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The Role of Settlements in Shaping the Israeli Apartheid  
Regime in the Occupied Palestinian Territories

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By

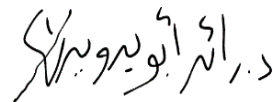
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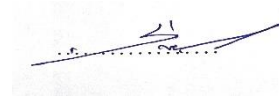
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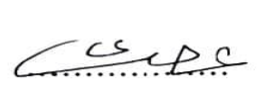
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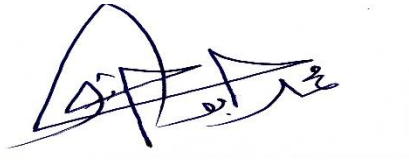
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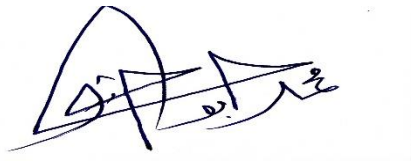
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Date 20\5\2022

## **Abstract**

This study aims to identify the role of illegal Israeli settlements in shaping the Israeli system of discrimination in the occupied Palestinian territories through the definition of Israeli settlement in the occupied Palestinian territories, and the definition of the discrimination system and the international agreements that stipulated it and the relevant reports in general.

In this study, the researcher focuses on addressing the study problem: the role of settlements in shaping the Israeli apartheid regime in the occupied Palestinian territories. This research is divided into two chapters. The first chapter of this study deals with the historical background of apartheid in Palestine throughout history as a country under occupation. The second chapter discusses the legal framework of the study. The second chapter is divided into four sections. The first section deals with the crime of apartheid under the definition of international law and the elements of the crime. In the second section, it is prohibited to commit the crime of apartheid as peremptory norms or peremptory norms, and the role of settlement in establishing the apartheid regime in the West Bank and East Jerusalem. In the third section, the practices and policies of the occupation in establishing the apartheid regime, and in the fourth section a case study of the village of Beit Dajan.

The study concluded that the Israeli occupation state, by establishing Israeli settlements on the occupied Palestinian lands, created a system of racial discrimination against Palestinians and violated the rights of Palestinians on their lands.

## **Introduction**

Apartheid is closely related to settlement. In fact, models of settlement vary across the world. For example, some settlements have resulted in genocide, as was the case in the United States and Australia. Other forms of settlement are based on the exploitation of indigenous populations, examples of which include colonial France's forcing of Algerians to carry out hard and exhausting work. Other settlements are based on the import of slaves, as was the case in North America. The settlement established as part of the Zionist project is made possible through the ethnic cleansing and expulsion of the indigenous people from their homeland. The researcher also considers hybrid settlement models, including the North American model of forced import of labor (slavery) following the mass killing of the indigenous population.

Perhaps it is worth noting: "We see, according to a simple settlement logic, that the apartheid in South Africa was not based on the expulsion of the black population and other ethnic minorities, but on their exploitation. The motto of the white settler in South Africa was to force the indigenous people to do heavy and exhausting work.

Zionism aims to establish a national home for Jews, with the least number of non-Jewish residents. It is a form of settlement based on the usurpation of the land, like all other forms of settlement. Zionism is based on the expulsion and ethnic cleansing of the indigenous population.

With its abolition in South Africa. In our case, the primary means of separation by the Israeli authorities is geographical, used to grant privileges and rights to Jews over the Palestinians.

The researcher believes that the occupation regime began to reinforce its basic principle, which is the differential ruling on two population groups of different statuses, and also began to develop the minute details that fall within this issue.

Differential rule is based on racial segregation in its Zionist version, as the separation between these two systems is represented and perpetuated by means of pure legal, military, ideological, and bureaucratic ideals and practices through a matrix of three separation principles: a dual national separation between Jews and Arabs, a dual civil separation between citizens and non-citizens, and territorial separation.

Because of this separation, a new form of control began to emerge, based on fragmenting the Palestinian spatial space, deeply penetrating the territory and enhancing movement control within it.

Similar to Apartheid South Africa's Bantustans, Israel has established isolated cantons through the mediation of a new movement system and a network of bypass streets, all made possible through a set of unfair and unjust military laws forced upon the Palestinian population. It is legal to carry out practices of repression as well as imposition of an occupation regime based on segregation and colonial settlement on the one hand, while rendering the lives of the Palestinian population illegal on the other. This can be called a system of control that produces, at the same time and without interruption, the conditions for the isolation of one group from the other while consolidating relations of dependence between them. Segregation, on the one hand, and subordination, on the other, are the two sides of the coin of Israeli apartheid, as they constitute a Jewish-type separation system whose main features consist of Jewish-only roads, barriers and walls, transit, and work permits.

Apartheid in Israel is more criminal than South African apartheid, as the former includes, and is in line with, the colonial expansionist goals aimed at the ethnic cleansing that Israel apparently seeks. That is, racism in Israel represents a double international crime and a compound of apartheid and ethnic cleansing.

Since Israel's occupation of Palestinian lands in 1967 and its control over Palestinian lands, the Israeli Civil Administration has allocated to the Palestinians a very small percentage of the so-called state's lands in the West Bank, compared to a third of this lands for settlers. Israel claims that the dunams of occupied West Bank land are state land. Meanwhile, some of this land was registered in the land registry in the name of the Kingdom of Jordan until 1967. Israel declared the vast majority of its state land after 1979 to allow and facilitate the construction of illegal settlements.

According to Israeli data, hundreds of thousands of acres of state land have never been allocated and are still in its possession. Hundreds of thousands of dunams were allocated to the Zionist Histadrut, and most of the settlements, homes and agricultural land were built on these lands.

A large percentage of Palestinian land has been allocated to cellular companies, local councils and regional councils, especially for the construction of public buildings. Government offices, such as Mekorot, Bezeq, and the Israel Electric Corporation received thousands of donors of state land. As for the Palestinians, a very small percentage of the state's land has been allocated.

Since these lands became state lands, they also became Jews because the state of Israel is reserved for Jews. Meanwhile, a whole industry of anarchy has arisen in Israel, which appears under the guise of law.

On the surface, there are legal procedures in the occupied territories, but in reality there is a huge activity of dispossession and annexation in which even the Israeli courts are involved. However, the Israeli judicial system is an important means of granting legitimacy to annexation of land. Israeli courts accept the strangest claims in favor of land grabs and finally bless what has

already been done by providing legal cover for such actions. The Israeli army has become a tool used and exploited in the name of the settlers' ideology. This vision came after the statement of Israeli Defense Minister Moshe Ya'alon who ordered the confiscation of thousands of dunams in the Bethlehem area in 2014, which some Israeli newspapers described as a violation of international law in an editorial entitled "Barbarian Control."

## **Research Problem**

The occupation of Palestine is a longstanding issue, as this occupation resulted in many illegal practices and laws that violated international laws and norms. The Israeli occupation authorities facilitated the transfer of their residents to the occupied territories, and with this act, the Israeli authorities turned the occupation regime into a system of racial discrimination.

The main question of this study is: To what extent did the building of illegal Israeli settlements in the occupied Palestinian territories contribute to, participate in, and reinforce the system of racial discrimination in the occupied Palestinian territories?

## **Research Questions**

1. What are the laws and legislations that created a system of racial discrimination among the residents of the occupied Palestinian territories?
2. How did the Israeli occupation distinguish between Palestinians and settlers in the occupied Palestinian territories through the delivery of services and infrastructure?
3. What are the care and protection measures applied by the Israeli occupation authorities in the occupied Palestinian territories? How did it reinforce racial discrimination?
4. What practices did the Israeli occupation carry out in order to deprive the Palestinians of access to their natural resources?

## **Research Significance**

This research is important because of the following:

1. To learn about how Israeli settlements in the occupied Palestinian territories create a system of racial discrimination between Palestinians and Israeli settlers.
2. To identify the most important means and tools used for settlement in the occupied Palestinian territories, which resulted in a system of racial discrimination in the opts.
3. To become familiar with the policies of the Israeli occupation towards racial discrimination in the occupied Palestinian territories, where Israeli settlements are built.
4. To recognize the importance of international legal rules in protecting the population in the occupied Palestinian territories from the crime of racial discrimination as it relates to settlements.
5. To define apartheid not only as a prohibitive practice that states undertake, but also as a crime against humanity, in accordance with the relevant international instruments, such as the International Convention on the Suppression and Punishment of the Crime of Apartheid.
6. To highlight the importance of international reports issued by international organizations, such as Human Rights Watch and others, exposing Israel's apartheid system forced upon the occupied Palestinian territories.

## **Research Methodology**

- a) **Historical approach:** The researcher dealt with the historical development of the Israeli occupation of the occupied Palestinian territories and the development of the settlement policy that the occupation has followed since its inception.
- b) **Descriptive analytical approach:** The researcher relied on the analytical approach to analyze and compare the Israeli legislation, laws, and practices on settlements against the relevant international laws and conventions, including the Geneva Conventions.

## **Research Tools**

The researcher used many tools, books, international jurisprudence, international treaties, legal texts, reports of international institutions, reports of local institutions, journals, articles and documents published in international magazines and websites, as well as personal interviews with international legal experts interested in racial discrimination published on the Internet.

## **Limits of the Study**

- **Legal:** This is related to the most important international laws relevant to the system of racial discrimination, occupation, and settlement. This also pertains to the most important international conventions that criminalize the system of racial discrimination known as apartheid.
- **Location:** West Bank and East Jerusalem.

## **Literature Review**

There are a number of books, reports, articles, and studies that addressed the Israeli apartheid regime in the occupied Palestinian territories, but they did not address the role of settlements, in particular, in shaping the Israeli apartheid regime in the occupied Palestinian territories. Among these previous studies are:

**A.     *Apartheid Israel: Possibilities for the Struggle Within* by Uri Davis, published in 2003 in London.**

Uri Davis believes that the Nakba, which took place in 1948–1949, resulted in a crime against humanity. One of its most prominent features is the crime of widespread ethnic cleansing of the Palestinian people. Therefore, *apartheid* became evident. On the topic of Israeli apartheid, we find that Uri Davis has reflected on the accurate comparison between Israeli and South African systems of apartheid. While he did highlight Israel's less apparent methods and practices to establish its system of apartheid, Davis did not address Israel's settlement practices as a means of creating a system of racial discrimination, nor did he address the most important legislation and procedures taken by the Israeli occupation authorities in the occupied Palestinian territories in this regard. The researcher will bridge this gap in the literature through this current study.

**B.     *Apartheid, International Law, and the Occupied Palestinian Territory* by John Dugard and John Reynolds, Oxford University, 2013.**

The authors explored the definition of apartheid and its relationship to human rights and international criminal law. They also examined the extent to which the Israeli occupation is responsible for crimes of racial discrimination in the occupied Palestinian territories. They

concluded that the Israeli practices in the territories not only remind us of apartheid but also are worse than South Africa's apartheid.

However, the two authors failed to address the methods used by the Israeli occupation in promoting and creating a system of racial discrimination and segregation between Palestinian citizens and settlers in the occupied Palestinian territories, nor did they mention the policies pursued by the Israeli occupation to strengthen this system of racial discrimination in the occupied Palestinian territories.

**C.     *The Israeli Occupation of the West Bank and the Crime of Apartheid: Legal Opinion*, by Adv. Michael Sfard, Position paper, June 2020.**

In his report, Michael Sfard talked about apartheid as a crime committed in the occupied Palestinian territories' West Bank, discussing how the Israeli authorities practiced apartheid. Sfard described the Israeli occupation as a system based on the systematic oppression of the Palestinians and the denial of their rights.

However, Sfard did not address in his report how the occupation, through its practices in the occupied Palestinian territories, reinforced racial discrimination through settlement and segregation between Jews and Arabs in the West Bank. The researcher will address this gap in his study.

**D.     *The Impact of Israeli Settlements in the West Bank on the Human Rights of Palestinians*, by Yesh Din, April 2021.**

The report addressed Israel's violation of human rights in the Palestinian territories and how settlements affected the rights of Palestinians by violating their right to life, freedom, education, property, and freedom of movement. The report also discussed how settlement activity violates the collective right of the Palestinians to their natural resources by building

illegal structures, neighborhoods, and outposts on their lands. In many cases, the buildings were removed from Palestine for the Palestinians. It stopped ordering the illegal evacuation of an outpost.

However, the report did not address the discriminatory, legislative, and judicial policies that reinforced the system of racial discrimination against the Palestinians. This gap in the literature will also be bridged by the researcher in this study.

**E.     *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution*, by Human Rights Watch, APRIL 2021.**

The report talked about the laws, policies, and statements by leading Israeli officials, who make plain that the objective of maintaining Israeli control over the demographics, political power, and land has long guided government policy. In pursuit of this goal, the Israeli authorities have dispossessed, confined, forcibly separated, and subjugated Palestinians by virtue of their identity to varying degrees of intensity. In certain areas, as described in this report, these deprivations are so severe that they amount to the crimes against humanity of apartheid and persecution.

The report did not address how the Israeli occupation state facilitated the transfer of Jews to the occupied Palestinian territories in place of the Palestinian population, and how the Israeli occupation practiced oppression against the Palestinians in all aspects of life in the West Bank.

## **Thesis Outline**

### **1. Chapter One: historical Background**

**1.1** Israel's long-term occupation of Palestine.

**1.2** Settlements.

**1.3** Settlements and international law.

**1.4** Israel's apartheid system and international law view on occupation settlement, and apartheid.

### **2. Chapter Two: Legal framework**

**2.1** The crime of apartheid under international law definition and elements of the Crime.

**2.2 .** The role of settlement in creating the apartheid regime in the West Bank and East Jerusalem.

**2.3** The practices and policies of the occupation in creating an apartheid regime.

**2.4** Case Study: Beit Dajan Village

### **Conclusion**

## **Chapter One: historical Background**

### **1.1 Israel's long-term occupation of Palestine**

#### **The Hundred Years' Occupation of Palestine**

Israeli settlements are based on colonial and racist foundations that contradict all international norms and laws. The Zionist movement focused on immigration and settlement to implement its settler colonial project.

Zionist leader Theodor Herzl emphasized the nature of Jewish settler colonialism in the so-called *Promised Land*, including the migration of Jews to, and settlement in, the now-occupied Palestinian lands, and expulsion of the Arabs who lived there.

The immigration of Jews to and settlement in Palestine, as well as the expulsion of Arabs from it, are the main pillars of the Zionist movement and the establishment of settlements. The first Zionist Congress set the following goals for the establishment of early settlements:

1. Settling Jewish farmers and craftsmen in Palestine by establishing settlements (colonies) there,
2. Strengthening and organizing national sentiment and Jewish national consciousness and developing religious awareness among Jews,
3. Organizing global Judaism and unifying it through local and international organizations, and
4. Obtaining the approval of the major world powers on the goal of Zionism.

(uri davis, 2003, p. 49)

Jewish immigration, Jewish settlement, and the deportation of Arabs became the mainstay of Zionist thought and practice for the establishment of settlements and the realization of Jewish settler colonialism.

Jewish settler colonialism crystallized in Arab Palestine through four stages:

- The first stage: the transfer of the Jews (or what is known as Jewish immigration to Palestine),
- The second stage: settling in Palestine and building Jewish settlements
- The third stage: the use of terrorism and mass massacres to deport Arab Palestinians, and
- The fourth stage: igniting aggressive wars to achieve expansion, occupation, annexation, and Judaization of Arab lands, expelling the Palestinian Arab people from their homeland in Palestine, and the transformation of settler colonialism into a new Jewish imperialism in Arab countries.

Jewish immigrants and the Zionist movement raised the right of the Jews to immigrate to Palestine and deport the Arabs living there. Their right to conquest, annexation, and seizure of Arab lands, water, and wealth rose to the rank of religious duty.

