PLANNING TO FAIL
THE PLANNING REGIME IN AREA C OF THE WEST BANK:
AN INTERNATIONAL LAW PERSPECTIVE

Diakonia International Humanitarian Law Resource Centre
Legal Report

September 2013
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Acknowledgements

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Diakonia International Humanitarian Law Resource Centre Reports

Diakonia IHL Resource Centre provides a legal perspective on current issues of interest related to the protection of civilians and their properties in the Israeli–Palestinian conflict. Our work focuses on the application of international humanitarian law (IHL) and international human rights law (IHRL) to specific policies, practices and issues pertaining to the occupied Palestinian territory (oPt).1

The analyses aim at providing humanitarian and development experts and practitioners, policy and decision makers, researchers, academics and journalists with accessible and reliable information on international law and its applicability in the oPt. IHL is a key reference and tool for people who work to increase the protection of civilians, alleviate human suffering, and promote peace, justice and development in Israel and the oPt. The objective of these analyses and the related recommendations is to facilitate policy formulation.

Diakonia works together with partners from civil society in both Israel and the occupied Palestinian territory:

Al Haq
www.alhaq.org

Al Mezan Centre for Human Rights
www.mezan.org

The Association for Civil Rights in Israel (ACRI)
www.acri.org

Badil Resource Center for Palestinian Residency and Refugee Rights
www.badil.org

B’Tselem, the Israeli Information Centre for Human Rights in the Occupied Territories
www.btselem.org
# Table of Contents

**EXEClUTIve sUmmArY** ........................................................................................................ 8

I. INTRODUCTION ............................................................................................................ 10

II. BACKGrOUND .............................................................................................................. 11

III. UNLAWFUL TRANSITION FROM THE JORDANIAN PLANNING LAW ..................... 14

IV. ANALYsIS OF THE ISRAEli PERMIT AND PLANNING REGIME IN AREAl C .......... 14

   Israel’s legal obligations ............................................................................................... 15
   Facilitating unlawful policies: settlements, the wall and the annexation of East
   Jerusalem ..................................................................................................................... 16
   The obligation to ensure public order, safety and civil life .......................................... 17
   Not respecting existing local laws and local institutions ............................................. 18
   Failure to respect, protect and fulfil the human rights of protected persons .............. 20
   Lack of protection for Palestinian property .................................................................. 22
   Forcibly transferring protected persons ..................................................................... 24
   Denying the right of self-determination ..................................................................... 25
   Economic effects of Israeli planning restrictions in Area C ........................................ 26

V. THE LEGAL FRAMEWORK FOR THE DELIVERY OF AID IN AREAl C AND IMPLICATIONS FOR
   THIRD PARTY RESPONSIBILITY .................................................................................. 29

   The obligation to facilitate the delivery of aid under international law ....................... 29
   From humanitarian relief to development – similar obligations ................................ 29
   The challenge of delivering aid and development in the context of the oPt ................. 31
   The obligation to respect and protect aid personnel .................................................. 31
   The obligation to respect and protect aid property ..................................................... 32
   The responsibility of third parties for violations of IHL and IHRL by parties to the
   conflict ........................................................................................................................ 32
   The legal implications of the application of the ICA permit and planning regime on the
   delivery of aid ................................................................................................................ 32
   The practice of aid and development agencies ......................................................... 33

VI. CONCLuSIONS AND reCOmmeNDATIONs .................................................................... 35

   The illegality of the planning regime – institutions, policies, practices and their
   outcomes ...................................................................................................................... 35
   Failure of the planning regime to allow and facilitate the delivery of aid in Area C
   Planning recommendations ....................................................................................... 36
   Aid recommendations ............................................................................................... 37

VII. TIMelIne: eVOLUTION OF THE PLANNING REGIME IN THE WEST BANK .................. 38
List of acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AHLC</td>
<td>Ad Hoc Liaison Committee</td>
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<tr>
<td>COGAT</td>
<td>The Coordinator of (the Israeli) Government Activities in the Territories</td>
</tr>
<tr>
<td>EAPPI</td>
<td>The Ecumenical Accompaniment Program in Palestine and Israel</td>
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<td>EU</td>
<td>European Union</td>
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<tr>
<td>EWASH</td>
<td>The Emergency Water, Sanitation and Hygiene group in the occupied Palestinian territory</td>
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<td>ICAHD</td>
<td>Israeli Committee against House Demolitions</td>
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<td>ICRC</td>
<td>International Committee of the Red Cross</td>
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<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>IDF</td>
<td>Israeli Defence Forces</td>
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<td>ICA</td>
<td>Israeli Civil Administration</td>
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<td>ICJ</td>
<td>International Court of Justice</td>
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<td>IHL</td>
<td>International Humanitarian Law</td>
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<tr>
<td>IHCJ</td>
<td>Israeli High Court of Justice</td>
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<tr>
<td>IHRL</td>
<td>International Human Rights Law</td>
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<td>IMC</td>
<td>Israeli Military Commander</td>
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<td>IPCC</td>
<td>International Peace and Cooperation Centre</td>
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<tr>
<td>MO</td>
<td>Military Order</td>
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<tr>
<td>NGO</td>
<td>Non–Governmental Organisation</td>
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<tr>
<td>NIS</td>
<td>New Israeli Shekel</td>
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<tr>
<td>NRC</td>
<td>Norwegian Refugee Council</td>
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<tr>
<td>oPt</td>
<td>occupied Palestinian territory</td>
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<tr>
<td>PA</td>
<td>Palestinian Authority</td>
</tr>
<tr>
<td>PAH</td>
<td>Polish Humanitarian Action</td>
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<tr>
<td>HCT</td>
<td>The United Nations Humanitarian Country Team</td>
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<tr>
<td>UNOCHA</td>
<td>United Nations Office for the Coordination of Humanitarian Affairs</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>USD</td>
<td>United States Dollar</td>
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Legal definitions

**A fortiori**
argument ‘from [the] stronger’. The phrase is used to mean ‘even more likely’ or ‘with even more certainty’.

**De facto**
‘concerning fact’. In law, it often means ‘in practice’ but not necessarily ordained by law or ‘in actuality’.

