GUILTY BY ASSOCIATION

Israel’s collective punishment policies in the oPt

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I. Introduction

This brief analyzes different collective punishment policies enforced by Israel against Palestinians living throughout the Occupied Palestinian Territory (OPT) at different stages of the occupation.

The brief will look first at the rationale behind the prohibition against collective punishment and its codification under international humanitarian law (IHL), international human rights law (IHRL), international criminal law (ICL) and general principles of international law. It will then assess the impact of a number of past and more recent measures enforced by Israel that indiscriminately target the Palestinian population in both the West Bank (including East Jerusalem) and the Gaza Strip. The brief will additionally analyze the broader implications of such policies. It will conclude by pointing out specific actions that relevant international community actors can, and should, adopt to reverse these trends, in compliance with their own obligations under international law.

II. Collective Punishment and International Law

A. The Prohibition of Collective Punishment under International Humanitarian Law

The prohibition against collective punishment derives from the fundamental principle that responsibility is individual and an individual may only be punished for an offence he or she is proven to have personally committed. The corollary to this principle is that persons or groups of persons may not be punished for acts committed by others, regardless of any connection (such as, for example, family, community or village) with the alleged offender.

The prohibition against collective punishments has been enforced in many domestic legal systems. The prohibition similarly exists under international law, and has particular resonance in situations of armed conflict and military occupation. This derives from the demonstrated past tendency by parties to armed conflicts of inflicting collective penalties, often in an apparent effort to forestall breaches of the law or to quell and repress dissent. In resorting to intimidation measures to terrorize an entire population, belligerents in many cases evidently have hoped to punish or prevent hostile acts. The experience of the two world wars proved that these expectations largely were misguided. According to the authoritative Commentary to the Geneva Conventions “[f]ar from achieving the desired effect, however, such practices, by reason of their excessive severity and cruelty, kept alive and strengthened the spirit of resistance”.

This history explains why international humanitarian law, also known as the law of armed conflict, is the main body of law codifying the prohibition against collective punishment. In particular, the Hague Regulations of 1899 concerning the Law and Customs of War on Land contain the first treaty prohibition of collective punishment. This rule was further developed with the adoption of the Fourth Geneva Conventions in 1949 (IVGC). Article 33 IVGC specifically prohibits collective punishment in determining that “no protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited”.

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1 In particular, according to Dutch jurist and philosopher Hugo Grotius “no one who is innocent of wrong may be punished for the wrong done by another”; H. Grotius, ‘De Jure Belli ac Pacis Libri Tres’ (Amsterdam, Johan Blaeu, 1646). See also, J. Pictet, ‘Commentary of the Geneva Conventions of 12 August 1949. Volume IV’ (Geneva, International Committee for the Red Cross, 1958) p. 225.


3 Convention (IV) relative to the Protection of Civilian Persons in Time of War (Geneva, 12 August 1949), Article 33 (Commentary) (hereinafter “Fourth Geneva Convention”).
Legal experts have set out the specific requirements that must be satisfied before a measure may be classified as an act of collective punishment. Firstly, there must be a tangible connection between an offence that has been committed and the punitive measures imposed in direct response to the commission of the illegal act. Secondly, any hardship endured by innocent parties must be substantial and not merely incidental to the suffering of persons found guilty of an offence. For example, lawful imprisonment often causes hardship for an offender’s relatives but does not constitute collective punishment.

The prohibition against collective punishment has been echoed in the Third Geneva Convention in relation to the treatment of prisoners of war, as well as in the two Additional Protocols to the Geneva Conventions. It has also been included in the great majority of States’ military manuals.

With regard to the OPT, Israel’s Manual on the Laws of War (1998) clearly states that collective punishment of prisoners of war is absolutely forbidden. More recently, Israeli governmental officials have restated this prohibition and emphasized how collective punishment goes against Israel’s values. With regard to a number of Israeli policies, some scholars have argued that the prohibition against collective punishment applies only to penal punishments inflicted upon innocent persons in relation to the actions of others, or other acts contrary to “the laws of war regarding distinction or proportionality.” However, the commentary to Article 33 GCIV and international jurisprudence clearly suggest that the scope of the prohibition is broader and that collective punishment not only entails punishments inflicted in the form of penal sanctions but also more widely includes “penalties of any kind inflicted on persons or entire groups of persons”.

B. The Prohibition of Collective Punishment under International Human Rights Law

While in international human rights treaties and conventions (also known as international human rights law) no explicit prohibition of collective punishments exists as such, acts amounting to collective penalties may, at times, infringe upon various fundamental human rights. Depending on their nature, collective penalties can violate universally recognized human rights such as the right to fair trial and the equality of all people before the law, the rights to liberty and security of person, freedom of movement and the right to an adequate standard of living. Moreover, the UN Human Rights Committee – the main body responsible for the interpretation and application of the International Covenant on Civil and Political Rights (ICCPR) – has referred to collective punishment in its work. In particular, in its General Comment on Article 4 of the ICCPR, the Committee stated that States parties may “in no circumstances” invoke a state of emergency “as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance […] by imposing collective punishments”.

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8 Ibid.
10 Fourth Geneva Convention (n 3) Article 33 (Commentary). See also, Special Court for Sierra Leone, Prosecutor v. Fofana and Kondewa, SCSL–04–14–A (Judgment, Appeals Chamber) (28 May 2008) para 222.
11 However, it should be noted that certain regional human rights instruments contain provisions that enshrine the principle that responsibility is individual and individuals may only be punished for offences which they have personally committed. See, in particular, Article 5(3) of the American Convention on Human Rights (Adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969). See, also, Article 7(2) of the African Charter of Human and People’s Rights (Adopted in Nairobi, Kenya, 27 June 1981).
12 Human Rights Committee, CCPR General Comment No. 29, CCPR/C/21/Rev.1/Add.11 (31 August 2001) para. 11.
C. The Offence of Collective Punishment under International Criminal Law

As collective punishments are pursued “in defiance of the most elementary principles of humanity”,13 they not only are prohibited under IHL, but the actions underpinning them have been criminalized both at the national and international levels.

