

10 Years after the Advisory Opinion on the Wall in Occupied Palestine: Time for Concrete Action

9th of July 2014

To:

*Secretary-General of the United Nations Ban ki Moon
High Contracting Parties to the Geneva Conventions*

This letter is joined by 92 legal experts and 41 legal networks and organizations concerned with the ongoing breaches of international law in the occupied Palestinian territories violating the Palestinian people's individual and collective human rights. We are pursuing mechanisms to end impunity for these breaches and violations on the occasion of the tenth anniversary of the International Court of Justice (ICJ) *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* of 9 July 2004.¹ We take note also of the main outcomes of subsequent efforts by independent legal experts, UN bodies and civil institutions² to promote good practice and operational measures aimed at ending Israeli violations and ensuring respect for international law in the pursuit of justice, peace and world order.

The Court arrived at its Advisory Opinion following essentially the same rules and procedures as in its binding judgements in other, contentious cases. Further, the Advisory Opinion's high status and legal effect derive from the fact that it is the official pronouncement of the principal judicial organ of the United Nations.

The 2004 ICJ opinion authoritatively elucidates (1) the international legal framework that applies to the Israeli occupation (2) the connection between the Wall and Israel's illegal settler-colony enterprise and (3) the responsible actors and their legal obligations. The ICJ concluded that the "construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated régime, are contrary to international law."³ The Court found that construction of the Wall and its associated régime violate multiple norms binding on all States under both treaties and customary law, including peremptory norms from which no derogation is permitted.⁴ The Court ruled that:

- A. Israel cannot rely on a right of self-defence, or on a state of necessity, in order to preclude the wrongfulness of the construction of the Wall⁵;
- B. Israel is under an obligation to terminate its breaches of international law, to cease the construction of the Wall, to dismantle its structures, and to repeal or render ineffective all related legislative and regulatory acts; Israel is further under an obligation to make reparation for all damage caused by the Wall⁶;
- C. All States are under an obligation not to recognize the illegal situation resulting from the construction of the Wall and not to render aid or assistance in maintaining the situation created by such construction and its associated régime⁷;

- D. All High Contracting Parties (HCPs) to the *Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949* have an additional obligation to respect and ensure Israel's and other States' compliance with international humanitarian law as embodied in that Convention⁸;
- E. The United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the Wall and the associated régime.⁹

The 150 states¹⁰ that voted in favour of UN General Assembly resolution ES-10/15¹¹ explicitly have acknowledged the duty of Israel and all UN Member States to “comply with their legal obligations as mentioned in the advisory opinion.”¹² Following the ICJ advisory to consider further action, the General Assembly acclaimed “*Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*,”¹³ and established the United Nations Register of Damage (UNRoD) caused by the construction of the wall in the occupied Palestinian territory.¹⁴

Subsequent legal analysis of Israeli violations and their consequences for Palestinian human rights have reaffirmed and complemented the *ICJ Advisory Opinion* in response to the particular question that the General Assembly put to it.¹⁵ The *ICJ Advisory Opinion* already had underlined that the Wall was a component of the wider Israeli annexation and settlement enterprise that systematically violates Palestinians' human rights. Consecutive UN Special Rapporteurs on the situation of human rights in the oPt have found that Israel's occupation regime, integrating the settler colonies and the Wall, has resulted in institutionalized discrimination, segregation and systematic and severe violation of Palestinians' human rights. They have characterized this Israeli regime as one “of prolonged occupation with features of colonialism and apartheid.”¹⁶ UN treaty bodies such as the UN Committee on the Elimination of Racial Discrimination (CERD)¹⁷ and independent legal studies¹⁸ have supported these findings. It follows that these Israeli violations trigger not only state responsibility, but also individual criminal liability under the Rome Statute of the ICC and other standards of international criminal law.¹⁹

Based on the above, UN fact-finding missions and Special Rapporteurs, as well as human rights organizations around the world, have engaged in the study of third-party responsibilities and extraterritorial human rights obligations.²⁰ They have analysed how states, parastatal and private actors provide recognition and/or otherwise assist in the commission or maintenance of these crimes, gross violations of human rights and serious violations of IHL.²¹ Taking into consideration the IHL framework, human rights conventions,²² the *Apartheid Convention*²³ and the *Rome Statute of the ICC*, such analysis has demonstrated the obligation of states to adopt practical measures in economic and business operations, in order to comply with their duties under international law and avoid, or terminate complicity with illegal situations.

