

Dr. Vicky Kapogianni, Lecturer in Law, Newcastle University, UK

E: kapogiannivassiliki@yahoo.fr

Dr. Sardar M.A. Waqar Khan Arif, Assistant Professor of Law, University of Kotli Azad Jammu and Kashmir, Pakistan

E: sardarwaqarkhan@gmail.com

Call for Submissions: Thematic report to the UN General Assembly on the right to self-determination

What have been the most grievous violations of the Palestinians' right to self-determination: from a political, economic and cultural point of view?

Introduction

Resolution 181, adopted by the United Nations General Assembly (UNGA) in 1947, recommended to the United Kingdom, being the mandatory Power for Palestine, to adopt and implement the Plan of Partition set forth in its part III.¹ Following the adoption of the ad hoc resolution, acts of war and terror have ravaged the region with no permanent solution to the Israeli-Palestinian conflict. The Palestinian territory, embodying the Gaza Strip and the West Bank, including East Jerusalem, was occupied by Israel in 1967. While, admittedly, Palestine has the right to self-determination, as widely underpinned by international instruments,² contestations among certain States over Palestine's status as a State³ have hindered Palestine's ability to rely on State-based rights and obligations under international law. The 1949 Armistice agreement establishing the Green Line between Israel and Jordan is recognised by the international community as the eastern limit of Israeli sovereignty. Nevertheless, 'Israel has never recognised the Green Line as an international border and maintains it has claims to the West Bank'.⁴ The prolonged occupation based on the unresolved political dispute over territorial borders' claims⁵ along with the Israeli unilateral policies and the inaction of the international community to intervene ensuring the

¹ The mandatory Power shall partition the Palestine Mandate into the Independent Arab and Jewish States and the Special International Regime for the City of Jerusalem. G.A. Res. 181, U.N. GAOR, 2nd Sess., Supp. No.11, U.N. Doc. A/RES/181 (Nov. 29, 1947)

² *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 136

³ The UN General Assembly decided in 2012 by 138 votes to 9 with 41 States abstaining to 'accord to Palestine non-member observer State status in the UN'. Resolution on the Status of Palestine in the UN was adopted by the GA on 29 Nov. 2012 (4 Dec. 2012) UN Doc A/Res/67/19, 3

⁴ Michael Sfard, 'B-Border/Barrier' in Orna Ben-Naftali, Michael Sfard and Hedi Viterbo, *The ABC of the OPT: A Legal Lexicon of the Israeli Control over the Occupied Palestinian Territory* (CUP 2018) 46

⁵ Israel's annexation of East Jerusalem has not been internationally recognised. Saul, Matthew, *The Right to Self-Determination and the Prolonged Occupation of Palestinian Territory* (January 2021). Gentian Zyberi (ed.), *Protecting Community Interests through International Law* [2021]

implementation of international law and human rights law in the Occupied Territory of Palestine (OPT) have been obstructing the potential for Palestinians to exercise their right to self-determination.⁶ In fact, since 2005, the right of Palestinians to exercise self-determination has been constantly denied. Despite the Israeli Disengagement Plan to unilaterally withdraw settlers from the Gaza Strip and from northern West Bank, in addition to the redeployment of Israeli Occupation Forces internally from the Gaza Strip, Israeli occupation remains in its legal and physical form maintaining ‘effective control’ of the area.⁷ Taking into account the current Israel-Palestinian situation, this report dissects political, economic and cultural violations arising with regards to the Palestinians’ right to self-determination.