**De Jure**
‘concerning law’. Unlike de facto, practices may exist de jure and not be obeyed or observed by the people in actuality.

**Erga omnes**
rights or obligations owed ‘toward all’. Describes obligations owed by states towards the international community at large.

**Jus cogens**
‘compelling law’. Describes a fundamental principle of international law, accepted by the international community of states, from which no derogation is ever permitted.

**Military necessity**
the concept has been defined as “those measures which are indispensable for securing the ends of the war and which are lawful according to the modern laws and usages of war”. It is a principle whereby a belligerent has the right to apply any measure that is required to bring about the successful conclusion of a military operation, and that is not forbidden by the laws of war. Military necessity is not a carte blanche to achieve the military goal at any price.

**Jurisprudence**
Judicial precedents and rulings that are considered collectively.
EXECUTIVE SUMMARY

In recent years there has been growing concern with regard to the planning regime operating in the West Bank. These concerns have flowed from the continuing development and growth of illegal Israeli settlements, coupled with an increasing number of demolitions of Palestinian homes and property. At the same time there have been increasing restrictions on humanitarian assistance and aid delivery including the demolition of structures, the confiscation of equipment as well as the harassment of aid personnel.

This paper presents the international legal analysis of the Diakonia IHL Resource Centre of the Israeli planning regime that is in place in Area C of the West Bank, in order to establish whether it conforms to international standards, and if not, what steps can be taken to bring the planning regime into line with the basic demands of international law.

The overall finding is that the planning regime in Area C is fundamentally unlawful, and that this is demonstrated in several key aspects of its form and function.

In terms of its form, the establishment of a long-term Israeli planning regime that excludes Palestinians from the decision-making process:

- violates Israel’s obligation as an Occupying Power to respect existing local laws, and represents an unnecessary transgression into the civilian affairs of the protected population;

In terms of its function, the planning regime:

- facilitates unlawful policies such as illegal settlements, the Wall, and the annexation of East Jerusalem;
- fails to meet Israel’s obligation to ensure public order, safety and civil life;
- fails to meet Israel’s obligation to respect, protect and fulfil the human rights of the protected population;
- fails to meet Israel’s obligation to protect private property;
- puts protected persons at risk of being forcibly transferred;
- systematically impedes the delivery of humanitarian and development aid to Area C;

It can only be said that the planning regime, in both its form and function, infringes upon the Palestinians right to self-determination.

We also find that these unlawful characteristics of the Israeli planning regime cannot reasonably be justified by the demands of military necessity. Nor are the legal obligations that are contravened by the planning regime superseded or rendered in any way invalid by subsequent agreements such as the Oslo Accords.

The overall consequence is a restrictive, discriminatory and unlawful planning system that obstructs Palestinian development in Area C by impeding access to natural resources and livelihoods, and that prevents rather than ensures the maintenance of order and safety. Over a period of decades, this has proved to be detrimental to the development of Palestinian communities, and to the realisation of their rights.
In light of these main findings, we make the following recommendations:

**Israel** as the Occupying Power is under an obligation to:
- cease the violations of international law instigated and facilitated by its unlawful planning regime, including the construction and expansion of settlements and the Wall, unlawful destruction and forcible population transfer, and provide guarantees for non-repetition and reparations to the victims;
- dismantle all settlements and those portions of the Wall within the oPt;
- refrain from any intervention in the planning process except in temporary and strictly limited circumstances of genuine security concern, in line with its obligations under international law;
- cede full ownership of the planning regime to the Palestinian population, allowing genuine representation in the decision making process. Ultimately, in order for this to be achieved, Israel should end the occupation of the West Bank, including East Jerusalem, and the Gaza Strip, and respect, protect and fulfil the right of the Palestinian people to self-determination;

The **international community** must:
- take all measures to ensure that Israel abides by its international obligations, and call on Israel to cease the unlawfulness of its planning regime;
- encourage Palestinian ownership of the planning regime in Area C and the remainder of the West Bank, including East Jerusalem;

**Palestine** should:
- take all possible steps, individually and through international assistance and cooperation, to the maximum of its available resources, to achieve the full realisation of the civil, political, economic, social and cultural rights of Palestinians living in the West Bank;
- exert every effort to ensure that the Palestinian people are not adversely affected by its undertaking of nominal spatial planning, nor recognize the unlawful Israeli planning regime and its associated policies and practices;
- ensure that in concluding bi-lateral agreements with the Occupying Power, it does not concede the rights of the Palestinian people, in so far as spatial planning, including the sovereignty over natural resources, is considered.

*With regard to aid we make these recommendations:*

**Israel**, as the Occupying Power, has the primary obligation to provide for the welfare of the occupied population, including through the delivery of aid. Given that they are failing to do so, they must at the very least:
- allow and facilitate the rapid, unimpeded, effective delivery of aid, including infrastructure, by international actors to the protected population in all parts of the West Bank;
- put in place a coordination mechanism for the aid community to deliver construction in Area C, that will not oblige them to engage with the unlawful planning regime;

Until such time as a lawful coordination mechanism is put in place by Israel, the **international community** should:
- inform the Occupying Power of development projects in a manner that will be effective, but not recognise nor engage with the unlawful planning regime;
- take all positive measures to ensure that Israel facilitates the effective delivery of aid;
- demand from Israel, in cases of unlawful interference with the delivery of aid, the cessation of the violation, guarantees of non-repetition and reparations.
I INTRODUCTION

The Area C of the West Bank, as classified by the 1995 Oslo Agreement, comprises 62 percent of the West Bank. As the only contiguous territory that encompasses the bulk of land and natural resource available, the zone is critical to the immediate and long-term development of the occupied Palestinian territory (oPt) and the viability of any future Palestinian state.

In recent years there has been growing concern with regard to the planning regime operating in the West Bank, specifically in Area C. These concerns have flowed from the continuing development and growth of illegal Israeli settlements, coupled with an increasing number of demolitions of Palestinian homes and property. At the same time there have been increasing restrictions on humanitarian assistance and aid delivery including the demolition of structures and confiscation of equipment as well as harassment of aid personnel.

Therefore the Diakonia IHL Resource Centre has undertaken legal analysis of the planning regime in order to establish whether it conforms to international standards, and if not, what steps can be taken to bring the planning regime into line with the basic demands of international law.

