

Past the point of no return? A rights-based framework for international engagement in Israel/Palestine

By Omar Dajani
and Hiba Hussein

■ Executive summary

Twenty-one years after the Oslo Accords were signed, Israel's occupation is more deeply entrenched than ever and will not easily be undone. Through a range of policies, the international community has compensated for breaches of Israel's obligations as an occupying power. Consequently, Israelis lack incentives to alter dangerous practices because their costs are borne by others.

Rather than blithely supporting additional rounds of aimless talks, the international community should undertake a coherent and sustained effort to help Palestinians secure their fundamental rights by (1) clarifying the legal obligations not only of Israel and the Palestinians, but also of third states by requesting a new International Court of Justice opinion, undertaking routine legal impact assessments of donor programmes and appealing to Israel to formally recognise Palestinians' right to self-determination; (2) revisiting policies that help perpetuate the occupation and establishing tangible incentives for bringing it to an end; (3) refocusing international assistance on expanding Palestinian institutions' capacity to serve and represent Palestinians across the occupied territory, particularly Area C and Jerusalem; and (4) acting multilaterally to elaborate on and endorse parameters for a Palestinian-Israeli peace settlement in accordance with the long-standing consensus in the UN General Assembly and the Arab Peace Initiative.

Introduction

The international community cannot be accused of neglecting the Palestinian-Israeli conflict. The "question of Palestine" was among the first items to appear on the agenda of the United Nations (UN) General Assembly; and almost 70 years later it continues to command high-level and broad-based diplomatic engagement: mediation by leading international diplomats; two dedicated UN missions (the UN Special Coordinator and UN Relief and Works Agency); a host of other standing multilateral institutions (the Ad Hoc Liaison Committee, Office of the Quartet Representative and U.S. Security Coordinator for Israel and the Palestinian Authority); and dozens of UN resolutions each year. In addition, Israel and the occupied Palestinian territory (OPT) receive more foreign aid per capita than most other countries in the world.

Palestine's future nevertheless remains an open question. Despite the near-universal international consensus in support of a two-state solution based on the 1967 border, Israel's occupation of the OPT now approaches half a century, the settler population in the West Bank exceeds

half a million, and Palestine is more fragmented as a geographic space than at any time since the conflict's inception.

The failure of recent U.S.-led conciliation efforts to produce a diplomatic breakthrough and the devastation wrought by Israel's July-August 2014 military operation in the Gaza Strip highlight the need for a reassessment of the legal and political framework guiding international engagement in the Middle East. Have facts on the ground produced a new legal reality? If so, what are its implications for international diplomacy and assistance? And what new opportunities does it present for constructive engagement by the international community? This report offers preliminary answers to these questions, urging the international community to respond to Israel's increasingly entrenched occupation and the fragmentation and stagnation of Palestinian political and economic life by taking a series of concrete steps to clarify and promote adherence to international legal obligations. The report draws on extensive desk research and dozens of interviews with officials, analysts, advocates, and activists in Palestine, Israel and elsewhere.

The emerging reality: entrenched occupation and “fragnation”

The way forward must be informed by a candid assessment of where we are now. The Oslo process was expected to facilitate a gradual end to Israel’s occupation of the Palestinian territory and a gradual strengthening of Palestinian national institutions, leading within five years to a negotiated two-state solution of the conflict. Twenty years later the opposite has occurred. As described further in an annex to this report, Israel’s occupation of the Palestinian territory is expanding and becoming entrenched in ways that make resolution of the conflict through the partition of the Holy Land increasingly difficult. The most visible and dangerous manifestation of this dynamic is the continuing expansion of Jewish settlements in the West Bank, including East Jerusalem. Although the settlements need not be seen as irreversible facts, their growth has substantially increased the political, economic and security costs of a territorial compromise. In addition, Israel’s so-called disengagement from the Gaza Strip in 2005 has not resulted in an end to occupation, but a virulent new form of it, as reflected in Israel’s recurrent and destructive military operations there, its imposition of a wide “no-go” zone within the territory’s already tiny perimeter, and the paralysing restrictions on movement and trade it enforces together with Egypt. Indeed, the situation in Gaza affords a worrying window into the future of Palestinian enclaves in the West Bank if current trajectories are not altered (Li, 2006).

As Israel’s occupation has become entrenched, Palestinian economic and political life has become fragmented and stagnant, creating a dynamic – which we call “fragnation” – that threatens to undermine two decades of investment in state-building and security cooperation and to turn Israeli leaders’ claims that they lack a Palestinian partner for peace negotiations into a self-fulfilling prophecy. As a geographic space, Palestine is today more fragmented than it has been at any time since the *nakba*¹ of 1948. Palestinians live under a proliferating array of legal regimes in their own homeland: unequal citizenship in Israel; tenuous “permanent” residency in Jerusalem; isolation under authoritarian rule in the Gaza Strip; and, in the West Bank, an archipelago of areas (A, B, C) and zones (seam zones, fire zones, nature reserves) – none of which is governed by institutions accountable to the Palestinians whose lives they regulate. This fragmentation of space has sapped the vitality of the Palestinian economy and national movement, creating dysfunctions and divisions that will not easily be remedied.

The news, however, is not all bad: several recent developments offer cause for hope, if not optimism. Firstly, the threat posed by entrenched occupation to Israel’s political and economic future is an increasingly significant part of Israeli public discourse. Indeed, a poll conducted in

February 2014 indicated that the “removal of the threat of economic boycott” was the single most influential factor animating Israeli support for a peace agreement with the Palestinians, particularly among right-wing and centrist Israelis (New Wave-Nielsen Alliance, 2014: 6). Secondly, the UN General Assembly’s recognition of Palestine as a non-member observer state has paved the way for enhanced Palestinian participation in an array of multilateral regimes, which may eventually serve as a vehicle for deterring violations of Palestinians’ rights by both Israel and the Palestinian Authority (PA). Thirdly, political reconciliation between Fatah and Hamas offers an opportunity to re-energise Palestinian national institutions. Of course, these developments may not necessarily lead to a negotiated two-state settlement. The situation on the ground is vulnerable to sudden shocks that could cause Palestinian-Israeli security cooperation to unravel, with far-reaching consequences. In addition, Israeli concerns about demography could animate a push toward unilateralism instead of renewed talks. Palestinian efforts to rebuild the Palestine Liberation Organisation (PLO) could produce a new liberation strategy focused on equal citizenship or binationalism rather than a two-state solution, particularly if Palestinian initiatives in multilateral forums fail to yield meaningful changes in Israeli policy. And the reconciliation of Palestinian factions could prompt additional punitive actions by Israel even beyond the recent operation in Gaza. What happens next will depend to a considerable extent on the steps that the international community chooses to take at this critical juncture.