The Zionist founders unanimously agreed that the Zionist strategy should be based on the seizure of Palestinian Arab lands. The Zionist organizations and institutions were built on this basis, in particular the Jewish National Fund, which was established in 1903, and the Alkern Kemet Land Purchase Company, which was established in 1927. The maximum area of land for the inevitable establishment of a large Jewish state. Zionism pursued a policy of plundering Arab lands. (uri davis, 2003, p. 50)

Through the British Mandate in Palestine, especially under the leadership of its first Jewish High Commissioner of Palestine Herbert Samuel, by purchasing lands from some large Lebanese and Syrian feudal families, as well as some Palestinians, and by military force during the wars of Zionist expansion and usurpation of lands by occupation and military control and for alleged military purposes.

Britain occupied Palestine after defeating the Ottomans in World War I, during which time Palestine was a Jewish minority and an Arab majority. Tensions grew between the two sides when the international community gave Britain the task of establishing a “national home” for the Jewish people in Palestine, which, for the Jews, is the land of their ancestors. 15 or the Palestinian Arabs, however, it is their land, in which they lived for hundreds of years and who, thus, opposed this step. (Khaldoun Dwaikat, 2018, p. 25)

### **1.1.1 The chronology of the occupation**

#### **1. The Balfour Declaration**

When England occupied Palestine, it took it upon itself to establish a national home for the Jews in Palestine to get rid of them in Europe. British Foreign Secretary Balfour issued a declaration of a national home to the Jews to preserve its strategic interests in the Middle East and to stop the immigration of Jews from Russia and Eastern Europe to Britain, that is, to serve its expansionist agenda.

Britain helped in the migration of a large number of Jews to Palestine and provided them with arms, protection, and money for settlement. (Raed Abubadawia, 2019, p. 14)

## **2. Treaty of Faisal Weizmann**

Prince Faisal bin Hussein signed an agreement with the head of the World Zionist Organization in 1919 at the Paris Peace Conference to give facilities to Jews to establish a national home for them in Palestine.

## **3. British Mandate Cauldron**

In 1917, the British army took control of Palestine and Transjordan with the Arabs' help through the Arab Revolt led by Sharif Hussein (who sought the independence and unity of the Arab states based on the Hussein-McMahon correspondence). Following the Sykes–Picot Treaty, Jordan and Palestine came under the British Mandate. In the same year, Arthur James Balfour, the British Foreign Secretary, sent a letter to Baron Lionel Walter de Rothschild in which he pledged Britain's support.

## **4. Jewish Immigrants to Palestine**

Some 367,845 Jews immigrated to Palestine, of whom 33,304 immigrated between 1920 and 1945. This immigration led to an increase in the number of Jews in Palestine compared to the number of the original Arab population in historical Palestine, as Britain facilitated this immigration and provided critical assistance to the Jews to immigrate to Palestine.

## **5. United Nations General Assembly Resolution on the Partition of Palestine**

On November 29, 1947, the United Nations General Assembly adopted a resolution ending the British occupation of Palestine, dividing Palestine into three parts: a Palestinian Arab (palestinian journeys, 2018).

State and a Jewish state, while placing Jerusalem and Bethlehem under international leadership and protection. This decision came to resolve the Arab–Jewish conflict over the years of the British occupation of Palestine.

## **6. Occupation from 1947 to 1967**

### **A. The Nakba**

The Zionist movement carried out a number of preplanned actions aimed at the expulsion of the Palestinians and the ethnic cleansing of Palestine. These actions were attacks by Jewish armed groups, including the Haganah, Irgun, and Stern, targeting Arab villages and cities.

These planned methods have been discussed previously by many historians, such as Ilan Pappé, Benny Morris, and Walid Al-Khalidi.

These operations led to the Jews seizing nearly 78% of the area of historical Palestine and forcibly killing and displacing nearly one million Palestinians to Arab and European countries and refugee camps inside Palestine. The Palestinian refugees who left the areas on which Israel was founded constituted a new nucleus for the Palestinian cause. Between 1947 and 1948, approximately 750,000 Palestinian Arabs were displaced from their cities. After the end of the British occupation of the Palestinian territories, Palestine was divided between Jordan, Egypt, and part of the occupied Palestinian territories, which was established by Israel. The inhabitants of Palestine. (palestinian journeys, 2018).

## **B. Deir Yassin massacre**

Deir Yassin is a Palestinian village located west of Jerusalem. On April 9, 1948, the Zionist criminal gangs, called the Irgun and Stern, committed a massacre. These gangs killed between 250 and 400 Palestinian people from the village of Deir Yassin, most of whom were women, children and the elderly.

The Deir Yassin massacre led to the displacement of a large number of the Palestinian population to areas outside Palestine in neighboring Arab countries due to the fear, terror, and genocide perpetrated by Zionist gangs against defenseless Palestinian civilians. The massacre added additional hatred to the already existing hatred between Arabs and Israelis.

## **C. Announcing the Establishment of the State of Israel**

Following the attacks by the Zionist Jewish forces on the civilian population and the British forces that were occupying Palestine, Britain referred the Palestinian issue to the United Nations, which issued a decision to form the United Nations Special Committee on Palestine (UNSCOP). The committee consisted of 11 members who supported the decision to partition Palestine, agreed to by both Russia and America.

In the period that followed, the pace of military operations escalated from all sides, and the Zionists had deliberate plans that they implemented and were controlling every area from which the British forces withdrew, while the Arabs were in a state of military crisis. Due to the delay in taking effective measures to build a regular Arab force that defended Palestine, the Zionist forces succeeded in occupying more areas than what they had obtained under the partition resolution, and large numbers of Palestinians left their cities and villages because of the battles or fear of the massacres they had heard about. (Raed Abubadawia, 2019, p. 24)

The then-Israeli president sent a letter to Truman, the American president, asking him to establish a Jewish state, where America recognized the declaration of the establishment of a Jewish state in occupied Palestine on May 15, 1948. Hence, Britain withdrew from Palestine, the High Commissioner left Palestine for Britain, and the war between Arabs and Jews continued in Palestine, only to end with the Jews controlling more than the area granted to them under partition resolution. Thus, Gaza became administratively affiliated to Egypt, and the West Bank and Jerusalem to Jordan.

#### **D. The 1948 War**

The first war was between the Arab countries and Israel, and the Arabs called it the Nakba or *the Palestine War*. Meanwhile, European countries and America both dubbed it the Arab–Israeli War.

The Arab forces intervened in order to prevent the establishment of a Jewish state in Palestine in 1948, when the Egyptian, Syrian, Jordanian, Lebanese, and Iraqi forces entered the lands of Palestine. The war continued for a whole year, during which Israel controlled more than 75% of Palestinian lands and violated the Partition Resolution issued by the United Nations. More than 500,000 Palestinians have been displaced and remain refugees to this day.

The Zionist leaders had begun preparing detailed military plans since the beginning of 1945 in anticipation of the upcoming confrontation, and in May 1946, the Haganah drew up a plan they later called the May 1946 Plan. The Arab armies, when entering Palestine after May 15, 1948, achieved significant victories. (palestinian journeys, 2018).

### **E. West Bank and Gaza Strip**

These two terms, West Bank and Gaza Strip, began to appear after the 1948 war, when Israel occupied the Palestinian territories per the Partition Plan and additional lands seized by the Israeli army or acquired by Israel under the Rhodes Accords. Based on the agreement concluded at the Jericho Conference in 1949, Palestinian leaders met and demanded to be annexed to Jordan, and that was the result of parliamentary elections, while Egypt imposed military rule on the smallest of the Palestinian territories, i.e., the Gaza Strip.

In 1956, Israel occupied the Gaza Strip for five months in the context of military operations related to the Suez Crisis, then returned under Egyptian military rule. In 1967, Israel occupied the entire area of the West Bank and Gaza Strip and imposed military rule on them. Relations between Jordan and the West Bank continued until King Hussein bin Talal of Jordan announced the decision to disengage in 1988, giving up the West Bank and severing Jordan's relations with Israel. In 1982, Israel completed its withdrawal from the Sinai Peninsula under the Egyptian–Israeli peace treaty, but the Gaza Strip remained under Israeli military rule.

### **F. The 1967 War**

Referred to by Western and Israeli media as the Six-Day War, the 1967 War took place between the Israeli occupation state on one side and Egypt, Syria, and Jordan on the other over control of the Gaza Strip and the West Bank, in addition to the Egyptian Sinai and the Syrian Golan Heights, resulting in the displacement of more Palestinians to neighboring countries. Meanwhile, Israel announced the unilateral annexation of East Jerusalem immediately after the Arab defeat. (Raed Abubadawia, 2019, p. 26)

Israel immediately began to plunder much of the wealth of the West Bank, especially by systematically Judaizing East Jerusalem. This western region has become well positioned in the western region, which is a flying area. Historic Palestine. The war was called by the Arabs a Setback, and the word has become a feature of Arab history.

The fallout from the 1967 war or the *Setback* had a major impact on the PLO, which was still in its prime years at the time. As a result, the war gave rise to new dissident factions of higher value closer to Marxism than to nationalism, clearly highlighting the decline of the Arab project.

The period after the Setback was marked by the beginning of guerrilla warfare. The Palestinians were, and still are, concentrated in the countries surrounding historical Palestine, especially Jordan, Lebanon, and Syria. The resistance movement began to appear from outside Palestine after the fall of the West Bank and the Gaza Strip to Israel and the completion of its occupation of all lands of Palestine.

It is noteworthy that the mass exodus of Palestinians after the 1967 Setback to neighboring countries, especially Jordan, exacerbated an already dire situation, as a large number of Palestinian refugees had already fled to these countries in the 1948 Nakba. The reason for this is their geographical proximity to Palestine, especially Jordan, which shares the longest land border with Palestine. This, in turn, led to a major PLO concentration in the country, which continued until 1971. (wafa, 2020).

## **7. The Oslo Accords**

On September 13, 1993, the PLO signed the Oslo Peace Accords with the Israeli occupation state in Washington, USA. This agreement was named after the secret negotiations held between the PLO and Israeli leaders. (Raed Abubadawia, 2019, p. 156)

This agreement provided for the establishment of the Palestinian Authority, which is a Palestinian autonomous and elected legislative council for the West Bank and the Gaza Strip only. The agreement set a transitional period of five years in return for the PLO's recognition of Israel as a state in the 1948-occupied Palestinian territories, with the aim of reaching permanent peace. However, observers of this agreement believe that it weakened the Palestinian position as many PLO leaders opposed it, especially since many of its provisions were not implemented on the ground. (Raed Abubadawia, 2019, p. 156)

### **1.1.2 International Solutions**

- **The Two-State Solution**

The Palestinian Authority has always called on the international community to establish a Palestinian state next to the State of Israel on the 1967 borders. The future Palestinian state would be established in the occupied Palestinian territories, which make up the entire West Bank and Gaza Strip liberated since 2007, in addition to East Jerusalem as the capital.

- **The One-State Solution**

Supporters of this solution call for the establishment of the State of Israel, which is only one state over the entire area of historical Palestine, in which all residents enjoy full rights and are equal among themselves. This ideological approach is demanded by some pro-Israeli states in order to end the Palestinian identity and not recognize Palestine as an independent state. (wafa, 2020).

- **Deal of the Century**

The term Deal of the Century is a proposal put forward by US President Donald Trump to end the Israeli–Palestinian conflict, as this deal aims to give Palestinians outside Palestine the nationalities of the countries in which they reside and end the right of asylum.

The plan guarantees the continuation of Israeli control over most of the West Bank, which Israel occupied in 1967, the annexation of the huge settlement blocs in the West Bank to the State of Israel and the survival of the city of Jerusalem united and under Israeli sovereignty. Israel pledged to limit settlement activity in the West Bank for a period of four years, which is the period granted to the Palestinian side to agree to enter into negotiations with the Israeli side to implement the plan.

But even before Netanyahu set foot in the land of Israel from Washington, he announced that he would submit a proposal to the Israeli Knesset to unilaterally annex the strategic Jordan Valley area and West Bank settlements to the State of Israel. The Palestinian state that will be established under the plan will have a capital with the name of Jerusalem elsewhere, but it has nothing to do with the city of Jerusalem, which will remain united and under Israeli sovereignty and as its capital. The Palestinian capital will include some of the remote suburbs of East Jerusalem, which Israel occupied in 1967. As for the Haram al-Sharif in Jerusalem, the situation will remain as it is, and Israel will continue to protect the holy sites in Jerusalem and guarantee freedom of worship for Muslims, Christians, Jews and other religions. Under this plan, Jordan retains its responsibilities over the Al-Aqsa Mosque in Jerusalem. (Dalal Iriqat, 2020)

The researcher summarizes that the Israeli occupation occupied the entire area of Palestine, with the exception of the besieged Gaza Strip. Since then, Israel has continued to control these areas and their inhabitants in one form or another and has imposed on them for half a century the reality of looting, oppression and human rights violations. Here is a summary of this:

- In the Gaza Strip, through its control from the outside, Israel pursues a harsh policy and denies its dire consequences for the lives of the population. Israel prevents the residents of the Gaza Strip from any possibility of establishing a Palestinian state, and this policy does not allow the financial reconstruction of the Gaza Strip after it was destroyed during a number of rounds of fighting, nor does it provide an economic recovery to recover from the long years of siege. The occupying power refuses to ease the siege measures on the Gaza Strip despite the difficult situation in the Strip, as it will become uninhabitable.
- In the West Bank, the Israeli occupation state is maintained through direct control over the entire West Bank, and the official practices and positions of an increasing number of Israeli leaders testify that they do not see the occupation as a temporary reality. Instead, in the West Bank, Israel behaves as it pleases, as if this area were under its full sovereignty. It plunders the land, exploits the natural resources of the West Bank for its needs, and establishes permanent settlements reserved for Jews only. At the same time, military rule is applied to the Palestinians in the West Bank, which increases their suffering from the Israeli occupation and its daily practices.
- The Israeli occupation state placed East Jerusalem under Israeli occupation and opposed international laws and norms and annexed it to Israel.

- Israel treats the Palestinian residents of Jerusalem as unwanted immigrants, and there is a systematic policy aimed at seizing their homes, and deporting and displacing them from the city of Jerusalem.

- The official Israeli occupation authorities deny the occupation's responsibility for this reality and the consequent violation of human rights. Instead, they use the pretext of protecting Israel's security interests, and holding the Palestinians accountable for its continued control, whether this is direct control over the entire area of the West Bank or the siege of the Gaza Strip and indirect control over it, but the relationship between security considerations and the policy that Israel applies in the occupied territories that it controls since 1967 is weak, and despite Israel's stubborn "propaganda campaigns," the facts remain clearer: millions of Palestinians are under Israel's control.

- If countries around the world are serious about ending the conflict, the occupation would have ended, the siege on the Gaza Strip would have been lifted, and millions of Palestinians would have been freed from Israel's control. If not, the current reality will continue for many years to come, with continued incursions, looting, and repression. Israel chose the second option. After more than 50 years of absurdity, we regard this reality as temporary and cling to the conviction that Israel aims to change it. The political dynamic in Israel in everything related to the reality in the occupied territories is the constant disregard for all the occupied territories and the Israeli judicial authorities have no hope of finding a solution: the control of the Palestinians includes many Israeli authorities, but this would not have happened if the entire judicial system had not acted to impose the seal of legitimacy on the massive deprivation of the Palestinians of their

legitimate rights and in effect turn the occupied judicial system into a central tool for controlling the Palestinians.

- At the international level, not much is being done to bring about a change in Israel's practices, and it receives broad international support. Successive rounds of talks did not lead to the realization of Palestinian rights, and in the case of the Oslo Accords, these talks eventually expanded the scope of the expropriation of Palestinians, giving Israel an additional period of years to advance its interests. The current situation is difficult, but a realistic assessment of the situation in the present must take into account what the future holds. Israel's goals are well-known. Deepening control and promoting Israel's interests by imposing more and more reality on the ground. All of this is happening in an international reality that imposes on Israel the slightest punishment that has brought it to this level of violence, illegitimacy, and immorality.