The report is primarily based on legal norms of international humanitarian law (IHL) whose application, while disputed by Israel, has been confirmed by the UN Security Council (such as Resolution 242 and Resolution 338), and the International Court of Justice, the highest authority on international law.

This report outlines the international legal framework that regulates the exercise of planning authorities by the Occupying Power and analyses the legality of the Israeli planning institutions, policies and practices as they currently pertain to Area C of the West Bank.

Secondly, the report introduces the relevant legal framework regulating the delivery of aid by third states in occupied territory and its implications for the aid community, as third State actors, in Area C.

The third and final section will specify conclusions and recommendations to Israel, as the Occupying Power, the international community and Palestine.
II. BACKGROUND

Shortly after its occupation of the West Bank, including East Jerusalem and the Gaza Strip in 1967, Israel issued Military Order No. 418 (1971), which significantly modified the Jordanian Planning Law in place in the West Bank. In doing so, Israel disbanded the Local and District Planning Committees, both of which included representatives of the local Palestinian population. Full authority over planning in the West Bank was instead granted to the Israeli Military Commander, thereby disenfranchising the local planning authority and removing Palestinian ownership or participation in the planning decision making process. Concurrently, Israeli authorities created Special Local Planning Committees of which there are now 20 — that plan exclusively for Israeli settlements, which are illegal under international law. Settlements and settler groups are fully represented in these committees. According to international customary law an Occupying Power has an obligation to respect the laws in place in the occupied territory.

As the Occupying Power, Israel is under an obligation according to international humanitarian law (IHL) to administer the oPt for the benefit of the protected Palestinian population. This includes maintaining law and order, protecting Palestinian civilians from any form of violence, and, crucially, ensuring that their rights and needs are provided for. However, since the introduction of Military Order 418, Israel has enforced a planning regime that controls access to natural resources, determines the allocation of land and controls its use — directly impacting the demographic distribution within the territory and limiting its future development. It also denies the overwhelming majority of Palestinian planning and permit applications. In recent years, Israeli authorities have rejected 94 percent of Palestinian permit applications and less than one percent of Area C, much of it built-up already, has been assigned for Palestinian development by the Israeli Civil Administration (ICA). Seventy percent of Area C is off-limits to Palestinian construction, as it is allocated either to Israeli settlements or closed military areas; while another 29 percent is heavily restricted to Palestinians.

The denial of planning permits for Palestinian construction and the demolition of existing structures go hand in hand with the development and expansion of Israeli settlements across the West Bank, including East Jerusalem. In the first half of this year, Israel began the construction of 1,000 new settlement units in the West Bank, with another 15,000 or so in the process of planning, approval or development. In approximately the same period, the Israeli military demolished 350 Palestinian structures, usually under the pretext of lack of a building permit. These included residential buildings, emergency tents and livelihood and water infrastructure, and resulted in the forcible displacement of 630 people. In January of this year alone, 139 Palestinian structures were destroyed, representing close to a three-fold increase in the monthly average of demolitions in 2011 and 2012. In total, some 27,000 Palestinian structures have been demolished since the beginning of the occupation.

As a matter of principle under IHL, in occupied territory, lack of building permits and public order arguments cannot be used to justify displacement or relocation of civilians against their will.

The driver for the protection and humanitarian crisis in the oPt, and the root cause of the need for humanitarian aid is the prolonged occupation, and the practices and policies of Israel, the Occupying Power, that have deprived Palestinians of their ability to live self-sustaining lives. These practices and policies include the destruction of property and livelihoods, forced displacement, restrictions on movement and access, and the lack of effective remedy and accountability for violations, that have resulted in entrenched levels of food insecurity and continued dependence on humanitarian aid.

In addition, Israel utilises the same system to regulate the delivery of aid projects within Area C and the planning regime has hampered the work of humanitarian and development actors whose objective is to alleviate the poverty and facilitate the development of the most vulnerable population groups in occupied Palestine. These actors, aiming to provide aid to Palestinian communities in the form of infrastructure, face many of the same restrictive planning regulations as individual Palestinians do and the Israeli planning regime has proven to be an impediment to the delivery of aid in Area C.
It is important to note that any security issue or genuine military concern on the part of Israel should be able to be addressed with negligible intervention in the civilian planning system. In the same vein, Israel, as the Occupying Power, should have strictly limited involvement in the planning process, which should be ‘locally-owned’ and civilian-led, rather than controlled by the Occupying Power.
**KEY FACTS**

- In 2012, more than 600 Palestinian homes and other structures were demolished by Israeli authorities, resulting in the forced displacement of 886 Palestinians, more than half of them children. Around 4,100 people were otherwise affected, for example due to the demolition of animal shelters, water cisterns or infrastructure.

- Most demolitions (90%) occur in already vulnerable farming and herding communities in Area C; thousands of others remain at risk of demolition and displacement due to outstanding demolition orders.

- Palestinian construction in 70% of Area C is prohibited (allocated to Israeli settlements or the military) and in 29% it is heavily restricted; less than 1% of Area C has been planned for Palestinian development. Palestinians who built without Israeli permits are exposed to demolitions and displacement.

- Only 13% of East Jerusalem is zoned for Palestinian construction, much of which is already built up, compared with 35% which has been zoned for the use of Israeli settlements.

- Demolitions have serious negative consequences for Palestinian men, women and children. They often deprive Palestinians of their home and frequently result in disruption in livelihoods, reduced standard of living and limited access to basic services, with particularly negative consequences for children.

**NUMBER OF DEMOLISHED PALESTINIAN OWNED STRUCTURES AND DISPLACED PEOPLE 2009 - 2013**

![Graph showing the number of demolished Palestinian owned structures and displaced people from 2009 to 2013. The graph indicates an increase in demolitions and displacement over the years, with the highest number in 2012.]