Primary responsibility to promote and protect human rights, and to ensure respect for international law and human rights by nonstate actors, remains with States. However, legal development over the last years has stressed the liability of corporations, parastatal institutions and financial actors. In 2006, the International Red Cross has stressed that IHL binds not only states and armed groups but as well business enterprises.²⁴ In 2011, the UN Human Rights Council resolution A/HRC/RES/17/4 adopting the *UN Guiding Principles on Business and Human Rights* underlined that transnational corporations and other business enterprises have a responsibility to respect human

rights.²⁵ The UN Special Representative for Business and Human Rights has concluded that corporations now are considered bearers of duties under international criminal law.²⁶

Some non-State actors already have been denounced for their noncompliance with their international law and human rights obligations. Among these entities are the parastatal Jewish National Fund, World Zionist Organization, and Mekorot, as well as Israeli and transnational corporations such as Elbit Systems, Sodastream, Ahava, G4S, Veolia Group, Alstom, Dexia Bank, and institutions of the Israeli banking system, among others.²⁷

Since 2004, some States and private bodies have developed good practices or policies, including divestment from, or termination of/abstention from contracts with entities involved in Israeli violations of international law. The EU Guidelines on eligibility of Israeli entities for grants, prizes and financial instruments²⁸ and the relevant Non-Aligned Movement resolutions²⁹ are notable examples of the exercise of collective extraterritorial obligations.

States, public entities, parastatal organisations and private actors—whether located in, operating partially in, providing services or products to, transacting with or trading in services or products of Israeli settler colonies, or otherwise engaged in projects executed totally or partially under Israeli control in the oPt and/or not “undertaken in accordance with the wishes of the peoples of [Non-Self-Governing] Territories, and their contribution to the development of such Territories”³¹—are under self-executing obligations to cooperate in taking the following measures:

1. Terminate all funding, contracts or other economic and institutional relations with actors enabling, supporting or encouraging the continuation of Israeli violations of international law. To this end, investigations must consider the fungibility of financial trails, products and technology transfer.
2. Ban/terminate all trade in products partially or totally produced in the illegal settler colonies. The labelling of products as originating from the colonies, while continuing to trade, is not sufficient to meet the obligations of nonrecognition of, and noncooperation with the illegal situation. The WTO regime does not impede this corrective trade measure.³²

Individual States and governments, in particular, should:

1. Adopt policies and prohibitive legislation, and develop, produce and widely disseminate informational guidelines, in order to ensure that companies and other entities under their jurisdiction are sufficiently apprised of the legal consequences of their role in Israeli violations, and in order that no party evade its obligations.
2. High Contracting Parties to the Geneva Conventions are further obliged to exercise domestic and universal jurisdiction, in order to pursue and prosecute or extradite actors that have been or are involved in grave breaches of IHL³³;
3. States must pursue and prosecute the authors of international crimes, codified inter alia in the *Apartheid Convention* and the *Rome Statute of the ICC*, in accordance with their international obligations;
4. States and organs of the United Nations must ensure that Israel make timely, effective and adequate reparation for all damages suffered from its conduct and that of its agents.³⁴

International law provides for States to comply with these obligations individually and by way of international cooperation, as well as through the organs and mechanisms of the United Nations.

Among the available measures are:

- Implementing trade, military and/or diplomatic sanctions as a countermeasure³⁵;
- Creating an enabling environment for the accession of Palestine to the Rome Statute³⁶;
- Depositing a statement affirming applicability of the Fourth Geneva Convention in the oPt, including Jerusalem, the West Bank and Gaza Strip;
- Re-constituting the UN Special Committee and Center against Apartheid, charged to investigate Israeli apartheid, recommend measures to combat it, and monitor compliance of all States and private entities in light of their individual, collective, domestic and extraterritorial obligations vis-à-vis Israel's regime of prolonged occupation with its features of colonialism and apartheid, which the Wall exemplifies³⁷;
- Development of an UN Agenda for Action in consultation with the UN human rights treaty bodies, ILO compliance mechanisms, legal advisors to the Secretary-General and the depositary of the IV Geneva Convention;
- Through the General Assembly, mandating the UN Register of Damage to develop the capacity to determine reparations for losses, costs and damages to any party as a consequence of the Separation Wall's development, construction and/or maintenance.