- The occupation must end its continuing control over the millions of Palestinians under its control. The so-called "status quo" secures only one thing: the descent of all who live in Palestine into a reality filled with more injustice, violence, and despair. If a non-violent exit from the current reality is not found, the fighting will continue until the end of the occupation because the Palestinian people are the only people on this planet under occupation. Any long-term Zionist occupation is barbaric, oppressive, and racist.

- The longest occupation in history will end soon because of the looming change in the balance of power and the Palestinian people strong will to end this racist occupation, which is the result of the injustice inflicted on them. They have endured more than a hundred years of occupation of their land.

## 1.2 Israeli Settlements

The concept of Israeli settlement is one of the most important Zionist intellectual premises and is based on two important philosophies:

1 - The expulsion of the Palestinian population from their land, using all means, such as killing, displacement, and destruction, and this philosophy in Zionist thought was evident through the practices carried out by the Haganah gangs on the ground in 1948.

2 - The seizure of Palestinian land, under religious and historical arguments, with the aim of applying the theory of Zionist replacement in Palestinian land, which is based on imposing a fait accompli through settlement and the establishment of a Jewish entity in the Arab region, starting from Palestine.

The Zionist concept of settlement requires gathering the largest possible number of settlers in the Palestinian territories, based on the Zionist idea that “there is no Zionism without settlement, nor based on what was said by a Jewish state without evacuating the Arabs and confiscating and fencing lands.” Israeli settlement means “taking a country as a home that seeks to eliminate the homeland of others, and the entry of a new foreign element with the aim of seizing part or all of the land.”

This is exactly what applies to the status quo in Palestine, whether it happened in 1948 or 1967, as the Israeli settlement represents a “replacement reality for Israeli settlers and soldiers and their housing in the occupied lands, by using military force to forcibly confiscate those lands.” This takes many forms, including economic, military, and civilian housing. (Bilal Ibrahim, 2010, p. 16)

What the West Bank is experiencing today does not deviate from this philosophy, as it is witnessing a massive settlement attack that leads to the replacement of the original inhabitants by settlers by trying to change the history, geography, and demography of the West Bank.

What the West Bank is experiencing today does not deviate from this philosophy, as it is witnessing a massive settlement attack that leads to the replacement of the original inhabitants by settlers by trying to change the history, geography, and demography of the West Bank. (Mamoun Shehadeh, 2009)

### **1.2 .1. The historical development of Israeli settlement policy in Palestine.**

The Zionist settlement chain began in Palestine in 1882, when Jewish settlement operations were limited until the nineteenth century, specifically in 1889, to the establishment of 22 settlements. Settlements in 1914 to 47 settlements, and in 1918, the area of land owned by Jews became about 5.2% of the land of Palestine.

The British Mandate period witnessed a boom in the number of settlements as their number increased to 304 settlements. This rise in the number of settlements is due to the British Mandate government's cooperation with the Zionist movement to expel the Palestinians, plunder their lands, and plant settlers there. The Israeli settlement projects developed later, according to the stages of the occupation and control of Palestinian land and the displacement of its original inhabitants to be replaced by settlers. (Awad, 2021)

**To understand the Israeli settlement phenomenon in the Occupied Palestinian Territory, it must be viewed as an integrated unit in accordance with the policies and projects adopted by the successive Israeli governments, including:**

**The first stage:** In the 1967–1976 stage, the settlements were selectively established as part of a settlement policy based on quality rather than quantity, and the settlements were concentrated in Jerusalem and the Jordan Valley, inspired by the Allon Plan, which is based on the strategy of narrowing the scope of available options for a solution (or settlement) regarding sovereignty over the occupied lands, through the application of a fait accompli by appropriating the land and building a wide settlement enterprise along the Jordan Valley, from the south of the Beisan Valley to the south of the Hebron desert, with a length of 115 km and a width of 20 km. In light of this plan, 34 settlements were built during the Labor Party era from 1968 to 1977, 12 of which were in Jerusalem.

**The second stage:** the stage of 1977–1984. This stage witnessed the rise of the Likud party and the increasing influence of the Gush Emunim settlement movement, in addition to the conclusion of the Camp David Accords with Egypt and the subsequent evacuation of the settlements of the Sinai Peninsula. This stage witnessed a boom in the construction and expansion of Israeli settlements. The theoretical framework for this expansion was a set of plans and settlement projects, the most important of which are:

a) **The Sharon Plan**

Ariel Sharon, chairman of the High Ministerial Committee for Settlement, devised this plan, which includes the establishment of a colonial bloc in the West Bank, cutting it longitudinally from north to south, from which wide cross sections extend. (Awad, 2021)

b) **Netanyahu's Drobilus Plan**

This plan aims to settle 12,000 Jews through the construction of 50 settlements, to be established in seven strategic places in the Palestinian territories.

c) **The Gush Emunim Plan**

According to the plan of this settlement movement, this plan revolves around building settlements in areas where other settlement projects are already in place. The plan aims to preserve the surrounding areas from the Jordan Valley to the coast and control the mountain range in the West Bank.

**The third stage:** The 1985–1990 Stage witnessed a return of the pace of settlement expansion to something similar to the first stage. This may be due to the lack of many places suitable for settlement, in addition to the conflict in the settlement vision between the two parties to the government in Israel, the Labor Party, and the Likud Party.

**The fourth stage:** The 1991–2018 stage witnessed the start of the negotiation process between the Israeli occupation state and the leadership of the Palestine Liberation Organization (PLO) for the political settlement that resulted in Oslo on September 13, 1993 between the PLO leadership and the Israeli occupation, and the establishment of the Palestinian Authority in the West Bank First and then the Gaza Strip. But the political track came to a halt after the Israeli authorities insisted that the Israeli occupation was not serious about leaving the West Bank without occupation and the occupied city of Jerusalem in reaching a peace agreement to end the extended Palestinian-Israeli conflict and America's lack of seriousness in pressuring Israel to advance the peace process and meet. Terms and requirements of the political process. (Awad, 2021)

**This stage witnessed many laws being issued in favor of settlements, most notably:**

- 1. The construction of the Separation Wall in 2002**, which forms part of the infrastructure for settlements, surrounds the West Bank and penetrates its lands, and contributes to the seizure of vast areas of Palestinian lands. The building of settlements intensified. In 2007, 3,614 housing units were built. The number of settlers in the West Bank increased by 486 thousand, and in East Jerusalem, about 200 thousand settlers. The number of Israeli settlements in the West Bank at the end of the year (2020) reached 141, including 26 in Jerusalem.
- 2. The 2017 Legalization of Outposts:** In February 2017, the Israeli Knesset approved the second and third reading of the so-called Outposts Law, legalizing outposts built on privately owned Palestinian lands in the occupied West Bank, with the support of 60 members out of 120 in the Israeli Knesset, and this is the first time that the Knesset has approved a law that includes the private property of the Palestinians in the occupied Palestinian territories. However, this does not mean that Israel still controlled Palestinians' private properties throughout its years of occupation. An analytical study conducted by the Applied Research Institute – Jerusalem (ARIJ) on settlements showed that 49% of the settlement area was built on privately owned Palestinian lands, while 51% was built on lands classified by Israel as state lands. For example, the area of Israeli settlements in the Jerusalem governorate is 868.40 dunams, or 73% of them are built on privately owned lands, including lands that were illegally and unilaterally annexed by Israel to (Awad, 2021)

The municipal boundaries of Jerusalem. As for the Ramallah governorate, the total area of settlements reached 181.32 dunams, or 62% of them built on privately owned lands.

3. **The Nationality Law 07/19/2018.** The Israeli Knesset approved on July 19, 2018 by a majority that Israel is the nation state of the Jewish people. Regarding settlements, 62 members voted against 55 members, and two members abstained. This law stipulates that the development of settlements is a national value, and the state works to encourage, support and establish settlements (Awad, 2021).

### **1.2.2 Israeli allegations on the legality of Israeli settlements**

#### **A. Historical Claims**

Israeli claims that Jews have been living in the Occupied Palestinian Territory for thousands of years without ever forming a state for them include Jewish immigration and settlement through a League of Nations mandate over 90 years ago that is still valid today.

In its advisory opinion on the international status of Southwest Africa, the International Court of Justice established that the mandate system is still in force, even though the League of Nations ceased to exist after its collapse with the start of World War II.

#### **B. Legal Claims**

1. **The claim that Palestinian land is disputed, not occupied.** Israel claims that it has a right to the occupied Palestinian territories, which is an ongoing historical debate because its existence parallels the existence of the Palestinian-Israeli conflict on the ground. The Israeli view is that Israel's right to settle in Palestine is derived from the British Mandate over the (Khalidoun Dwaikat, 2018, p. 20)

Occupied Palestinian lands in 1922, and that Israel's claim to this land and building settlements on it is understood as a right that Israel will not give up as long as this right derives from the presence of Jews in this spot in time. However the International Court of Justice found that the historical theory cannot be adopted and that it is controversial because the Israeli occupation came after the British Mandate and there can be no evidence of the presence of Jews in Palestine and that there are important changes in international law that led to the falsehood of these allegations.

2. **Israel believes that the Geneva Conventions do not apply to settlements in the West Bank.** These agreements deal only with occupied territories and do not apply to disputed territories, and they claim this is the case in the West Bank. Israel objected to the full application of the Fourth Geneva Convention of 1949 to the occupied territories in 1967, and that Israel made a voluntary decision to abide by the humanitarian provisions of the Geneva Convention on the West Bank and Gaza Strip.
3. **Israel also believes that the agreements concluded in 1993, the Oslo agreement and its aftermath,** do not contain any danger to the construction or expansion of settlements and left the determination of the settlement issue to permanent status negotiations. However, Israel agreed to initiatives for a voluntary settlement freeze several times by placing it as a contribution to building confidence with the Arabs and to encourage a process political settlement in the region.
4. **Israel confiscated these disputed lands while they are in a state of self-defense and their borders have been revealed.** Buildings and lands in the occupied areas may be temporarily used for various purposes for a security necessity, and that the settlements (Khalidoun Dwaikat, 2018, p. 20)

Exist to meet the military needs, as they claim, and that the Israeli occupation state will keep these disputed lands until the completion of the settlement process. Negotiations for new legally recognized borders.

5. **Regarding the population transfer mentioned in Article 49 of the Fourth Geneva Convention of 1949 under the title of deportation** displacement and eviction, it was intended to prevent the forced transfer of the civilian population, and this was done by Israel in the settlement operations in East Jerusalem, the West Bank and the Gaza Strip and allegations that Israel did not forcibly transfer its citizens to the Occupied Territories and that the Geneva Convention does not impose restrictions or prohibitions on the voluntary movement of individuals and their right to choose their place of residence. These claims are refuted by the settlements on the Occupied Palestinian Territories and the existence of significant demographic change in the population.
6. **Israel refuses to include settlement activity under the category of war crimes because the transfer of the civilian population in the occupied territories cannot be qualified as a war crime**, such as attacks on population centers and civilians or mass murder, and that the tendency to criminalize the movement of settlers to live in the West Bank is to use the decisions of the International Court of Justice for political purposes. (Peace Now Movement, 2018).

**The researcher sees fit to provide counterclaims to the Israeli allegations of its right to build settlements.**

**First: Responding to Historical Allegations**

- If we accept, for the sake of argument, the historical claim that the Jews belong to the Palestinian lands, then this claim has no basis in reality, logic, or international law. This is because the Jews' attachment to Palestine was cut off when they were expelled by Hadrian, then-emperor of the Roman state. The Jewish population have been away for more than eighteen centuries.
- Israel's religious, historical, and security claims are not significant to warrant a discussion of the legal status of settlements. This is because these claims are not even related to the subject of discussion here, and are not serious, realistic or correct from a legal point of view.

**The researcher sees fit to respond to the legal allegations.**

- With regard to the application of the Geneva Conventions of 1949 to the settlements in Jerusalem and the areas occupied in 1967, international law did not leave the matter for states to determine the extent of the applicability of the Geneva Conventions to issues of inter-state disputes. Security Council Resolution 446 refers to the Fourth Geneva Convention as the legal reference applicable to the territories occupied in 1967. The Committee on the Elimination of All Forms of Racial Discrimination confirmed that the situation in the settlements is clearly inconsistent with Article 3 of the Fourth Geneva Convention. Amnesty International and Human Rights Watch confirmed and described the settlements as a flagrant violation of all international conventions, norms and laws.

- The transfer of the settler Jewish population to live in the territories occupied in 1967, according to Amnesty International, constitutes a violation of Palestinian human rights, because the existence of settlements requires the confiscation of Palestinian lands, whether it is private or public property, for the benefit of settlers. The rights of the Palestinian people, and the possibility of expulsion from their place of residence are risks associated with the building of settlements. The presence of settlements has also led to restrictions on the freedom of movement and travel of Palestinian citizens in their country.

- The existence of settlements constitutes a violation of the rights of the occupied Palestinian people, as these settlements were established as private lands belonging to the Palestinians, and that these settlements limit the ability to freely dispose of the natural resources in the area. They also endanger the right of the Palestinian people to self-determination. This right constitutes a necessary basis for the rules of international law.

- International resolutions and laws stipulated the protection of the rights of citizens in their occupied lands. The 1949 Geneva Convention states in Article 49 that the occupying power may not transfer all or part of its population to the lands it has occupied. The process of confiscating and annexing lands and building Israeli settlements is inconsistent with international agreements, as well as the text of Article 47 of the Geneva Convention of 1949 and the Hague Convention, which emphasizes in its entirety the need to protect the interests of the people suffering under occupation.

### **1.3. International Law Perspective on Israeli Settlements**

The establishment of settlements and population transfer contradict the principles of international law, including the Geneva Conventions, the Charter of the United Nations, the Hague Regulations, International Covenant on Economic, Social and Cultural Rights, the Universal Declaration of Human Rights. It is also inconsistent with the resolutions of the United Nations.

There are many international resolutions regarding the illegality of settlements in the occupied territories, which also contradict the 1993 Declaration of Principles Agreement. In addition to its failure to abide by the rules and provisions of international law, Israel has also failed to comply with United Nations resolutions that deny any legal status to settlements and land annexation procedures, and the resolutions demanded that Israel stop building and expanding settlements in the Arab territories occupied since 1967, including the city of Jerusalem. Some of these resolutions include Security Council Resolutions No. 446 of 1979, Resolution No. 452 of 1979, and Resolution No. 465 of 1980, which demanded a stop to the fragmenting of Jerusalem. Other resolutions include Security Council Resolution No. 2334 of 2016, which considered the Israeli occupation authorities' building of settlements to have no legal legitimacy and to be in violation of international norms and laws.

### **1.3.1 Israeli Settlements in United Nations Resolutions**

United Nations resolutions dealt with the illegality of Israeli settlements in the occupied territories, in addition to population displacement and land confiscation. The following are the most important United Nations resolutions regarding Israeli settlements and Israeli actions in the occupied territories.

#### **1.3.1.1 Israeli Settlements in UN Security Council Resolutions**

The resolutions issued by the UN Security Council stipulated that settlements are illegal, and constantly demanded the Israeli governments to end their pro-settlements policies, whether in the West Bank or occupied Jerusalem. Highlighted below are some of the most important of these resolutions.

##### **1. Resolution No. 442, adopted by the UN Security Council on March 22, 1979.**

The resolution emphasized that the Geneva Convention applies to the occupied Palestinian territories. The resolution also emphasized that the establishment of Israeli settlements in the 1967-occupied Palestinian territories had no legal basis. The resolution affirmed that Israel must abide by the Fourth Geneva Convention and demanded the end of any measures that may change the reality on the ground, would lead to a change in the legal status and geographical character, or may lead to a tangible impact on the demographic structure. The resolution announced the formation of a tripartite committee of UN Security Council members to study the situation in the settlements and submit its report to the Security Council. Israel refused to cooperate with the UN Security Council Committee, ignored the resolution, and continued to confiscate Arab lands and build Jewish settlements on these lands (Kamal Qaba, 2017).