**DEMOLISHED STRUCTURES**

- Governorate Capital
- Palestinian Built-up Areas
- Green Line
- Barrier
- Constructed / Under Construction
- Planned

**ISRAELI SETTLEMENTS**

- Built-up areas and Cultivated Land
- Municipal Boundary
- Regional Council (covers approximately 75% of Area C)

**OSLO AGREEMENT**

- Area A
- Area B
- “Wye River” Nature Reserves

Source: Displacement Working Group, 2012
III. UNLAWFUL TRANSITION FROM THE JORDANIAN PLANNING LAW

In order to provide a comprehensive legal analysis of the planning regime under international law, the domestic planning system prior to occupation must be explained and understood. Therefore this section will set out the framework of the Jordanian Planning Law in force in the West Bank prior to 1967. This is necessary due to the fact that the Occupying Power is under a general obligation under international law not to change local laws.

Until 1972, planning and building in the West Bank were subject to the Jordanian City, Village and Building Planning Law No. 79, enacted in 1966. Under the Jordanian Law, a three-tiered planning system was in place, including a High Planning Council and District Planning Committees, which would prepare and approve regional plans, and Local Planning Committees (serving municipalities or groups of villages) that would prepare outline and detailed plans (to be approved by the High Planning Council and District Committee, respectively) and issue building permits in accordance with approved plans. The planning institutions guaranteed local representation in all levels of the decision-making process, from the preparation of plans and the approval process to the issuance of building permits.

In 1971 Israel comprehensively amended the Jordanian law by way of ‘Military Order of Planning of Towns, Villages and Structures (MO No. 418)’, under which all significant decisions on permits and plans would be made by a High Planning Council appointed and staffed by the Israeli Military Commander (IMC). MO No. 418 also allowed the High Planning Council to prepare, amend, cancel, disregard, or dispense with the need for any plan or permit. MO No. 418 annulled the District and Local Planning Committees, and their functions are now performed by the Military Commander through the Israeli Civil Administration’s Local Planning and Licensing Sub-Committee, with no Palestinian representation.

While denying Palestinian participation, MO No. 418 introduced Special Local Planning Committees exclusively for Israeli settlements, in which settlers are fully represented. These committees, of which there are 20, issue building permits in line with plans approved by the (IMC’s) High Planning Council. This can be considered as a violation of the principle of non-discrimination.11

It is important to note, and will be discussed in further detail later in the report, that the change in the Jordanian Planning Law was done in violation of Article 43 of the Hague Regulations:

“The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”12

The decision to abolish the planning committees, as well as the subsequent conduct of the planning authorities of the Military Commander, are intrinsically related to the establishment of the settlement infrastructure, which is illegal in and of itself according to Article 49 of the Fourth Geneva Convention. According to Article 49(6) of the Fourth Geneva Convention, the Occupying Power is strictly prohibited from transferring or encouraging the transfer of its own civilian population into occupied territory.13

IV. ANALYSIS OF THE ISRAELI PERMIT AND PLANNING REGIME IN AREA C

It is first important to note that the full exercise of permit and planning powers by the Occupying Power has significant long-term implications for the occupied territory and its Palestinian population and by definition creates an inherent tension with the short term and temporary nature of occupation as envisaged by IHL. Planning and development in East Jerusalem, which has been illegally annexed by Israel, is governed by Israel’s national planning institutions, thereby eliminating all signs of occupation.
Israel’s legal obligations

As the Occupying Power in the West Bank, including East Jerusalem, and the Gaza Strip, Israel’s obligations under international humanitarian law (IHL) are codified in the Hague Regulations, which are reflective of customary international law, and the Fourth Geneva Convention of 1949, largely reflective of customary international law. The application of the Fourth Geneva Convention to the oPt has been reaffirmed on numerous occasions by the UN Security Council and the UN General Assembly as well as the International Court of Justice (ICJ) in its 2004 Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Territories. According to IHL, Israel is bound by an obligation to administer the oPt for the benefit of the protected Palestinian population. This includes maintaining law and order, protecting Palestinian civilians from any form of violence, and, crucially, ensuring that their rights are respected and needs are provided for.

In complementarity with IHL, international human rights law (IHRL) is also applied to the occupied territory, and ever more so in situations of prolonged occupation. Under IHRL, Israel, through the IMC, has the immediate obligation to take steps for the realisation of these rights and to take progressive steps for their full realisation to the maximum of their available resources. Israel must also refrain from interfering in the enjoyment of these rights, including with its policies and practices in Area C.

Subsequent to a lawful application of planning powers according to IHL, IHRL outlines in greater detail the human rights of persons that must be respected, protected and fulfilled by the State exercising effective control over the territory.

Protected Persons

Protected persons are those who “at a given moment and in any manner whatsoever find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals”. They are entitled as individuals but also as a community to basic safeguards under IHL and human rights under IHRL. Certain persons such as the sick and wounded as well as special vulnerable groups such as women, children, refugees, internally displaced persons, the elderly and disabled persons deserve special attention owing to their vulnerability. The additional protection provided by IHL includes, for example, being given priority in the delivery of relief, shelter and medical treatment. Under international human rights law, all human beings are entitled, without distinction of any kind, to economic, social, cultural, civil and political right, including the right to adequate housing.

From the very outset, the Israeli permit and planning regime has prioritised the planning needs of settlers, whose presence in the West Bank is illegal under international law, over those of the protected Palestinian population. In doing so, Israel has deliberately ignored the unlawful status of settlements and the fact that settlers are not protected persons and are therefore not entitled to the services of the military administration. It is a position that denies Palestinians their special rights as protected persons.

Before a more detailed analysis of the practices and policies of the Israeli planning system in the West Bank, there are three aspects of the regime that deserve notice, particularly when viewed in light of the prolonged military occupation of Palestine;
• firstly, the full exercise of permit and planning powers by the Israeli Military Commander has long-term implications, creating an inherent tension with the short term and temporary nature of occupation as envisaged by IHL;
• secondly, the significant modification by the Military Commander of the local planning laws and institutions is contradictory to the limited scope of permitted military interventions in the local affairs of the occupied population;
• thirdly, Israel, as the Occupying Power, should have strictly limited involvement in the civilian planning system, which should be 'locally-owned'. It is important to note at the outset that any security issues or genuine military interest on the part of Israel could likely be addressed with negligible intervention in this planning system.25

In addition, special notice should be given to two general legal obligations on any state. First, is the obligation to apply international obligations in good faith, 26 that policies and practices of states must be consistent with the spirit of the relevant body of law. Second, the obligation to ensure that domestic legislation does not contradict the State's international duties. If this is so, domestic laws must be repealed or amended.27 Furthermore, the full exercise of spatial planning powers by Israel has long term implications and should therefore be reviewed through the prism of the founding principles of the UN Charter, most relevant being the right to self-determination for all peoples.28

The current Israeli permit and planning regime does not effectively promote the realisation of the rights of the protected persons under international humanitarian or human rights law. Beyond the structural changes made to the planning institutions, as will be elaborated below, it adopts highly restrictive ‘special’ outline plans29 contrary to the domestic Jordanian Planning Law, and only applicable to selected villages leaving the majority of communities without detailed planning. The systematic denial of permit applications in the rest of Area C is of particular relevance, as indeed is the repeated rejection of community-initiated or requested detailed planning in villages under high risk of demolitions and displacement.