A positive agenda for international engagement

The international community has been far from inattentive to the Palestinian-Israeli conflict. It has not succeeded, however, in altering the dangerous trajectories on the ground, in some ways contributing to the perpetuation of the conflict rather than hastening its end. The challenges presented by Israel’s entrenched occupation and Palestinian political and economic “fragnation” will require bolder, more coherent and more sustained action by the international community than has been undertaken in the past. A positive agenda for international engagement should be built on four pillars: (1) the clarification of and attention to the international legal obligations of Israel and third states; (2) a sustained effort to alter Israel’s incentives in ways that encourage an end to the occupation without promoting damaging unilateralism or exclusivist nationalism; (3) a refocusing of international assistance with a view to bolstering the political vitality and geographic reach of Palestinian national institutions, together with a reassessment of existing institutional frameworks for coordinating international engagement; and (4) a multilateral effort to elaborate on and endorse the desired contours of a Palestinian-Israeli peace settlement.

1 “Catastrophe”.

International law: a framework for engagement

International engagement in Palestine/Israel should be guided by explicit attention to the legal obligations not only of Israel and the PA, but also of third states – and the international community as a whole.

The obligations of third states flow from treaty commitments, customary international law and domestic (i.e. municipal) law. States parties to the Geneva Conventions of 1949 are bound “to ensure respect” for its terms (Geneva IV, art. 1) and to take legal action against persons who have committed grave breaches of their obligations (art. 146). In addition, under the customary law of state responsibility, states must cooperate to bring to an end any serious breach of obligations under a “peremptory norm” of international law and are barred from recognising as lawful or helping to assist or maintain a situation created by such a breach (ILC, 2001: art. 41). Peremptory norms (*jus cogens*) include those “of essential importance for safeguarding the right to self-determination of peoples” and those “of essential importance for safeguarding the human being”, such as the prohibitions of racial discrimination and apartheid (ILC, 2001: art. 40, cmt. 8 & n. 651). As described below, these obligations create duties that govern how the conflict should be resolved and, pending a peace settlement, how it should be managed.

International law prohibits “the subjugation of peoples to alien subjugation, domination, and exploitation” and recognises the right of “all peoples” to “freely determine their political status and freely pursue their economic, social, and cultural development”.² It also regards the prohibition of the acquisition of sovereignty over territory by force as of “essential importance” for safeguarding this right (ILC, 2001: art. 40, cmt. 8, n. 651). The right of the Palestinian people to self-determination has elicited almost universal international recognition, including, recently, by the U.S. Although Israel has not explicitly taken a position on the matter, in the Oslo Accords it recognised the Palestinians’ “legitimate and political rights”, a phrase the International Court of Justice (ICJ) has since construed as including the right of self-determination (ICJ, 2004: 183).

A corollary of the right of self-determination is the right of peoples to “freely dispose of their natural wealth and resources” and not to be “deprived of [their] own means of subsistence”, as proclaimed in Article 1 of the International Covenants on Civil and Political Rights and Economic, Social, and Cultural Rights. In accordance with this principle, the UN General Assembly has reaffirmed “the inalienable rights of the Palestinian people ... over their natural resources, including land, water and energy resources” (UNGA, 2012: para. 1). These rights point to the necessity that a Palestinian state be viable: a state that lacks contiguity, access to its resources and control over its borders cannot plausibly be considered a fulfilment of the Palestinian people’s right to self-determination. And

because the right to self-determination is considered a peremptory norm of international law, an agreement establishing a Palestinian state constrained in these ways would be of questionable validity.

In addition to establishing Palestinians’ right to an independent state, international law defines the attributes of sovereignty that an independent Palestine is entitled to enjoy. As a general matter, statehood implies a range of sovereign rights: the right to enter into treaty relations with any other state; the right to issue passports and visas, and to determine who its nationals are; the right to organise its political, economic and cultural affairs free of outside intervention; the right to exclude other states from its territory and airspace; the right to claim maritime zones and exclusive control over the exploitation of its resources; the right to regulate the movement of goods and persons across its borders; and the right to self-defence in the event of an armed attack, along with the attendant right to maintain armed forces for the purposes of national defence.

Of course, while sovereignty implies these rights, states may – and often do – constrain the exercise of their sovereign powers by unilateral declaration or agreement. The extent to which a state may cede its sovereign rights is limited, however, by two factors. Firstly, because independence is widely considered to be a core attribute of statehood, an entity may fail to be recognised as a state if it surrenders attributes of sovereignty central to its independence. Secondly, where a state emerges from a situation of military occupation by another state, as Palestine would, the imposition of substantial constraints on its sovereignty may give rise to continuing obligations on the part of the occupying power.

In addition to these collective rights, Palestinian refugees assert an individual right to return to the homes in Israel from which they fled or were expelled, as recommended by the UN General Assembly in Resolution 194 of 1948. Palestinian refugees also assert a right to restitution of their homes and other property or, if they prefer, to compensation (Kagan, 2007: 423, 427-28). Although the refugees’ right of return is contested by Israel (Kent, 2012: 212-213, 198-200; Benvenisti & Zamir, 1995: 325), the voluntary repatriation of refugees is now routinely included in post-conflict peace-building efforts (Quigley, 1998: 213-16; Rosand, 1998: 1127-38; Ullom, 2001: 127-33). In addition, two human rights treaties to which Israel is a party – the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the International Covenant on Civil and Political Rights (ICCPR) – proclaim the right of all persons to “return to” (CERD, art. 5(d)(ii)) or “enter” (ICCPR, art. 12(4)) their “own country”.

The international community has an interest in ensuring that the Palestinian-Israeli conflict is resolved in a way that

² UNGA (1960). This declaration has come to be regarded as an authoritative interpretation of the UN Charter.

is consistent with the various norms outlined above. Beyond the general interest in the effective functioning of the international legal system, the prevailing instability in the Middle East presents the risk that departures from legal obligations in one context will be cited as a justification or pretext for their abuse in another. To cite one example, a failure to address Palestinian refugees' claims in a fair and coherent way could have deleterious consequences for efforts to solve the Syrian conflict, which has produced a refugee crisis of enormous proportions.

International law also establishes a range of duties that should guide how the conflict is managed pending a peace settlement. International humanitarian law has long been the primary reference point with respect to Palestinian rights under occupation. As codified in the Hague Regulations and the Fourth Geneva Convention, international humanitarian law imposes three primary kinds of duties on Israel as an occupying power. Firstly, it defines an array of *protections for individual civilians* in the occupied territory, e.g. prohibiting abuses like torture and collective punishment (Geneva IV, arts. 32-33), barring the confiscation or destruction of property unless necessitated by military operations (arts. 53 & 147), and requiring the fair treatment of criminal suspects (arts. 71-74) and detainees (art. 76). Secondly, it requires the occupying power to *facilitate civil life* during occupation by taking all measures in its power to ensure public order and safety (Hague, art. 43); ensuring the population has food and medical supplies (Geneva IV, art. 55); and, in cooperation with national and local authorities, providing for education (Geneva IV, art. 50) and health care (Geneva IV, arts. 55-56). Thirdly, it obliges the occupying power, in effect, to *preserve the status and integrity of the territory* during the occupation by respecting existing laws in the territory (Hague, art. 43); refraining from depleting, damaging or destroying finite resources (Hague, art. 55) or using them for the benefit of its own population (Geneva IV, art. 33; ICJ, 2005: paras. 249-50); and refraining from transferring parts of its own population into occupied territory or deporting the territory's residents abroad (Geneva IV, art. 49).