## **2. Resolution No. 465 of 1980.**

This resolution clearly and explicitly states that the measures taken by the Israeli governments to change the physical characteristics and demographic structure in the Palestinian territories occupied in 1967 have no legal basis, and that their policies and procedures aimed at resettling a portion of the new settlers in the Palestinian territories constitute a legal violation of the Fourth Geneva Convention, which states that the residents of Israel must dismantle all settlements established in the West Bank, and immediately stop establishing any new ones.

## **3. The Security Council Resolution regarding the Separation Wall on October 21, 2003.**

The resolution called on Israel to stop and remove the apartheid wall built on privately owned Palestinian lands in the Palestinian territories, which is built in favor of the settlements at the expense of Palestinian lands. The resolution was based on the advisory opinion issued by the International Court of Justice in 2004, which represents an important legal reference in emphasizing the illegality of the Israeli settlements, given that the Apartheid Wall was built in the occupied West Bank.

## **4. Security Council Resolution No. 2334**

Resolution 2334 is the first resolution that directly addresses the problem of illegal Israeli settlements, which decided that Israel should immediately stop all settlement activities. No country voted against the resolution, while 14 countries voted in favor and the United States abstained. (Khaldoun Dwaikat, 2018, p. 55)

The resolution affirmed the applicability of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949 to the Palestinian territories, including East Jerusalem and other Arab territories occupied since 1967. The resolution recalled the advisory opinion issued on July 9, 2004 by the International Court of Justice, and condemned all other measures aimed at changing the demographic makeup, character, and status of the Palestinian territories occupied since 1967, including East Jerusalem by, inter alia, the construction and expansion of settlements, the transfer of Israeli settlers, the de facto confiscation and annexation of land, the demolition of homes, and the forcible transfer of Palestinian civilians, in violation of the law. The resolution reaffirms its vision for a region in which two democratic states, Israel and Palestine, live side by side in peace within secure and recognized borders.

The resolution also clarified that changes to the 1967 borders will only be recognized by consensus of the parties, stressing the distinctions in treatment between Israel and the territories occupied in 1967 and reaffirming the urgent need to achieve a just, comprehensive and lasting peace on the basis of the relevant United Nations resolutions and the Madrid terms of reference, including: That is the principle of land for peace, the Arab peace initiative, and the road map (Kamal Qaba, 2017).

### **1.3.1.2 United Nations General Assembly Resolutions on Israeli Settlements**

All resolutions of the General Assembly have clearly and explicitly stated that the establishment of Israeli settlements constitutes a violation of international law, and that ongoing settlement activity is a clear violation of international law and Palestinian human rights. They also contradict what was agreed upon between the Palestinians and the Israelis in 1993 under the Oslo Accords. Below are some of the most important resolutions issued by the General Assembly:

#### **1. Resolution No. 2443 issued on December 19, 1968.**

The resolution formed the decision of the Commission of Inquiry into Israeli Violations Committed against the Palestinians, which later determined that the evidence, including the testimonies given before the Commission on Annexation and Settlement, supported the allegations that Israel pursued a policy of annexation and settlement in the occupied territories.

#### **2. Resolution No. 60/106 of 2002.**

This resolution stated that the occupying power's transfer of some of its civilian population to the lands it occupies is a violation of the Fourth Geneva Convention and the relevant provisions of customary law. It also affirmed that the Israeli settlements in the Palestinian territories, including East Jerusalem, and in the occupied Golan Heights in the Syrian territory, are illegal and constitute an obstacle to peace as well as economic and social development (alghad, 2018).

### **3. Resolution No. 60/105 of 2005.**

The resolution affirmed the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory and recalled the International Court of Justice's decision to consider the establishment of Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, a violation of international law, and that Israeli settlement activities constitute a violation of international humanitarian law. The resolution also acknowledged the settlements' detrimental effect on peace efforts in the Middle East. The resolution also noted that the construction of the Separation Wall constitutes a violation of international law and called for the dismantling of existing settlements. (Kamal Qaba, 2017)

## **1.4 Apartheid**

Apartheid was the system of government and racist policy pursued by the white minority government in South Africa from 1948 until 1990. This policy was based on the principles of apartheid between the ruling white settlers and the black indigenous peoples, and the preference of white people over black people in all areas.

Apartheid is defined as acts committed for the purpose of establishing and maintaining domination by one racial group over another racial group, with the former systematically oppressing the latter.

### **Principles of Apartheid**

1. Carrying out a settlement project within a settlement activity separate from the state occupying its lands.
2. Ethnic discrimination between two groups of the population.
3. The dominance of the occupying state over the occupied people.
4. Control over all the wealth of the occupied land.
5. A pervasive political and religious culture based on ethnic theories espoused by the state and the church and constituting a theoretical and moral justification for the apartheid regime (John Dugard, 2013, p. 667).

### **1.4.1 The History of Apartheid**

The System in South Africa began in the mid-17<sup>th</sup> century, when Calvinists of Dutch, German and French ancestry settled around the Cape Colony of South Africa (today's Cape Town). The white European settlers were originally known as Boers. They later became known as Afrikaners (people who speak Afrikaans). Britain conquered the Cape Colony in the late 18<sup>th</sup> Century, resulting in multiple severe clashes between the Afrikaners, who migrated north and established two independent republics, and the new British regime. Over the course of the 19<sup>th</sup> Century, the British Empire extended its rule in the south. In 1910, the independent republics united with the areas under British control to form the Union of South Africa, which remained under British rule but had limited autonomy, controlled by white settlers (English and Afrikaans speaking). The first government of the Union was led by the South African Party (SAP), which adopted a pro-British line. An opposition party, the National Party (NP), was formed in 1914. One of the issues that the Afrikaner Nationalists did not address with the ruling party was the active participation of South Africa in World War II on the side of Britain and the Allied forces. The word apartheid (apartness in Afrikaans) expresses the notion of organizing the regime and society in a manner that would ensure separation between races in all aspects of life and the dominance of the white race. It first appeared in 1929, and became a cause in the creation of the NP in 1944. On May 28, 1948, the NP won the election (in which only whites voted) and began reforms designed to incorporate the notion of apartheid in South African society and in the country's economy. It should be noted that the NP's apartheid policies were not purely its invention. The party relied heavily on already existing legislation, policies, and practices. (Michael Sford, 2020, p. 9)

In British rule, which gave different rights to the black indigenous people (the African majority), who lived mostly in the Cape area, Asians, who were brought from India and Southeast Asia and their descendants, and whites. Most non-white residents of South Africa could not vote or run for public office even before the NP took power, under laws enacted beginning in 1910. By the time the NP won the election and formed a coalition government with another nationalist party, the Afrikaner Party, the notion of racial segregation and white rule had already been ingrained in local politics. Nevertheless, the NP's ascendance saw apartheid being adopted as an official policy dictating actions in various fields of governance. Proponents of the apartheid policy argued that it was designed to ensure "separate development" for members of the country's different ethnic groups, while preserving their unique features, heritage, and culture.

In practice, the policy developed into a complex system of laws and regulations that gave the white minority control over all sources of power politics, economic activity, as well as natural and other resources, including land, all while excluding members of other racial groups. This is known as "grand apartheid." It concerns the systematic, institutional discrimination of one group by another, in the context of the domination of the discriminating group over the discriminated one and with the intention of perpetuating the said domination. In addition to establishing the rule of the white hegemony, as described above, apartheid laws included compulsory physical and social separation in communities, educational facilities, public transportation, access to health services, and cultural and leisure activities, with the best reserved for the white minority. This racial segregation, immortalized in photographs taken in public drinking fountains and busses have, over the years, come to symbolize apartheid. (Michael Sfar, 2020, p. 11)

The people who fought the regime referred to this as “petty apartheid.” Humiliating and hurtful, petty apartheid complemented grand apartheid, whose ramifications for the lives and futures of non-whites were far greater. At their peak, apartheid laws forbade interracial marriage and sexual intercourse, restricted freedom to oppose apartheid and work to end it, and banned political and professional associations. (Michael Sfar, 2020, p. 11)

## Conclusion

- Israel's long-term occupation of Palestine the Hundred Years' Occupation of Palestine Israeli settlements are based on colonial and racist foundations that contradict all international norms and laws. The Zionist movement focused on immigration and settlement to implement its settler colonial project.
- The chronology of the occupation that established an apartheid regime in occupied Palestine began with the Balfour Declaration and then the British Mandate, followed by the immigration of Jews to Palestine and the United Nations General Assembly resolution on the partition of Palestine, and after this decision Palestine was occupied from 1947 to 1967, and crimes against humanity were committed by the Jews, including The Deir Yassin massacre, the declaration of the establishment of the State of Israel by the outbreak of the 1948 war, the division of the West Bank and the Gaza Strip, and the occupation of all of Palestine in the 1967 war, through the Oslo Accords and international solutions, including the two-state solution and the Deal of the Century. All of these events I will analyze in the second chapter and link them to the crime of apartheid in Palestine.
- Israeli settlement: The concept of Israeli settlement is one of the most important Zionist intellectual premises and is based on two important philosophies: the expulsion of the Palestinian population from their land by all means such as killing, displacement and destruction, and the confiscation of Palestinian lands on religious and historical pretexts.

- The establishment of settlements and population transfers are contrary to the principles of international law, including the Geneva Conventions, the Charter of the United Nations, The Hague Regulations, the International Covenant on Economic, Social and Cultural Rights, and the Universal Declaration of Human Rights. It also contradicts United Nations resolutions.
- • Apartheid is defined as the actions that are committed with the purpose of establishing and maintaining the domination of one ethnic group over another ethnic group, with the first group systematically suppressing the latter. I will link this definition in Chapter Two to the Israeli settlement in the occupied Palestinian territories and how the settlement created, reinforced and demonstrated apartheid In Palestine.

## **Chapter 2**

### **2. Legal framework**

#### **2.1. The crime of apartheid under international law definition and elements of the crime**

The criminalization of apartheid under international law On December 1950 the UN General Assembly adopted a resolution stating that a policy of 'racial segregation (Apartheid) is necessarily based on doctrines of racial discrimination and calling on South Africa to refrain from enacting laws that define separate living areas for different racial groups.

The term racial discrimination was officially defined for the first time in Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which the UN General Assembly opened for signature on December 1965.

The definition included in the ICERD went beyond discrimination on the basis of race alone:

*Any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.*

The definition of racial discrimination in ICERD goes beyond the traditional, narrow scope of racial group, which focuses on a biological-genetic classification of humans, towards a social approach that looks at the political and identity classifications of groups of people, and includes these in its definition of race as well. Over the years the conceptualization of race as a social construct has taken hold. For instance, the International Criminal Tribunals for Rwanda and the (John Dugard, 2013)

Former Yugoslavia have ruled that the definition of a certain group as a “racial group” depends on circumstances and on social cultural and political context. According to the tribunal such a definition is arrived at on a case by case basis (and is not limited to racial, biological origin). The idea that racial groups are determined by self-identification with a social, cultural or political group adopted in the jurisprudence of these tribunals is in line with the recommendations of the UN Committee on the Elimination of Racial Discrimination (1990) whereby membership in a racial group should be based on self-identification.

Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination sets forth that:

*States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.*

Until 1966, the UN General Assembly addressed South African Apartheid in terms of a violation of the principles and spirit of the Charter of the United Nations (1945) and the Universal Declaration of Human Rights (1948). On December 1966 the UN General Assembly issued its first condemnation of apartheid in terms of crimes against humanity. In 1968 the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity set forth that “inhuman acts resulting from the policy of apartheid” are considered crimes against humanity. The term “inhuman acts” opened a space for interpretation as to whether the apartheid regime itself is criminal as opposed to inhuman acts resulting from it or carried out as part of it that have been expressly criminalized.

It is against this backdrop that the UN General Assembly began drafting an international convention on the suppression and punishment of the crime of apartheid as a regime. (Abdul Ghani Salama, 2021)

### **2.1.1. The criminalization of apartheid under international law**

#### **2.1.1.1 The Apartheid Convention**

On November 1973, the UN General Assembly opened the International Convention on the Suppression and Punishment of the Crime of Apartheid (ICSPCA) (hereinafter: Apartheid Convention) for signature. The Convention came into effect on July 1976. The Apartheid Convention defines the crime of apartheid as “inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them. The preamble to the final version of the Convention lists the sources for the assertion that apartheid is a crime against humanity. They include the Universal Declaration of Human Rights (1948) which declares all persons are born equal in rights and dignity and that all are entitled to all the freedoms listed in the Declaration regardless of race, color or nationality the Declaration on the Granting of Independence to Colonial Countries and Peoples (1960) in which the UN General Assembly declared that liberation from colonial rule is inevitable and that colonial rule must end along with the practices of separation inherent in it. the Convention on the Prevention and Punishment of the Crime of Genocide (1951) which the preamble to the Apartheid Convention states incriminates certain acts that may also come under the definition of the crime of apartheid as well as other international conventions and declarations some of which were mentioned above. Article I of the Apartheid Convention states that “States Parties declare that apartheid is a crime against humanity and that inhuman acts resulting from the policies and practices of apartheid and similar policies and practices of racial segregation and discrimination, as defined in Article II of the Convention, are crimes violating the principles of international law, in particular, the purposes and principles of the Charter of the United Nations. (John Dugard, 2013, p. 349)

Article II of the Apartheid Convention defines apartheid as (underline emphasis added, M.S.):

*For the purpose of the present Convention, the term “the crime of apartheid”, which shall include similar policies and practices of racial segregation and discrimination as practiced in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:*

1. Denial to a member or members of a racial group or groups of the right to life and liberty of person:
  - a) By murder of members of a racial group or groups
  - b) By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment.
  - c) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups.
2. Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part
3. Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work (Convention Crime of Apartheid, 1973)

4. the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association.
5. Any measures including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups the expropriation of landed property belonging to a racial group or groups or to members thereof.
6. Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour.
7. Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.

On 19 June 1976, the UN Security Council made its first declaration condemning the crime of apartheid and treating it as a crime against humanity. On 8 June 1977 the First Protocol Additional to the Geneva Conventions of 12 August 1949 was published listing the crime of apartheid as a grave breach of the Convention and a war crime.

On 3 September 1981 the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) entered into effect. In its preamble the Convention declares that the eradication of apartheid all forms of racism racial discrimination, colonialism, neocolonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women. (Recommendation, 1995)

The criminalization of apartheid as an international crime continued after South Africa's apartheid regime collapsed.

In a resolution dated 18 August 1995 the UN Committee on the Elimination of Racial Discrimination affirmed the universal application of Article 3 of ICERD which prohibits all forms of racial segregation and apartheid and emphasized that the prohibition on racial segregation applies to all countries.

In 1996 the Truth and reconciliation commission of South Africa, headed by Archbishop Desmond Tutu declared that being part of the international human rights community it considers apartheid a crime against humanity.

Two years later the Rome Statute was opened for signatures. The statute is the constitution of the International Criminal Court in The Hague (the ICC) and the legal source for its operation.

#### **2.1.1.2. The Rome Statute**

On 1 July 2002 the Rome Statute which constitutes the ICC went into effect. The Statute lists apartheid as one of eleven crimes against humanity and defines it as follows:

*Acts of a character similar to those referred to in paragraph 1 committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.*

The definition of apartheid in the Rome Statute focuses on an institutionalized regime and the crime committed as part of it.