The failure of the United Nations and individual Member States to uphold their binding obligations to uphold international law and world order in this case undermines the international system and faith in international law. Ten years after the ICJ decision, we urge the United Nations, its Member States and organs, finally to comply with their obligations and take legally permissible measures to ensure the removal of the Israeli Wall from occupied Palestinian territory and the associated regime of settler colonies, institutionalized discrimination and annexation. This requires applying the lessons of conflagrations past, combatting the related violations by any and all parties, and effecting the full reparation of victims now for the resulting costs, losses and damages in compliance with the reparations framework that the General Assembly has adopted by acclamation.

In the face these persistent grave breaches, gross violations and codified crimes, ten years of inertia is far too long.

Initial signatories:

1. *Kohki Abe*, professor of International Law, Kanagawa University School of Law, Japan
2. *Georges Abi-Saab*, former ad hoc Judge of the International Court of Justice, a former Judge of the Appeals Chamber of the International Criminal Court for the former Yugoslavia (ICTY) and Rwanda (ICTR), honorary professor of International Law at the Graduate Institute of International and Development Studies in Geneva, honorary professor at Cairo University Faculty of Law and a member of the Institute of International Law, Egypt
3. *Karen Abu Zayd*, Human Rights Council appointed Commissioner (for the Commission of Inquiry on Syria)
4. *Suzanne Adely*, member of the National Lawyers Guild, International Association of Democratic Lawyers, USA