International human rights law thus provides a complementary framework of protection for Palestinians in the OPT. Norms such as equal protection, freedom of movement and due process offer a means of interpreting or filling in gaps in the rules of international humanitarian law (Gross, 2007: 10-26). Although the Israeli government contends that its human rights treaty obligations do not extend to Palestinians in the OPT, this view has been rejected by the ICJ (2004: paras. 102-13) and the Human Rights Committee (2003: para. 11). In addition, Israeli courts have found international human rights law applicable to Palestinians in the OPT (Gross, 2007: 10-26).

Human rights law also invests Palestinians outside of the occupied territory with important rights. For example, under the ICCPR, to which Israel is a party, Palestinian citizens of Israel are entitled to equal protection of the law

(art. 26) and to enjoy their culture, practise their religion, and use their language with other members of their community (art. 27). The Arab states that host most of the Palestinian refugees are also parties to the ICCPR, binding them at a minimum to safeguard the refugees' non-political rights, including their rights to security of person (art. 9), due process (art. 9), mobility (art. 12) and civil liberties (arts. 18-19).

As discussed further below, more can and should be done by the international community to ensure respect for Palestinians' rights under humanitarian and human rights law pending a resolution of the conflict. *In view of the duration and colonial aspects of Israel's occupation of the Palestinian territory, however, a broader reassessment of the overarching legal framework is warranted.* The military occupation of foreign territory is not illegal as such: international humanitarian law regulates how an occupying power should conduct itself, not whether its occupation is lawful. It assumes, however, that occupation is a temporary condition, and prolonged occupation is increasingly considered to be at odds with the right of self-determination (Cassese, 1995: 99; Ben-Naftali et al., 2005: 556). Where a prolonged occupation is also colonial in character – i.e. where the occupying power seizes land and other resources for the benefit of its own citizens, substantially alters the legal regime, and denies the population meaningful self-government – the denial of self-determination is plain (Ben-Naftali et al., 2005: 600-5). In such circumstances it is not just the case that the occupying power's conduct violates specific obligations under humanitarian or human rights law; the occupation itself becomes illegal.

Israel's occupation of the Palestinian territory has crossed this threshold. Israel has ruled the West Bank and Gaza Strip for just short of a half-century – more than twice as long as it lived within the Green Line. In addition, as carefully documented by South Africa's Human Sciences Research Council, Israel has engaged in a variety of practices that evince the colonial character of its occupation, including:

violations of the territorial integrity of occupied territory; depriving the population of occupied territory of the capacity for self-governance; integrating the economy of occupied territory into that of the occupant; [and] breaching the principle of permanent sovereignty over natural resources in relation to the occupied territory (HSRC, 2009: 15-16).

These practices render Israel's continuing presence in the occupied territory unlawful.

To be sure, a range of different scenarios could unfold in the period ahead: peace talks could resume; new elections could pave the way for a reinvigorated PA; new interim arrangements expanding the PA's territorial and/or functional jurisdiction could be implemented; Israel could take unilateral steps to relocate settlers behind the West

Bank barrier (wall) or into Israel and/or to annex all or parts of the occupied territory; or a third *intifada* could erupt. None of these scenarios, however, would alter the illegal character of Israel's presence in the occupied territory, because none would redress the continuing denial of Palestinians' right to self-determination.

What are the practical consequences of this conclusion? Recognising the illegality of Israel's occupation would not alter its duty to administer the occupied territory in a manner consistent with humanitarian law. But, as the ICJ concluded with respect to South Africa's occupation of Namibia (ICJ, 1970: para. 133), it would establish Israel's legal obligation to bring its occupation to an immediate end. Clarifying this obligation would help to eliminate the claimed ambiguity in UN Security Council Resolution 242, which calls on Israel to withdraw from "territories" occupied during the 1967 war without clarifying which territories – an ambiguity that Israel has long invoked to justify its presence in the OPT. It would also make clear that withdrawal is not only a political demand of the UN Security Council, but also an obligation under international law. That said, recognising the illegality of Israel's presence in the OPT would not foreclose a negotiated agreement providing for some revision of the border or other equitable solutions to the problems presented by the large Israeli settler population in the OPT. It may help, however, to discourage incendiary actions such as the unilateral annexation of occupied territory.

Of perhaps even more far-reaching importance, it would also alter the duties of third states. As noted above, states are barred from recognising as lawful or helping to assist or maintain a situation created by the breach of obligations under a peremptory norm of international law, and they are obliged to cooperate to bring the situation to an end. Accordingly, recognising that Israel's continuing occupation violates the Palestinians' right to self-determination would establish a broader duty on the part of third states, firstly, to refrain from actions that assist or maintain the occupation and, secondly, to cooperate to bring the occupation to an end.

The international community can take several concrete steps to clarify all parties' legal obligations in view of the evolving situation on the ground. Firstly, as urged by former UN special rapporteur for human rights John Dugard, *the UN General Assembly should request an advisory opinion from the ICJ assessing the "legal consequences of a regime of prolonged occupation with features of colonialism and apartheid for the occupied people, the Occupying Power, and third States"* (UNHRC, 2007: 3). Even if a new advisory opinion does not elicit an immediate change in Israeli policies, it would serve two critical purposes: by clarifying the legal framework, it would facilitate coherent and coordinated action by international institutions and individual governments; and it would help to insulate such action from challenges by domestic constituencies and other actors, providing political leaders with a legal

rationale for revising their policies. In this regard, the ICJ's 2004 advisory opinion offers an instructive precedent: although it has not halted Israel's construction of the West Bank barrier, it has guided the policy choices of international actors that provide assistance to Israel and the Palestinians.

Secondly, *all actors that provide assistance to or engage in trade with Israel and the PA should undertake legal impact assessments to confirm that their policies and programmes are consistent with their obligations under international law and related provisions of domestic law.* Such assessments would be facilitated by a new ICJ advisory opinion, but they need not wait on one. Indeed, European institutions have already begun to take constructive measures to ensure that their practices comply with European administrative law, drawing on international norms to clarify the content of their legal obligations. A practical step toward broadening this kind of effort would be for leading donors to develop a template for legal impact assessments of proposed assistance programmes, possibly under the auspices of a coordination mechanism like the Ad Hoc Liaison Committee (AHLIC).