The acts the definition refers to are those “of a character similar” to other crimes against humanity included in Article 7 of the Rome Statute (murder extermination enslavement (Rome Statute, 1998)

Deportation or forcible transfer of population imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law torture rape sexual slavery and other forms of sexual violence persecution; enforced disappearances and other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health. This last item is a catch-all phrase that applies to cases of particularly grave physical or mental violence as part of a broad attack on a civilian population.

### **2.1.2. The elements of the crime**

The main legal sources listing the elements of the crime of apartheid as an international crime are the Apartheid Convention and the Rome Statute each of which contains a full definition of the crime.

The ICERD is another relevant instrument as it specifies the definitions of “racial discrimination and racial group expanding the group classification to include ethnic and national origin among others.

The definition of apartheid differs between the two conventions, but they share many common features.

Most important to the matter at hand is that under both definitions apartheid is a regime focused crime. In other words, it is a crime that centers on the existence of a regime that has certain attributes. While unlike the Rome Statute the Apartheid Convention does not use the term regime it does however require a body of practices and policies that are implemented systematically similarly to South Africa and thus also depicts an institutional crime.

Specific acts defined as inhuman acts carried out as part of this regime implicate the individuals who commit them in the crime of apartheid. (John Dugard, 2013, p. 883)

As for inhuman acts, there are certain differences between the definitions included in the conventions as well as considerable overlap: Many of the inhuman acts listed in Article 2 of the Apartheid Convention could come under the crime of persecution listed in Article 7(1) (h) and defined in Article 7(2)(g) of the Rome Statute (the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity) or in the catch-all phrase included in Article 7(1)(k) (“Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health).

And so, both definitions, in the Apartheid Convention and in the Rome Statute list three elements of the crime act context and purpose:

1. Act - the commission of one of the acts defined as “inhuman.
2. Context - A regime of control and oppression of one group (or groups) by another group (or groups); the terms systemic control and oppression should be read literally and as related to one another: a system that allows enforcing the inferiority of one group to another. This will mostly be manifested in institutionalized discrimination in rights and resources.
3. Purpose - The preservation of control by the discriminating group (or groups) over the group (or groups) subjected to discrimination; These three are complemented by the requirement applicable to all crimes against humanity that the act in question form part of a systematic or widespread attack on a civilian population rather than a single act.

The full list of elements of the crime of apartheid will be extricated from the three (John Dugard, 2013, p. 883)

mentioned above, act, context and purpose, after adding the required sub-elements (the existence of more than one racial group; the act being committed as part of a widespread attack on a civilian population and others).<sup>30</sup> For purposes of this opinion, we adopt a restrictive approach that looks only at acts that meet the criteria of both instruments.

When the elements listed below are present a crime of apartheid has allegedly been committed. The word allegedly has been added because crimes are perpetrated by people, and liability requires the mental element of awareness of the acts and their context along with intent to maintain the regime as mentioned. The specific liability of one person or another for a crime can only be determined individually according to findings about what the person knew and intended.

### **The elements of the crime of apartheid**

1. The presence of different racial groups as per the definition in Article 1(1) of the ICERD (which expressly includes race, color, descent, or national or ethnic origin).
2. The context of a regime in which one group (or groups) dominates another group (or groups) and systematically oppresses its members, in other words, enforcing the inferiority of one group compared to another usually through institutional discrimination in rights and resources but also through segregation practices.
3. The commission of one of the acts defined as inhuman and listed in Article 2(a)-2(f) of the Apartheid Convention or Article 7(1) of the Rome Statute. It is noted, in this context, that the commission of the crime of apartheid does not require the presence of all inhuman acts listed in the relevant articles. However, since the crime in question is a crime against humanity, it is reasonable to assume a certain degree of severity will be required, and since there is no jurisprudence on the issue, it is difficult to predict how the requirement for an inhuman act will be interpreted in terms of scope. (Michael Sfard, 2020, p. 165)

4. The commission of the acts for the purpose of establishing and maintaining the context domination by a racial group (or groups) over another racial group (or groups) and its systematic oppression. In this context an assessment must be made to determine whether the acts are sporadic or lack institutional context, or whether they are perpetrated as part of a widespread systemic institutionalized regime of oppression.
5. The acts forms part of a systematic or widespread attack on a civilian population (a requirement for all crimes against humanity).

The mental element: In addition to these, concrete criminal liability requires the mental element of awareness of the nature of the inhuman acts, their being part of a larger apparatus for their commission and the aforesaid regime context. It also requires intent to maintain the regime context

### **2.1.3. The prohibition on the commission of the crime of apartheid as jus cogens or peremptory norm**

The prohibition on apartheid has become a central accepted norm in international law, anchored in declarations resolutions conventions and even a prohibition written into international criminal law. The elevated status this principle enjoys stems not only from its wide acceptance by the international community and its institutions, but also from the fact that it is rooted in the heart of the moral code which is the foundation of international law.

Today there is broad consensus that this prohibition has attained the highest status a legal principle can achieve in international law - jus cogens, or peremptory norm. (ICC, 2011)

Article 53 of the Vienna Convention on the Law of Treaties (1969) defines a jus cogens norm as a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted.

The Article also states that any treaty that is in conflict with such a norm is void (as reinforced in Article 64 of the Convention as well) and that a norm of this caliber can only be modified by a later norm of the same character. Norms that have attained jus cogens status in the past include the prohibitions on genocide and on the slave trade.

Evidence of the wide consensus that apartheid belongs among the rare prohibitions with jus cogens status can be found in the fact that it is listed alongside prohibitions whose jus cogens status is uncontested in the Draft Articles on Responsibility of States for Internationally Wrongful Acts, issued in 2001 by the International Law Commission (ILC) as examples of breaches of international law that include a wrongful act component.

The ILC which is the highest level UN body dealing with the interpretation of international law and the drafting of international conventions, also notes the widespread agreement among states regarding the fundamental nature of the prohibition on apartheid, and notes it considers it a norm that admits no exceptions under the general principles of international law. The ILC has recently restated its position in no uncertain terms and included apartheid in a tentative list of norms that have attained jus cogens status in a report summarizing its draft conclusions on the issue. (Report of the International Law , 2019, p. 23)

It is important to note that jus cogens norms give rise to obligations erga omnes meaning obligations whose violation is considered a violation against the entire international community rather than only the victim or the other party involved in the act inasmuch as such exists (not every norm that gives rise to obligations erga omnes is necessarily a jus cogens norm but every jus cogens norm does give rise to obligations erga omnes). Therefore a breach of the prohibition on apartheid imposes duties on all states not just the specific victims of the crime.

It is also worth noting in this context that in the matter of Barcelona Traction Light and Power Company (Belgium v. Spain) the International Court of Justice (ICJ) ruled that the prohibition on racial discrimination was an erga omnes obligation and stated it may arise from principles and rules concerning the basic rights of the human person including protection from slavery and racial discrimination.

It is worth noting that the ICJ is the highest judicial instance of the UN and the competent authority on the interpretation of international law. Its decisions constitute a source of customary international law.

The aforesaid indicates it is widely accepted that the prohibition on the establishment and maintenance of a regime based on institutional systemic discrimination and control by the discriminating group over the group subjected to discrimination such as a regime of apartheid is a jus cogens norm that gives rise to obligations erga omnes. (John Dugard, 2013, p. 885)

#### **2.1.4. The Scope and application of the principle of universal jurisdiction**

The principle of universal jurisdiction is one of the main tools for ensuring the prevention, criminalization and punishment of serious violations of international humanitarian law.

The system of "grave violations", as set out in the International Convention for the Suppression of the Crime of Apartheid and the Rome Statute, provides that states parties must search for persons

who allegedly committed or ordered these violations. Conventions and Protocol that have been defined as grave breaches, and either brought before its courts - regardless of the nationality of these persons - or handed over to trial by another State Party concerned.

Effective implementation of these obligations requires each State Party to extend universal jurisdiction to the list of grave breaches in its national legislation. When states become aware that persons alleged to have committed a serious violation of international humanitarian law are on their territory or in places under their jurisdiction, it is their responsibility to ensure that such persons are investigated and brought to justice, where appropriate, for the crime of apartheid.

In addition, state practice and laws of opinion have helped establish a customary norm under which states can grant their courts universal jurisdiction over other serious violations of international humanitarian law.

In addition, the updated commentary considers in detail the principle of universal jurisdiction contained in the system of grave breaches and the ways in which States Parties have implemented it in recent decades. While states may make conditions for the application of universal jurisdiction for serious violations or other serious violations of international humanitarian law - such as the presence of the alleged perpetrators on their territory or the special discretion of the prosecution - such conditions should, in all circumstances, seek to maximize effectiveness. The predictability of universal jurisdiction and should not unduly limit the possibility of prosecuting suspected perpetrators. (icrc, 2016)

The updated comments also address other key issues, such as the time frame for fulfilling the obligation to investigate alleged serious violations and either prosecute or extradite those responsible; The challenges that states face when implementing universal jurisdiction; The state of international law today with regard to potential jurisdictional and prosecution immunities for alleged serious violations of international humanitarian law; And the applicability of the system of grave violations to grave violations of international humanitarian law in non-international armed conflicts.

States bear the primary responsibility for investigating and prosecuting the perpetrators of serious violations of international humanitarian law, particularly the perpetrators of the crime of apartheid. When they do not take legal action against individuals suspected of such crimes on the basis of other grounds of jurisdiction, the use of universal jurisdiction can be an effective mechanism to ensure accountability and reduce impunity. (ICC, 2011)

## **2.2. The role of settlement in creating the apartheid regime in the West Bank and East Jerusalem**

### **2.2.1. The presence of two groups**

The presence of two groups, an element in the definition of the crime of apartheid, certainly applies in the space examined here. Two racial groups, in the meaning of the term as explained above currently live in the West Bank: Israeli Jews on the one hand and Palestinians on the other. These are two national groups perceived as such both by their members and by others. National origin is expressly written into the definition of racial groups in ICERD.

The group of Israeli Jews lives in 132 settlements and more than 120 unauthorized outposts, with a total population of some 460,000 as of October 2020 and an additional 230,000 in East (Khaldoun Dwaikat, 2018)

Jerusalem as of 2020. The magnitude of the Israeli settlement enterprise in the West Bank has generated a reality in which two national groups live in the same geopolitical area, with one, the Palestinian, making up some 86% of the total population.

### **2.2.2. A regime centered on systemic domination and oppression of one group by another**

A regime centered on systemic domination and oppression of one group by another The requirement of a system of domination and oppression for the crime of apartheid, as explained in the previous section, necessitates the identification of a regime that imposes and enforces collective inferiority, mainly through systemic, institutionalized discrimination in rights and resources as a central, constitutive feature of the regime.

Military occupation is, by definition, a belligerent, coercive regime imposed on the occupied population. In the case of the West Bank, the element of domination and oppression inherent in any military occupation is compounded by a concrete group context - the presence of the Israeli settler population.

The international laws of occupation confer on the Israeli military commander all state powers in the West Bank, and as such, he plays the role of legislative, executive and judicial branch in the area he commands. This means the military units to which the military commander's powers are delegated, the Judea and Samaria Brigade and the Civil Administration, exercise governmental powers and govern the territory and its residents by force – through the barrel of their guns. This is the case with any military occupation, and the Israeli occupation of the West Bank is no different. In specific terms, Israel's military occupation of the West Bank coincides with a process of colonization, the settlement of citizens of the occupier in the area and the creation of a civilian (peacenow, 2021)

Occupier community. Indeed, in the West Bank, the occupying force is an organic part of one of the groups living in the area, the Israeli-Jewish minority. Members of this group are citizens of the occupying power, the State of Israel, whose military is the occupying force. The presence of Israeli settlers in the occupied territory forces governmental institutions in the West Bank to serve and protect them and see to their welfare. As noted, the magnitude of the Israeli settlement enterprise in the West Bank has forced a reality of two national groups living in a single geopolitical area. One community is made up of civilians living under occupation, ruled by the military and subject to laws the creation of which they cannot influence (with the exception of the very limited legislative powers of the Palestinian Authority).

The other is made up of citizens of the occupying country. One community has no civil rights by definition (or rather its civil rights are suspended because of the occupation) while the other enjoys the full gamut of civil rights and has all the political influence citizens of a democracy have. One is politically invisible, while the other enjoys a great deal of political power, with connections to, access to and membership in the centers of power that shape everyone's future. This civic reality, in which right less subjects live in the same territory and under the same rule as masters who enjoy both power and rights inevitably leads to systemic institutionalized discrimination between the two groups through practice policy and even legislation. That is exactly what happened in the West Bank.

The legal regime that applies to them is largely civilian, made up of the modern, democratic legislation passed by the Israeli parliament - to which they are eligible to vote and for which they may run. The legal means by which Israeli laws are applied to settlers living in the West bank (peacenow, 2021)

Involve a pipelining technique: military orders, which constitute the primary source of governance in the occupied territory, stipulated that Israeli legislation, mostly administrative shall apply in the settlements.

This way, Israeli government ministers were given de facto powers in the settlements without annexing them de jure.

The conditions that developed in the West Bank are of two groups, one of which suffers from forced political, legal and economic inferiority. It is dominated by the other group, discriminated against in terms of rights and resources, and any efforts made by its members to be liberated of this inferiority are suppressed.

All of this leads to the conclusion that the element of a regime centered on systemic domination and oppression of one group by another is present in the West Bank. (peacenow, 2021)

### **2.2.3. Intent to maintain control**

The singularity of the crime of apartheid lies, as noted, in the fact that it is designed to preserve a regime of domination and oppression of one group over another. Having examined whether the regime exists, we now turn to an in-depth review of whether this regime exhibits that inherent element designed to preserve it.

With respect to the preservation of control in Israel's case Israel's conduct in the territory and its actions therein; the changes in Israel's declarations about the occupied territories over the years; the slow but steady trickle of legislative changes that cumulatively grow into creeping legal annexation of the West Bank and, finally, explicit, direct proclamations by the government of Israel and its leadership regarding plans to annex part or all of the occupied territories. (mfa, 2009)

#### **2.2.4. Inhuman acts**

The element of inhuman acts has several iterations under the Apartheid Convention and the Rome Statute. Israel employs many policies and practices that violate the rights of Palestinian residents of the West Bank. Many of them are eligible for this dubious category.

However given the requirement that like other crimes against humanity an act considered to fulfill the requirements of the crime of apartheid must be part of a systemic or widespread attack on a civilian population. Not every practice technically covered by the definition of inhuman act would meet this requirement only those whose injurious effect is widespread and systemic.

the system of access restrictions imposed exclusively on Palestinians both with respect to entering and exiting the West Bank and with respect to movement inside it the restrictions Israel imposes on Palestinian work and employment the severe restrictions on organization, association and protest and the interference with the residency status of many of them constitute both severally and jointly the inhuman act of denial of basic rights (Section 2(c) of the Apartheid Convention.

Many injurious practices Israel employs in the West Bank against Palestinians only, attain the level of “inhuman acts Practices constituting the inhuman act of persecution (in the language used in the Rome Statute) or denial of rights (the term used in the Apartheid Convention) practices constituting the inhuman act of dividing the population along racial lines” (Article 2(d) of the Apartheid Convention, which may also constitute “persecution” per the Rome Statute); and practices that constitute the inhuman act of “Persecution of organizations and persons [...] because they oppose apartheid” (Article d(f) of the Apartheid Convention, and “persecution,” under the Rome Statute). (John Dugard, 2011, p. 892)

### **2.2.5. Widespread, systematic attack**

Each inhuman act described and analyzed above is a manifestation of deliberate policies that affect anywhere from thousands to millions of individuals. This holds true for the denial of civil rights to the entire Palestinian public and the dual legal system. It holds true for the policy of preventing development and the policy of separation. The land expropriation policy is directed against Palestinians only, as is the longstanding policy of persecution of those who oppose and resist the regime. Finally, the practice of forcible transfer of populations does not stop at one community, but rather is directed against many. All the above leads to the conclusion that the inhuman acts described in this document meet the requirement of a widespread or systematic attack directed against a civilian population, and that this element of the crime of apartheid is present as well. (Michael Sfard, 2020)

## **2.3.The practices and policies of the occupation in creating an apartheid regime.**

### **2.3.1. Persecution (Rome Statute) and denial of basic rights (Apartheid Convention).**

The Rome Statute defines the crime of persecution (Article 7(2) (g)) as intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity. For our purposes, the relevant collective or group identity is national. In the context of persecution of dissenters the group affiliation is also political. The crime of persecution is also included in the statutes of previous international tribunals such as the Nuremberg Military Tribunal which operated after WWII the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the Former Yugoslavia (ICTY). The crime concerns denial of rights on a collective basis without requiring a particular motive (such as racism or ideology). For the element of persecution to be present it is enough that the denial of rights occurs as a result of the victim's belonging to a group rather than on a personal basis. As an independent crime persecution has to be tied to the commission of other crimes against humanity on top of denial of rights on a collective basis.