5. *Bina Ahmad*, National Vice President of the National Lawyers Guild, The Legal Aid Society, USA
6. *Susan M. Akram*, clinical professor and supervising attorney, International Human Rights Program, Boston University School of Law, USA
7. *Ricardo Alemão Abreu*, University of São Paulo, secretary of international relations PCdoB, Brazil
8. *Anis Al-Qasim*, lawyer, associate fellow of the Institute of Advanced Legal Studies, University of London, chairman of the Legal Committee of the Palestine National Council, Palestine, Palestine Year book of international law
9. *Roberto Amaral*, professor at the Catholic University PUC Rio de Janeiro, member of the Institute of Brazilian Lawyers (Instituto dos Advogados Brasileiros), member of the Brazilian Center of Latinamerican Studies, ex-minister of Science and Technology
10. *Huwaida Arraf*, lawyer and human rights advocate, USA
11. *Hrair Balian*, director of Conflict Resolution Program, The Carter Center, USA
12. *Upendra Baxi*, Emeritus Professor of Law, University of Warwick, UK/India
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14. *Karima Bennoune*, professor of Law, Martin Luther King Jr. Hall research scholar, University of California at Davis School of Law
15. *George Bisharat*, University of California Hastings College of the Law, USA/Palestine
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17. *Audrey Bomse*, Co-Chair of the National Lawyers Guild Palestine Subcommittee, USA
18. *Bill Bowring*, barrister, director of the LLM/MA in Human Rights, School of Law Birkbeck, University of London
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21. *Kjell Brygfeld*, lawyer, with the right to meet in the Supreme Court, Norway
22. *Diana Buttu*, Palestinian-Canadian lawyer, former spokesperson for the Palestine Liberation Organization, Canada/Palestine
23. *Francisco Carrion*, president of the UN Committee for the Protection of the Rights of All Migrant Workers and Members of Their Families, former Minister of Foreign Affairs of Ecuador
24. *Paulo Castelo Branco*, lawyer, president of the Coordination ‘Pace in Palestine’ of the Federal Council of the Brazilian Bar Association, Brazil
25. *M Isabel Torres Cazorla*, professor of International Public Law, Law Faculty, University of Malaga, Spain
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27. *Eric David*, professor at the Free University of Brussels (U.L.B.) in Public International Law, Law on International Organisations, International Criminal Law, Law of Armed Conflicts, president of the Advisory Commission on International Humanitarian Law of the Belgian Red Cross (French-speaking section), president of the Centre for International Law at the U.L.B., member of the International Humanitarian Fact-finding Commission, Counsel for various states at the International Court of Justice and the International Criminal Tribunal for Rwanda,
28. *Pablo De la Vega*, lawyer, regional coordinator of the Interamerican Platform for Human Rights, Democracy and Development (PIDHDD), Ecuador
29. *Paul De Waart*, professor emeritus of International Law VU Amsterdam, member the Independent Fact Finding Committee on Gaza to the League of Arab States, established in February 2009, chaired by John Dugard, Chair of the joint Academic Project Dynamics of Self-Determination of Israeli, Palestinian and Western researchers 1988-1993, The Netherlands
30. *Gilles Devers*, lawyer, Lyon, France
31. *Rajeev Dhavan*, advocate of the Supreme Court of India, Commissioner of the International Commission of Jurists, India
32. *José E. Díaz*, lawyer of political prisoners and human rights organizations, Uruguay
33. *François Dubuisson*, professor of International Law, Center of International Law at the Free University of Brussels (ULB), Belgium
34. *John Dugard*, Chair in Public International Law, member of the UN International Law Commission, former UN Special Rapporteur on Diplomatic Protection, former UN Special Rapporteur for the Occupied Palestinian Territories, South Africa