Thirdly, *international actors engaged in Middle East diplomacy and assistance must distinguish clearly between Israel's legal obligations, on the one hand, and voluntary measures that are merely recommendations, on the other.* Conflating these two categories – e.g. by referring to all measures requested of Israel generically as "enablers" – obscures the fact that Israel has obligations under binding general norms of international law and its own agreements with the Palestinians to take steps like halting settlement activity, permitting freedom of movement, transferring tax revenues and allowing Palestinians to make use of their resources. Refraining from framing political demands in legal terms may make meetings with Israeli officials less contentious, but it has not yielded a constructive change in Israeli policy.

In a similar vein, *the Israeli government should be pressed to clarify its understanding of the legal status of the OPT and recognise explicitly the Palestinian people's right of self-determination.* With respect to both, there is a disjuncture between the conclusions of the Levy Committee, which found that "the classical laws of occupation as set out in the relevant international conventions cannot be considered applicable to the unique and *sui generis* historic and legal circumstances of Israel's presence in Judea and Samaria spanning over decades" – and which continues to be cited in official government reports – and decisions of Israel's Supreme Court, Israel's undertakings in the Oslo Accords, and its acceptance of the Road Map (Yesh Din, 2014). This lack of clarity has allowed the government to avoid confronting the difficult choices peacemaking requires. Just as the Quartet has obliged the Palestinians to take an explicit position regarding recognition of Israel and past agreements and the renunciation of violence, Israel must be called on to clarify its own stance regarding the principles undergirding the peace process.

Incentivising de-occupation

Clarifying the applicable legal framework is a necessary step toward altering the conflict's dynamics; however, the international community must also take bolder, more sustained and better coordinated action to encourage Israel to adhere to its legal obligations. This action should take two forms: revisiting policies that help perpetuate the occupation and establishing tangible incentives for bringing it to an end.

Although international donors have obliged Palestinian public institutions to take a range of steps to bolster their transparency, accountability, and efficiency, and have even imposed political conditions on the disbursement of assistance, they have not pressed Israel meaningfully to fulfil its corresponding obligations under the Oslo agreements and international law. Instead, they have compensated for Israel's failure to meet its obligations in a variety of ways – relieving Israel of the burden of financing the provision of health services, education, food assistance and public order to Palestinians in the OPT; helping to cushion the Palestinian economy from shocks caused by Israel's military operations, movement restrictions and refusal to transfer tax revenues; and acquiescing in Israel's destruction or confiscation of infrastructure and equipment financed by foreign donors. This approach has created a problem of moral hazard in which Israeli leaders lack incentives to alter dangerous but deeply entrenched policies because their costs are borne by others. Two different kinds of policy responses would help to alter this dynamic.

Firstly, *the international donor community should press Israel for a financial contribution to the expense of running the PA commensurate with its obligations as an occupying power.* Although donors have urged Israel (without much success) to facilitate the success of assistance programmes by eliminating a range of restrictions on Palestinian life, they have not demanded that Israel pay its fair share. A task force should be charged with assessing the scope of Israel's obligations and offering recommendations about the volume and types of assistance Israel might be requested to provide. These recommendations should be made an explicit agenda item at meetings of the AHLC and other donor coordination structures in which Israel participates.

Some leading donors have threatened to sever assistance to the PA as a means of pressuring Israel to halt violations of Palestinian rights and commit more seriously to peace talks. It is questionable, however, whether such tactics, if implemented, would improve the situation on the ground. Prior to the establishment of the PA, when Israel exercised direct authority over all of the Palestinian territory, its provision of services to the Palestinian population and its maintenance of public order were marred by neglect and abuse of authority. Were Israel to reassume these roles, it is unlikely to dedicate the resources needed by Palestinians in the OPT, particularly in view of its longstanding inattention to the needs of Palestinian communities within its own

borders. Rather than applying indirect pressure by reducing aid to the PA, and risking the deterioration in economic, security, and political conditions likely to attend its collapse, the international donor community should press Israel directly to assume its financial responsibilities as the occupying power by providing support to the PA.

Secondly, *the international donor community should develop coordinated mechanisms for tracking – and holding Israel accountable for – the wrongful destruction and confiscation of donor-financed assets, as well as the costs incurred as a result of onerous and arbitrary security clearance procedures.* Two preliminary steps are called for in this regard. Firstly, leading donors should commission a study assessing the scope of Israel's legal responsibility in the range of circumstances in which such actions have occurred and exploring models for advancing compensation claims based on past international experience. Secondly, the donor community should consider establishing a consolidated register for documenting the circumstances surrounding such actions and tracking the costs arising from them. European Union (EU) institutions have already begun tracking Israeli destruction of development projects, estimating that such destruction amounted to almost €50 million between 2001 and 2012, some €30 million of which was provided by the EU or its member states (Euractiv, 2014). Establishing a consolidated register may help protect the investment of less politically or economically influential donors and pave the way for more coherent and effective appeals for compensation.

In addition to revisiting policies that enable Israel to maintain its occupation of the Palestinian territory at minimal cost, international actors should take progressive action to establish positive incentives to end the occupation. These steps are best pursued collectively, but may also be taken by individual states.

Firstly, *third states should ensure that Israeli entities operating in the OPT are no longer able to benefit from privileges enjoyed by Israel under international agreements.* European institutions have already taken important strides in this direction by requiring Israeli non-governmental entities to certify that they will not use EU funds in the OPT, refusing to recognise Israel's certification of certain settlement goods (such as poultry products and organic produce) for export, and obliging importers to supply information about where goods were produced. These measures should be deepened and broadened. Settlement goods should be clearly identified as such when they are marketed to consumers, as is already required by Denmark and Britain. Government and non-governmental entities should be required to certify that assistance they receive (including military assistance) will not be utilised in the OPT. In addition, the UN General Assembly should call on all states to implement measures of this kind.

Secondly, *third states should prohibit the provision of material support to public and private Israeli entities that are*

based or operating in the OPT. A few governments have already taken preliminary steps in this direction: Britain, for instance, has issued a warning to British businesses about the legal and reputational risks associated with economic and financial activities in Israeli settlements, making clear that it does not encourage such activities; and the European Commission is preparing a common message to businesses along similar lines. However, the international community should go further by instituting an outright ban on all material support to the settlements. Such a ban would necessarily include not only a halt to all imports of settlement goods and other trade with the settlements, but also the prohibition of contributions to settler organisations. In this regard, the longstanding multilateral effort to restrict the flow of material support to entities engaged in terrorism offers a relevant precedent and reservoir of experience on which to draw.

Thirdly, *the international community should promote individual accountability for violations of Palestinian rights.*

Israel's occupation has become entrenched because the leaders responsible for the policies that sustain it – and those involved in implementing them – operate with impunity. Individual accountability may be promoted through a variety of means:

- Firstly, Palestinian accession to the Rome Statute of the International Criminal Court (ICC) should be supported, not discouraged. As former ICC prosecutor Luis Moreno-Ocampo recently argued,

The presence of the ICC in the region will encourage the sides to think creatively about how to solve their problems in their bilateral relations. ... Joining the ICC might prevent crimes and open up new ways of thinking about the problem (Eldar, 2014).