There is a great deal of overlap between the inhuman act of persecution and several of the inhuman acts listed in the Apartheid Convention:

1. Article 2(c) Denying to members of a racial group or group's basic human rights (in order to prevent them from participation in the political social economic and cultural life of the country or creating conditions preventing the full development of such a group or groups. (ICC, 2011, p. 10)

2. Article 2(d) Any measures including legislative measures designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups the prohibition of mixed marriages among members of various racial groups the expropriation of landed property belonging to a racial group or groups or to members thereof.
3. Article 2(f) Persecution of organizations and persons by depriving them of fundamental rights and freedoms because they oppose apartheid. (ICC, 2011, p. 10)

**The definition of “persecution” under the Rome Statute contains two conditions that are not explicitly listed in the Apartheid Convention. These will be addressed in the analysis below:**

**Firstly:** the denial of rights must be severe. It is clear that not every instance of denial of rights or discrimination amounts to persecution. These must be attended by a degree of severity that raises it to the level required for the crime. The denial must have a profound impact on the lives of the victims. It must deprive them not simply of comfort but of the ability to maintain their social, cultural and economic existence and to develop both individually and collectively. The ICTY has ruled that severity should not be examined with respect to an isolated act of discrimination but from a broader view of the context and the cumulative effect of discriminatory acts and policies.

**Secondly:** the denial must take place contrary to international law. This condition has been interpreted as relating to a violation of fundamental rights recognized in what has become known as the International Bill of Human Rights which includes the Universal Declaration of Human Rights (1948) the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic Social and Cultural Rights (1966). (William A. Schabas, 2000, p. 198)

In other words, the denial must be of rights that are recognized in international law and must be carried out in a manner that is incongruent with the provisions of this legal field namely without a protection derogation or exception that permits the violation.

Several key policies and practices Israeli authorities employ in the West Bank constitute we believe the act of persecution under the Rome Statute and or “denial of rights” under the Apartheid Convention. We review them below referencing the relevant articles in each of the instruments. (William A. Schabas, 2000, p. 198)

### **2.3.2. Dual legal system**

Under the Apartheid Convention: Article 2(c) - denial of basic rights.

Under the Rome Statute: Article 7(1) (h) – persecution.

In the years since the institution of a military government in the West Bank the military regime has made far-reaching changes to the law applicable in the West Bank through declarations and orders. Theoretically the military government and the laws it enacts along with Jordanian law which survived Jordanian rule apply to anyone who is present in the West Bank whether they are visitors or residents.

In practice however as the military legal system developed the Israeli legislature applied much of Israeli law to Israelis living in the West Bank and in some cases also individuals covered by Israel’s law of return (i.e. Jews who are not citizens of Israel) personally and ex-territorially most notably Israeli criminal law. Concurrently the military commander subjected Israeli local governments in the West Bank (Israeli regional and local councils and their residents) to a string of Israeli administrative laws in a number of fields giving the local Israeli bureaucracy the same powers it would have had inside Israel. As noted this (Association for Civil Rights in Israel, 2014)

Is done through pipelining whereby Israeli law (made by the Knesset) is applied to Israeli local authorities in the West Bank through military orders.

This created two types of communities in the West Bank. One type is Palestinian villages and towns that come under Jordanian law (as well as British Mandate and Ottoman laws the military did not repeal) and the military orders that altered it (and the laws of the Palestinian Authority in areas A and B). The other is Jewish local and regional councils that come mostly under Israeli law and administration. The Israeli administrative law that applies to Israeli communities has been dubbed enclave law.

The result is a regime in which one territory has two legal systems. Israelis are largely governed by ex-territorial and pipelined Israeli legislation while Palestinians are governed by Jordanian and military law (and to a limited degree, laws enacted by the Palestinian Authority). In broad terms this process can be said to have resulted in widespread deep systemic discrimination of Palestinians, who, as stated are subjected to military rule compared to Israelis, who are governed mostly by a civilian legal system. Decades of settlement by Israeli citizens in the heart of the occupied territory have produced systemic discrimination enshrined in legislation and jurisprudence and affecting many aspects of the lives of Palestinian residents of the West Bank.

This deprives Palestinians (among other things) of the right to equality in every sense but primarily in its most basic sense: equality before the law. This degree of systemic institutionalized discrimination according to group affiliation also constitutes a severe violation of the right to dignity and in fact undermines the broadest basis for the concept of human rights: the shared humanity of all persons. (Association for Civil Rights in Israel, 2014)

Aside from the issue of discrimination the military regime denies Palestinians many rights such as the right to due process (which Israelis enjoy given that they are investigated and tried by Israeli civil institutions) the right to leave and enter the West Bank and travel freely inside it privacy and family rights the rights to assemble and freedom of expression and protest. The severe legal discrimination has not spared Palestinian minors. While Israeli minors benefit from the Youth Law (Adjudication and Treatment) 5731-1971 an advanced modern law that brings the principle of the child's best interest into the criminal system Palestinian youths are subjected to military legislation that is geared towards establishing authoritarian rule and focused on deterrence. Military legislation does not begin to approach the standards set in international law for the treatment of minors, meaning that at any given moment hundreds of Palestinian youths are held in the custody of Israeli authorities while their rights as minors are violated.

The fact that the application of Israeli laws to settlers confers rights should not cloud the fact that it also withholds rights from Palestinians. Therefore though the dual system of laws could be seen as an act of extending rights to one group it is at the same time an act of denying them to the other.

The dual legal system described above constitutes a policy of systemic institutionalized discrimination that denies Palestinians basic human rights in the sense that it creates a legal system in which rights are granted or denied on the basis of group affiliation. This dual legal system certainly serves the purpose of preventing participation in the political social economic and cultural life in that it extends the opportunity to participate to one group and withholds it from the other. (B'Tselem, 2007)

Finally the dual legal system contributes to the development of conditions preventing the full development of members of the group that is subjected to discrimination. In other words this policy constitutes intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity. (B'Tselem, 2007)

**Some of these legislations include:**

- 1) The occupation state inherited from the British Mandate the 1945 military emergency regulations, which are diverse and interfere in all areas of life, from controlling personal letters and parcels to arrest, restrictions on freedom of movement, exile, and expulsion of residents.

The beginning of the “state of emergency” in Israel goes back to the first days of the establishment of the state when the “Provisional State Council” (the legislative authority before the establishment of the state, which later became the “Knesset”) approved on the nineteenth of May 1949, that is, four days after the declaration of the establishment of the state The Order on Governance and Judicial Arrangements, which constituted the first legislative decree issued in the State of Israel.

Clause (9) of that order granted the “Provisional Council of State” the power to declare “the application of a state of emergency in the country,” according to which “any law can be changed, its effect temporarily canceled or restricted under various conditions.”

With this legislation, the State of Israel practically adopted, since its birth, the "Mandate Emergency Regulations" that were in force in Palestine during the British Mandate, without restricting them to a specific period of time. (Khaldoun Dwaikat, 2018, p. 53)

In a later step, this clause, with all its detailed contents, was entered into the “Basic Law: The Government,” whose last (third) version was approved by the Knesset in 2001. This law empowers the Knesset, as well as the government, to declare a state of emergency in the state.

The law states, in Section 38: “(A) - If the Knesset considers that the State is facing a state of emergency, it is entitled, on its own initiative or according to a proposal submitted by the Government, to declare a state of emergency. (B) This declaration shall be in effect for a period to be determined by the Knesset, Provided that it does not exceed one year, the Knesset can re-declare a state of emergency, as stated.(C) - If the government considers that the country is facing a state of emergency and that a “state of emergency” must be declared even before the Knesset has convened, it can declare it for a period not exceeding 7 days, if the Knesset does not approve it or cancel it before that, by a decision supported by a majority of its members. If the Knesset does not reconvene, the government can re-declare a state of emergency, as stated here... (E) - The Knesset has the right to cancel the declaration of a state of emergency, in any time”.

Section 39 of this law states: “(A) - In a state of emergency, the government may issue emergency regulations and orders for the purpose of protecting the state, protecting the security of the public and ensuring the provision of vital services and goods. (C) Depending on the emergency regulations, any law may be changed, temporarily revoked or included in conditions, as well as imposing new taxes or increasing existing taxes, unless another law provides otherwise. (Khaldoun Dwaikat, 2018, p. 54)

Based on this legal text, the State of Israel has been living a continuous “state of emergency” since its establishment, 64 years ago, and until today (at least!), as the Knesset has been in the habit of extending (renewed) the state of emergency every year, automatically, for another additional year. , even the government did not find the need to use its legal power (section 38-c, above) to declare a state of emergency on its own, even once.

2) Absentee Property laws: According to these laws, all Arabs who ‘left’ their homes after

The partition resolution, even for a temporary period, or who own property and lived somewhere near it, are considered absentees. This includes about 30,000 Arabs who fled from one place to another inside Israel, but they never left the country. Their properties were also declared absentee property, confiscated, and placed under the control of the state.

The Absentees’ Property Law is a law enacted on the 20th of March 1950 that defines anyone who has been displaced, displaced or left the borders of occupied Palestine until November of 1947, for any reason, particularly because of the war of occupation, as an absentee. This definition is empowered to the Israeli authorities. And the “custodian” of the absentees’ property by seizing the property of the displaced Palestinians. This law replaced the “emergency procedures” that organized things from the occupation in 1948 until 1950.

The Absentee Property Law is one of the strange laws that lacks its logic. It allows the authorities to confiscate the property of those who left their land and property for fear of war, even if they were absent for a few hours and moved to a nearby village. Through this legislation, Israel was able to achieve results by implementing this law, and this was on several levels, the most important of which was settlement. It clearly affirms Israel's opposition to the return of Palestinian refugees to their homes and properties. (Michael Sfard, 2020)

The occupation seized and took control of thousands of homes, real estate, and millions of dunams, and ensured that the ownership of the displaced 's properties was transferred to the "values" to prevent the possibility of the displaced Palestinians returning to their lands and properties they left behind before, during or after the war of occupation.

2) Land Acquisition Law (1953): Its purpose is to legitimize the confiscation of Arab lands.

According to Article (2) of the Land Acquisition Law, every property (meaning lands only), an order was issued by the Minister authorized by the government, that it met the following specifications:

- 1- On 1/4/1952 it was not in the possession of an owner.
- 2- It was allocated or used between 24 May 1952 - 1/4/1953 for the purposes of vital development, settlement or security.
- 3- And it is still required for one of the aforementioned purposes.

Every such property is transferred to the ownership of the Construction and Development Department and becomes its own property, and it has the right to possess and dispose of it immediately.

As for the fourth article of the aforementioned expropriation law, it granted the owner of the property that was expropriated according to this law the right to material compensation. Or an alternative land, in the event that the expropriated land is established in agricultural land and that its owner was living on farming. But in reality, hundreds of thousands of dunams were expropriated according to this law, but the material compensation offered to the owners was low and did not constitute a real (Abdul Ghani Salama, 2021)

Compensation for the value of the expropriated land. Not to mention that all Palestinian owners, without exception, strongly refused compensation out of non-recognition of the occupation.

4) The Prescription Law (1958): This law requires Arab owners who are not in possession of land titles to present evidence proving his or her ownership of the land for a period of no less than 15 years.

5) The Law of Return (1950), according to which Jews, regardless of their nationality, are granted the right to residency and Israeli citizenship without restriction or condition, while Arabs born in the occupied territories are not entitled to citizenship.

6) The Refugee Land Privatization law, which enables the state to transfer large areas of land confiscated from Palestinians to Israel. The list of similar racist laws, or proposed bills, is long.

7) The Settlement Law of 2016, which is considered one of the most severe violations of the rights of Palestinians in the occupied Palestinian territories, and through it, the properties of Palestinians are violated by settlement groups under a legal cover and the protection of the occupying state. The Settlement Law creates a new reality in the occupied Palestinian territories, by giving priority to the interests of the settlers over the interests of the Palestinians resident of the occupied territories in violation of international law

The Settlement Law is one of the first laws to be enacted by the occupying power that has a direct relationship to the occupied territories. In addition, the settlement law works to annex large parts of Palestinian land to the occupying state and expels Palestinians from the lands they own. The occupying power sees Palestinian private ownership of lands as a major obstacle to the (Abdul Ghani Salama, 2021)

Expansion of its settlement project. Therefore, it considers the settlement law as a radical solution to disputes related to the ownership of land on which settlements are built, by transferring its ownership permanently to settlers

8) The Nation-State of the Jewish People ('Nation-State Law') passed in 2018. In effect, it affirms the supremacy of the "Jewish" over the "democratic" character of the state. Its basic principle is that the "exercise of the right to national self-determination in the state of Israel is unique to the Jewish people." Article 7 of the law further states that "the State views the development of Jewish settlement as a national value" and shall act to encourage and promote its establishment and strengthening. (Khaldoun Dwaikat, 2018, p. 15)

### **2.3.3. Forcible transfer of population**

*Under the Apartheid Convention: Article 2(c) - denial of basic rights Article 2(d) - separation of racial groups.*

*Under the Rome Statute: Article 7(1) (d) - forcible transfer.*

In the first decades of the occupation Israel deported many Palestinian activists as noted above. Despite the mass scale of these expulsions and with isolated exceptions in the early 1970s the deportations were individual in character even if they did reach hundreds of people at their peak (for instance with the deportation of 415 Hamas and Islamic Jihad men to Lebanon in 1992). It is therefore difficult to say that these amount to deportation of populations as required under the definition of inhuman act stipulated in Article 7(1)(d) of the Rome Statute.

Forcible transfer of communities: The forcible transfer of entire communities is also part of Israel's demographic engineering. For the most part the relocation of communities is achieved by refusing to give the sites where they live legal recognition, and treating any structures built in them as illegal. Following are a number of examples: (HRW, 2021)

**Susiya:** In 1986 the military expelled all members of the Palestinian community of Susiya from their homes after the Civil Administration declared the village a national park with an archaeological site at its center. Susiya residents were forcibly removed from their village and forced to live on their farmlands several hundred meters south-east of the original community. The residents have been living under the constant threat of forcible removal from their homes and house demolitions. Incidentally the administration of the original site of the village was handed over to the South Hebron Hills Regional Council.

