



# Russell Tribunal on Palestine

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## BREACHES AND VIOLATIONS OF INTERNATIONAL LAW BY ISRAEL IN THE OCCUPIED PALESTINIAN TERRITORY

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HOCINE OUAZRAF

Since 1948 Israel has persistently violated all peremptory norms of international law and has continually demonstrated an attitude of flagrant contempt for its international obligations.

**Respect for the principle of the Palestinian people's right to self-determination**

This right, won by colonised peoples through a hard-fought struggle, is the cornerstone of international law. For 60 years Israel has prevented the Palestinian people from exercising the right of self-determination, although the right of peoples to self-determination is a principle enshrined in Article 1, paragraph 2, of the UN Charter, which states that one of the purposes of the United Nations is: "**To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples...**".

United Nations General Assembly (hereinafter UNGA) resolution 1514 (XV) of 14 December 1960 on the granting of independence to colonial countries and peoples draws attention to this obligation and declares that the **subjection of peoples to alien subjugation, domination and exploitation** is prohibited.

The right of peoples to self-determination is also reaffirmed as an inalienable principle in the *Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States* of 24 October 1970 (UNGA resolution 2625 (XXV)).

In its resolution 2649 of 30 November 1970, the UNGA recognises the applicability of resolution 1514 (XV) to the Palestinian case by noting that the Palestinians are a people under "**colonial and alien domination**" and are thus entitled to benefit from the principles set forth in resolution 1514 (XV). It "condemns those Governments that deny the right to self-determination of peoples recognized as being entitled to it, especially of the peoples of southern Africa **and Palestine**".

More recently, the International Court of Justice, in the Advisory Opinion concerning the ***Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory***, stated that Israel has breached the right of the Palestinian people to self-determination. Furthermore, it affirms that the right of peoples to self-determination has acquired an *erga omnes* character.

It also notes that, pursuant to Article 1, paragraph 3, of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, the States parties to the two Covenants are required to promote the realisation of the right to self-determination. It thus reaffirms the obligations incumbent on the State of Israel, which is bound by a number of human rights treaties notwithstanding the fact that the State of Israel appears to dispute their applicability to the Palestinian territories on the ground that the international instruments in question afford protection only in peacetime and not in time of war. This argument was rebutted by the Court, which firmly concludes that human rights treaties are applicable, in addition, to international humanitarian law. The State of Israel is therefore bound to fulfil its human rights obligations in the Occupied Palestinian Territory under the instruments that it has ratified. This position was endorsed by the United Nations Human Rights Committee, which stated that the provisions of both Covenants were applicable to the inhabitants of the Occupied Palestinian Territory.

A direct corollary of the right of the Palestinian people to self-determination is the prohibition of the acquisition of territory by force. Thus, the denial of the Palestinian people's right to self-determination by the State of Israel also breaches the principle of the inadmissibility of the acquisition of territory by force, as stated unequivocally in Article 2, paragraph 4, of the UN Charter:

***“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.”***

In June 1967, after the Six-Day War, the Israeli armed forces occupied all the territories constituting historic Palestine. Today, the State of Israel still occupies the West Bank, the Gaza Strip and East Jerusalem. On 22 November 1967, the United Nations Security Council (hereinafter UNSC) adopted resolution 242, which restates the principle of the inadmissibility of the acquisition of territory by force, sets forth the principles that must be fulfilled to bring about a just peace in the Middle East, and calls for **“the withdrawal of Israel armed forces from territories occupied in the recent conflict”**. Israel is bound to implement Security Council resolutions by Article 25 of the United Nations Charter, which requires Member States “to accept and carry out the decisions of the Security Council”. Israel has to date violated and continues to violate more than 30 Security Council resolutions.

The relationship between the two principles (self-determination and the inadmissibility of the acquisition of territory by force) is clearly discernible in UNGA resolution 31/20 of 24 November 1976, which considers that the evacuation of the territory occupied by Israel in 1967 is a prerequisite for the exercise of the right of the Palestinian people to self-determination.