35. *Bent Endresen*, lawyer, with the right to meet in the Supreme Court, Norway
36. *Richard Falk*, Milbank Professor of International Law Emeritus, Princeton University, UN Special Rapporteur for the Occupied Palestinian Territories, 2008-2014, USA
37. *Andreas Fischer-Lescano*, University of Bremen, Germany
38. *Katherine Gallagher*, Senior Staff Attorney, Center for Constitutional Rights, USA
39. *Zeina Ghandour*, Lecturer in Law, SOAS University of London, UK
40. *Fausto Gianelli*, lawyer, Italy
41. *Lord Anthony Gifford*, Queens Council, UK
42. *Vera Gowlland-Debbas*, emeritus professor of International Law, Graduate Institute of International and Development Studies, Geneva, Switzerland
43. *Pål Hadler*, lawyer, Norway
44. *Peter Hansen*, Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) from 1996-2005, Switzerland
45. *Zaha Hassan*, Palestinian-American lawyer, human rights advocate, USA
46. *Geir Høin*, lawyer, Norway
47. *Masaji Ie*, professor emeritus of International Law, Kobe City University of Foreign Studies and Himeji Dokkyo University, Japan
48. *Kazuko Ito*, attorney at Law, Secretary General, Human Rights Now, Japan

49. *Vinodh Jaichand*, professor of Law and dean of the School of Law, University of the Witwatersrand, Johannesburg, former deputy director, Irish Centre for Human Rights, Galway, former director, Lawyers for Human Rights, Pretoria, South Africa
50. *Indira Jaising*, Senior Advocate, former Additional Solicitor General of India
51. *Cemalettin Karadas*, lecturer on International Law, General Secretary of International Law Association-Turkey
52. *Ali Khashan*, former Palestinian Minister of Justice, founder and former Dean of Faculty of Law, University of Jerusalem, professor of constitutional law and human rights, Palestine
53. *Aisa Kiyosue*, associate professor of Constitutional Law and Family Law, Muroran Institute of Technology, Japan
54. *Maria Lahood*, Centre for Constitutional Rights USA
55. *Loureno de Almeida*, Wellington, University of Brasilia, master's programme in Human Rights, Brazil
56. *Ketil Lund*, lawyer, former Norwegian Supreme Court Justice and ICJ Commissioner, Norway
57. *Daniel Machover*, head of civil litigation for Hickman & Rose Solicitors in London, co-founder of Lawyers for Palestinian Human Rights, UK
58. *Ana Paula Maielo*, professor at the State University Paraíba, Brazil
59. *Michael Mansfield*, Queens Council, UK
60. *Michel Angela Martinez*, Ph.D. candidate, Human Rights and Visual Culture, USC, Politics and International Relations Program, USA
61. *Amin Mekki Medani*, lawyer/partner Elkarib and Medani (Khartoum), legal scholar, former Sudanese Cabinet Minister, magistrate, lecturer in law, OHCHR representative in Palestine, Croatia, Afghanistan and Cambodia, former president of the Arab Organization for Human Rights, Sudan
62. *Jeanne Mirer*, president of the International Association of Democratic Lawyers, USA
63. *Lejeune Mirhan*, member of the Academy of Higher Studies of Lisbon, member of International Sociological Association, Brazil
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65. *Ernesto Moreau*, lawyer, co-president of the Permanent Assembly for Human Rights (APDH), ex-president of the Association of Lawyers of Buenos Aires (AABA), Argentina
66. *Yuriko Moto*, visiting researcher, Centre for Asia Pacific Partnership, Osaka University of Economics and Law, Japan
67. *John Pace*, senior visiting fellow, Australian Human Rights Centre, Faculty of Law, University of New South Wales, Australia
68. *Andrea Pacheco Pacifico*, associate professor of international law/international relations at State University Paraíba, Brazil
69. *Jose Antonio Martin Pallin*, member of the Spanish Supreme Court, Spain
70. *Norman Pech*, emeritus professor at Hamburg University, former member of parliament, expert