The planning regime has been repeatedly criticised by the international community as being an impediment fulfilling to both humanitarian needs and the development goals of the Palestinian population due to recurring demolitions, including of essential objects such as rainwater harvesting cisterns.30 The current system has also been recognised as creating a coercive environment that increases the risk of forcible transfer.31 The overall consequence of Israel’s military administration in this regard is the creation of a wholly unlawful planning system that obstructs Palestinian development in Area C by impeding access to natural resources and livelihoods, and that prevents rather than ensures the maintenance of order and safety.

Facilitating unlawful policies: settlements, the wall and the annexation of East Jerusalem

Since taking full control over the entire planning regime in the oPt, Israel has enforced a restrictive and discriminatory mechanism that determines the allocation of Palestinian land and controls its use — directly impacting the demographic distribution within the territory and limiting its future development. The Israeli planning system is used to promote the development and expansion of settlements in the West Bank, including East Jerusalem, and the Wall, at the expense of Palestinian communities.

Given the clear prohibition outlined in Article 49(6) of the Fourth Geneva Convention, the establishment of Israeli settlements in the West Bank, including East Jerusalem, is in direct contravention of Israel’s legal obligations under IHL. This position was reiterated by the United Nations Security Council Resolution 446 (1979), which articulated that “the policy and practice of Israel in establishing settlements in the Palestinian and other Arab territories occupied since 1967 have no legal validity [...]”.32 More recently, the UN Independent Fact-Finding Mission on Israeli Settlements in the Occupied Palestinian Territory (oPt), including East Jerusalem, which criticised Israel’s ‘creeping annexation’ of the West Bank, called on the
Occupying Power to cease all settlement activity without preconditions, “in compliance with article 49 of the Fourth Geneva Convention”.33

This was further reaffirmed by the International Court of Justice (ICJ) ruling in 2004, which stated that the establishment of settlements in the oPt was a breach of international law, and that those portions of the Wall being built by Israel in the oPt, along with its associated regime of Israeli settlements, land confiscation, separate roads, permit systems and movement restrictions, are contrary to international law.34 In doing so, the ICJ highlighted the symbiotic relationship between Israel’s policies and practices, and particularly between the Wall, settlements and planning institutions.

While the Military Commander denies the overwhelming majority of Palestinian planning and permit applications, the expansion of settlements has continued unabated. In recent years, Israeli authorities have rejected 94 percent of Palestinian permit applications35 and less than one percent of Area C, much of it built-up already, has been assigned for Palestinian development by the Military Commander.36 Seventy percent of Area C is off-limits to Palestinian construction, as it is allocated either to Israeli settlements or closed military areas; while another 29 percent is heavily restricted to Palestinians.37 Practically speaking, the denial of planning permits for Palestinian construction and the demolition of existing structures go hand in hand with the unrelenting development and expansion of Israeli settlements and the Wall across the West Bank, including East Jerusalem. The Israeli planning institutions, policies and practices, which include Special Local Planning Committees for settlements that coordinate with the Israeli Civil Administration (ICA), are in character and in effect settlement-promoting mechanisms.

In the first half of 2013, Israel began the construction of 1,000 new settlement units in the West Bank, with another 15,000 or so in the process of planning, approval or development.38 In approximately the same period, the Israeli military demolished 377 Palestinian structures, usually under the pretext of lack of building permit.39 These included residential buildings, emergency tents and livelihood and water infrastructure, and resulted in the forcible displacement of 630 people. In January of this year alone, 139 Palestinian structures were destroyed, representing close to a three-fold increase in the monthly average of demolitions in 2011 and 2012.40 In total, some 27,000 Palestinian structures have been demolished since the beginning of the occupation.41

Deputy Defence Minister Danny Danon (Likud) highlighted the link between the planning process and the Israeli settlement enterprise in a recent interview with the settler-affiliated media outlet Arutz 7, when he declared that “[e]veryone interested in legally approving construction in Judea and Samaria [official Israeli term for the occupied West Bank] is invited to me personally and directly, and we will promote construction in Judea and Samaria […]. Our commitment to Judea and Samaria is clear, and we are committed to continued construction in Judea and Samaria”.42

Finally, Israel’s policies and practices in the Jerusalem periphery, in particular the construction of settlements and the Wall as well the associated restrictions on freedom of movement and denial of access to natural resources, lead to the displacement and fragmentation of Palestinian communities. This, in turn, contributes directly to the entrenchment of the annexation of East Jerusalem.43 Such annexation is a violation of the prohibition against acquiring land through use of force according to Article 2(4) UN Charter.

The obligation to ensure public order, safety and civil life

According to Article 43 of the Hague Regulations the Occupying Power is under a two-fold obligation—a positive obligation to ensure public order, and the safety and civilian life of the protected population, and a negative obligation not to change local laws unless absolutely necessary. This obligation comprises the duty to secure respect for the applicable rules of international humanitarian law and international human rights law, to protect the inhabitants of the occupied territory against acts of violence, and not to tolerate such violence by any third party.44
The first part of Article 43 sets forth the Occupying Power’s obligation to ensure public order and safety in its dual sense, i.e. ensuring not only the public interest in order and safety, but also that the needs of the protected population are provided for. This obligation should be interpreted broadly to include human rights such as the rights to health and education, amongst others. As reiterated by Sassoli and Boutruche, it is an aim that must be pursued with all available and proportionate means in line with the provisions of IHL. In essence this obligation is one of means, rather than results.