At the national level, many domestic military codes criminalize the imposition of collective penalties.14 One remarkable jurisprudential example is the Military Tribunal of Rome decision in the case against former SS Captain Erich Priebke in relation to the massacre of 335 Italian citizens perpetrated at the Ardeatine Caves in 1944.15

At the international level, following the inclusion of collective punishment among war crimes by the 1919 Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties, the International Military Tribunal of Nuremberg held in 1946 “[t]hat violations of [the prohibition of collective punishment] constituted crimes for which the guilty individuals were punishable is too well settled to admit of argument”.16 Following this reasoning, in 1991 the International Law Commission defined collective punishment as an “exceptionally serious” war crime.17 These and other established legal findings led the UN Secretary General to state that the most serious forms of collective punishment amount to crimes under customary international law.18 Collective punishment was included as a war crime in the statutes of the Special Court for Sierra Leone (SCSL) and the International Criminal Tribunal for Rwanda (ICTR).19 In particular, a number of trials before the Special Court for Sierra Leone have seen individuals prosecuted for the war crime of collective punishment for the first time in recent years.20

As one well-regarded international criminal law expert noted, “while the natural trajectory of this war crime’s development should have been its inclusion in the Statute of the International Criminal Court (ICC), collective punishment does not appear in the extensive list of war crimes over which the ICC has jurisdiction”.21

Nevertheless, specific actions amounting to collective punishment still may invoke criminal liability before the ICC. For example, in the case of collective punishment that results in the demolition of homes, the ICC Statute includes among its enumerated war crimes extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly.22

13 Fourth Geneva Convention (n 3) Article 33 (Commentary).
Moreover, the ICC Statute criminalizes as a crime against humanity “persecution” of any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law, in connection with any other crime within the jurisdiction of the Court. In particular, persecution is defined under Article 7(2)(g) as “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity”.\textsuperscript{23} As explained below, certain forms of collective punishment may meet this definition and thus appropriately characterized as the crime of persecution.

D. The Prohibition of Collective Punishment and Jus Cogens Norms

That the prohibition against collective punishment reflects customary international law is not controversial. As noted above, the prohibition has been included in a multitude of international instruments, including the Geneva Conventions and their Additional Protocols, and also is defined in and prohibited by the great majority of States’ military manuals. As a result, Rule 103 of the ICRC Customary International Humanitarian Law Study clearly spells out that “[c]ollective punishments are prohibited”.

Customary international law is made up of rules that evolve from ‘general practices accepted as law’ and that exist independently of treaty law. In other words, customary international law is a body of established legal norms that bind all States regardless of ratification of any specific treaty and its obligations. Customary international humanitarian law is of crucial importance in many of today’s armed conflicts because it fills gaps left by treaty law and thus strengthens the protections offered to civilians.

In addition, a further argument can be made for the inclusion of the prohibition of certain forms of collective punishment as peremptory norms of international law (jus cogens). Jus cogens norms sit at the top of the hierarchy of the rules of international law, and thus may not be derogated from at any time, or by any actor, because these norms protect an overarching interest of the international community as a whole.

No comprehensive list of jus cogens norms exists, but international jurisprudence and legal literature have included in this category the right to self-determination, the prohibition against the acquisition of territory by force, the prohibition against genocide, war crimes and crimes against humanity.\textsuperscript{24} Moreover, the International Court of Justice (ICJ) in its Advisory Opinion on The Legality of the Threat or Use of Nuclear Weapons determined that “[the] fundamental rules [of IHL] are to be observed by all States whether or not they have ratified the conventions that contain them, because they constitute intransgressible principles of international customary law”.\textsuperscript{25} According to the International Law Commission, and in light of this ICJ description, it appears justified to also categorize these fundamental IHL rules as jus cogens norms.\textsuperscript{26}

\textsuperscript{23} ICC Statute (n 22) Article 7(2)(g).


\textsuperscript{25} Legality of the Threat or Use of Nuclear Weapons, ICJ Reports 1996, para 79. As duly pointed out by Professor Condorelli, “it is unlikely that the Court merely meant [...] that those principles must not be transgressed. That, indeed, is true of any rule of law that imposes any obligation at all”; L. Condorelli, ‘Nuclear weapons: A weighty matter for the International Court of Justice’, 319 International Review of the Red Cross (1997) p. 14; V. Chetail, ‘The contribution of the International Court of Justice to international humanitarian law, 85 International Review of the Red Cross (2003) p. 251.

\textsuperscript{26} In this regard, the International Law Commission has observed that “some of [the rules of humanitarian law] are, in the opinion of the Commission, rules which impose obligations of jus cogens”. See Report of the International Law Commission on the Work of its Thirty–second Session, 35 UN GAOR Supp. (no. 10), 98, UN Doc A/35/10 (1980). See also, ARSIWA (n 24) Article 40 (Commentary).
There may be two grounds to include the prohibition against collective punishment among jus cogens norms. First, the prohibition against collective punishment is undisputedly part of customary IHL. It has been enshrined in all the major codifications of IHL rules, including, already in 1919, the Report of the Commission on the Responsibility of the Authors of the War, which listed collective penalties among violations of the laws and customs of war that should be subject to criminal prosecution. Furthermore, the Commentary to the Fourth Geneva Convention highlights how the prohibition of collective punishments relates to “penalties of any kind inflicted on persons or entire groups of persons, in defiance of the most elementary principles of humanity”. The need to preserve such elementary principles explains the origin for the conceptualization of this norm, which thus may be included among jus cogens norms – those fundamental IHL rules constituting “intransgressible principles of international customary law,” in the ICJ parlance.

Second, although not characterized as a grave breach of the Geneva Conventions, collective punishment may entail the commission of a war crime under customary international law. This does not apply to all forms of collective penalties but only to those that severely infringe upon basic human rights of the protected persons and the fundamental guarantees included in common article 3 to the Geneva Conventions. In this regard, it should be noted how both the ICTY jurisprudence and respected legal experts have concurred on including the prohibition of war crimes among peremptory norms. The prohibition of collective punishment – in its most serious forms that amount to war crimes – thus falls among those rules.

In summary, it could be argued that combined policies of collective punishment – albeit in their most serious forms and if perpetrated in a repetitive, large scale and orchestrated manner – may amount to violations of a jus cogens norm. As explained below, this categorization prescribes direct obligations for third State action in reaction to documented serious instances of collective punishment.

III. Israeli Collective Punishment Policies in the OPT

This chapter analyzes a number of practices followed by the Israeli authorities in the West Bank (including East Jerusalem) and the Gaza Strip. These measures, adopted at different times and places, should not be viewed in isolation. On the contrary, the purpose of the following analysis is to unveil the existence of a common denominator running behind different forms of collective punishment inflicted against Palestinians living in the OPT.

Examining in particular the most recent developments in the OPT, alleged indiscriminate targeting by Israeli force of different portions of the Palestinian OPT population can be grouped into a number of different categories. The following category list is by no means exhaustive and has been developed mainly by examining the reality on the ground. These categories include: a) measures restricting freedom of movement and enhancing OPT fragmentation; b) measures amounting to excessive use of force; and c) measures negatively affecting the Palestinian economy and long-term OPT development.