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71. *Federico lvarez Petraglia*, lawyer, former judge, Uruguay
72. *Paulo Sérgio Pinheiro*, adjunct professor of International Studies, Watson Institute for International Studies, Brown University, USA; research associate, Center for the Study of Violence, University of So Paulo, NEV/USP, Brazil
73. *Emma Playfair*, former Representative, Ford Foundation, Cairo Office, Chair, Alexandria Trust
74. *Michael Ratner*, president emeritus, Center for Constitutional Rights, USA
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76. *João Vitor Rodrigues Loureiro*, University of Brasilia, master's programme in Human Rights, Brazil
77. *Enrique Santiago Romero*, lawyer, Uruguay
78. *Carlos Enrique Ruiz Ferreira*, professor of international relations (focus on human rights), State University Paraíba, Brazil
79. *Joseph Schechla*, former programs coordinator of the OHCHR in Palestine, former representative of the OHCHR in Tunis, coordinator of the Housing and Land Rights Network
80. *Martin Siepermann*, director of The Rights Forum, Netherlands
81. *Martha L. Schmidt*, attorney and counselor, USA
82. *Pedro Estevam Serrano*, professor of constitutional Law at the Catholic University PUC of São Paulo, Brazil
83. *Juan Soroeta*, professor of International Public Law, University of the Basque Country, Spain
84. *Harald Stabell*, lawyer, with the right to meet in the Supreme Court, Norway
85. *Gerhard Stuby*, professor at the University of Bremen, Germany
86. *Beinusz Szmukler*, president of the Consultative Council of the American Association of Jurists, ex-president of the Lawyers Association of Buenos Aires, councilor of the National Judiciary of Argentina
87. *Bret Thiele*, International Human Rights Lawyer, Co-Executive Director of the Global Initiative for Economic, Social and Cultural Rights, USA
88. *Andreas Van Agt*, chairman of The Rights Forum, former Prime Minister of the Netherlands
89. *Theo Van Boven*, honorary professor of international law, Maastricht University, Netherlands
90. *Jacob Van Garderen*, National Director of Lawyers for Human Rights, South Africa
91. *Carlos Zamorano*, president of the Argentine League for Human Rights, Argentina
92. *Liesbeth Zegveld*, human rights lawyer, founder of the Nuhanovic Foundation, The Netherlands

Organizational signatories:

Palestine:

- Adalah - The Legal Center for Arab Minority Rights in Israel
- Addameer Association for Human Rights
- Addameer, Prisoner Support and Human Rights Association
- Al Haq
- Al Mezan Center for Human Rights
- Al-Quds Human Rights Clinic, Al-Quds University
- Arab Organization for Human Rights
- Badil Resource Centre for Palestinian Residency and Refugee Rights
- Center for Defense of Liberties and Civil Rights "Hurriyat"
- Civic Coalition for Palestinian Rights in Jerusalem
- Defence for Children International, Palestine Section
- Jerusalem Legal Aid and Human Rights Center
- MUSAWA, The Palestinian Center for the Independence of the Judiciary and the Legal Profession
- Palestinian Centre for Human Rights
- Palestinian NGO Network (PNGO)
- Palestinian Stop the Wall Campaign