Article 43 is supplemented by a customary international law obligation to ensure that the needs of the protected civilian population are provided for, including means of shelter. This obligation is result-oriented thus making the Occupying Power responsible for both the means it chooses to employ and the outcome of its actions. The exercise of means and their reasonably expected outcomes should also be in line with other provisions of IHL, i.e. respect for private property and the demographic composition of the occupied territory, as will be elaborated hereafter. In any case, public order, safety and civil life cannot justify administrative measures that are not aimed at and result in the advancement of welfare of the occupied population by the Occupying Power.

The two complementary obligations elaborated above are contextual and can depend on the specific circumstances of the occupation. In a situation of prolonged occupation, where civilian needs increase over time, the Occupying Power has enhanced humanitarian and human rights responsibilities towards the protected population. The participation of the local population in the decision-making process has been highlighted as a possible litmus case for the lawful exercise of civil powers by an Occupying Power in long-term occupation.

Not respecting existing local laws and local institutions

The second part of Article 43 requires the Occupying Power to respect the laws in force in the occupied territory, unless absolutely prevented from doing so. The reference to local laws should be interpreted in a broad manner including local manners and customs, as also set in Article 27 of the Fourth Geneva Convention. The overarching parameter for lawful intervention in local affairs is one that is done in anticipation of the end of occupation, rather than with a view to entrenching it. In this regard, a military administration should reflect its temporary nature and should not extend its powers beyond the period of occupation. Put simply, the Occupying Power should refrain, unless absolutely necessary, from interfering in the domestic civilian affairs of the occupied population.

Planning is a civilian feature of governmental powers with limited relevance to national security. As such, comprehensive control over planning authorities by the military regime should be seen as an unnecessary transgression into the internal affairs of the protected population. In addition, planning is an instrument that seeks to realise long-term goals based upon agreed national and local objectives of society. Thus, the administration of planning and construction by the Occupying Power, being in essence a temporary regime, raises significant concerns for its application beyond the permissible scope of occupation. IHL presumes that civilian affairs should be run by the protected population through local institutions.

In order to be deemed lawful, the exercise of legislative powers by the Occupying Power and subsequent change in local laws must serve genuine security needs, provide for effective administration or be in pursuance of IHL obligations. The Occupying Power would have to overcome significant benchmarks to articulate the exact necessity to drastically modify the local planning legislation. Security needs, if quoted, would require the identification of a specific security-related goal and the measures taken must adhere to the principle of proportionality between the goal sought and the potential harm to civilians. Additionally, it is important to note that if such argument was used, genuine military interests could probably be secured with minimal intervention into the civilian, or ‘locally-owned’, planning system.

Regardless, the Occupying Power cannot “prescribe any measure specifically prohibited by IHL or establish adverse distinctions prohibited by Article 27 of Geneva Convention IV”.

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An effective administration is one that promotes public order and safety and it is the responsibility of the Occupying Power to prove that the situation under the new legislation is more beneficial than that under the previous legislation.\textsuperscript{61} Any change in local legislation needs to be examined regularly in order to ensure that the rationale for amending local legislation does indeed exist.\textsuperscript{62} Furthermore, if the new legislation negates, or results in violations of other obligations of IHL and IHRL, then it cannot be presumed to serve public order and is unlawful.\textsuperscript{63} When the Occupying Power is unable to fulfil its duties under IHL, it is obligated to amend the local laws. The same rationale applies when the change in legislation stems from the application of an international agreement to which the Occupying Power is signatory – international agreements cannot supersede international law or undermine the protections afforded by the Fourth Geneva Convention.\textsuperscript{64} Lastly, the application of any of the above exceptions must be made in good faith.\textsuperscript{65}

In the case of Area C, the IMC has made several legislative changes to local laws and customs, namely the centralisation of planning institutions under Israeli control, the creation of ‘special’ outline plans,\textsuperscript{66} and the extension of planning laws to the Bedouin community in Area C. No security concerns were ever identified by Israel as justification for the legislative changes. The primary reason presented by the Israeli Civil Administration (ICA) is the need to maintain effective administration i.e. public order and safety. However, persistent resistance by Palestinians to the above changes, as reflected in numerous administrative objections and petitions to the Israeli High Court of Justice suggest that these changes do not provide for the best interests of the protected Palestinian population, in addition to violating their rights, and as such, are in contravention of Israel’s international law obligations.

The unlawful, restrictive and discriminatory policies and practices adopted as well as their debilitating outcomes are strongly indicative of a lack of good faith to continue Israeli control over permit and planning in Area C.\textsuperscript{67} For almost two decades Israel has pointed to the Oslo Agreements in order to lend an aura of legitimacy to the planning regime and to counter arguments that highlight its unlawful, restrictive, and discriminatory policies and practices. However, as outlined above, international agreements such as Oslo can in no way be used to justify violations of international law. It is also worth noting that the Oslo Agreements were designed as interim agreements that would last five years. They were not created as a mechanism to govern long-term planning and development in Area C and should not be considered as an appropriate system to do so. It is also important to highlight the fact that the Palestinian Authority administers planning institutions in Areas A and B, which, from an IHL perspective, casts further doubt over the legitimacy of Israel’s control over and legislative changes involving planning in Area C.\textsuperscript{68}
The Oslo Agreements – not an impediment to reinstalling planning institutions for Palestinians in Area C

The Oslo Agreements were designed to be fully implemented by 1999. The agreements saw planning powers in Area C remain, temporarily, in the hands of Israel as an Occupying Power until their gradual transfer to the Palestinian Authority (PA). However, the Oslo Agreements cannot “adversely affect [...] the situation of protected persons” and deny the occupied population its basic human rights and humanitarian imperative. Article 47 of the Fourth Geneva Convention stipulates that protected persons shall not be deprived, in any case or in any manner whatsoever, of the benefits of the Convention inter alia, “by any agreement concluded between the authorities of the occupied territories and the Occupying Power”. As Sassoli and Boutruche note, the Oslo Agreements, as international agreements, can only transfer authority to Israel as long as they do not conflict with IHl norms. Regardless of Oslo, Israel is still under the obligation to ensure that the planning regime—its institutions, policies and practices—operates in accordance with its international obligations. As such, Israel has an active obligation to correct any violations, including undoing some of the legislative amendments it has made to local laws, to ensure that IHl and IHRL are respected. In order to do so, they must transfer control over planning authorities to the local population as stipulated by Oslo and restore the planning committees under the Jordanian Law that ensured Palestinian representation in the process.