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27 In particular, the prohibition against collective punishment has been enshrined in Hague Regulations of 1899, Hague Regulations of 1907, the III and IV Geneva Conventions (1949) and in Additional Protocol I and II of the Geneva Conventions (1977). See also, Report of the First World War Commission (n 16) p. 18.
28 Fourth Geneva Convention (n 3) Article 33 (Commentary).
29 See, International Law Commission, ‘Draft Code of Crimes against the Peace and Security of Mankind’ (n 17); Report of the Secretary General on the establishment of a Special Court for Sierra Leone (n 18) para 12.
30 On the inclusion of the prohibition against war crimes among jus cogens norms, see the decision of the ICTY in the Kuperskic case where it held that “most norms of international humanitarian law, in particular those prohibiting war crimes [...] are also peremptory norms of international law or jus cogens”. ICTY, Kuperskic et al., ICTY-95–16–T, (Judgment, Trial Chamber) (14 January 2000) para 520; A. Cassese, ‘On the Current Trends Towards Criminal Prosecution and Punishment of Breaches of International Humanitarian Law’ 9 European Journal of International Law (1998) p. 6.
A. Measures Restricting Freedom of Movement and Enhancing Fragmentation in the OPT

Permit revocation

The Israeli authorities recently started reacting to episodes of Palestinian violence and alleged stabbing or shooting attacks by systematically engaging in the blanket revocation of permits required for Palestinian West Bank ID holders to enter Israel. In June 2016, following a shooting attack by Palestinians that took place at an open-air complex in Tel Aviv leaving four Israelis dead and 16 others injured, Israel’s government imposed a four-day ban on all OPT Palestinians (excepting ‘medical and humanitarian cases’) from entering Israel and the entire city of Jerusalem.31 This measure impacted approximately 83,000 West Bank Palestinians and some 200 Gaza Strip residents. The UN High Commissioner for Human Rights, through its spokesperson, expressed its strong concern over the closure, including by stating how it “may amount to prohibited collective punishment and will only increase the sense of injustice and frustration felt by Palestinians in this very tense time”.32

Similarly, in apparent reaction to a wave of deadly attacks against Israeli settlers around Kiryat Arba in July 2016, the Israeli Government announced the mass revocation of work permits for residents of Bani Na'im, the village from which one of the Palestinian attackers allegedly originated. Additional punitive measures have been discussed by recently appointed Israeli Defense Minister Avigdor Lieberman, including a partial freeze on the transfer of PNA tax money, a blanket directive not to return the bodies of alleged terrorists,33 and renewed discussions about deporting their families.34

In a separate development, following increased episodes of violence in East Jerusalem and the rest of the West Bank during the Fall of 2015, the Israeli Security Cabinet convened a meeting on 13 October 2015. Among measures approved to counteract the wave of “terror attacks”, the Cabinet approved the revocation of the Jerusalem permanent residency status of alleged attack perpetrators.35 In addition, it was reported by media outlets that during one of the ensuing cabinet meetings, the Israeli Prime Minister announced that the government was considering the blanket revocation of Jerusalem residency status for all Palestinian inhabitants of East Jerusalem living in the neighborhoods located on the West Bank side of Israel’s separation wall.36 If implemented, this measure also would amount to collective punishment in its indiscriminate targeting of a large portion of the Palestinian Jerusalem community without establishing any connection whatsoever with the commission of any alleged criminal offence. Moreover, it has been estimated that if the blanket revocation of residency status for East Jerusalem residents living on the West Bank side of the separation wall were to be

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36 It should be noted that there are a number of Palestinians holding Jerusalem residency status that live in communities that, although included in the Jerusalem municipality, fall on the West Bank side of the separation wall. This status entails a number of problematic issues as, despite residents of these areas are entitled – like all other residents of Jerusalem – to services under Israeli law and pay fees and taxes for these services (including the Jerusalem Municipal Tax ‘Arnona’), Israeli municipal and national authorities are deliberately failing to provide basic services, including law-enforcement and rubbish collection. See, NRC, ‘Residency Revocation of Wall-affected Communities in East Jerusalem: Initial Legal Evaluation’, Legal Memo (November 2015); See also, Jerusalem District Court, ‘Zegair v. Jerusalem Municipality’, DC 27276–07–15 (1 November 2015).
enforced, up to 100,000 people would be affected.\textsuperscript{37} This policy – viewed in combination with other discriminatory measures targeting Palestinians in East Jerusalem such as home demolitions and imposition of fines – also may bear serious long-term implications in altering the demographic status of Jerusalem and further severing it from the remainder of the West Bank, as well as serving to affirm the status of Israel’s separation wall as a permanent physical border, in contravention of the 2004 International Court of Justice Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory.

In conclusion, these measures, taken together, impose severe hardships on people for offences that they have not personally committed. The measures also target vast portions of the Palestinian population and significantly entrench conditions of oppression, distress and segregation. These measures therefore appear to amount to a form of collective punishment.

**Sealing off entire Palestinian neighborhoods and villages**

Another result of the 13 October 2015 Israeli Security Cabinet meeting, was the imposition of thirty-five checkpoints and concrete roadblocks at entrances to neighborhoods in East Jerusalem, as well as on internal community roads, severely disrupting the lives of some 300,000 Palestinian residents.\textsuperscript{38} While many of these restrictions have now been lifted, certain neighborhoods such as Bab al–Majles in the heart of the Old City and Silwan, still suffer from severe access restrictions and intensive policing operations that significantly harm residents’ lives and livelihoods.\textsuperscript{39}

These measures, which indiscriminately target large segments of the Palestinian population living in East Jerusalem neighborhoods without evidence of any direct links with the commission of attacks, negatively and disproportionately affected a number of basic rights, including freedom of movement and the right of access to adequate health care, as well as the right to an adequate standard of living. By impairing the possibility for many Palestinians to freely move and reach their places of work, these measures also produced negative impacts on the Jerusalem and overall Palestinian economy, as well as diminishing employment opportunities within East Jerusalem.

