778-2018, unofficial translation by Dr. Susan Hattis Rolef, available at: <https://knesset.gov.il/laws/special/eng/BasicLawNationState.pdf>; BADIL, *The Nation State Law: The Culmination of 70 Years of Israeli Apartheid and Colonization* (Bethlehem: BADIL, 2018), available at: [https://www.badil.org/phocadownload/badil-new/publications/research/in-focus/NationStateLaw\(PositionPaper-BADIL-Oct2018\).pdf](https://www.badil.org/phocadownload/badil-new/publications/research/in-focus/NationStateLaw(PositionPaper-BADIL-Oct2018).pdf)

international framework on the prohibition of colonial policies and practices. It is therefore **necessary that any legal analysis of the practices and policies that have been contributing to the creeping Palestinian lands grab and the correlated forcible transfer of the Palestinian people, which notably finds expression in *de facto* and *de jure* annexation, requires the adoption of a apartheid-colonial paradigm.** Colonialism has been the guiding axiom of the Zionist-Israeli enterprise, whether through the shape of a colonial Zionist movement commended and upheld by the British Mandate before 1948, or as proper colonial Israel after 1948. Since the inception of the Zionist ideology, but more acutely since the formal prohibition of colonial practices in the 1960s, Israel has been making a constant effort to conceal its colonial intents through the veil of other legal regimes – military occupation, *de facto* and *de jure* annexation – in order to achieve the full colonization of Palestine while ensuring it does not attract international ire, but rather benefit from international support. It is essential to recognize the interplay between colonialism, apartheid and annexation, and in particular the part played by annexation practices in the reinforcement of the Zionist-Israeli settler-colonial structure. Failing to acknowledge the colonial intents behind annexation policies and practices allows for the normalization of Israel’s annexation actions through the legally neutral framing of “application of sovereignty.”<sup>131</sup> Bringing forward the settler-colonial paradigm, jointly with the apartheid framework, will allow international law to effectively address the root causes of the Palestine Question and promote a human rights-based approach.

The above analysis stands the legal argument that Mandatory Palestine, as a whole, constitutes a territory “of a colonial type” whose fragmentation has contributed to applying distinct colonial practices, including blockades, military occupations, and *de facto* and *de jure* annexation, for the purpose of normalizing Israeli colonization. As such, Mandatory Palestine qualifies as a non-self-governing territory entitled to the acquisition of a “full measure of self-government” in line with General Assembly Resolution 1541(XV) of 1960.<sup>132</sup> **From a legal outlook, it is therefore supported that the Decolonization**

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131 See in particular, Raphael Ahren, “Rivlin l’Utilise, d’Autres Le Détestent” “Annexion” Est-Il Un Gros Mot ?, *Times of Israel*, 16 June 2020, available at : <https://fr.timesofisrael.com/rivlin-lutilise-dautres-le-detestent-annexion-est-il-un-gros-mot/> [accessed 4 December 2020]

132 General Assembly, Principles Which Should Guide Members in Determining Whether or Not an Obligation Exists to Transmit the Information Called for Under Article 73e of the Charter, A/RES/1541, 15 December 1960, available at: <https://www.ilsa.org/Jessup/Jessup10/basicmats/ga1541.pdf>

**Declaration, recognized as customary law, should be applied, within the borders of Mandatory Palestine, including the Palestinian territory colonized, annexed and recognized by the international community as Israel in 1948.**

The combination of Israeli colonial and apartheid practices aimed at achieving a hybrid system of systemic oppression of an entire population naturally comes at the expense of the Palestinian people's legitimate right to self-determination. This necessarily implies that the achievement of the Palestinian people's right to self-determination and refugees' right to reparations could not seriously be fathomed except outside of the apartheid-colonial system of Israel that is the end product of a century of apartheid-colonial policies and practices in Palestine. **The only viable legal solution must come from the realization of the decolonization of the Palestinian territory within its mandatory borders, as a *sine qua non* condition for the achievement of the Palestinian people's right to self-determination, wherever they are.** It should be pointed out here that such decolonization process in the Palestine context after a century of colonial practices and policies will necessarily require and entail the decolonization of the ideology of the Zionist-Israeli colonial population settled in Palestine.

While, in 2020, the United Nations is celebrating the completion of the Third International Decade for the Eradication of Colonialism,<sup>133</sup> it has never been as necessary to recognize Palestine as a non-self-governing territory, to which the Decolonization Declaration should apply under the supervision of the Special Committee on the Situation with regard to the Implementation of the Declaration. **A failure to do so would not just discredit the legitimacy and willingness of the international community to support the just and legitimate liberation of Palestine, but also of all other territories and peoples' struggle against colonial oppression.**

In view of the above, BADIL calls on third state parties to:

- **Recognize Israeli apartheid-colonial-annexation practices as an act of aggression** that warrants the triggering of Security Council sanctions against Israel under Chapter VII of the United Nations Charter, including

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<sup>133</sup> See United Nations, "International Decades for the Eradication of Colonialism," available at: <https://www.un.org/dppa/decolonization/en/history/international-decades> [accessed 4 December 2020]

complete or partial interruption of economic and diplomatic relations, as well as military embargo measures.

- **Recognize the settler-colonial and apartheid frameworks** as appropriate legal structures for analyzing the nature of the Israeli regime, as well as the situation of oppression furthered by Israeli annexation of the Palestinian territory; and annexation not as a goal in itself, but simply as a continuous mechanism in pursuance of the complete colonization of Palestine;
- **Recognize Mandatory Palestine as a non-self-governing territory** and advocate for its inclusion under the United Nations list of non-self-governing territories;
- **Recognize Israel as a colonial and apartheid regime** and take practical measures for the dismantlement of this regime and its structures that are the origin of the fragmentation of Mandatory Palestine, the denial of the Palestinian right to self-determination, and the deprivation of Palestinian refugees and internally displaced persons from their right of return; in essence, advocate for the decolonization of Palestine;
- **Promote a human rights based approach** to the decolonization process in Palestine, and ensure that equal rights are guaranteed for all residents of Palestine.





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The only viable legal solution must come from the realization of the decolonization of the Palestinian territory within its mandatory borders, as a *sine qua non* condition for the achievement of the Palestinian people's right to self-determination, wherever they are.

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