Failure to respect, protect and fulfil the human rights of protected persons

Planning and zoning are essential to the realisation of many individual and collective human rights. Through adequate planning and zoning the central government defines in practical terms – through the allocation of land use and building rights – the potential for the implementation of economic, social and cultural rights as well as civil and political rights. In this regard, planning institutions, policies and procedures should represent attempts by states parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) to utilise without discrimination all appropriate means to fulfil their obligations under the Covenant. Similarly, planning is a tool through which states parties to the International Covenant on Civil and Political Rights (ICCPR) undertake the necessary steps to adopt such laws or other measures to give effect to the rights recognised in the Covenant, without discrimination.

For example, planning and zoning may promote or hinder the realisation of the right to an adequate standard of living, which includes the right to adequate housing, the right to food, the right to access water, as well as the realisation to the right to health, the right to education, and the right to cultural freedoms. By extension, the accumulative long-term effect of zoning and planning has direct implications on the right of the protected population to development. As noted by the International Court of Justice in its Advisory Opinion on the Wall, “Israel is bound by the provisions of the International Covenant on Economic, Social and Cultural Rights”. Beyond this, Israel is under a further obligation not to create any impediment to the exercise of such rights in those areas where competence has been transferred to Palestinian authorities. Furthermore, special features of the right to adequate housing such as the obligation to allow participation in planning and security of tenure are “obligations of immediate effect” and delays in their implementation cannot be justified.
Beit Hanina family subjected to repeated house demolitions by Israeli military.

From the hill nearby the tent where he now lives, 67-year-old father of 12, Mohamed Ka’abneh can see what used to be his original family house on land now that is beyond his reach, as it is located on the other side of the Wall, in the East Jerusalem neighbourhood of Beit Hanina.

“When the bulldozers came, they not only destroyed my house, but also my life. The house in which my nine daughters and three sons used to live has now turned into an empty tent where my wife and I spend long silent evenings,” says Mohamed, who now resides in a makeshift tent in Beit Hanina El Balad. “All I wish today is to be allowed to live in this tent on my land with my wife.”

Mohamed’s story is one of an exhausting ‘war of nerves’—12 years of continuous struggle and ongoing court cases to obtain a building permit to secure a roof for his wife and family. Three times his houses were demolished and each time, his family was left homeless.

Beit Hanina El Balad, a Palestinian village in the Jerusalem governorate, is located in Area C of the West Bank. Surrounded by the Wall on four sides and also by the Israeli settlements of Ramot and Ramat Shlomo, the town is isolated from its nerve centre, Beit Hanina, which is located on the Jerusalem side of the Wall.

Mohamed’s main income was generated by breeding and selling goats. He sold half of his flock to buy more land and built—for the third time—two houses for himself and his son. In November 2011, the Israeli army demolished both houses without prior warning. “One morning, the bulldozers arrived and soldiers banned us from evacuating our furniture and belongings,” tells the old man.

The family received humanitarian assistance from international organisations in the form of residential caravans providing temporary shelter. In July 2012, three internationally-donated residential caravans—including Mohamed’s—were confiscated by the Israeli forces, on the grounds that they lacked Israeli-issued building permits. Mohamed and his family now live in a tent that provides little protection in the cold winter.
Given that the operation of planning institutions is a function of government, citizen representation and participation in decision making is an important expression of the civil and political rights of a population. Participation in the planning process is demonstrative of the right to participate in public affairs and the right of equal access to public service. Any engagement with the planning institutions should be in accordance with the right of the beneficiaries of the planning procedure to due process. It should also ensure the right to freedom of expression, which includes the right to access to information from public authorities. These rights should only be derogated from in strictly limited circumstances, governed by necessity and proportionality. In the case of Israel, there is no justifiable reason, such as public emergency, for the limitation or derogation from the rights elaborated above. Even if certain circumstances do allow for some restrictions or derogation, Israel’s policies and practices in this regard seem to be neither necessary nor proportional in terms of the harm caused to the Palestinian population.

Following her visit to the oPt in February 2012, the UN Special Rapporteur on the right to adequate housing reported to the UN Human Rights Council that “tens of thousands of Palestinians are estimated to be at risk of their homes being demolished due to unregulated building.” The Special Rapporteur concluded that: “ [...] administrative measures adopted by the Israeli Civil Administration of the Territory not only result in the demolition or eviction of considerable numbers of homes, but severely limit opportunities for Palestinians to expand cities and to access basic means of livelihood and services – essential elements of the right to adequate housing. The territorial fragmentation and the severe deterioration of Palestinian standards of living are furthered by decades of accelerated expansion of Israeli settlement units that expropriate land and natural resources.” Furthermore, Israel is adopting and exercising discriminatory policies at all levels—institutions, policies and practices planning and zoning as well as enforcement of planning laws in Area C.

The planning policies and practices described above, by de facto prohibiting construction of structures serving basic needs, including schools, clinics, water cisterns, latrines and even tents, have resulted in violations of the human rights of Palestinian residents of Area C.

Lack of protection for Palestinian property

Palestinian communities in Area C have been continuously threatened by a series of administrative measures, planning regulations and military initiatives adopted by Israel as the Occupying Power, including the extensive demolition of Palestinian residential and livelihood-related structures. The depopulation of Area C of its Palestinian inhabitants has left those remaining Palestinian communities ever more isolated and at ever-greater risk of forcible transfer and displacement. At the same time, Israeli settlements, which are illegal under international law, continue to flourish under detailed plans approved by the Military Commander.

Protection for civilian property is specifically granted in IHL through the explicit prohibition against confiscation of private property, and destruction (except where required for imperative military necessity), and the prohibition of appropriation (named in IHL seizure or requisition) of movable or immovable property.