Israeli forces also reacted to the renewed wave of violence by isolating and sealing off entire Palestinian villages and towns. For example, on January 25 2016, Israeli security forces encircled the village of Beit Ur a-Tahta in Ramallah District, the alleged origin of one of the perpetrators of an attack against Israelis in the settlement of Beit Horon earlier that day. Given, according to an Israeli army spokesperson, that the encirclement was effected through roadblocks and prevented travel into and out of the village (except in cases deemed humanitarian), this measure can be considered a form of collective sanction against the entirety of the population residing in the village.\textsuperscript{40}


\textsuperscript{40} See Ma’an News, ‘Palestinian village sealed for 2nd day, Ramallah–area roads closed’ (27 January 2016) https://www.maanews.com/Content.aspx?id=769990; Hamoked, ‘HaMoked to the Military Commander of the West Bank: the military encirclement imposed on Beit Ur a–Tahta constitutes collective punishment and must be lifted at once’ (27 January 2016) http://www.hamoked.org/Document.aspx?dID=Updates1660. In particular, according to Hamoked, this measure contradicts an earlier undertaking by the state, enshrined in the High Court of Justice decision 7577/06, whereby encirclement “does not mean a sweeping ban on exit from and entry to a certain area, but means the subjection of travel into and out of that area to security checks”.


The sealing off of Beit Ur a-Tahta, which lasted for nine consecutive days, is not an isolated case. On 3 February 2016, after three residents of Qabatiya, a northern West Bank village, allegedly carried out an attack in East Jerusalem, the village was searched intensively by Israeli security forces and its entrances were sealed for three days. The closure heavily restricted the movement for 20,000 Palestinian residents, resulted in the shutdown of fourteen schools as well as the village’s main vegetable market. Later in February 2016, after a stabbing attack occurred in the nearby settlement of Neveh Daniel, Israeli security forces sealed off the Palestinian village of Nahalin for more than a week. On 8 March 2016, following two stabbing attacks in the Petah Tikva and Jaffa areas of Tel Aviv, Israeli forces sealed off the two West Bank villages of Zawiya and Hajjah, where the alleged perpetrators were said to have originated. In reaction to the Tel Aviv attack and other deadly attacks against Israeli settlers in July 2016, Israeli forces sealed off the entire city of Hebron as well as its surrounding villages and towns, from where Israel claimed the alleged perpetrators originated, thereby imposing severe restrictions on movement to and from the entire Hebron area. According to media reports, “the closure of the Hebron area, which affects some 700,000 Palestinians, is the harshest measure since the […] kidnap–murder of three teenage boys in June 2014”.

The practice of sealing off and conducting intensive military operations indiscriminately targeting entire Palestinian villages was explained in an interview with an Israeli army commander in the West Bank:

We started to target them directly. We compiled a list of around 100–150 such people who matched our criteria in every village; […] Those that we could arrest, we arrested. For those who we had no reason to arrest, we warned, and for others we mapped their homes—every night we went to their houses and searched them. We also exerted pressure on their families. We made it clear that if their child involves themselves in terror, the equipment they used to provide for themselves—be it farming equipment or engineering tools—would be confiscated […] When we carry out these measures without stopping, every night, it has an effect […] It also affects those whom we haven’t visited yet […] Economic levers have a massive influence […] This is an extremely efficient way of sending a message.

The sealing off of Palestinian neighborhoods and villages should be assessed in light of the Occupying Power’s obligation, and right, to ensure public order and safety within the occupied territory. Indeed, while more restrictive controls and intensified checking may be justified by an Occupying Power for specific security reasons, such measures should fully comply with the criteria required under the necessity and proportionality IHL principles. Stated differently, any measure imposed by the Occupying Power that disproportionately affects the protected population’s basic guarantees under IHL is unlawful. This is even more the case for any measure that not only disproportionately affects, but also indiscriminately targets, Palestinian civilians without any direct link between the persons so impacted and the actual alleged offence or perpetrator(s).

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46 See Article 43 of the Hague Regulations.
B. Measures Implying Excessive Use of Force

Punitive home demolitions

Punitive home demolitions have long been practiced in the context of the Israeli military occupation of the OPT, particularly targeting the families and relatives of Palestinians allegedly involved in attacks against Israeli citizens. However, this policy was suspended by the Israeli Defence Forces (IDF) in February 2005 after an internal military investigation recommended their halt following its conclusion that, rather than deterring attacks, punitive demolitions only enflamed the population and led to more violence.\(^\text{47}\)

Notwithstanding this history, punitive demolitions were re-introduced through a mid–2014 Israeli Government decision in connection with the Israeli operation “Brothers Keepers”, following the killing of three Israeli settlers in the Hebron area in June 2014. The Israeli organization B’Tselem subsequently documented four punitive home demolitions by Israeli forces in 2014. After a subsequent lull in the first part of 2015, 30 structures have been demolished or sealed as result of punitive demolition orders since October 2015, rendering 189 people (including 79 children) homeless.\(^\text{48}\)

These measures appear to be enforced mainly based on decisions taken by the Israeli Prime Minister’s security cabinet. These decisions do not appear to be made in keeping with fundamental due process standards, including formal judicial process and review. A number of Israeli civil society organizations petitioned the Israeli High Court of Justice against the 2014 resumption of this policy. On 31 December 2014, the Court rejected the petition, accepting the State’s reasoning that such measures were necessary on security and deterrence grounds.\(^\text{49}\)

Punitive home demolitions breach Israel’s obligation under Article 53 IVGC, according to which the destruction of private property by the Occupying Power is prohibited, except where rendered absolutely necessary by military operations.\(^\text{50}\) Based on the Commentary to Article 53, the Occupying Power must try to interpret the ‘military necessity’ clause “in a reasonable manner: whenever it is felt essential to resort to destruction, the occupying authorities must try to keep a sense of proportion in comparing the military advantages to be gained with the damage done”.\(^\text{51}\) Punitive demolitions of Palestinian homes also negatively impact a number of fundamental human rights, including the right to an adequate standard of living, the right to family life, the right to physical and mental health and freedom of movement. Each of these rights is included in international instruments that Israel has ratified and is obligated to apply extraterritorially to the OPT.\(^\text{52}\) In this regard, the Human Rights Committee called on Israel in November 2014 to “[i]mmediately put an end to conducting punitive demolitions given their incompatibility with the State party’s obligations under the [ICCPR] and provide effective remedies to victims of destruction of property, forced eviction and forcible transfer”.\(^\text{53}\)