Violations of the Palestinians’ Right to Self-Determination

Violations of Palestinian people’s rights demonstrate Israel’s disregard for international law and international human rights and humanitarian law. Israel, in order to sustain its occupation, has increasingly been employing arbitrary use of force –physical and administrative– impacting on Palestinian lives in myriad ways. Israeli settlement policy in Palestinian land is a grave violation of human rights, pursuant to Article 2 and 17 of the Universal Declaration of Human Rights (UDHR). Palestinians are subject to expulsion, house demolition and expropriation for the establishment of Jewish settlements within the context of Israel’s policy of creeping annexation of the occupied territories.⁸ Palestinians are living without rights, in an acute state of subjugation and with no path to self-determination or a viable independent State. In this context, Israel, over the last five decades, has created 300 Jewish-only civilian settlements, all of them illegal, with 700,000 Israeli Jewish settlers living amidst East Jerusalem and the West Bank amidst, yet apart from the three million Palestinians.⁹

The Israeli regime, in all the territory it controls, has created an apartheid rule. Means that the Israel employs to enforce the principle of Jewish supremacy focus on engineering space geographically, demographically, and politically.¹⁰ Contrary to the UN Security Council Resolution 2334 (2016), various actions have been undertaken by Israel, including the establishment and expansion of settlements in East Jerusalem and the West Bank along with the establishment of a wall or security barrier which as described by the UN Secretary General, this wall ‘deviates more than 7.5 km from the Green Line in certain places to incorporate

⁶ UN, The Question of Palestine (13 February 2006) <https://www.un.org/unispal/document/auto-insert-187651/> accessed 13 June 2022

⁷ *ibid*

⁸ Settlements and the Palestinian Right to Self-Determination, <https://pij.org/articles/478> accessed 13 June 2022

⁹ Human Rights Council, Report of the Special Rapporteur on the situation of Human Rights in the Palestinian Territories Occupied since 1967, A/HRC/49/87, 21 March 2022, 3

¹⁰ The Israeli Information Center for Human Rights in the Occupied Territories, ‘A Regime of Jewish Supremacy from the Jordan River to the Mediterranean Sea: This is Apartheid’, 12 January 2021, <https://www.btselem.org/apartheid> accessed 13 January 2022

settlements, while encircling Palestinian population areas.¹¹ The building of settlements on occupied Palestinian lands amounts to their de facto annexation to Israel as it impedes the attainment of Palestinians' self-determination. Settlements, in fact, alter the demographic character of the occupied territories, even more so when the land's original inhabitants are expelled and are substituted by foreigners resulting to a minoritized and alienated Palestinian population.¹²

The demographic supremacy that Israel aims to achieve via a comprehensive dual and political system which provides rights and living conditions for the Jewish Israeli settlers while imposing upon the Palestinian people military rule and control without ensuring any of the basic protections of international humanitarian and human rights law, not only constitutes an apartheid and a crime against humanity¹³, but also enables Jewish settlers to actively participate in negotiations regarding the future of the occupied territories. Among recent and current Israeli political leaders, the debate regarding Palestinians has been focused on whether the Palestinians will be granted a shrunken statelet with its own postage stamps and a seat at the UN or be kept in their present state of having no citizenship or been left stateless, requiring ID cards from the Israeli military to live and work in the territories.¹⁴ Taking stock of the extant settlement policies, it leaves no doubt that these constitute a violation of the rules of conventional international law and the Fourth Geneva Convention concerning the protection of civilians under occupation as well as an aggression on the right of Palestinians to self-determination.

Economic and Cultural Cataclysm

What are the economic violations with regards to right to self-determination in the OPT? What are the difficulties surrounding the right to self-determination of Palestinians? The armed conflict in the OPT entails serious human rights violations including war crimes, crimes against humanity and apartheid. Following five decades of occupation and human rights violations, severe impediments surround the right to self-determination of Palestinians with regards to economic and social development. Israel is party to the international instruments, such as, the ICCPR and ICESCR and these instruments oblige Israel to *respect, promote* and *fulfill* human rights of the Palestinians including economic, social and cultural (ESC) rights. The Committees monitoring the situation oblige Israel not only to stop unlawful exploitation of natural resources but also to refrain from violating ESC rights. Are these rights "progressively realized" by the occupying power in an occupied territory? The answer is in the negative. Israel, for instance, as an occupying power has denied Palestinians' fair access to trade and hampered the realization of ESC rights by favoring its own economy and citizens. The myriad methods employed for deepening and expanding