- Secondly, the governments of third states should stop efforts to shield Israeli officials from prosecution and/or civil suits in their own courts for violations of international humanitarian law and related offences. Such action is far from unprecedented; indeed, Palestinian leaders have already been the target of numerous criminal prosecutions and civil suits in Israel and other countries.
- Thirdly, third states should consider denying visas to and freezing the assets of Israeli officials who are responsible for or complicit in undermining the territorial integrity of the OPT, analogous to the measures recently implemented in response to the Ukraine crisis.

These incentives are warranted by Israel's unresponsiveness to diplomatic appeals and narrowly tailored to encourage Israel to end its violations of international law. They are in no way incompatible with diplomatic efforts to end the conflict, however. Too often over the past two decades the international community has refrained from holding Israel to account in the hopes of maintaining a constructive atmosphere for negotiations. As a result, it has been more

costly politically for Israeli leaders to desist from practices that undermine confidence in peace talks than to continue them. In the future, incentives devised by the international community should be linked to concrete steps to end the occupation, not merely to the resumption of negotiations. Care should be taken, moreover, to convey to the Israeli public that the international community's aim is not to delegitimise the State of Israel but, instead, to ensure that the primary challenge to its legitimacy – its continuing occupation of Palestinian territory – is brought to an end.

Refocusing international assistance

Donors to the PA, UNRWA and other institutions that provide assistance to the Palestinian people are understandably keen to ensure that the funds they provide are neither wasted nor used in a way that perpetuates the violation of Palestinian rights. Budget reductions necessitated by the global recession, along with rising needs elsewhere, make prioritisation crucial, and the problem of moral hazard as regards Israeli obligations can no longer be ignored.

Although the PA is on life support, it is not on its deathbed. Barring a full-scale military confrontation with Israel, it will survive as long as funding continues to flow. Diminishing aid in an ad hoc way is unlikely to alter Israeli practices in constructive ways and could increase tensions on the ground. What should be undertaken instead is a coherent effort to focus assistance on reversing Palestinian political and economic "fragnation", with a view to preserving the option of a two-state solution and protecting Palestinian rights pending the resolution of the conflict. As noted above, one element of that effort should be securing Israeli financial support for Palestinian institutions commensurate with Israel's obligations as an occupying power. In addition, *donors should focus on rebuilding the legitimacy of Palestinian institutions by expanding their ability to serve and represent Palestinians both across the occupied territory and in the diaspora.* In particular, the international community should:

- help to facilitate free, fair, and inclusive Palestinian elections in the West Bank (including East Jerusalem) and the Gaza Strip;
- offer technical assistance in support of efforts to re-energise the PLO as a vehicle for deliberative democracy among Palestinians worldwide;
- bolster Palestinian development in Area C, in accordance with the PA's master plan; and
- support initiatives to fortify political and economic links between East Jerusalem and the rest of the Palestinian territory.

Such efforts obviously will not succeed without a greater measure of Israeli cooperation. The problem is that the structures established to harmonise international engagement on the ground, such as the Quartet, the Office of the Quartet Representative (OQR), the AHLC, and the U.S. Security Coordinator for Israel and the Palestinian Authority (USSC), tend to focus primarily on influencing the PA,

whereas Israeli policies tend to be addressed in multilateral forums far removed from the ground or through bilateral interventions undertaken in private meetings with Israeli officials. In addition, the division of responsibility among donors with respect to the political, security, and economic/humanitarian tracks has caused them to become overly compartmentalised, with peace talks, Palestinian security sector reform, and development projects proceeding as if in different universes. Although some effort was made during the development of the Road Map to establish a coherent structure for harmonising international engagement with both Palestinians and Israelis along parallel political, humanitarian, and security tracks, this effort was ultimately undermined by the U.S. (Elgindy, 2012: 11-19). To the extent that the international community's deference to the U.S. approach was animated by the view that the U.S. is uniquely positioned to influence Israel, it should be reconsidered in view of its failure over the past decade to secure Israel's flexibility in peace talks or constructive changes to the latter's policies on the ground.

The time has come for the international community to evaluate how existing coordination mechanisms and institutions can be reconfigured to increase their ability to influence Israeli policy. A number of questions warrant immediate consideration:

- Is the Quartet as it is currently structured an effective mechanism for coordinating international diplomatic engagement with Israel and the PA? Is it sufficiently attentive to the legal obligations of the parties and third states under international law? Should its membership be expanded – e.g. to include key regional actors such as Egypt and Jordan, key global actors such as China, and/or other major donors such as Norway? How can its relationship with other international mechanisms and institutions operating on the ground (e.g. the OQR, AHLC and USSC) be strengthened to ensure that appeals to the Israeli government are harmonised and presented at a high level? More broadly, what purposes are served at this juncture by maintaining an informal diplomatic contact group outside the framework of the UN system? Has the Quartet simply outlived its usefulness?
- What is gained by charging two different structures – the OQR and AHLC – with the mandate of marshalling and coordinating international assistance to the PA? In view of the challenges both have faced in obtaining cooperation from Israel – and the centrality of Israeli cooperation to their respective missions – what kind of institutional capacity can be developed that focuses specifically on facilitating Israel's compliance with its legal obligations and political undertaking? In view of the illegality of Israel's continuing presence in the OPT, should the international donor community revisit procedures for coordinating with the Israeli Civil Administration?
- Should the mandate of the USSC be expanded beyond technical assistance to PA security sector institutions to address the performance of Israeli military and security institutions operating in the OPT?

Advancing the international consensus in support of the two-state solution

The international community is united in its support for a two-state solution. In Resolution 242 (1967), the UN Security Council affirmed “the inadmissibility of the acquisition of territory by war”, calling on Israel to withdraw from territories occupied during the 1967 war and proposing land for peace as the framework for ending the conflict. In 2002, after more than ten years of Palestinian-Israeli peace talks, the Security Council expressed support for the establishment of a Palestinian state, affirming “a vision of a region where two States, Israel and Palestine, live side by side within secure and recognized borders” (UNSC, 2002). And in 2003 the council endorsed the Quartet's Performance-Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict (UNSC, 2003), which calls for a negotiated settlement

that ends the occupation that began in 1967, and includes an agreed, just, fair, and realistic solution to the refugee issue, and a negotiated resolution on the status of Jerusalem that takes into account the political and religious concerns of both sides, and protects the religious interests of Jews, Christians, and Muslims worldwide, and fulfills the vision of two states, Israel and sovereign, independent, democratic and viable Palestine, living side-by-side in peace and security.