**The Jahalin:** Until the 1950s members of the Jahalin tribe lived around Tel Arad in the Negev Desert which became part of the State of Israel after 1948. In the early 1950s the Jahalin and several other Bedouin tribes were deported by the military government to the West Bank. The exact time of the Jahalin's arrival in the area now occupied by the settlement of Ma'ale Adumim as described in the High Court of Justice is controversial: While the Petitioners [members of the Jahalin tribe] contend that they have resided in this area since the 1950s with the consent of the landowners from Abu Dis and al-Eizariyah the Respondents [the Minister of Defense and the Civil Administration] maintain that it was not until approximately 1988 that clusters of Jahalin tribe members began settling on and near the land. At any rate there is no dispute that members of the tribe were pushed to the area located at the top of the Jerusalem-Jericho road because of restrictions imposed by Israel and that over the years some of the areas they occupied were expropriated in order to establish and expand settlements. The result was that by the late 1980s the tribe lived permanently in and around an area designated for the expansion of Ma'ale Adumim. Efforts to forcibly transfer them began at this time as implementation of the settlement's expansion plan was (Michael Sfard, 2020, p. 54)

Looming. The Civil Administration put pressure on the Jahalin to move to alternative sites that did not suit their way of life and were located near a regional landfill. Members of the tribe staunchly refused these propositions.

In July 1994 removal orders were issued for a cluster of Jahalin tribe members. A petition filed on this matter to the High Court was dismissed in 1996. In January 1997 and February 1998 removal orders were issued for two more clusters totaling 150 Jahalin families. A High Court interim injunction postponed the displacement but ultimately under pressure from the justices of the High Court the Jahalin entered negotiations with the Civil Administration. These culminated in 1999 with an agreement that tribe members would relocate to an alternative site. The remaining members of the Jahalin still live under the threat of displacement as Israeli policy is to forcibly remove all tribe families from their current sites. A study conducted by UNRWA and Bimkom: Planners for Planning Rights about the displaced families in their new location indicated their social and tribal fabric had disintegrated and poverty and unemployment rates were high. The study concluded that the new site was socially and economically unsustainable for the community. A current example of the efforts to forcibly transfer the communities that make up the Jahalin tribe is the case of Khan al-Ahmar a hamlet of Jahalin families straddling the Jerusalem-Jericho road near the settlement of Kfar Adumim. Structures in the hamlet were issued demolition orders some of which were executed over the years. Israeli authorities openly intend to clear the area of all Palestinian residents.

In 2011 the Civil Administration began promoting a plan to relocate all Jahalin Bedouins to a Bedouin community the Civil Administration had built near the Abu Dis landfill. A campaign against the displacement followed. (Michael Sfard, 2020, p. 55)

In February 2017 the Civil Administration delivered about 40 demolition orders for all structures in Khan al-Ahmar as part of the effort to remove the hamlet. In May 2018 the High Court ruled there was no cause to intervene in the decision of the Minister of Defense to execute the demolition orders. The residents neither left their homes nor demolished them and it remains to be seen whether the state goes forward with a forcible removal.

**Firing Zone 918:** An area covering 30,000 dunams in the South Hebron Hills that was declared a firing zone by the military. Twelve Palestinian communities live in this area. In August 1999 most members of these communities received eviction orders due to illegal habitation in a firing zone. In November 1999 security forces forcibly removed more than 700 residents demolished homes and confiscated property, leaving the victims homeless. In January 2000 the Association for Civil Rights in Israel filed a High Court petition arguing the eviction was illegal. In August 2012 the state announced residents of four of the 12 communities would be allowed to continue living there and would not be expelled. In early 2013 the High Court issued an interim order instructing the state to refrain from forcibly removing members of the other communities in the firing zone. In January 2017 an order nisi was issued instructing the state to file a response listing alternative solutions for eviction. To this day Israeli policy is geared toward removing the remaining communities and emptying this vast area from its residents. (Michael Sfard, 2020, p. 55)

#### 2.3.4. Denial of development

Under the Apartheid Convention: Article 2(c) - denial of basic rights Article 2(d) - separation of racial groups.

Under the Rome Statute: Article 7(1) (h) – persecution.

With the occupation of the West Bank in 1967 planning powers for the area were transferred to the military commander. In 1971 the military commander signed the Order regarding Town

Village and Structure Planning (No. 418) which inserted changes to Jordanian planning laws and laid down the infrastructure for the planning system that has been at work in the West Bank since then and throughout the occupation.

The order transferred the powers of the local and regional planning committees which included representation of West Bank communities to the Supreme Planning Council instituted by the military commander and its subcommittees which have no Palestinian representation. Another change was made to the planning council itself. The order stipulates that the council would include representatives of the central military government only (including the Civil Administration) unlike its previous makeup, which included representation of local councils. Palestinians also have no representation in the Subcommittee for Local Planning and Licensing which is responsible for approving construction in Palestinian communities as well as plans in villages.

On the other hand in the settlements military law established local planning committees and stipulated that local and regional councils would function as local planning committees thus giving them planning powers. Separating the planning systems for Israelis and Palestinians in the West Bank has allowed Israel to implement a policy that encourages construction in the settlements on the one hand and freezes it in Palestinian communities on the other. Whereas settlements in the West Bank have detailed master plans that allow for expansion development and issuance of construction permits the planning status of Palestinian communities has been static for years. Add to that Israel's land allocation policy in the West Bank. Figures provided by the Civil Administration in 2013 (and according to organizations that work on this issue have not significantly changed since) reveal that since 1967 only about 0.7% of the lands under the charge (HRW, 2021)

of the Civil Administration have been allocated to Palestinian entities while more than 50% of this land has been allocated to the World Zionist Organization which develops settlements Israeli cellular companies settlement municipal authorities government ministries and Israeli infrastructure companies such as Bezeq (telecommunications) the Electrical Company and Mekorot (water supply) Of all public land (state land ) in the West Bank allocated by the Civil Administration 99.76% was handed over to Israeli entities and only 0.24% to Palestinians.

And so the Israeli regime has been allocating public land resources almost exclusively to Israelis and projects that serve them. It is therefore little wonder that in the 53 years since Israel took over the West Bank more than a hundred Israeli settlements have been built but only two new Palestinian communities: The city of Rawabi established by the Palestinian Authority and a community on the outskirts of Jerusalem where members of the Jahalin tribe were forcibly relocated to make way for the construction of the settlement of Ma'ale Adumim in violation of international law (more on this to follow).

The statutory planning system in the West Bank as well as planning policy and the allocation of public lands in practice are meant to prevent Palestinians from participation in the political social economic and cultural life of the country or creating conditions preventing their full development while at the same time encouraging massive development in the Israeli sector only. This violation of fundamental rights recognized in international law on a collective basis also constitutes persecution under the Rome Statute. (HRW, 2021)

The judgment of the International Criminal Tribunal for the Former Yugoslavia (ICTY) Krajicek concluded that the Serbian authorities were responsible for the transportation when they "created difficult living conditions for Muslims and Croats" through house searches, arrests and physical harassment, as well as services such as water, electricity and telephones succeeded in making the residents' survival impossible. (Michael Sfard, 2020)

### **2.3.5. Expropriation and dispossession of land**

Under the Apartheid Convention: Article 2(c) - denial of basic rights; Article 2(d) - separation of racial groups.

Under the Rome Statute: Article 7(1) (h) – persecution.

Until 1967 most of the area now considered by the Civil Administration as state land was not considered government property. Under Israeli rule a million dunams of West Bank land were declared public land (Israeli authorities refer to it as state land) thanks to an extremely controversial interpretation of the Ottoman Land Law of 1858. The law stipulates that the government would gain usage rights to unregistered farmland that has not been cultivated continuously, even if the land had been cultivated in the past or is used in the present for grazing. Using this interpretation between 1978 and 1992 Israel declared close to a million dunams of land in the West Bank as state land (hereinafter declared land). Palestinians whose land was declared government property had a right to file objections that were heard by a military appeals committee. However given the highly controversial legal basis on which the committee relied for its rulings the process was practically ineffective and the vast majority of the declarations were readily upheld. And so in just 13 years Israel increased West Bank land considered public land to some 1.6 million dunams which are close to 30% of the land area of the West Bank (excluding East Jerusalem). ( Bimkom, 2013)

These declarations were mainly made in areas the government designated for Israeli settlements and they are the tool that was used to dispossess Palestinian communities of their collective lands used primarily for grazing livestock and for developing Palestinian towns and villages. While such declarations purport to merely formalize an existing legal situation in practice particularly given the land allocation policy described below they effectively constitute the expropriation of collective usage rights.

Nearly all declared land in the West Bank is currently located within the jurisdiction of settlement local and regional councils meaning Palestinians are entirely barred from using it. As noted above figures show that since 1967 only about 0.24% of the public land in the area has been allocated to Palestinian entities while more than 99.26% has been allocated to the World Zionist Organization which develops settlements Israeli cellular companies settlement municipal authorities government ministries and Israeli infrastructure companies such as Bezeq (telecommunications) the Electrical Company and Mekorot (water supply). In addition land has also been expropriated, for instance in the area where the settlement of Ma'ale Adumim was built. Palestinians are also dispossessed of their land through Israeli settler violence. While this violence is not perpetrated by the regime directly the consistent willful blindness to it lack of law enforcement on the perpetrators and retroactive legitimization of settler presence on land seized through criminal acts leave no choice but to consider the regime responsible. The consistent exploitation and retroactive official sanctioning of these land takeovers, first through chronic lack of enforcement and then through retroactive legitimation for them.

In February 2017 the Knesset passed the Regularization of Settlement in Judea and Samaria Law 5777-2017 which instituted a mechanism for the expropriation of privately owned Palestinian (HRW, 2021)

Lands and their allocation to Israelis who illegally invaded them. In June 2020 the Israeli High Court of Justice repealed the law declaring it both unconstitutional and a violation of international law. Organizations that have studied the issue estimated that the law would have resulted in the expropriation of tens of thousands of dunams of privately owned Palestinian land.

Expropriation of privately owned land and dispossession of land from communities due to their collective identity (in this instance nationality) constitutes the inhuman act of persecution under the Rome Statute. As held by the ICTY:

In the same context [of the crime of persecution the plunder of property is defined as the unlawful extensive and wanton appropriation of property belonging to a particular population whether it be the property of private individuals or of state or quasi-state public collectives.

The declaration policy and the retroactive approval of construction on privately owned Palestinian land constitute the expropriation of landed property belonging to a racial group or groups or to members thereof. Some of the lands were expropriated in the ordinary sense of the term the expropriation of proprietary rights from their owners while others were expropriated collectively in the sense that members of the groups were deprived of their collective rights to benefit from this land. Not only has that but Israel systematically allocated expropriated land to members of the other dominating, group of Israeli residents of the West Bank completing the dispossession. This is an extremely widespread policy and a practice that is central to the nature of the military regime in the West Bank which falls under the definition of the inhuman act of persecution according to the Rome Statute as well as the definition of the inhuman act of denial of rights and separation along group lines under the Apartheid Convention. The latter refers specifically to the expropriation of the land of one group by the other. (HRW, 2021)

**Israel's Violation of the Legislation and Laws in the Occupied Territories.** The Israeli occupation is obligated under the Geneva Conventions to respect the legislation and laws in force in the occupied Palestinian territories and is also obligated to allow national courts to operate and apply the laws of the occupied territories. The occupying power's legislation in the occupied territories is in clear violation of what is stipulated by international rules. The legislation poses a flagrant violation of the laws in force in the occupied territories and constitutes a violation of the most important rights of the inhabitants of the occupied territories. (Amira Hass, 2013)

#### **2.3.6. The policy of separation between settler's and Palestinians in the West Bank.**

Under the Apartheid Convention: Article 2(c) - denial of basic rights Article 2(d) - separation of racial groups.

Under the Rome Statute: Article 7(1) (h) – persecution.

One of the main features of the regime in the West Bank is a system of physical separation between the two groups living there. Some might say this is separation between parties that are not interested in living together. However international law prohibits such separation regardless of what members of the separated groups might want. Moreover settler's separation policy does not ask settlers and Palestinians what they want. It is simply there physically and legally according to national origin. That is why for instance these rules apply to peace and human rights activists who are not interested in being separated. Arguing that the separation is put in place for security reasons does not make it legal either. Separation between groups is prohibited regardless of the motive and it constitutes an inhuman act. (Yesh Din, 2021)

Separation between population groups in the West Bank began quietly. In 1992 Palestinians were banned from entering settlements. A system of orders was put in place and settlement security coordinators were given the power to block Palestinians who wished to travel through settlement lands. This system of orders is backed by a bureaucratic apparatus that issues entry permits to Palestinian laborers who build clean and landscape for the settlers. The system that controlled entry into settlements laid down the principles that remained with the separation policy for years to come: no Palestinians may enter areas with Israeli presence unless they have cause to be there and received a permit for this purpose from the military commander.

Later on the ban on Palestinian access was expanded to vast areas around and near settlements designated as Special Security Areas or SSAs. Hundreds of dunams around dozens of settlements have been declared SSAs and fenced in. Many of these areas include Palestinian farmland where crops and orchards are grown. Keys to the gates of these SSAs are kept by settlement security coordinators and with them the power and authority to prevent Palestinian landowners from accessing their own land or allow it through the coordination mechanism. Access to much more land in areas near settlements has also been permanently or seasonally blocked and subjected to permit regimes.

Then came the separation fence and along with it the seam zone the project of installing a physical barrier which began in 2003 and has so far torn away about 8% of West Bank land in areas near the Green Line through a system of fences and walls. Dozens of settlements on the other side of the fence were kept connected to Israel, swallowing with them a few dozen Palestinian villages and hundreds of thousands of dunams of Palestinian land. The majority of the Palestinian population was left on the other side of the fence. Building the fence along this route produced a (Yesh Din, 2021)

Palestinian civilian space that is trapped between the it and the Green Line. Israel calls this space the seam zone. A declaration issued by the IDF commander in the West Bank stipulated that the entire space was a closed military zone access to which is prohibited to all except three “types of people” (the exact expression used in the order) to whom the declaration does not apply. The first two “types” are Israelis and tourists who have a visa to enter and remain in Israel.

The third type” are Palestinians with permits allowing them to work in settlements. It is important to note that the definition of “Israelis” which as recalled are excluded from the closed zone declaration, covers Israeli citizens, permanent residents of the State of Israel and anyone entitled to Israeli citizenship under Israel’s Law of Return i.e. anyone who is Jewish.

This is how the physical and legal reality of separation began developing. A Palestinian who owns land passed down through generations must visit the offices of the Civil Administration and ask for a permit to pass through the gate that leads to it. At the same time any Jew from anywhere in the world even if they have never lived in Israel or the West Bank may cross the fence freely. The permit regime has turned Palestinians who live in the separation fence enclaves into illegal aliens on their own lands and in their own homes unless they were granted a permit to keep living in the zone, and severely violated their basic rights primarily the right to freedom of movement the right to make a living and live in dignity and the right to family. The permit regime leads to systematic dispossession of Palestinians from their lands in the seam zone.

The settlements SSA’s and particularly the separation fence and permit regimes have changed the land. Entire areas have been painted with national colors Jewish areas and Palestinian areas white areas and black areas. An intricate system of separate roads (referred to as bypass roads) was built to minimize interaction between the populations on traffic routes as well. (btselem, 2021)

A policy of separation is a classic case of measures including legislative measures designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or group according to the definition of inhuman act in Article 2(d) of the Apartheid Convention. Separation is also a widespread violation of the right to freedom of movement on a collective basis and as such constitutes persecution under the Rome Statute. (btselem, 2021)

### **Advisory Opinion of the International Court of Justice, 2004**

The Israeli settlement expansion has led to the denial of building permits to Palestinians while granting them to settlers. It also led to the demolition of Palestinian homes, the violation of the rights of Palestinians to move in the occupied Palestinian lands near Israeli settlements. It further led to the control of Palestinian natural resources, especially water, the confiscation of land under false pretexts, and the forced displacement of the Palestinian population and its replacement with Israeli settlers. ( icj, 2004)

## **2.4.Case Study: Beit Dajan Village**

### **2.4.1. Beit Dajan Village**

Beit Dajan Village is located east of Nablus. Its population is about 5,000, and contains many valleys, plains, and hills .Overlooking the Palestinian Valley, the village connects the Palestinian mountains from east of Nablus to the northern Palestinian Jordan Valley. Its western borders meet with the village of Beit Furik and Salem village. Its northern border meets with the village of An-Nasaria and the village of Al-Jiftlik. Finally, its eastern borders are the central valleys, and its southern borders are the village of Aqraba. The Israeli occupation prevented the people of Beit Dajan village from moving on the main street of Beit Dajan village, located to the west of the village, for security reasons.