\(^{49}\) See, HCJ 8091/14; see also, Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council Resolution S-21/1, A/HRC/29/CRP4 (22 June 2015), para 528.
\(^{50}\) See Fourth Geneva Convention (n 3) Article 53; Article 46 Hague Regulation.
\(^{51}\) Fourth Geneva Convention (n 3) Article 53 (Commentary).
\(^{52}\) Relevant international human rights treaties that Israel has ratified include the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. With regard to the extraterritorial applicability of these instruments to the OPT see, Human Rights Committee, ‘Concluding observations, Israel’, UN Doc. CCPR/C/ISR/CO/3 (3 September 2010) para 5; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) ICJ Rep 2004, paras 106–113.
\(^{53}\) CCPR/C/ISR/CO/4, para. 9.
Policies that result in the punishment of people for offences they have not personally committed thus infringe upon their most fundamental human rights and guarantees, including as protected persons under IHL, but also specifically breach the prohibition on collective punishment. In this regard, the 2015 UN Commission of Inquiry on the 2014 Gaza Conflict raised its concerns “about the resumption of a practice that risks further fueling hatred and the cycle of violence, rather than achieving its stated objective of deterrence. […] The impact of the punitive demolition of a home affects entire families, including those with no link to the alleged crime, and therefore constitutes collective punishment, in violation of international humanitarian law”.54

Methods of warfare employed in the Gaza Strip

In the three rounds of conflict that have afflicted the Gaza Strip and its inhabitants since 2008, Israel has employed methods of warfare, along with an accompanying narrative, that appears to aim at blurring the lines between obligatory IHL rules and long-term Israeli strategic and political goals. According to the conclusions of prominent international investigations into each of these rounds of conflict, these newly deployed military doctrines not only seem to have disproportionately prioritized Israel’s perceived military interests over civilian protection, but also appear to have aimed at deploying disproportionate use of force to punish the entire civilian Gaza Strip population for its purported support of Hamas, or otherwise to deter such support in the future.

During Operation Cast Lead in December 2008, Israeli forces allegedly applied the so-called Dahiya doctrine during military actions. First deployed during the 2006 Lebanon War, the Dahiya Doctrine envisages the destruction of the civilian infrastructure of hostile regimes as a means of establishing deterrence and endorses the employment of disproportionate force toward that end. According to its creator, current IDF Chief of Staff General Gadi Eisenkot:

what happened in the Dahiya quarter of Beirut in 2006 will happen in every village from which Israel is fired on. […] We will apply disproportionate force on it and cause great damage and destruction there. From our standpoint, these are not civilian villages, they are military bases. […] This is not a recommendation. This is a plan. And it has been approved.55

Although the IDF officially denied the application of the doctrine during ‘Operation Cast Lead’ in 2008–09, the same military tactics appeared to have been applied in the Gaza Strip.56

According to the UN Fact-Finding Mission on the Gaza Conflict:

 [...] the tactics used by the Israeli armed forces in the Gaza offensive are consistent with previous practices, most recently during the Lebanon war in 2006. A concept known as the Dahiya doctrine emerged then […] The Mission concludes from a review of the facts on the ground that it witnessed for itself that what was prescribed as the best strategy appears to have been precisely what was put into practice.57

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54 Report of the detailed findings of the independent commission of inquiry (n 49) para 530.
56 In particular, the UN Fact-Finding Mission on the Gaza Conflict based itself on the reflection provided in September 2008 by IDF Colonel (Ret.) Gabriel Siboni according to whom “with an outbreak of hostilities, the IDF will need to act immediately, decisively, and with force that is disproportionate to the enemy’s actions and the threat it poses. Such a response aims at inflicting damage and meting out punishment to an extent that will demand long and expensive reconstruction processes. The strike must be carried out as quickly as possible, and must prioritize damaging assets over seeking out each and every launcher. Punishment must be aimed at decision makers and the power elite […] This approach is applicable to the Gaza Strip as well. There, the IDF will be required to strike hard at Hamas and to refrain from the cat and mouse games of searching for Qassam rocket launchers. The IDF should not be expected to stop the rocket and missile fire against the Israeli home front through attacks on the launchers themselves, but by means of imposing a ceasefire on the enemy”. Report of the 2009 Gaza FFM (n 55) para 1197.
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The Mission referred in particular to statements made by Israeli Deputy Prime Minister Eli Yishai on 6 January 2009 that “[i]t [should be] possible to destroy Gaza, so they will understand not to mess with us [...] it is a great opportunity to demolish thousands of houses of all the terrorists, so they will think twice before they launch rockets”.58

The Dahiya doctrine, along with Israel’s repeated application of it and related statements, not only stands in direct opposition with core IHL principles such as distinction and proportionality, but also reveals an apparent intent to punish the Gaza Strip population as a whole for its alleged support to the Hamas regime or to deter and seek the removal of any such support. The UN Mission on Gaza emphasized that:

Israel, rather than fighting the Palestinian armed groups operating in Gaza in a targeted way, has chosen to punish the whole Gaza Strip and the population in it with economic, political and military sanctions. [...] The facts ascertained by the Mission, the conditions resulting from the deliberate actions of the Israeli armed forces and the declared policies of the Israeli Government – as they were presented by its authorized representatives – with regard to the Gaza Strip before, during and after the military operation, cumulatively indicate the intention to inflict collective punishment on the people of the Gaza Strip. The Mission, therefore, finds a violation of the provisions of article 33 of the Fourth Geneva Convention.59

Similar tactics also appear to have been deployed during the more recent 2014 round and Israel’s so-called Operation Protective Edge. Israeli ground forces pursued a policy of declaring entire neighbourhoods or villages “sterile combat zones”.60 This policy was deployed in areas such as Khuza’a, Rafah and Shuja’iya. The Human Rights Council mandated 2015 Commission of Inquiry reported that while Israeli forces had delivered initial warnings directing civilians to abandon these areas, parts of the civilian population could not move for a variety of reasons. When Israeli forces subsequently commenced military operations, their manner of deployment suggested a presumption that civilians were no longer present in these areas.61

Accordingly, the 2015 Commission’s report highlighted how Israeli forces may have treated entire densely populated areas as one single military object instead of distinguishing between civilians and combatants in each of the incidents occurring in affected areas.62 As a result, the 2015 Commission Report assessed how these operations may qualify as direct attacks against civilians or civilian objects and thereby amount to war crimes. Furthermore, the Commission noted how:

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58 Ibid, para 1304.
61 Several statements and declarations from IDF officials on the goals and tactics of Israel’s ground operation support this observation. As an example, the commission reported the statement from Israeli Major Amitai Karanik, who suggested that the IDF “try to create a situation whereby the area where we are fighting is sterile, so any person seen there is suspected of engaging in terrorist activity”. See, ‘Head of the Doctrine Desk at the Infantry Corps HQ, Major Amitai Karanik in Ba’abasha’, 29 Ground Forces Journal (October 2014), p. 62 (unofficial translation) as referred in Report of the detailed findings of the independent commission of inquiry (n 49) para 400. This stance was confirmed by testimony later given by soldiers to Breaking the Silence, which, explained that “[t]he soldiers were briefed by their commanders to fire at every person they identified in a combat zone, since the working assumption was that every person in the field was an enemy”. See, Breaking the Silence, “This is how we fought in Gaza: Soldiers testimonies and photographs from Operation “Protective Edge””, (2014) p. 18, http://www.breakingthesilence.org.il/pdf/ProtectiveEdge.pdf; See also, Report of the detailed findings of the independent commission of inquiry (n 49) para 401.
62 Report of the detailed findings of the independent commission of inquiry (n 49) para 337.
the extent of the destruction, combined with the statements made during the operation by the commander of the Brigade responsible for the Khuza’a operation to the effect that “Palestinians have to understand that this does not pay off”, are indicative of a punitive intent in the action of the IDF in Khuza’a and may constitute collective punishment.63

C. Measures affecting Palestinian Development and Economy

The Gaza Blockade

The siege and naval blockade of the Gaza Strip should be understood in the context of increasingly restrictive economic and political measures imposed by Israel over the OPT with the open or tacit support of a number of third States that began with the February 2006 Hamas victory in Palestinian legislative elections. This policy ultimately became fully entrenched after the Israeli Government declared the Gaza Strip a “hostile territory” in September 2007,64 a characterization that facilitated the enactment of “a series of economic, social and military measures purportedly designed to isolate and strangle Hamas”.65 These measures have devastatingly impacted the whole Gaza Strip population’s living standards.

In particular, the Gaza siege and naval blockade comprises a combination of measures imposed by Israel that include: the closure (partial or total) of border crossings (for people, goods and services, including the provision of fuel and electricity), curtailing permitted offshore fishing zones and imposition of access restricted areas within Gaza Strip territory adjacent to its land boundaries with Israel. This regime has remained in place – with minor variations apparently responsive to political circumstances and diplomatic pressure – since 2007. Not only have ten years of siege and naval blockade negatively impacted the Gaza Strip economy and undermined any prospect of development, it also has created an acute and prolonged humanitarian crisis that may have irreversible repercussions on future living conditions for Gaza Strip residents.66

The legality of the Gaza blockade regime has been scrutinized by a number of international bodies, including the 2009 UN Fact-Finding Mission on the Gaza Conflict, the 2010 UN Fact-Finding Mission on the Gaza Flotilla incident, the ICRC and the UN Under-Secretary General for Humanitarian Affairs. All have concurred that such measures indiscriminately and disproportionately infringe upon the Palestinian population’s basic needs and result in a form of collective punishment for the entire population of the Gaza Strip that cannot be justified by alleged security needs.67 More recently, the UN Secretary General, during a 2016 visit to the Gaza Strip, noted how “the closure of Gaza suffocates its people, stifles its economy and impedes reconstruction efforts. It is a collective punishment for which there must be accountability”.68

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63 Ibid, para 341.
Withholding tax revenues to the Palestinian National Authority

Additional measures taken by Israel that have resulted in the collective punishment of large portions of the Palestinian population appear to have been adopted in reaction to attempts by the Palestinian leadership to resort to international legal fora to counteract the Occupying Power’s policies on the ground. For example, in apparent response to the vote of the UN General Assembly granting Palestine non–member observer State status in November 2012, the Israeli government reacted by withholding – for the four month period between December 2012 and March 2013 – approximately 100 million USD per month of tax revenues that it collects on the Palestinian National Authority’s (PNA) behalf and that Israel is obliged to transfer periodically to the PNA under the terms of the 1994 Paris Protocol annexed to the 1995 Oslo II Accord.69 Similarly, from January to March 2015, Israel seized Palestinian taxes in response to Palestine’s accession to the ICC Statute.70 Due to substantial restrictions and limitations already imposed by the Occupying Power on the development of the OPT economy, this PNA tax revenue income contributes significantly to maintaining the standard of OPT civil life, including delivery of basic services such as health, education, housing, employment and social security. “As such, Israel seizure of such a huge proportion of public revenue has dire consequences for the whole Palestinian population”.71

D. The Security Argument for the Imposition of Collective Punishment Measures

Israel, as Occupying Power in the OPT, has the right and duty to ensure public order and safety in the occupied territory.72 Thus, genuine security and military necessity considerations may, exceptionally, allow Israel to deviate from its obligations toward the population under occupation in certain specific circumstances. However, any such exception must be strictly confined to the achievement of genuine and necessary security objectives and must not disproportionately affect the rights and prerogatives of protected persons under the Geneva Conventions.73 It is essential to note, however, that no exception to the prohibition against collective punishment under Article 33 IVGC is permitted under any circumstance. Stated differently, the Fourth Geneva Convention makes absolutely clear that Israel may not, under any circumstances, justify the imposition of measures that result in the indiscriminate punishment of Palestinian civilians based on a security or military necessity argument.

Despite the fact that security and military necessity arguments cannot justify measures of collective punishment as a matter of law, assertions that Israeli policies resulting in collective punishment, including those described above, enhance Israel’s security have been questioned even among the senior ranks of Israel’s security establishment.

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70 In particular, according to human rights organizations, “the tax payments seized by Israel amount[ed] to nearly three quarters of monthly Palestinian National Authority […] revenue”. See Al–Haq 2015 (n 69) Executive Summary.

71 Ibid. In particular, Israel is obliged to transfer such revenue not only in light of the commitments included in the Paris Protocol but also by virtue of its obligation as an Occupying Power to ensure the ‘civil life’ of the occupied population in accordance with Articles 43 and 48 of the Hague Regulations.