The UN General Assembly has elaborated on this vision by proposing additional principles to guide the resolution of the conflict. They include:

- Israel's withdrawal from the Palestinian territory, including East Jerusalem;
- the establishment of an international boundary between Israel and Palestine “based on the pre-1967 borders”;
- the realisation of the Palestinian people's “inalienable” rights, “primarily the right to self-determination”; and
- a just resolution of the Palestine refugee problem “in conformity with” General Assembly Resolution 194(III), which provides that

the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible (UNGA, 2013a: paras. 21-23).

Each year the General Assembly also continues to demand full implementation of Security Council resolutions calling on Israel to dismantle existing settlements (UNGA, 2013c) and to rescind the measures it has taken to annex occupied East Jerusalem (UNGA, 2013b). The resolutions endorsing all of these principles are not the work of a narrow majority of the General Assembly; they have won nearly unanimous

support from member states, the most recent eliciting “no” votes only from Israel, Canada, the U.S. and a few Pacific island nations – and “yes” votes from all European and Arab states, Iran, Brazil, Russia, India, China, South Africa and most others. In fact, a sweeping majority of the General Assembly urged a settlement of the conflict based on similar principles as early as 1989 (UNGA, 1989).

These principles are also the foundation of the Arab Peace Initiative (API). In exchange for comprehensive peace and the normalisation of relations with the Arab world, the API calls on Israel to withdraw fully from all the territories occupied since 1967, to achieve

a just solution to the Palestinian refugee problem to be agreed upon in accordance with U.N. General Assembly Resolution 194, and to accept the establishment of a Sovereign Independent Palestinian State on the Palestinian territories occupied since the 4th of June 1967 in the West Bank and Gaza strip, with east Jerusalem as its capital.³

Palestinian leaders have shown willingness to accept a compromise that falls short of both Palestinian aspirations and the vision endorsed by most of the international community. Rather than insisting on the dismantlement of all settlements, they have accepted modification of the 1967 border to accommodate Israel’s annexation of settlement blocs adjacent to the border, provided that any such revisions are equitably compensated through land exchanges. Rather than demanding the total withdrawal of Israeli security personnel from Palestinian territory, they have accepted their continuing presence during a transitional period and the establishment in the West Bank of Israeli early warning stations, as well as the deployment of multinational forces to ensure compliance with security obligations. And rather than demanding that all refugees be enabled to return to their homes in Israel, they have signalled a willingness to limit implementation of the right of return “in a way that preserves Israel’s distinction as a state with a Jewish majority” (Avishai, 2011). President Abbas recently reaffirmed Palestinians’ flexibility on this last point, telling a delegation of Israeli students that while the refugee problem “is an issue we must solve to end the conflict ... we will not seek to flood Israel with millions of refugees to change its social character” (AFP, 2014).

The limits of Palestinian leaders’ flexibility will be defined as much by the practical implications of a proposed deal as by its consistency with UN resolutions. After 15 years of permanent status negotiations, their “red lines” are not difficult to anticipate. Proposed changes to the 1967 border will be judged not only by the quality of land and other assets offered as compensation, but also by their consequences for Palestinians’ mobility, personal security and economic development. In this respect, contiguous Pales-

tinian sovereignty over Arab areas of East Jerusalem (not just its outer suburbs) will be seen as a minimum requirement, as will the evacuation of (or, at least, the establishment of Palestinian sovereignty over) settlements deep in the West Bank, such as Ariel. Proposed limitations on Palestine’s sovereignty will be viewed through a similar lens: cooperative arrangements in areas of common interest – security, water, the electromagnetic spectrum, border crossings, etc. – will be welcomed; however, arrangements that assign Israel overriding authority over government functions affecting Palestinian life without recourse to effective third-party dispute resolution will be rejected as a perpetuation of the Oslo framework. With respect to refugees, few Palestinians expect a peace agreement to secure the implementation of the refugees’ right of return, but few would accept one that presumed to renounce that right. What they will demand is some acknowledgement by Israel of its share of responsibility for the refugees’ dispossession and a framework for compensation and resettlement that restores the refugees’ sense of agency and respects their dignity. Without a meaningful effort by Israel to demonstrate sensitivity to this key dimension of the Palestinian narrative, it seems unlikely that Palestinian leaders will respond affirmatively to demands to recognise Israel as a Jewish state.

At this juncture efforts to achieve peace will not succeed unless the international community acknowledges the simple fact that Israel does not share its vision for a two-state solution. With respect to borders, Israeli prime minister Binyamin Netanyahu has declared his unwillingness “to evacuate any settlements or uproot a single Israeli” (Langfan, 2014), adding that he refuses to “concede places others conceded in the past”, such as the settlements of Beit El and Hebron (Ravid, 2014a). The prime minister has also made clear that he would not agree to the establishment of a Palestinian capital anywhere in Jerusalem (Ravid, 2014b). With respect to withdrawal, Netanyahu demands an Israeli military presence in the West Bank’s Jordan Valley for an indefinite period (Booth & Eglash, 2014), and Israeli negotiators have pressed for overriding control over Palestine’s border crossings, airspace and electromagnetic spectrum. Finally, with respect to refugees, Netanyahu stated in October 2013 that the “first concession” Palestinians must make is “to give up your dream of the right of return” (*Times of Israel*, 2013), and Israeli negotiators have reportedly refused to accept the return of even a single refugee or to accept any responsibility for the refugees’ plight. According to Netanyahu’s predecessor, Ehud Olmert, Israel’s current positions are “a vast distance from what everybody understands is the basis on which an accord can be reached” (*Times of Israel*, 2014).

The measures recommended in previous sections of this report may help over time to alter Israelis’ analysis of the costs of their alternatives to a negotiated agreement. In

3 In 2013 the Arab League indicated that it would also support a territorial settlement involving “comparable, mutually agreed, and minor” land swaps (Makovsky, 2013).

addition, *the international community should press the U.S. to support a Security Council resolution calling on Israel to end its occupation of the Palestinian territory and defining parameters for a negotiated peace settlement, in accordance with the consensus articulated by the UN General Assembly and the API.* The success of that effort may be impeded both by domestic political dynamics in the U.S. and by the disjuncture between the principles advocated by the General Assembly and those on which successive U.S. presidents have based their proposals. However, the demise of Secretary of State Kerry's recent conciliation effort offers an opening for a renewed effort to use the Security Council to advance the cause of peace.