International:

- Interamerican Association of Jurists, International
- Arab Tamkeen Group
- Argentine League for Human Rights, Argentina
- Association of Democratic Lawyers (Vereinigung Demokratischer Juristinnen und Juristen), Germany
- Centre for Studies and Research of environmentally displaced people people, State University of Paraiba, Brazil
- Coordination 'Peace in Palestine' of the federal council of the Order of Lawyers of Brazil
- European Association of Lawyers for Democracy and Human Rights Global, Europe
- Global Initiative for the Economic, Social and Cultural Rights, International
- Housing and Land Rights Network / Habitat International Coalition, International
- International Law Association, Turkey
- Lawyers for Human Rights, South Africa
- Lawyers for Palestinian Human Rights, UK
- Lawyers Left Forum, Spain
- Mothers and Families of Prisoners and Disappeared, Uruguay
- Movement against Racism, Anti-Semitism and for Peace (MRAP)
- National Association of Democratic Jurists, Italy
- National Lawyers Guild, USA
- Network for Legal Action on Palestine (PLAN), International
- Permanent Assembly of Human Rights (APDH), Argentina
- PROGRESS Lawyers Network, Belgium
- Russell Tribunal on Palestine, International
- Service Peace and Justice - SERPAJ Chile
- Service Peace and Justice - SERPAJ Colombia
- Service Peace and Justice - SERPAJ Uruguay
- Union of Arab Jurists

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- ¹ “Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,” Advisory Opinion of 9 July 2004 [heretofore: *ICJ Advisory Opinion*], at: <http://www.icj-cij.org/docket/files/131/1671.pdf>.
- ² See, for example: Ingrid Jaradat/al-Haq, “*State Responsibility in Connection with Israel’s Illegal Settlement Enterprise in the Occupied Palestinian Territory*,” http://www.alhaq.org/images/stories/PDF/2012/Legal_Memo_State_Responsibility_FINAL_16_07.pdf; Tom Moerenhout, “*The Obligation to Withhold from Trading in Order Not to Recognize and Assist Settlements and their Economic Activity in Occupied Territories*,” *JOURNAL OF INTERNATIONAL HUMANITARIAN LEGAL STUDIES*, Volume 3, Issue 2, pages 344–385; François Dubuisson, “*The International Obligations of the European Union and its Member States with regard to Economic Relations with Israeli Settlements*,” (Brussels: CNCD-11.11.11, February 2014), at: <http://www.madeinillegality.org/IMG/pdf/en-report-dubuisson-madeinillegality.pdf>; “*Feasting on the Occupation: Illegality of Settlement Produce and the Responsibility of EU Member States under International Law*,” (Ramallah: Al-Haq, 2013), at: <http://www.alhaq.org/publications/publications-index/item/feasting-on-the-occupation-illegality-of-settlement-produce-and-the-responsibility-of-eu-members-states-under-international-law>; *The Proceedings of the Russell Tribunal on Palestine*, <http://www.russelltribunalonpalestine.com/en/sessions>;
- ³ *ICJ Advisory Opinion*, op. cit., paras. 142, 147, 162, 163.
- ⁴ Such as the prohibitions against the acquisition of territory by force, population transfer and the violation of the Palestinian people’s right to self-determination; absolute prohibitions against torture, etc.
- ⁵ *ICJ Advisory Opinion*, op. cit., paras. 137, 139, 142.
- ⁶ *Ibid.*, paras. 149–54.
- ⁷ See also S/RES/465, 1 March 1980, para. 7.
- ⁸ *Ibid.*, paras. 154–59.
- ⁹ *Ibid.*, para. 160.
- ¹⁰ The only countries not voting in favour of the resolution were: Against - Arshall Islands, Micronesia (Federated States of), Palau, United States of America ; Abstaining - Cameroon, Canada, El Salvador, Nauru, Papua New Guinea, Solomon Islands, Tonga, Uganda, Uruguay, Vanuatu.
- ¹¹ “Advisory opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, including in and around East Jerusalem,” ES-10/15, 2 August 2004, at: <http://unispal.un.org/UNISPAL.NSF/0/F3B95E613518A0AC85256EEB00683444>.
- ¹² *Ibid.*, paras. 1 and 2.
- ¹³ “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,” A/RES/60/147, 21 March 2006, at: <http://www.un.org/Docs/asp/ws.asp?m=A/RES/60/147>.
- ¹⁴ “Establishment of the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory,” ES-10/17, 24 January 2007, at: <http://www.unrod.org/docs/Resolution%20ES-10%2017%20of%20the%20General%20Assembly%20of%202024%20January%2007%20.pdf>. The Resolution recalled that “Israel is under an obligation to make reparation for all damage caused by the construction of the wall in the occupied Palestinian territory, including in and around East Jerusalem” and recognized “the necessity of accurately documenting the damage caused by the construction of the wall for the purpose of fulfilling the obligation to make the above-mentioned reparations, including restitution and compensation, in accordance with the rules and principles of international law.” The same Resolution notes that “the act of registration of damage, as such, does not entail, at this stage, an evaluation or assessment of the loss or damage caused by the construction of the wall,” which is implicitly a function of measures yet to be determined.
- ¹⁵ “What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the report of the Secretary General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?” See “Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory,” ES-10/14, 8 December 2003, at: <http://unispal.un.org/UNISPAL.NSF/0/F953B744269B9B7485256E1500776DCA>.
- ¹⁶ John Dugard, “*Implementation of General Assembly resolution 60/251 of 15 March 2006 entitled "Human Rights Council": Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*” <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=461e52b12>; Richard Falk, “*Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, submitted in accordance with Human Rights Council resolution 5/1*,” <http://unispal.un.org/UNISPAL.NSF/0/69BEC99AF727EAC2852577C3004AAD8A>; Human Sciences Research Council of South Africa, *Occupation, Colonialism, Apartheid?: A re-assessment of Israel’s practices in the occupied Palestinian territories under international law* (Cape Town: HSRC, 2009), at: <http://www.hlrn.org/img/documents/HSRC%20study%20-%20Occupation,%20Colonialism,%20Apartheid%20-%20full.pdf>.
- ¹⁷ CERD, “Concluding Observations: Israel,” CERD/C/ISR/CO/13, 14 June 2007, paras. 17–19; and CERD/C/ISR/CO/14–16, 9 March 2012, paras. 11, 15, 24–27.
- ¹⁸ Human Sciences Research Council of South Africa, *Occupation, Colonialism, Apartheid?: A re-assessment of Israel’s practices in the occupied Palestinian territories under international law* (Cape Town: HSRC, 2009), at: <http://www.hlrn.org/img/documents/HSRC%20study%20-%20Occupation,%20Colonialism,%20Apartheid%20-%20full.pdf>; and Third Russell Tribunal on Palestine, Cape Town, 5–7 November 2011, at:

<http://www.russelltribunalonpalestine.com/en/sessions/south-africa>.

- ¹⁹ Notably, the CERD findings repeat the concern over Israel's failure to uphold its obligations under Article 3 of the Convention on the Elimination of All Forms of Racial Discrimination, which obliges States parties to combat the crime of apartheid.
- ²⁰ See, for instance, *Maastricht Principles on Extraterritorial Obligation of States in the area of Economic, Social and Cultural Rights*, 2011, at: <http://www.etoconsortium.org/en/library/maastricht-principles/>.
- ²¹ A large majority of Israeli companies, financial and parastatal institutions are involved in the construction of the Wall and the settlement project and the maintenance of the situation created by them. Transnational companies are expanding their economic activities in the occupied Palestinian territory as part of, or for the benefit of settlements, or maintain commercial relations with Israeli companies involved in the settlements. Especially the homeland security industry (and connected sectors) maintain a symbiotic relationship with Israeli violations of international norms as they provide a testing ground for their technology. At least 1,400 corporations are active in settlements and thirteen industrial zones, as well as agricultural zones have been established on the West Bank; they benefit from public investments and preferential fiscal regimes. Jaradat/al Haq, op. cit.
- ²² The Independent Fact-finding Mission on the Israeli settlements and the Human Rights Council have explicitly affirmed the applicability of these principles to business activities in the occupied Palestinian territory. "*Human rights situation in Palestine and other occupied Arab territories Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem*," A/HRC/22/63, 7 February 2013, paras. 17, 104, at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-63_en.pdf.
- ²³ *International Convention on the Suppression and Punishment of the Crime of Apartheid*, General Assembly resolution 3068 (XXVIII), 30 November 1973, entry into force 18 July 1976, at: <http://legal.un.org/avl/ha/cspca/cspca.html>.
- ²⁴ ICRC (2006). Business and international humanitarian law, p. 14, at: http://www.icrc.org/eng/assets/files/other/icrc_002_0882.pdf
- ²⁵ International guidelines and principles such as the UN *Global Compact*, the OECD *Guidelines for Multinational Enterprises* have been adopted to reflect the standard of the UN Guiding Principles.
- ²⁶ The United Nations Secretary-General's Special Representative for Business and Human Rights John Ruggie's reports indicate that in the course of the past few decades, the legal status of corporations in international law has shifted to some extent from the classical position, with corporations now considered bearers of duties under international criminal law. See Emeka Duruigbo, "*Corporate Accountability and Liability for International Human Rights Abuses: Recent Changes and Recurring Challenges*," 6 NORTHWESTERN JOURNAL OF INTERNATIONAL HUMAN RIGHTS. 222 (2008), at: <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1073&context=njihr>.
- ²⁷ Other corporations well-known for their dealings with the Israeli occupation include Caterpillar Inc. (United States), Ahava (Israel), Volvo Group (Sweden), Riwal Holding Group (Netherlands), Hewlett Packard (USA), Mehadrin (Israel), Motorola (USA), Assa Abloy (Sweden), and Cemex (Mexico), etc.
- ²⁸ European Commission, "*Guidelines on the eligibility of Israeli entities and their activities in the territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the EU from 2014 onwards*" Notice 2013/C 205/05, OFFICIAL JOURNAL OF THE EUROPEAN UNION, Vol. 56 (19 July 2013), pp. 9–11, at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:205:FULL:EN:PDF>.
- ²⁹ The Non-Aligned Movement has adopted several declarations calling for "specific actions to be taken including legislative measures, collectively, regionally and individually, to prevent any products of the illegal Israeli settlements from entering their markets, consistent with obligations under international treaties, to decline entry to Israeli settlers and to impose sanctions on companies and entities involved in construction of the Wall and other illegal colonization activities in the occupied Palestinian territory, including East Jerusalem." Non-Aligned Movement, "*Declaration on Palestine*," XIV Ministerial Conference of the Non-Aligned Movement, 19 August 2004, at: <http://www.nam.gov.za/media/040820a.htm>.
- ³¹ Under-Secretary-General for Legal Affairs Hans Correll, The Legal Counsel, "*Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council*," S/2002/161, 12 February 2002, paras. 21–22, at: <http://www.arso.org/Olaeng.pdf>.
- ³² Moerenhout, op. cit.
- ³³ *Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949*, Article 146.
- ³⁴ A/RES/60/147, 21 March 2006.
- ³⁵ General Assembly resolution "The situation in the Middle East," A/37/123, 16 December 1982, para. 13.
- ³⁶ On 21 January 2009, Government of Palestine Minister of Justice `Ali al-Khashān declared under Article 12 (3) of the Rome Statute, recognizing the jurisdiction of the International Criminal Court "for the purpose of identifying, prosecuting and judging the authors and accomplices of acts committed on the territory of Palestine since 1 July 2002. The ICC Registrar acknowledged receipt of the declaration in 2009/404/SA/LASS, 23 January 2009. See "*Al-Haq Position Paper on Issues Arising from the Palestinian Authority's Submission of a Declaration to the Prosecutor of the International Criminal Court under Article 12(3) of the Rome Statute*," (Ramallah: Al-Haq, 14 December 2009), at: [http://www.alhaq.org/pdfs/position-paper-icc-\(14December2009\).pdf](http://www.alhaq.org/pdfs/position-paper-icc-(14December2009).pdf).
- ³⁷ Consistent also with the Russell Tribunal on Palestine, "Actions Required and Recommended," Cape Town session, 5 – 7 November 2011, 7.2.6, at <http://www.russelltribunalonpalestine.com/en/sessions/south-africa/south-africa-session-%e2%80%9494-full-findings>.