Furthermore, the GA recognises the “right of resistance” of peoples under colonial rule with a view to recovering their legitimate rights. This explicit recognition of the “right to resistance” may be clearly inferred from resolution 2649 of 30 November 1970, in which the General Assembly:

***“1. Affirms the legitimacy of the struggle of peoples under colonial and alien domination recognized as being entitled to the right of self-determination to restore to themselves that right by any means at their disposal;***

***2. Recognizes the right of peoples under colonial and alien domination in the legitimate exercise of their right to self-determination to seek and receive all kinds of moral and material assistance, in accordance with the resolutions of the United Nations and the spirit of the Charter of the United Nations.”***

Moreover, as noted earlier, the aforementioned resolution contains a direct reference to the Palestinian case.

The legitimacy of the right to resistance is confirmed in Article 1, paragraph 4, of the Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts (hereinafter Protocol I), which stipulates that:

***“The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.”***

***Settlements and the plundering of natural resources***

The development and expansion of settlements constitute an ongoing and illegal impediment to the effective exercise by the Palestinians of their right to self-determination. Since 1967 Israel has been pursuing an unrelenting policy of colonisation of Palestinian territory, with almost 150 settlements in the West Bank and East Jerusalem. More than 38% of the West Bank now consists of settlements, and their number continued to increase even during the periods when the so-called "peace process" was under way. Thus, the number of settlements has increased by 63% since 1993 notwithstanding the launching of the Oslo peace process.

The colonisation of the Palestinian territories occupied since 1967 has been a mainstay of the policy of all Israeli Governments irrespective of their political orientation and persuasion. The pursuit by the Israeli authorities of an intensive colonisation policy in the West Bank and East Jerusalem violates numerous provisions of international law and, in particular, a number of principles of international humanitarian law.

Although Israel disputes the applicability of principles of international humanitarian law to the Palestinian territories, there is no longer any doubt whatsoever that the Fourth Geneva Convention "relative to the Protection of Civilian Persons in Time of War", adopted on 12 August 1949, is applicable to the Occupied Palestinian Territory (hereinafter Fourth Convention). On the one hand, the State of Israel is bound by the Convention, which it ratified on 6 July 1951; on the other hand, Palestine made a unilateral declaration in 1982 in which it undertook to apply the Convention. Israel disputes the applicability of the Fourth Convention on the ground that Palestine is not the territory of a High Contracting Party within the meaning of the Convention. But this position does not stand up to an analysis of the articles concerning the scope of the principles enshrined in the Fourth Convention. Thus, the Palestinians benefit under Article 4 of the Fourth Convention from the protection afforded by the humanitarian instrument, according to which:

***"Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals."***

The UNGA and the UNSC have reaffirmed this view on a number of occasions and have consistently and repeatedly called on Israel to apply the Fourth Convention. For instance, on 5 November 2009 the General Assembly, in resolution 64/10 endorsing the conclusions of the GOLDSTONE report, clearly reiterates this view:

***"the relevant rules and principles of international law, including international humanitarian and human rights law, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, which is applicable to the Occupied Palestinian Territory, including East Jerusalem."***

The same is true of the International Committee of the Red Cross, which has supported and endorsed the positions of the UNSC and the UNGA on several occasions.

It should further be noted that while the State of Israel has ratified the four Geneva Conventions of 1949, it has not ratified Protocol I. It is nonetheless required to comply with its provisions inasmuch as the principles enshrined in the two Protocols form part of customary international law. They must thus be respected by all parties to an armed conflict.

Pursuant to Article 49 (para. 6) of the Fourth Convention, settlements are illegal. They breach the principles set forth in this article, which stipulates that:

***“the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.”***

These practices, which are designed to bring about a drastic change in the demographic status of the Palestinian population, have been repeatedly condemned by the UNSC and the UNGA. For instance, on 8 December 1972 the UNGA issued a reminder of the prohibition of any action that changes the physical character or demographic composition of the occupied Arab territories.

A similar view has been expressed on many occasions by the UNSC. Thus, in resolution 446 (22 March 1979) the Security Council reiterates that the establishment of settlements in the occupied Arab territories has “no legal validity” and calls on Israel, the occupying power, to withdraw from the occupied territories.