Twenty years ago, the people of the village of Beit Dajan have been forbidden to move to the city of Nablus using the main road to the village, which is 10kilometers away. Because of a private road to Elon Moreh settlement, where 1,500 Israeli settlers live, 5,000 Palestinians are denied their right to movement and access to the road. There is an Israeli military checkpoint at the entrance to the village, which obstructs the movement of citizens from Beit Dajan and Beit Furik every day. The village of Beit Dajan stands alone against a large settlement plan that aims to link the settlements of Nablus with the settlements of Jericho, and the new outpost threatens the seizure of 25,000 dunums of lands.

In the eastern area of Beit Dajan, there were attacks by settlers in the settlement of Al-Hamra and the settlement of Makhoura, which were built on the lands of the eastern village of Beit Dajan, and important landmarks were also attacked years ago. In 2015, the occupation forces (jaish, 2021)

Demolished the Abu Kamal house and stole its ancient stones. In 2019, settlers burned the Sheikh Kamel tree, and the occupation began digging a settlement road network and ended with a new settlement for settlers.

#### 2.4.2. **Caravan and cows**

In early October 2020, the residents of the village of Beit Dajan woke up to photos on social media of a settler and his family setting up a house and a barn for a group of cows in the Masyaf plain on the northeastern hills of the village.

Some of the villagers reached him, but the Israeli police intercepted them, and a few days later a decision was issued to remove the caravan, so he moved it to a nearby place on top of one of the hills overlooking the Jordan Valley. Now, the room has turned into a house full of rooms and the cows grew into entire herds, all with the protection of the occupation army that ferociously suppresses the peaceful demonstrations of the people of Beit Dajan.

The head of Beit Dajan villager Naser Abu Jaish says lands are registered in the name of the people of Beit Dajan village, and he says, “These olives have not been accessible since the establishment of the settlement, and settlers burned part of it, and the occupation razed, weeks ago, 300 olive trees near the settlement.”

He continued: “From the first day of placing this settlement in the Masyaf Plain, we arrived at the place and tried to expel the settler, and the Israeli police confronted us.” These losses do not matter to us, and the village will continue its sacrifices to protect its land from confiscation.”

Naser Abu Jaish says that the village of Beit Dajan, with a population of no more than 5,000, stands today in the face of a large plan drawn up by the so-called settlement council, which aims to link the settlements of Nablus with the surrounding settlements of Jericho. (jaish, 2021)

This is made possible by cutting off the historic *Maraka* road and building settlement roads that achieve a practical operation. Connection, and confiscation of more lands of citizens in Nablus and the Jordan Valley.

Naser Abu Jaish says: “Beit Dajan now lives in a large prison, and the settlements established on the lands of approximately 25,000 dunams are under threat confiscation and preventing citizens from accessing it.” The occupation closed the western entrance to the village in 2000, and after the establishment of a settlement northeast of the village, the road was closed. The road leading to *Maraka* is surrounded by earth mounds, and this road is the only remaining exit to the village, as the citizen earlier could reach Al-Nasaria and Al-Jaftlik in only 10 minutes.

Popular anti-settlement activities have continued since the first day of the outpost’s establishment, and every week a peaceful popular march is launched, the occupation soldiers suppress the demonstrators with heavy tear gas, sound bombs, and live and rubber bullets.

Naser Abu Jaish warns of the negative impact of this settlement on Beit Dajan, Jericho Governorate, the Jordan Valley, Nablus, and the wider region, where the so-called settlement council seeks to link the settlements of Nablus with the settlements of Jericho and the Jordan Valley.

The Israeli occupation authorities have deprived thousands of Palestinians from the village of Beit Dajan of their basic rights, including freedom of movement, private property and access to the natural resources of Beit Dajan. (jaish, 2021)

### **2.4.3. The acts of apartheid in Beit Dajan**

The Israeli occupation forces use many policies and practices that violate the rights of the Palestinians residing in the village of Beit Dajan. The actions and policies taken by the Israeli occupation forces consider the crime of apartheid, like other crimes against humanity, as part of a widespread or systematic attack on the civilian population of the village of Beit Dajan and inflicting harm on the residents of Beit Dajan.

The system of restrictions on access imposed exclusively on Palestinians from the village of Beit Dajan with regard to entering and leaving the lands they own adjacent to the Palestinian Valley and with regard to movement within it, restrictions imposed by the occupying forces on the work of Palestinian farmers in the village of Beit Dajan and strict restrictions on the regulation of home demolitions for more From a Palestinian citizen in the village of Beit Dajan, not granting building permits in areas classified as (C), and protesting against the settlers who seized the lands of citizens in the village of Beit Dajan and confiscated it by the Israeli occupation forces. These inhumane acts represented in depriving the basic rights (Section 2 (C) of the Apartheid Agreement for the residents of Beit Dajan village of freedom of movement by closing the main road to the village of Beit Dajan in order to use it only for settlers who reside in the settlement of Elon Moreh, the village of Beit Dajan village, in return facilitating Movement of settlers who live in Elon Moreh settlement, displacing the residents of Beit Dajan village from their lands and homes, and setting up a military roadblock that obstructs the movement of citizens from Beit Furik and Beit Dajan villages.

Imposing a geographical reality that cannot be changed. The legalization of the new settlement outpost established on the lands of Beit Dajan village, through the settlement law, imposes a new reality on the lands of Beit Dajan village, restricting the people of Beit Dajan and

making it confined from all sides to settlements and outposts, with the spread of geographically linked settlements around them, disrupting their geographical connection. Where the occupying power has improved the geographical contiguity of the settlers by forming a settlement block extending from the lands of the village of Beit Dajan to the other Israeli settlements in the Palestinian Valley, by arranging these blocks according to each other until the borders of the Green Line. If we examine the settlement presence in the village of Beit Dajan, we will find that the extension of the Green Line settlements reaches the borders of the eastern bank of Beit Dajan village. This is what we clearly see along the so-called Trans-Samaria Road, which starts from the Kafr Qasim area to the Jordan border. The imposition of a settlement fait accompli will lead to the continuation of the Israeli presence in the Occupied Palestinian Territories. It also impedes their withdrawal in preparation for the annexation of lands in the village of Beit Dajan to the occupying power.

Many of the harmful practices used by Israel in the village of Beit Dajan against the Palestinians in the village of Beit Dajan, Nablus District, reach the level of "inhumane acts and practices that constitute an act of inhumane persecution (in the language used in the Rome Statute) or denial of rights (the term used in the Separation Agreement). racial) practices that constitute the inhuman act of dividing a population along racial lines" (Article 2(d) of the Apartheid Convention, which may also constitute "oppression" under the Rome Statute); and practices constituting the inhumane act of "persecution of settler organizations and settlers of the inhabitants of the village of Beit Dajan and Article D (f) of the Apartheid Convention, and "persecution" under the Rome Statute). (Rome Statute, 1998)

## **Conclusion**

- Israel applies civil law to more than 450,000 settlers in the West Bank, while Israeli military law applied and still applies to more than two million and seven hundred thousand Palestinians in the occupied Palestinian territories. This means that Israel discriminates between settlers and Palestinians in applicable laws and legislation, and discriminates in the application of these laws while infringing on Palestinian rights, including the right to freedom of movement, to build homes, to have access to their wealth and natural resources, and to have access to infrastructure.

- Discrimination in the application of legislation, laws, and orders resulted in the violation of the rights of Palestinians living in the West Bank and the protection of the rights of settlers. For example, Palestinians are prevented access to roads or places near any Israeli settlement in the occupied territories. In the event of violating this rule, Palestinians are tried on charges of threatening public security. But if an Israeli settler breaks into a Palestinian land and takes control of it, he is not prosecuted, but rather is protected by the Israeli occupation forces.

- Various Israeli policies showed a clear distinction between Israeli settlers and Palestinians in all areas and details of life. Settlers have the right to whatever they want, even killing Palestinians and seizing what they own. Settlers also have the right to work where they want, move around as they want, and reside in any area of the occupied West Bank.

- The Israeli authorities seized more than 700,000 dunams of the occupied Palestinian lands, allocated these lands and made them into state lands, that is, public lands for the occupation authorities. About 99% of these lands were allocated to Israeli settlements by granting building permits in these lands to Zionist settler groups, while the Palestinians got only 1,600

dunams out of 700,000 dunams, and this indicates that Israel practices racial discrimination by granting these lands to the World Zionist Organization and other settler groups and individuals.

- In many cases, the occupation soldiers see settler's attacks on Palestinian residents and do not take any action that would lead to the arrest of the assailants or take them to the police. On the contrary, they assist the settlers in the attacks and violence against the Palestinians.

- The policy pursued by the Israeli occupation authorities in expanding and establishing illegal settlements in the occupied territories leads to numerous violations of human rights in the occupied Palestinian territories, including forced displacement of residents, preventing them from building, denying them building permits, and demolishing their homes that were not authorized by the occupation authorities..

- The occupying forces and other settlement groups support more than 650,000 Israeli settlers in the occupied Palestinian territories in Area C. When the Israeli government announces the establishment or expansion of a number of settlements in the occupied Palestinian territories, it also provides economic support to these settlements by providing all services and facilities to settlers, including controlling all resources in the occupied Palestinian territories.

- The Israeli occupation controls all construction procedures in Area C, and this control affects the residents of villages and cities in the occupied Palestinian territories because the Israeli occupation rarely gives building permits in Area C to force residents to move to Areas A and B in order to displace Palestinians from population centers in Area C and to expand settlements.

- Settlements in the West Bank have produced conditions in which Palestinians are denied access to their land. This is achieved by erecting physical barriers and using violence

against Palestinians, all with the help of the Israeli authorities, who do nothing to prevent these illegal acts but rather help entrench, maintain and strengthen the apartheid regime.

- The Israeli occupation authorities confiscated more than two million dunams of the occupied Palestinian lands since 1967 until the present day, and they are extending their full control over these lands, as they keep a quarter of the West Bank as state lands, dedicated for settlers. Zionist settlement groups also exploit these lands and establish settlements on them, where military policies and orders are used to seize these lands under the pretext that they are state lands without exploitation or use. These lands are private property of the Palestinians, but Israel stopped the land registry process in order to seize them and hand them over to settlers.

- The forcible transfer of entire Palestinian communities is part of Israel's demographic engineering. Palestinian communities are resettled by refusing to give the sites in which they live legal recognition, and treating any buildings built on them as illegal.

- Beit Dajan village, east of Nablus, is a Palestinian case where the Israeli occupation authorities have deprived thousands of Palestinians of their basic rights, including their right to freedom of movement, private property and access to Beit Dajan natural resources.

At the end of the research, the researcher asks the international community that forty years of apartheid crimes in racist South Africa were enough to end this fascist racist regime. At the beginning of the 1990s, the whole world got up and told them enough. How many years will it take the Palestinians for the world to feel their pain? How many years will it take the world to clearly see the crimes of Israel that exceeded the crimes of whites in Rhodesia and South Africa? How many years does victory over injustice do justice? How many years of torment and pain are enough to awaken the human conscience?

## **Recommendations**

The researcher recommends the following:

**First:** Conducting a media campaign in order to make the countries of the world boycott the State of Israel economically, as it is a country that commits a crime against humanity, namely apartheid.

**Second:** Carrying out a diplomatic campaign in all countries of the world in order to inform people of the crime committed by Israel against humanity, through the embassies and consulates of the State of Palestine all over the world.

**Third:** Exerting maximum efforts to obtain an international resolution from the United Nations General Assembly, describing Israel as an apartheid state, and urging all countries and institutions affiliated with the United Nations to implement the International Convention for the Suppression and Punishment of the Crime of Apartheid on Israel, through its political, economic, academic and educational boycott. All countries around the world are encouraged to withdraw investments from Israel and to impose sanctions on it until it revokes its racist laws, abides by the principles and rules of international law, especially humanitarian ones, and the resolutions of international legitimacy, and stops considering itself above the law and the international community. This should constitute a rehabilitation and reinvigoration of Resolution No. 3379 of 1975, considering Zionism a form of racism and racial discrimination.

This is a practical possibility outlined in many international reports by reputable authors. Three very important international reports are:

- Report of Special Rapporteur Falk, who said that Israel's practices and policies constitute segregation and apartheid.

- Report of the 2013 Independent Fact-Finding Mission on Settlements, A/HRC/22/63, which documents the issues of the fragmentation of Palestinian land and the creation of separate protectorates and exclusion zones.

- Conclusions and Recommendations of the Committee on the Elimination of Racial Discrimination in 2012 that it is deeply concerned about policies and practices that constitute de facto segregation, and that it has been particularly appalled by the tight separation of the two groups” CERD/C/ISR/CO/14-16.

**Fourth:** Renewing and activating the boycott of settlement products and merchandise, dispensing with what can be dispensed with of Israeli products, goods and merchandise, and supporting the escalating international boycott campaign.

**Fifth:** Inviting the United Nations Human Rights Council by the Palestinian Authority to initiate the procedures followed against the clear violations committed by Israel in the occupied Palestinian territories and to punish Israel for the policy of racial discrimination that resulted from the racist Israeli settlements.

**sixth:** Strengthening relations with the committees supporting Palestine and the boycott of Israel (BDS) by helping them spread all over the world, and to coordinate and fully support their various international activities in all economic, academic, popular, legal and political settings

**Seventh:** Helping the Palestinian citizens in the occupied lands in order to strengthen their steadfastness in their lands and to combat the apartheid practiced against them by the occupying state

**Eighth:** Searching for new appropriate strategies to end the stage of betting on the negotiations to extract national rights. Israel will not change, but taking advantage of the positive international conditions for the sake of the Palestinian cause might.

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## الملخص

تهدف هذه الدراسة إلى التعرف على دور المستوطنات الإسرائيلية الغير الشرعية في تشكيل نظام التمييز الإسرائيلي في الأراضي الفلسطينية المحتلة من خلال تعريف الاستيطان الإسرائيلي في الأراضي الفلسطينية المحتلة ، وتعريف نظام التمييز العنصري والاتفاقيات الدولية التي نصت عليه و التقارير ذات الصلة بشكل عام. يركز الباحث في هذه الدراسة على معالجة مشكلة الدراسة : دور المستوطنات في تشكيل نظام الفصل العنصري الإسرائيلي في الأراضي الفلسطينية المحتلة.

ينقسم هذا البحث إلى فصلين. يتناول الفصل الأول من هذه الدراسة الخلفية التاريخية للفصل العنصري في فلسطين عبر التاريخ كدولة تحت الاحتلال. يناقش الفصل الثاني الإطار القانوني للدراسة.

الفصل الثاني مقسم إلى أربعة أقسام. يتناول القسم الأول جريمة الفصل العنصري بموجب تعريف القانون الدولي وأركان الجريمة المرتكبة في الاراضي الفلسطينية المحتلة. في القسم الثاني حظارات تكاب جريمة الفصل العنصري كقواعد قطعية ودور الاستيطان في إقامة نظام الفصل العنصري في الضفة الغربية والقدس الشرقية. في القسم الثالث ممارسات وسياسات الاحتلال في إقامة نظام الفصل العنصري ، وفي القسم الرابع دراسة حالة لقريّة بيت دجن.

وخلصت الدراسة إلى أن دولة الاحتلال الإسرائيلي من خلال إقامة المستوطنات الإسرائيلية على الأراضي الفلسطينية المحتلة أوجدت نظام تمييز عنصري ضد الفلسطينيين وانتهاك حقوق الفلسطينيين على أراضيهم.