In view of the formidable barriers that exist to achieving partition along the lines discussed during the Oslo process, the time has also come to *reimagine the two-state solution in ways that make it more responsive to both sides' historical and religious attachment to all of the Holy Land and more durable in the face of developments on the ground.* Among the models worthy of further exploration is the vision of "Two States, One Homeland" advocated by a growing number of Israelis and Palestinians and spearheaded by the Israeli journalist Meron Rapoport. This vision embraces a two-state solution based on the 1967 borders, but rejects the notion that ethnic separation – "Us Here, Them There," as Yitzhak's Rabin's 1992 campaign slogan put it – is either feasible or desirable. Two sovereign states would coexist in the Holy Land with a defined and regulated border separating them. However, citizens of both states would be free to live, work and worship anywhere in their common homeland. Israeli citizens would be given a path to permanent residency in the state of Palestine, enabling Israeli settlers who are willing to live peacefully with their Palestinian neighbours the opportunity to remain in their homes in the West Bank, while at the same time facilitating Palestinian self-determination in an independent state. Similarly, Palestinian citizens would be given a path to permanent residency in Israel, enabling Palestinian refugees willing to live in peace with their Israeli neighbours to return to their homes in Israel, while at the same time permitting Israel to maintain a Jewish voting majority. To be sure, the practical challenges attending the negotiation and implementation of such a vision are manifold, but they pale in comparison with the obstacles facing the establishment of a single liberal or binational state across all of the Holy Land.

Conclusion

The international community is not powerless to counter the trends threatening the achievement of a two-state solution, but success at this juncture requires bold measures and the willingness to see them through. Following more than two decades of unmoored peace talks, the world should give law a chance.

Specifically, the international community should:

- clarify and give more explicit attention to the legal obligations of Israel and third states as a framework for conflict management and resolution, including by:
 - requesting an advisory opinion from the ICJ on the legal consequences of Israel's prolonged occupation;
 - undertaking legal impact assessments to confirm that donor policies and practices are consistent with their obligations under international law;
 - distinguish clearly between Israel's legal obligations, on the one hand, and voluntary measures that are recommended to promote peace or development, on the other; and
 - press Israel to reject the Levy Report, to clarify its understanding of the legal status of the OPT and to recognise explicitly the Palestinian people's right of self-determination;
- revisit policies that help perpetuate the occupation and establish tangible incentives for bringing it to an end, including by:
 - pressing Israel for a financial contribution to the expense of running the PA commensurate with its obligations as an occupying power;
 - developing coordinated mechanisms for tracking – and holding Israel accountable for – the wrongful destruction and confiscation of donor-financed assets, as well as the costs incurred as a result of onerous and arbitrary security clearance procedures;
 - ensuring that Israeli entities operating in the OPT are no longer able to benefit from privileges enjoyed by Israel under international agreements;
 - prohibiting the provision of material support to public and private Israeli entities that are based or operating in the OPT; and
 - promoting individual accountability for violations of Palestinian rights;
- refocus international assistance on rebuilding the legitimacy of Palestinian institutions by expanding their ability to serve and represent Palestinians across the occupied territory and in the diaspora, and evaluate how existing coordination mechanisms and institutions can be reconfigured to increase their ability to influence Israeli policy;
- advance the international consensus in support of the two-state solution by encouraging the U.S. to support a Security Council resolution calling on Israel to end its occupation of the Palestinian territory and defining parameters for a negotiated peace settlement, in accordance with the principles articulated by the UN General Assembly and the API; and
- undertake to reimagine the two-state solution in ways that make it more responsive to both sides' historical and religious attachment to all of the Holy Land and more durable in the face of developments on the ground.

References

- AFP (Agence France-Presse). 2014. "Palestinians will not 'flood Israel' with refugees – Abbas." *Jordan Times*, February 16th. <<http://jordantimes.com/palestinians-will-not-flood-israel-with-refugees---abbas>>
- Avishai, Bernard. 2011. "A plan for peace that still could be." *New York Times*, February 7th. <http://www.nytimes.com/2011/02/13/magazine/13Israel-t.html?pagewanted=all&_r=0>
- Ben-Naftali, Orna, Aeyal M. Gross & Keren Michaeli. 2005. "Illegal occupation: framing the Occupied Palestinian Territory." *Berkeley Journal of International Law*, 25: 551-614.
- Benvenisti, Eyal & Eyal Zamir. 1995. "Private claims to property rights in the future Israeli-Palestinian settlement." *American Journal of International Law*, 89, April: 295-339.
- Booth, William & Ruth Eglash. 2014. "Jordan Valley emerges as core issue in Middle East peace talks." *Washington Post*, January 25th. <http://www.washingtonpost.com/world/middle_east/jordan-valley-emerges-as-core-issue-in-mideast-peace-talks/2014/01/25/5b543d30-7f8d-11e3-97d3-b9925ce2c57b_story.html#>
- Cassese, Antonio. 1995. *Self-determination of Peoples: A Legal Reappraisal*. New York: Cambridge University Press.
- Eldar, Akiva. 2014. "Former ICC prosecutor says Palestinians can join court." *Al Monitor*, May 12th. <<http://www.al-monitor.com/pulse/originals/2014/05/luis-moreno-ocampo-international-criminal-court-palestine.html>>
- Elgindy, Khaled. 2012. "The Middle East Quartet: a post-mortem." Analysis Paper no. 25. Washington, DC: Saban Center for Middle East Policy at Brookings.
- Euractiv. 2014. "Compensation calls as Israel seizes EU-funded aid projects." April 11th. <<http://www.euractiv.com/sections/development-policy/compensation-calls-israel-seizes-eu-funded-aid-projects-301501>>
- Gross, Aeyal. 2007. "Human proportions: are human rights the emperor's new clothes in the international law of occupation?" *European Journal of International Law*, 18, February: 1-35.
- HSRC (Human Sciences Research Council). 2009. *Occupation, Colonialism, Apartheid: A re-assessment of Israel's Practices in the Occupied Palestinian Territories under International Law*. Cape Town: HSRC.
- ICJ (International Court of Justice). 1970. "Legal consequences for states of the continued presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)." Advisory Opinion.
- ICJ. 2004. "Legality of the construction of a wall in the Occupied Palestinian Territories." Advisory Opinion.
- ILC (International Law Commission). 2001. Draft Articles on Responsibility of States for Internationally Wrongful Acts. A/56/10.
- Kagan, Michael. 2007. "Restitution as a remedy for refugee property claims in the Israeli-Palestinian conflict." *Florida Journal of International Law*, 42, August: 421-87.
- Kent, Andrew. 2012. "Evaluating the Palestinians' claimed right of return." *University of Pennsylvania Journal of International Law*, 34, Fall: 149-235.
- Langfan, Mark. 2014. "Netanyahu 'won't uproot any settlements, anywhere'." *Arutz Seva 7: Israel National News*, January 26th. <<http://www.israelnationalnews.com/News/News.aspx/176741#.UwsVGF4zK94>>
- Li, Darryl. 2006. "The Gaza Strip as laboratory: notes in the wake of disengagement." *Journal of Palestine Studies*, 35, Winter: 38-55.
- Makovsky, David. 2013. "Stalled Arab Peace Initiative reaffirmed." Policywatch no. 2074. May 1st. Washington, DC: Washington Institute for Middle East Policy. <<http://www.washingtoninstitute.org/policy-analysis/view/stalled-arab-peace-initiative-reaffirmed1>>
- New Wave-Nielsen Alliance. 2014. *Research Report Regarding Israelis' Views of the Regional Approach and a Peace Agreement Based on the Arab Peace Initiative*. February 20th. <<http://www.israelpolicyforum.org/sites/ipforum2/files/IPI%20Group%20API%20Poll%20-%20Feb%2026,%20NewWave%20-%20Nielsen%20Research.pdf>>
- Quigley, John. 1998. "Displaced Palestinians and a right of return." *Harvard International Law Journal*, 39, Winter: 171-229.
- Ravid, Barak. 2014a. "Netanyahu: Israel will not evacuate Hebron, Beit El as part of a peace deal." *Ha'aretz*, January 6th. <<http://www.haaretz.com/news/diplomacy-defense/.premium-1.567343>>
- Ravid, Barak. 2014b. "Netanyahu rejects inclusion of Jerusalem in Kerry's framework deal." *Ha'aretz*, January 10th. <<http://www.haaretz.com/news/diplomacy-defense/.premium-1.567877>>
- Rosand, Eric. 1998. "The right of return under international law following mass dislocation: the Bosnia precedent." *Michigan Journal of International Law*, 19, Summer: 1091-138.