Furthermore, the policy of establishing settlements in Palestinian territory violates the right of the Palestinian people to sovereignty over their natural resources. The issue of control over natural resources must be viewed in conjunction with respect for the right to self-determination of the Palestinian people. It constitutes a collective right that is a key component of the right of the Palestinian people to self-determination. Issues relating to sovereignty over natural resources as a direct corollary of the right of peoples to self-determination have given rise to heated debate in the United Nations. In its resolution 3281 (XXIX) of 12 December 1974 (Charter of Economic Rights and Duties of States), the General Assembly reiterates that all forms of occupation and associated appropriation of natural resources are prohibited. It calls for the restitution of such resources and, where appropriate, compensation.

The two components of this resolution (condemnation and compensation) have been endorsed in a number of UNGA resolutions concerning the case of Palestine. For example, paragraph 2 of resolution 3175 of 17 December 1973, referring to the prohibition of the exploitation of resources by an occupying power, reaffirms that “all measures undertaken by Israel to exploit the human and natural resources of the occupied Arab territories are illegal and calls upon Israel to halt such measures forthwith.” The Palestinian people’s right to compensation has also been addressed in a number of General Assembly resolutions which call for “full compensation for the exploitation, depletion, loss of and damages to the natural resources of the Palestinian territories”.

### ***The annexation of East Jerusalem***

Jerusalem seems to be one of the thorniest issues in the struggle of the Palestinian people to recover their right to self-determination. The city of Jerusalem originally enjoyed a separate international status defined as follows by UNGA resolution 181 of 29 November 1947:

***“The City of Jerusalem shall be established as a corpus separatum under a special international regime and shall be administered by the United Nations. The Trusteeship Council shall be designated to discharge the responsibilities of the Administering Authority on behalf of the United Nations.”***

The international status of Jerusalem established by UNGA resolution 181 was undermined by the policy of territorial expansion pursued by the State of Israel. As early as 1948, Israel seized the eastern part of the city after the first Israeli-Arab war (1948-1949), an act that led to a division of the city, with the new Jewish State occupying the western part of the Holy City. This action was condemned by the UNGA, which reiterates the need for an international regime for the Holy City

and states that the Jerusalem area “should be accorded special and separate treatment from the rest of Palestine and should be placed under effective United Nations control”.

The Israel decision to extend its sovereignty by decree (Decree 2064 of 28 June 1967) to the entire territory of Jerusalem after the Six-Day War in June 1967 was vigorously condemned by the UNSC. In its resolution 298 (25 September 1971), the UNSC “confirms in the clearest possible terms that all legislative and administrative actions taken by Israel to change the status of the City of Jerusalem, including expropriation of land and properties, transfer of populations and legislation aimed at the incorporation of the occupied section, are totally invalid”.

Notwithstanding the UNSC warnings to the State of Israel to refrain from taking any legislative or administrative action to change the political or physical status of the City of Jerusalem, the Israeli authorities went one step further on 30 July 1980 when they adopted the basic law, turning Jerusalem into the “undivided and reunified capital of the State of Israel”. Faced with this situation, the UNSC adopted resolution 478 of 20 August 1978 in which it:

***“2. Affirms that the enactment of the ‘basic law’ by Israel constitutes a violation of international law (...)***

***5. Decides not to recognize the ‘basic law’ and such other actions by Israel that, as a result of this law, seek to alter the character and status of Jerusalem and calls upon:***

***(a) All Member States to accept this decision;***

***(b) Those States that have established diplomatic missions at Jerusalem to withdraw such missions from the Holy City.”***

Today the State of Israel is pursuing the illegal annexation of East Jerusalem actively and with impunity through its policy of Judaisation, reflected in the process of increased and sustained colonisation, the transfer of the population of Israel to East Jerusalem, the expulsion of Palestinian residents on various pretexts and the destruction of their homes. Day by day, these practices are reducing the prospects of making Jerusalem the capital of two states. The European Union has never recognised the annexation of East Jerusalem by Israel, and its member states have therefore established their accredited diplomatic missions in Tel Aviv.