72 See, Article 43 Hague Regulations.

73 With regard to ‘proportionality’ it is important to note that the Israeli High Court of Justice has adopted the following test in relation to examining the legality of administrative measures taken by military commanders in the oPt. In Beit Sourik v. Israel, the Court held that, according to international law, common law (e.g. Canada), continental law (e.g. Germany) and Israeli law, there are three secondary tests for proportionality: (1) the measures taken must rationally lead to realization of the objective (the rational means test); (2) the measure must injure the individual to the least extent possible (the least injurious means test); and (3) the harm expected from the action should be proportional to the benefit gained from it (the proportionate means test). Only when all three of these secondary tests are met and satisfied simultaneously is the military’s action proportional. HCJ 2056/04 Beit Sourik v. Israel, para. 41.
According to media reports, a major rift recently emerged between the positions of the Israeli army and government over a number of such policies. With regard to punitive home demolitions, the Israeli Government’s resumption of this practice in 2014 – despite a previous internal military investigation arguing that rather than deterring attacks, such measures only further enflamed the population and led to more violence – may be a sign of a broader internal policy rift. Furthermore, the alarm raised by high-level military officials on how the deterioration of the humanitarian situation as a result of the blockade may further destabilize the Gaza Strip, and thereby, render Israel less secure, appears to be an indirect criticism of government policy not to ease economic and access restrictions imposed as part of the Gaza Strip siege and naval blockade. Finally, in recent months media outlets reported that IDF Chief of Staff Gadi Eisenkot and former Defense Minister Moshe Ya’alon repeatedly, and jointly, thwarted attempts by Prime Minister Benjamin Netanyahu and his cabinet to take more extreme steps, including collective punishment measures, in reaction to recently spiraling violence in East Jerusalem and other areas of the West Bank. In February 2016 IDF Chief of Staff Eisenkot came under intense criticism from Israeli Government officials for urging restraint in keeping with the army’s open fire regulations. Furthermore, the Israeli army and Shin Bet security service allegedly criticized the reintroduction of a partial freeze on the transfer of PNA tax money, as well as the June 2016 Ministry of Defense directive not to return the bodies of terrorists, alleging that the first measure impairs security coordination with the Palestinians and that the second fails to deter further attacks.

This internal Israeli debate further supports the proposition that Israel’s collective punishment measures, beyond being illegal under IHL, appear not to serve a genuine security interest.

IV. Overall Implications

This brief has provided a description of a number of practices that collectively, and indiscriminately, punish the Palestinian population living in the OPT. These policies have been denounced repeatedly by authoritative international bodies in the past – including the UN Special Rapporteur on Human Rights in the OPT, the OHCHR, the ICRC, the 2009 UN Fact-Finding Mission on the Gaza Conflict and the 2015 UN Commission of Inquiry on the Gaza Conflict – as measures amounting to collective punishment.
More recently, the UN Secretary General has emphasized how “the blockade of Gaza should be lifted and all practices that amount to collective punishment, including restrictions on freedom of movement across the Occupied Palestinian Territory, punitive demolitions of homes, punitive residency revocations, cutting of benefits, punitive closures of towns and delays in returning bodies for burial, should be ended”.

From an overall perspective, Israel’s policies of collective punishment contain two layers. Firstly, viewed alone, each of the described measures, amounts to collective punishment and therefore breaches Israel’s IHL obligations. Secondly, it is important to assess the hardship on Palestinian civilians provoked by the combined and overall effect of such policies, repeatedly enforced at different times and places. In fact, these measures cannot be viewed in isolation and their linkage and interrelated character produce a long-term impact on the well-being of the entire Palestinian population. In particular, this analysis has endeavored to show how Israeli collective punishment measures have pursued specific and far-reaching goals. They have deprived OPT Palestinians of even the most elemental physical and mental security. These measures also have enhanced movement restrictions and overall OPT fragmentation, quelled and repressed all forms of protest (including dissent expressed through non-violent means by recourse to international legal fora) and entrenched humanitarian crisis, de-development and instability in the Gaza Strip, while simultaneously undermining sustainable economic development in the West Bank.

These are also measures that are discriminatory in nature because they have been enforced solely against Palestinians, despite the fact that Israeli individuals also have been implicated in what have been labeled by the Israeli Government as “terror attacks”. The combined effect of the imposition of collective punishment measures arguably serves to preserve the current status quo in the OPT, including its institutionalized discrimination aspects. In this context, collective punishment measures arguably should be viewed as a means to achieve specific policy goals by the Occupying Power to exercise and maintain a system of domination and to deter and repress any form of dissent against the current status quo.

Collective punishment, as applied in the context of the OPT, thus also appears to be inherently linked with the crime of persecution. Persecution is defined in the ICC Statute as “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity” and it has been listed among crimes against humanity.

While it is not the purpose of this paper to determine whether Israel and its officials are responsible for committing the crime of persecution, it is relevant to underscore how prominent international bodies have in the past linked the cumulative effect of practices of collective punishment in the OPT with the perpetration of the crime of persecution. For example, the UN Fact-Finding Mission on the Gaza Conflict determined how “the conditions resulting from deliberate actions of the Israeli armed forces and the declared policies of the Government with regard to the Gaza Strip before, during and after the military operation cumulatively indicate the intention to inflict collective punishment on the people of the Gaza Strip”.

Concurrently, while analyzing the effects of Israel’s siege and naval blockade on the Gaza Strip, the Mission emphasized the combined effect of a series of acts that had deprived the population of the Gaza Strip of their means of subsistence, employment, housing and water, while also denying their freedom of movement and right to leave and enter their own country. Recalling ICTY jurisprudence, the Mission further noted that “the [crime against humanity] of persecution

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80 Report of the Secretary General, ‘Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem’, A/71/364 (30 August 2016) para 72(g).
83 Ibid, para 1328.
Guilty by association

encompasses a variety of acts, including, inter alia, those of physical, economic or judicial nature, that violate an individual’s right to the equal enjoyment of his basic rights”.84 On this basis, it concluded that “from the facts available [...] some of the actions of the Government of Israel might justify a competent court finding that crimes against humanity have been committed”.85

Emphasizing the cumulative effects of acts of collective punishment and their strong interrelation with the creation and consolidation of a system of institutionalized discrimination also may provide a basis to link OPT collective punishment policies with serious breaches by a State of peremptory norms of international law (jus cogens). The International Law Commission Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) defines a specific set of obligations for third States when jus cogens norms of international law are breached. In particular, Article 41 ARSIWA determines that when a serious breach of jus cogens norms is committed, all States are obliged not to recognize as legal any effect of this violation, not to aid or assist in the commission of the violation and to positively cooperate to bring an end to the violation.

As previously set forth above, it can be argued that the most serious violations of the prohibition against collective punishment (those amounting to war crimes) may amount to breaches of jus cogens norms. In this regard, article 40 ARISWA defines a “serious breach” as “a gross or systematic failure by the responsible State to fulfil the obligation”, where ‘gross’ refers to the intensity of the violation, its flagrant nature or its effects, and ‘systematic’ to its organized and deliberate character.86 In this regard, the commentary to Article 40 notes how “factors which may establish the seriousness of a violation would include the intent to violate the norm; the scope and number of individual violations; and the gravity of their consequences for the victims”.87

Following this ARISWA analysis, it can be argued that the practices of collective punishment analyzed above, in their cumulative and often combined effect, may amount to a serious breach of the jus cogens prohibition against collective punishment. The alleged violations appear to be both gross and systematic violations of the basic principle that people may not be punished for offences they have not committed personally. Moreover, the alleged violations appear to have been perpetrated on large scale by targeting significant segments of the Palestinian population and, to have been of a repeated character, prolonged nature and encompassing a significant geographic scope. They also appear to have been deliberately and systematically inflicted as an organized response to escalations of tensions that form part of a policy aimed at pursuing long-term goals, including maintaining and consolidating a system based on institutionalized discrimination and denial of rights and entrenching the fragmentation and de–development of the OPT, and in this way fundamentally undermining the Palestinian people’s right to self–determination.