¹¹ UNGA, 'Report of the Secretary-General prepared pursuant to General Assembly Resolution ES-10/13,' (24 November 2003) UN Doc A/ES-10/248, para 7

¹² Musa Dweik, 'Settlements and the Palestinian Right to Self-Determination', [2022] Palestine-Israel Journal, <https://pij.org/articles/478> accessed 14 June 2022

¹³ Amnesty International, *Israel's Apartheid against Palestinians*, (February 2022)

¹⁴ Ibid

territorial control in Gaza entail serious violations under International human rights and humanitarian law.¹⁵ Israel encourages and authorizes multinational commercial enterprises in the OPT to harm Palestinians economic development.

Due to restrictions on movement, trade and access Palestinian economy is stagnant, and the socio-economic condition difficult in terms of its realization especially during post Covid Pandemic. Following the new wave of omicron, the labor market has undergone major deficits due to economic contraction, frequent lockdowns, and business shutdowns in the OPT. This resulted in a devastating economic crisis for Palestinian workers and their families. Revenue transfers in OPT were delayed and consequently there is no space for economic stimulus.¹⁶ The system of governance through oppression and domination denies basic rights of the Palestinians who are faced with systematic discrimination. The obstacles due to occupation have led to a continuous economic meltdown and workplace closures.¹⁷

There is a significant loss of merchants in connection with global developments, commerce, and trade. As per the report of the Palestinian central bureau of statistics (PCBS), the services sector as well as workplaces are affected during occupation. Israel's blockade of the Gaza has devastated the economy. The closure measures taken by Israel have impacted on the free movement of Palestinians as well as on the in and out of goods resulting in economic losses. More than 80 percent of Gaza's population depends on humanitarian aid.¹⁸ The unfair socio-economic conditions of entrepreneurship and households hamper economic empowerment of women and youth.¹⁹ In terms of asylum seekers, the UNHCR Report indicates that even though Israel has hosted 41,327 refugees and asylum seekers from Eritrean and Sudanese areas, only 1 percent were given the refugee status without having any access to determination procedures and economic support.²⁰

The socio-economic environment has been badly thrashed by the occupying power and economy has been severely mutilated in the OPT. The loss of lands, geographic and market fragmentations, restrictions on imported inputs, technological barriers and heavy taxation on productivity, have not only affected the economy

¹⁵ Joint Parallel report on Israel's violations of the International Covenant on Economic, Social and Cultural rights; submitted on the occasion of the United Nations Committee on economic, social and cultural rights review of the fourth periodic report of Israel, Al Haque, September [2019], 7-11

¹⁶ International Labour Conference, 'The situation of workers of the occupied Arab territories Report of the Director-General – Appendix 2021', 109th Session, ISBN 978-92-2-034137-7, [2021], 9

¹⁷ Palestinian Central Bureau of Statistics, 'National Accounts', [2021]

¹⁸ World Report 2022 on Israel and Palestine, Events of 2021, <https://www.hrw.org/world-report/2022/country-chapters/israel/palestine> accessed 14 June 2022

¹⁹ Report of Palestinian Central Bureau of Statistics, 'Results of Impact of COVID-19 Pandemic (Coronavirus) on the Socio-economic Conditions of Palestinian Households Survey (March-May), 2020', [2020]; See also Ministry of National Economy (MONE) and PCBS, 'Joint Press Release on the Impact of Coronavirus (COVID-19) Pandemic on Economic/Business Establishments during (5/3/2020–31/5/2020)', [November 2020], 14

²⁰ Amnesty International Report 2021/22, *The state of the World's Human rights*, [2022], 210

but have also led to serious violations of the norms of IHRL and humanitarian law. Israel has halted economic activities and therefore, deprived Palestinians from jobs and income. To this effect, the Palestinian government has adopted the *National policy Agenda: Putting Citizens first, 2017-2022* which focused on digitalization for sustainable human development, but restrictions imposed on the communication and information sector, such as, restriction on building infrastructure, restrictions on purchasing equipment for field work, harm the economy of the OPT.²¹