Since 1967 the UNSC resolutions dealing with the status of Jerusalem have consistently reiterated their condemnation of the annexation by the Israel authorities of the Holy City.

### ***The Gaza blockade and operation “Cast Lead”***

As part of their policy of aggression against the Palestinian people, the Israeli authorities have treated the Gaza Strip as “a hostile entity” for more than three years and subjected it to an economic and humanitarian blockade. Some clarifications regarding the legal status of the Gaza Strip in terms of the principles of international law should first be provided. The evacuation of the settlers and Israeli military from the Gaza Strip in 2005 was presented by the Israeli political and military leadership as a step that would terminate the occupation of the territory. Thus, former Israeli Prime Minister Ariel SHARON stated before the UNGA on 15 September 2005 that the Gaza Strip was now a free and sovereign territory, so that Israel’s obligations vis-à-vis the territory as an occupying power had ceased. However, the key criterion that enables one to determine under international law whether a territory is occupied is the exercise of effective control over the territory, which does not

necessarily involve a military presence. It may be asserted without the shadow of a doubt, in the light of a whole series of considerations, that Israel is still an occupying power that exercises effective control over the Gaza Strip. The following list of points may be invoked in support of our conclusion:

- (a) Israel still controls the six access routes to the Gaza Strip;
- (b) Israel still controls the Gaza Strip by means of military incursions;
- (c) Israel has banned the inhabitants from accessing some parts of the Gaza Strip. In these areas, the army has been ordered to fire on anyone failing to respect the ban;
- (d) Israel still has total control over the Gaza Strip's airspace;
- (e) Israel still controls the Gaza Strip's territorial waters;
- (f) Israel controls the Palestinians' civil status records: the status of the inhabitants of the Gaza Strip is determined by the Israeli army.

All these points confirm that the Gaza Strip is still an occupied territory in terms of the provisions of international humanitarian law and international human rights law. Israel remains an occupying power and the inhabitants of the Gaza Strip continue to enjoy the protection of the Fourth Convention. All acts undertaken by the State of Israel in the Gaza Strip must therefore be assessed in the light of the provisions of these two branches of international law. It follows that the blockade and siege of the Gaza Strip in force for more than three years breach the international obligations of the State of Israel. This practice is comparable in many ways to collective punishment, which is prohibited by Article 33 of the Fourth Convention. Moreover, as an occupying power, Israel is required to do its utmost to prevent the humanitarian crises that the Gaza Strip has been suffering as a result of the blockade. At least, this is what may be inferred from Article 55 of the Fourth Convention.

The blockade of the Gaza Strip has led to all kinds of shortages that are attributable to the actions of the Israeli military leadership. The measures taken by Israel (closure of crossing points, reduction of supplies of fuel and electricity, suspension of banking activity, the food crisis, endemic unemployment, etc.) constitute manifest violations of international human rights law, especially the provisions of the International Covenant on Economic Social and Cultural Rights, such as the right to life (art. 6), the right to adequate food (art. 11), the right to the highest attainable standard of physical and mental health (art. 12), the right to education (art. 13), etc.

Moreover, the blockade of the Gaza Strip has increased the risks of child malnutrition. The rights of children to decent living conditions and to health are among the principles set forth in Article 24 of the Convention on the Rights of the Child, which the State of Israel has ratified.

During the "Cast Lead" military offensive launched against the Gaza Strip from 27 December 2008 to 18 January 2009, which the ICRC bluntly described as the "epicentre of a massive earthquake" on witnessing the vast scale of the human and material devastation wrought by the 22-day operation, Israel deliberately committed violations of the law of armed conflict, starting with the most elementary principle of distinguishing between civilians and combatants. It is a peremptory requirement of international humanitarian law that the parties to a conflict must distinguish between civilians and combatants during military operations. Indiscriminate attacks are prohibited. The GOLDSTONE report notes that the Israeli armed forces targeted the civilian population of the Gaza Strip in flagrant breach of the most elementary rules of international humanitarian law. Attacks against civilians violate the principles set forth in Articles 48 and 51 of Protocol I. The members of the GOLDSTONE Mission had no hesitation in stating that:

***“the Mission finds that the conduct of the Israeli armed forces constitute grave breaches of the Fourth Geneva Convention in respect of wilful killings and wilfully causing great suffering to protected persons and as such give rise to individual criminal responsibility. It also finds that the direct targeting and arbitrary killing of Palestinian civilians is a violation of the right to life.”***

The Israeli organisation “Breaking the Silence” collected testimony from soldiers who took part in the military operation and who confirm the conclusions of the GOLDSTONE report. They testify to the fact that deliberate attacks were undertaken against Palestinian civilians during Operation “Cast Lead”. Moreover, the soldiers involved were submitted to pressure by the Military Rabbinate, which took the form of dehumanisation of the Arabs and depiction of the conflict as a holy war against a demonic enemy.

Another distinction to be respected in any international conflict is that between a military object and a civilian object.

According to the GOLDSTONE report, the Israeli army deliberately targeted civilians objects during the military operations. Such conduct constitutes a violation of the rule of customary international law according to which attacks must be strictly limited to military objects. The aerial bombardments, the navy attacks and the ground incursions resulted in the destruction of civilian homes (no fewer than 21,000 dwellings were destroyed), civilian hospitals and official institutions in breach of the provisions of Article 53 of the Fourth Convention and Article 51 of Protocol I. Judge Richard GOLDSTONE has no hesitation in stating that “acts of illegal and blind destruction that are not justified by necessity constitute war crimes”.

*- Refusal to evacuate or to provide assistance to the wounded*

The GOLDSTONE report also notes that the Israeli armed forces systematically refused to evacuate wounded Palestinians and denied them access to ambulances. Yet Article 56 of the Fourth Convention strictly prohibits any form of interference with the work of humanitarian and medical personnel in conflict areas.

*- The use of Palestinian civilians as human shields and the detention of persons in Israel*

The use of Palestinian civilians by Israel as human shields during Operation Cast Lead was condemned by the members of the GOLDSTONE Mission. The Mission’s report describes situations in which:

***“Israeli forces coerced Palestinian civilian men at gun point to take part in house searches during the military operations(...). The Mission concludes that this practice amounts to the use of Palestinian civilians as human shields and is therefore prohibited by international humanitarian law. It puts the right to life of the civilians at risk in an arbitrary and unlawful manner and constitutes cruel and inhuman treatment. The use of human shields also is a war crime.”***

A number of international instruments prohibit the use of non-combatants as human shields. The Fourth Convention, for instance, explicitly prohibits such practices. Article 28 stipulates that: “The presence of a protected person may not be used to render certain points or areas immune from military operations.” Protocol I (Article 51, para. 7) uses even more explicit terms to prohibit the use of civilians as human shields.



Furthermore, the Mission notes that during some military operations large numbers of Palestinian civilians were detained, some in the Gaza Strip and others in detention centres in Israel:

***“From the facts gathered, the Mission finds that there were numerous violations of international humanitarian law and human rights law committed in the context of these detentions. Civilians, including women and children, were detained in degrading conditions, deprived of food, water and access to sanitary facilities, and exposed to the elements in January without any shelter. The men were handcuffed, blindfolded and repeatedly made to strip, sometimes naked, at different stages of their detention.”***

This finding leads it to conclude that:

***“the treatment of these civilians constitutes the infliction of a collective penalty on those persons and amounts to measures of intimidation and terror. Such acts are grave breaches of the Geneva Conventions and constitute a war crime.”***

Most of the Palestinian detainees were incarcerated in Israel, a practice that breaches Article 76 of the Fourth Convention. It should be noted that the same article prohibits the ill-treatment of detainees.