Times of Israel. 2013. "Full text of Netanyahu's speech at Bar-Ilan." October 7th. <http://www.timesofisrael.com/full-text-of-netanyahus-speech-at-bar-ilan/?utm_source=dlvr.it&utm_medium=twitter>

Times of Israel. 2014. "Olmert: Netanyahu's terms 'a vast distance' away from peace basis." February 7th. <<http://www.timesofisrael.com/olmert-netanyahus-terms-a-vast-distance-away-from-viable-peace-terms/>>

Ullom, Vic. 2001. "Voluntary repatriation of refugees and customary international law." *Denver Journal of International Law and Policy*, 29(2): 115-46.

UNGA (UN General Assembly). Resolution 1514 (XV) (1960).

UNGA. 1989. Resolution 44/42 (1989).

UNGA. 2012. Resolution 67/229.

UNGA. 2013a. Resolution 68/15 (2013).

UNGA. 2013b. Resolution 68/16 (2013).

UNGA. 2013c. Resolution 68/82 (2013).

UN Human Rights Committee. 2013. "Concluding observations of the Human Rights Committee: Israel." CCPR/CO/78/ISR of August 21st.

UNHRC (United Nations Human Rights Council). 2007. *Report of UN Special Rapporteur John Dugard on the Human Rights Situation in the Palestinian Territories Occupied by Israel since 1967*. A/HRC/4/17. January.

UNSC (UN Security Council). 2002. Resolution 1397 (2002).

UNSC. 2003. Resolution 1515 (2003).

Yesh Din. 2014. *Unprecedented: A Legal Analysis of the Report of the Committee to Examine the Status of Building in Judea and Samaria: International and Administrative Aspects*.

Acknowledgements

The authors of this study gratefully acknowledge the excellent research and analysis provided by Drew Craig and Joyce Morin Utz. The study was also informed by conversations and correspondence with the people listed below. Responsibility for its content, however, rests solely with its authors.

Bernard Avishai, Dartmouth College (February 4th 2014)
 Sam Bahour (November 11th 2013)
 Sari Bashi, Gisha – Legal Centre for Freedom of Movement (November 7th 2013)
 Bashir Bashir, Hebrew University (February 3rd 2014)
 Orna Ben-Naftali, College of Management Academic Studies (February 6th 2014)
 Shlomo Brom, Institute for National Security Studies (November 12th 2013)
 Dani Dayan, Yesha Council (November 13th 2013)
 Akiva Eldar, Al Monitor (November 8th 2013)
 Khaled Elgindy, Brookings Institution (February 25th 2014)
 Noura Erekat, Temple University Law School (November 20th 2013)
 Gidi Grinstein, Reut Institute (February 5th 2014)
 Nisreen Haj, Ahmad Ahel (November 2nd 2013)
 Tarek Hammam, PLO Negotiations Support Unit (November 11th 2013)
 Raja Khalidi, Palestinian Ministry of Planning (February 3rd 2014)
 Wassim Khazmo, PLO Negotiations Support Unit (February 3rd 2014)
 Sallai Meridor (February 3rd 2013)
 Michael Pearson, USSC (November 13th 2013; January 30th 2014)
 Ahmad Qurei (November 12th 2013)
 Fadi Qur'an, Al-Haq (November 13th 2013; February 6th 2014)
 Mouin Rabbani, Institute for Palestine Studies (December 6th 2013)
 Meron Rapoport (February 7th 2014)
 Daniel Reisner, Herzog, Fox & Neeman (November 12th 2013)
 Badr Rock, PLO Negotiations Support Unit (February 6th 2014)
 Dalia Scheindlin, *972 Magazine* (February 5th 2013)
 Daniel Seidemann, Terrestrial Jerusalem (November 10th 2013)
 Robert Serry, UNSCO (February 6th 2014)
 Charles Shammass, Mattin Group (February 1st 2014)
 Shaker Ozkan Turonlam, Embassy of Turkey in Palestine (November 13th 2013)
 Khalil Shikaki, Palestinian Centre for Policy and Survey Research (February 2nd 2014)
 Husam Zomlot, Fatah Commission for International Affairs (November 11th 2013)

■ THE AUTHORS

Hiba Hussein, Juris Doctor, is a managing partner of Hussein & Hussein Attorneys and Counsellors-at-law in Ramallah, Palestine; the firm serves a large domestic and international client base on a wide range of business law matters. She also specialises in policy reform and analysis of the legal and economic aspects of the Palestinian-Israeli conflict. She chairs the Legal Committee to Final Status Negotiations and has served as a legal adviser to peace negotiations since 1994.

Omar M. Dajani is a professor of law at the University of the Pacific's McGeorge School of Law. He has published extensively on legal aspects of the Palestinian-Israeli conflict in leading legal and policy journals. Previously he served as legal adviser to the Palestinian team in peace talks with Israel and as policy adviser to the UN Special Coordinator for the Middle East Peace Process. He is a graduate of Northwestern University (BA, 1991) and Yale Law School (JD, 1997).

Disclaimer

The content of this publication is presented as is. The stated points of view are those of the authors and do not reflect those of the organisations for which they work or NOREF. NOREF does not give any warranties, either expressed or implied, concerning the content.



- The Norwegian Peacebuilding Resource Centre
- Norsk ressurscenter for fredsbygging

The Norwegian Peacebuilding Resource Centre (NOREF) is a resource centre integrating knowledge and experience to strengthen peacebuilding policy and practice. Established in 2008, it collaborates and promotes collaboration with a wide network of researchers, policymakers and practitioners in Norway and abroad.

Read NOREF's publications on www.peacebuilding.no and sign up for notifications.

Connect with NOREF on Facebook or @PeacebuildingNO on Twitter

Email: info@peacebuilding.no - Phone: +47 22 08 79 32