Based on the above, it seems that Israel as an occupying power has severely violated basic norms of international law including denial of socio-economic development of Palestinians. As reflected in the *Wall's* case, the ICJ obliged Israel to protect basic human rights of the people. However, denial by Israel is persisting. Israel claims that the judgment of the ICJ is *Advisory* having no binding effect. However, it is argued that the Advisory opinions of the ICJ have binding effect by virtue of *erga omnes* obligations set out in the judgment or at least under customary international law (CIL) and obligations set out in *Wall's* case cannot be neglected in any case by the parties concerned. The socio-economic development regarding the realization of Palestinians' right to self-determination needs special attention and measures to be taken by the international community. The wording of article 42 of the Hague Regulations (1907) reflect that occupation is a temporary phenomenon and prolonged occupation is prohibited and has acute consequences on the rights of the occupied. In all circumstances, the occupying powers are under an obligation to *promote, protect* and *fulfil* rights of the inhabitants as reflected in Geneva Convention-IV (1949) and other human rights instruments.

Cultural Violations and The Apartheid Regime

In connection to economic violations, Israel as an occupying power has failed to *promote* and *protect* socio-cultural, institutional expansion, sustainable development and social cohesion in the OPT by neglecting culture related activities and cultural diversity. The protection of cultural rights is envisaged in Article 27 of the Universal Declaration of Human Rights, (UDHR) which provides that: "everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits". Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) includes the rights: (a) to take part in cultural life; (b) to enjoy the benefits of scientific progress and its applications; and (c) to benefit from the protection of the moral and material interests. State parties are under an obligation to respect the freedom indispensable for scientific research and creative activity and to cooperate in scientific and cultural fields under paragraph 3 and 4 of article 15.

²¹ UNCTAD Secretariat, 'Report on UNCTAD assistance to the Palestinian people: Developments in the economy of the Occupied Palestinian Territory', Trade and Development Board Seventy-first executive session Geneva, 29 November–3 December [2021], 9

It is well established that the provisions of ICCPR and ICESCR are binding on the occupying powers as reflected in the ICJ's Advisory judgment.²² In this context, the ICJ has stated that: Israel is under "an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities"²³. The CESCR also affirms that Covenant is applicable where the occupying power establishes effective control and to the extent that it continues to exercise jurisdiction in occupied territories.²⁴

The restrictions on organization and management of cultural activities, access to historic and cultural heritage and language, to enjoy the right to participate freely in cultural life are evident in the OPT. For instance, cultural and educational institutions, theatre, cinema, fine arts and music are limited in the OPT due to lockdowns and by imposition of closure regime. The cultural and traditional practice, including performance of religious activities, has critically been impaired²⁵ along with Palestinians' ability to preserve cultural heritage and enjoy socio-cultural protection, as reported by the UNESCO.²⁶ The Israeli authorities have not taken any positive action to ensure the preservation of archaeological and historic sites in the OPT.

Nevertheless, imposition of socio-economic and cultural apartheid by Israel leads to violations of basic human rights of the people. The international community's attention is imperative to ensure economic and cultural *protections* in order to ward off actions of apartheid regime, ensure implementation of international obligations and put an end to long-term occupation, persistent cycle of violence, exploitation of natural resources, disproportionate and unlawful arrangements, domination, violations, and abuses.

²² Advisory Opinion, (n 2) paras 102-113

²³ *ibid* para 112

²⁴ Concluding Observations by CESCR, reaffirmed its view that "the State party's obligations under the Covenant apply to all territories and populations under its effective control", [2003], E/C.12/1/Add.90

²⁵ International Herald Tribune, 25 March, [2008]; <http://www.iht.com/articles/ap/2008/03/25/africa/ME-GEN-Israel-Palestinians-Culture-Clash.php>. accessed 14 June 2022

²⁶ Giovanni Fontana Antonelli, presentation at the Jericho Conference on Conservation and Enhancement of the Cultural Heritage, UNESCO Ramallah office, 26-27 March, [2008]