In May 2009 the United Nations Committee against Torture expressed concern about the conditions of detention of Palestinian prisoners in Israeli jails. The Committee noted that some Israel practices violate the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

*- The delivery of humanitarian assistance*

The Mission’s report also mentions the difficulties encountered by humanitarian agencies in supplying the civilian Palestinian population with basic necessities and means of subsistence. It notes in this connection that Israel’s deliberate restrictions on the passage of humanitarian assistance breached its obligations under the Fourth Convention and, in particular, Article 23 thereof.

*- Closure of border crossings*

Furthermore, all the Gaza Strip’s border crossings remained closed during the conflict, so that the inhabitants were unable to flee from the conflict zone. The inhabitants of the Gaza Strip, confined to a territory encompassing only 360 square kilometres, were compelled by the Israeli army to remain in the area and were denied the opportunity to seek safety and shelter from the military operations. According to the Universal Declaration of Human Rights, everyone has the right to leave any country, including his or her own, and to return to his or her country (art. 13, para. 2) and everyone has the right to seek asylum (art. 14, para. 1). The freedom to leave any country, including one’s own, is also enshrined in the International Covenant on Civil and Political Rights (art. 12, para. 2). This did not prevent the State of Israel from keeping the Gaza Strip’s border crossings closed throughout the conflict.

In the light of all the foregoing points regarding Israeli army practices during Operation “Cast Lead”, we may cite, in conclusion, Professor John DUGARD, former United Nations Special Rapporteur on the situation of human rights in the Occupied Palestinian Territory, including East Jerusalem, who notes that:

***“It is highly arguable that Israel has violated the most fundamental rules of international humanitarian law, which constitute war crimes in terms of article 147 of the Fourth Geneva Convention and article 85 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I). These crimes include direct attacks against civilians and civilian objects, and attacks which fail to distinguish between military targets and civilians and civilian objects (articles 48, 51 (4) and 52 (1) of Protocol I); the excessive use of force arising from disproportionate attacks on civilians and civilian objects (articles 51 (4) and 51 (5) of Protocol I); and the spreading of terror among the civilian population (article 33 of the Fourth Geneva Convention and article 51 (2) of Protocol I).”***

*- The actions of the State of Israel: crimes against humanity?*

Looking at all the actions undertaken by the Israeli military forces in the Gaza Strip during Operation “Cast Lead”, the Fact-Finding Mission led by Judge GOLDSTONE raises the question of whether such acts might constitute crimes against humanity. It presents its comment in the following terms:

***“Finally, the Mission considered whether the series of acts that deprive Palestinians in the Gaza Strip of their means of sustenance, employment, housing and water, that deny their freedom of movement and their right to leave and enter their own country, that limit their access a court of law and an effective remedy, could amount to persecution, a crime against humanity. From the facts available to it, the Mission is of the view that some of the actions of the Government of Israel might justify a competent court finding that crimes against humanity have been committed.”***

### **The construction of the Wall in the occupied West Bank**

At the request of the UNGA, the International Court of Justice issued an opinion on the legality of the Wall under construction in the Occupied Palestinian Territory. In its Advisory Opinion issued on 9 July 2004, the ICJ undertakes a detailed examination of the violations of international law to which I have just referred. Its opinion regarding the illegality of the Wall in the Occupied Palestinian Territory is unequivocal:

- By constructing the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, and by adopting its associated regime, Israel, the occupying power, has violated the international obligations incumbent upon it;
- Israel must put an end to the violation of its international obligations flowing from the construction of the Wall. It must cease construction of the Wall and dismantle those parts of the Wall situated within the Occupied Palestinian Territory;
- It must provide reparations for the damage caused by the construction of the Wall;
- 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.

In its Opinion, the ICJ states that the construction of the Wall in the Occupied Palestinian Territory “severs the territorial sphere over which the Palestinian people are entitled to exercise their right of self-determination and constitutes a violation of the legal principle prohibiting the acquisition of territory by the use of force”. In addition, it fears that the route of the Wall will prejudice the future frontier between Israel and Palestine. It considers that the “construction of the wall and its associated régime create 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”. It expresses concern about the route of the Wall, which lies beyond the 1967 green line.