84 Ibid, para 1329.
85 Ibid.
86 ARSIWA (n 24) Article 40 (Commentary).
87 Ibid.
V. Recommendations

The prolonged and systematic policy of collective punishment against Palestinians in the OPT demands explicit third State action, based on obligations under Article 41 ARISWA and in light of the commitment to "ensure respect" for IHL under Common Article 1 of the Geneva Conventions. In particular third States should consider taking recourse to the following actions:

- The issue of collective punishment and a thorough necessity and proportionality analysis of Israel’s security needs and consequent actions should be included in bilateral fora discussions between Israel and third States. With regard to EU Member States, the issue of collective punishment should be raised consistently in the context of the EU Human Rights Country Strategy for Israel. In particular, to this end:

- Third States should more consistently address the resumption of punitive home demolitions in their bilateral interactions with the Israeli authorities from the angle of genuine military necessity, given its strict prohibition under IHL and its inconsistency with the findings of Israel’s own internal military recommendations;

- In the context of bilateral fora discussions with Israel, third State delegations should comprise military attaches and officials in order to provide a technical assessment of whether certain measures respond or not to genuine military necessity and security needs;

- UN organs and human rights bodies, both in loco and at headquarters level, henceforth should conduct cumulative monitoring of the combined impact of practices and policies amounting to collective punishment in the OPT and include such data in a specific section of their reports;

- Given the far-reaching implications of policies of collective punishment for the territorial integrity and development of the OPT, EU Member States should henceforth include language reiterating the unconditional prohibition of collective punishment in the EU Council Conclusions on the Middle-East Peace Process. Other regional State groups should take equivalent measures;

- EU Member States – based on their enhanced commitment stemming from the 2009 EU Guidelines on the promotion of compliance with international humanitarian law – should also address the cumulative effect of Israeli collective punishment measures and their long-term impact in altering the demographic and territorial status of the City of Jerusalem. In particular, EU States should actively support initiatives intended to restore Palestinian officials’ presence in East Jerusalem and establish a follow-up mechanism to their existing monitoring efforts in order to identify and support concrete avenues to reverse trends of shrinking physical, social, political, cultural and economic space for Palestinians in East Jerusalem;

- Third States should then not render aid or assistance to any practice resulting in the collective punishment of the Palestinian population in the OPT, particularly those measures aimed at discouraging Palestinian representatives from resorting to international legal fora for the peaceful settlement of disputes in line with their rights and obligations under international law;

- The High Contracting Parties to the Geneva Conventions – and in particular EU Member States based on their enhanced commitment stemming from the 2009 EU Guidelines on the promotion of compliance with international humanitarian law – should formally endorse the determination made by numerous authoritative international legal bodies on the illegality of the Gaza blockade and, as a first step, condemn it as a policy amounting to collective punishment;
• Based on the updated commentary to Article 1 Common to the Geneva Conventions released by the ICRC in 2016, the High Contracting Parties should commit themselves to resort to all possible means to exercise pressure on Israel to put an end to the Gaza Strip siege and naval blockade in line with their obligation to ensure respect for the Conventions under Common Article 1 of the Geneva Conventions;

• In light of the recommendation of the 2015 UN Commission of Inquiry on Gaza, all States and international organizations, including humanitarian agencies, NGOs and international donors should ensure that relief and reconstruction efforts in the Gaza Strip scrupulously respect IHL and human rights law. In particular, a monitoring mechanism should be promptly set up in order to assess the effect of the Gaza Strip siege and naval blockade on the provision of essential services, such as water and electricity, the delivery of humanitarian aid and reconstruction efforts. On this basis, the Israeli authorities should be pressured to agree to a time-bound plan containing benchmarks for the amount of material entering the Gaza Strip to ensure measurable improvement of the living conditions in the area, the amount of building effectively rebuild and the timeframe for the end of the existing illegal blockade.

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**Guilty by association**

88 Report of the detailed findings of the independent commission of inquiry (n 49) para 599.
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Jerusalem light rail IHL analysis

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Diakonia’s IHL Resource centre seeks to increase awareness of IHL among:

- The international community present in the oPt – international NGOs, international agencies such as United Nations and European Union bodies, international media and diplomatic missions as well as decision makers visiting the area;
- Israeli and Palestinian civil society, media, lawyers and the general public in Israel and Palestine;
- EU and UN bodies based in Brussels and Geneva;
- International corporate actors active in the oPt.
Where possible, the disseminated IHL information and work with partner organisations also includes a gender perspective.

How we work

The IHL Resource Centre consists of four interlinked components:

- Legal research and briefings to civil society and the international community;
- Education and information, including through the creation of an IHL Helpdesk and work with local partners;
- Monitoring of and reporting on IHL violations;
- Advocacy from Diakonia’s Head Office in Stockholm.
What is Diakonia?
Diakonia is a Swedish development organisation working together with local partners for a sustainable change for the most vulnerable people in the world. We support more than 400 partners in nearly 30 countries and believe in a rights-based approach that aims to empower discriminated individuals or groups to demand what is rightfully theirs. Throughout the world we work toward five main goals: human rights, democratisation, social and economic justice, gender equality and sustainable peace.

_Diakonia International Humanitarian Law Resource Centre_

The goal of Diakonia International Humanitarian Law Resource Centre is to increase the respect for and further implementation of international law, specifically international humanitarian law (IHL), in the Israeli–Palestinian conflict. We believe that addressing violations of IHL and international human rights law tackle the root causes of the humanitarian and protection crisis in the oPt, in a sustainable manner. Our Centre makes IHL expertise available by providing:

- Briefings to groups and organisations on IHL and its applicability to Israel and the oPt;
- Tailored in-depth trainings on specific issues and policies relating to IHL;
- Legal analyses and ongoing research on current IHL topics; and
- Legal advice, consultation and legal review of documents for other actors in the oPt, to support policy formulation and strengthen advocacy with an IHL perspective.

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Contact us at: ihl@diakonia.se