Moreover, the construction of the Wall violates international obligations incurred in treaties ratified by Israel. Mention may be made of the following:

- According to the ICJ, “the construction of the wall has led to the destruction or requisition of properties under conditions which contravene the requirements of Articles 46 and 52 of the Hague Regulations of 1907 and of Article 53 of the Fourth Geneva Convention”. Such destruction cannot be justified by military necessity or national security;
- The construction of the Wall has imposed major restrictions on the freedom of movement of the inhabitants of the Occupied Palestinian Territory, in violation of Article 12 of the International Covenant on Civil and Political Rights, according to which: “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.” The restrictions on freedom of movement lead to violations of other rights enjoyed by the Palestinians under Protocol I, such as: the right to health, to employment, to education, to an adequate standard of living, etc. It should be stressed that the restrictions on freedom of movement are applicable not only to the area adjoining the route of the Wall. In the West Bank permanent barriers impede Palestinian’s everyday movements. In 2009, there were no fewer than 634 barriers impeding the freedom of movement of Palestinians. Israel argues that the checkpoints are necessary

to guarantee its security. But it should be noted that most of the checkpoints are located beyond the green line in the West Bank.

The ICJ also analyses the legal obligations incumbent on third-party states. It emphasises that the construction flagrantly violates obligations flowing from the Fourth Convention and notes that, pursuant to Article 1 of the Convention: "The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances." Every state party is required to ensure respect for the Convention, whether or not it is a party to a conflict. It classifies the international obligations violated by Israel through its construction of the Wall as obligations *erga omnes*. Such obligations "are by their very nature the concern of all States and, in view of the importance of the rights involved, all States can be held to have a legal interest in their protection". The ICJ further considers that "the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an *erga omnes* character".

On 20 July 2004 the General Assembly adopted resolution ES-10/15 in which it demanded compliance by Israel with the Advisory Opinion of the International Court of Justice.

### **The European Union-Israel Association Agreement**

It was in the context of the Barcelona process (November 1995), aimed at fostering relations between the European Union and partners countries in the Mediterranean area, that the European Union-Israel Association Agreement was signed in 1995. On ratification by the Knesset, the national parliaments of member states and the European Parliament, it entered into force in June 2000. The Agreement provides for the gradual liberalisation of trade between Israel and the European Union, especially in agricultural produce and services, and the free movement of capital. Such agreements also seek to encourage cooperation between each partner country and the European Union in the social and cultural fields. However, some clauses of the Agreement seem to have been overlooked by the State of Israel, primarily the principles set forth in Articles 2 and 83 of the Association Agreement.

#### *- Article 2: the human rights and democratic principles clause*

Article 2 of the Association Agreement states that relations resulting from the partnership shall be based on respect for human rights and democratic principles. Yet one cannot help noting that, while the European Union generally condemns the violations of international law perpetrated by Israel in the Palestinian territories, it draws no legal consequences in terms of the principles set forth in Article 2. The persistent violation of human rights in the Occupied Palestinian Territory constitutes a manifest breach of Article 2 of the Association Agreement. This being the case, the European Union is under an obligation to suspend the EU-Israel Agreement for as long as Israel continues to violate human rights. The possibility of suspending association agreement was raised in 2002 in a resolution before the European Parliament calling for the freezing of the Agreement in response to the manifest violation of Article 2. Moreover, provision has been made for association agreement monitoring procedures. Pursuant to Article 79, the Council of Ministers of the European Union may take appropriate measures in the event of non-respect of association agreements. Far from complying with the European Parliament resolution referred to above or with the monitoring procedures envisaged by the Association Agreement, the European Union is currently considering the possibility of enhancing its partnership with Israel.

*- Article 83: the territorial scope of the Association Agreement*

The territorial scope of the Association Agreement is limited, pursuant to the principles set forth in Article 83, to the State of Israel within its 1967 borders. Yet Israel violates the legal provisions of Article 83 by exporting settlement products bearing Israeli labels to the European Union with a view to benefiting from the trade advantages offered by the Association Agreement, in particular the reduced customs duties imposed on Israeli products entering the territory of the European Union.