Destruction of property is strictly limited to cases where it is rendered absolutely necessary by military operations and is deemed proportional to the military advantage expected. In the same vein, appropriation may be justified by the needs of the occupying army itself. However, instances of extensive destruction and appropriation carried out unlawfully and wantonly, without military necessity, amount to a grave breach of the Fourth Geneva Convention. Moreover, according Article 8 of the Rome Statute of the International Criminal Court, grave breaches constitute war crimes and give rise to individual criminal responsibility. Destruction as a punishment or deterrent can never be legally excused and may amount to collective punishment.
In Area C, Palestinian structures are often demolished under the pretext of military necessity in areas commonly referred to in the oPt as ‘closed military areas’ or ‘firing zones’. The analysis of such demolitions would begin with establishing the legality or lack thereof of the appropriation and then, of the destruction of the property situated on the land. The legality of the appropriation would depend on the existence of the immediate operational and temporary “needs of the army of occupation”. Military training does not qualify in this regard. Again, at all times the appropriation must be proportional between the harm caused to the protected population and the expected military advantage. In such circumstances, the victims of the requisition must receive compensation as soon as possible and the appropriation should not under any circumstances facilitate a subsequent unlawful act, such as the establishment of settlements. Lastly, the process of appropriation must be preceded by due process.

It has been argued that an Occupying Power may be required to take administrative measures to enforce planning laws as part of its obligation to respect local law under both Article 64 GCIV and Regulation 43 of Hague Regulations. Such measures could theoretically include demolitions or appropriation of civilian property. However, the problem will remain as such steps would run counter to the specific prohibitions (including grave breaches) and protections concerning private property as set out above.

Any such administrative arguments can only be applied in accordance with the intent and purpose of the provisions, namely the underlying principle of acting for the benefit of the protected population, as well as broader notions under international law. In the specific context of the oPt, where demolitions have been undertaken extensively it is impossible to argue that such steps have been done for the benefit of the protected population, hence there is no legal basis for such a claim.

In addition to the regulation provided by IHL, it is widely recognised that IHRL delineates and sets restraints on the Occupying Power’s actions. According to customary international law, the right to private property, recognised in the Universal Declaration of Human Rights, must be respected and protected. IHRL also provides special protection against arbitrary or unlawful interference in the family and private life. It establishes the right to adequate housing, which is wider in scope under IHRL than the right to shelter under IHL. When guaranteed, this provides a foundation for the realisation of other rights, including the rights to family, work, education and ultimately, self-determination. According to the UN Committee on Economic, Social and Cultural Rights (CESCR), and as clarified in General Comment No. 4 of the ICESCR, State Parties, including Israel, are requested, at minimum, to abstain from the unlawful practice of destroying structures built for civilian use and facilitate “self-help” by affected groups, including through international assistance.

Furthermore, the UN Secretary General has reiterated the illegality of forced evictions under international law, and called for the destruction of private property, the planned transfer of Bedouin communities and those policies that may lead to forcible transfer to be immediately halted. The Secretary General concluded that “Israeli planning and zoning policies and practices should be immediately modified to ensure adequate housing for all Palestinian residents of Area C and East Jerusalem.”

During occupation, movable public property may be confiscated only if it can be used for military operations. Immovable public property such as land and trees cannot be confiscated and the occupier is only a trustee according to the rules of usufruct, i.e. it has the right to enjoy the fruits of the land without changing the substance of the land itself. The underlying rationale of the usufructuary rule is to prevent exploitation of natural resources in occupied territories.

IHL similarly safeguards against the destruction and appropriation of civilian property carried out due to lack of ICA building permits. Law enforcement mechanisms are at all times subject to IHL provisions and, as highlighted previously, the onus on the Occupying Power to maintain public order and safety cannot be abused to justify widespread destruction or appropriation not justified by strict military necessity.
CONFISCATION is the permanent taking of property and transference of ownership title without offering any compensation.

According to the Hague Regulations and the ICRC's customary law study, private property must be respected and cannot be confiscated. As such, property provided by international organisations or Third States, including water tanks and tents, cannot be confiscated.

Only movable public property, which can be used for military operations, can be lawfully confiscated. Immovable public property, including natural resources, can never be lawfully confiscated. Rather, under IHL, the Occupying Power is seen as the administrator and usufructuary of immovable public property.

SEIZURE (following the language of the Geneva Conventions) is the temporary taking of possession of private and public property that can be used for 'the transmission of news, or for the transport of persons or things, exclusive of cases governed by naval law, depots of arms, and, generally, all kinds of munitions of war.' However seized objects must be restored once peace is made.

REQUISITION (following language of the Hague Regulations) is the demanding of goods, materials or services in return for compensation, and only for the needs of the army of occupation. According to the Hague Regulations, requisitions may not be used to force the inhabitants in taking part in military operations against their own country.

Forcibly transferring protected persons

Forcible transfer of protected persons is prohibited under Article 49(1) of the Fourth Geneva Convention and it amounts to a grave breach of the Convention. Upholding this prohibition is a customary international obligation, and the only exception to the article is for the temporary evacuation of protected persons for their own security or for imperative military reasons. The prohibition is absolute and neither the motivation of the Occupying Power nor the purpose of the removal is relevant. Furthermore, the residency status of the evicted protected person or persons is irrelevant. Jurisprudence from the International Criminal Tribunal for the former Yugoslavia (ICTY) has expanded the notion of forced transfer to include not only policies that directly force protected persons from their place of residence, but also indirect policies that create a set of circumstances that do not leave the population with any alternative other than to relocate. In these cases, the alleged consent of the protected population to the displacement cannot be used as validation for the transfer. The sole test, as defined by jurisprudence, is the existence of a threat or an environment of coercion.

As a matter of principle, in occupied territory, lack of building permits and public order arguments under Article 43 of the Hague Regulations cannot be used to justify displacement or relocation of civilians. Therefore, any attempt to exclude protected persons who inhabit structures without a building permit from the application of this principle, and therefore the protection provided by Article 49(1), is manifestly unjustified. The purpose of the prohibition against the forced removal of protected persons is to expand the protections outlined in Article 43, and the two provisions should be seen to complement each other. Again, Article 43 cannot be manipulated as an excuse to permit forced transfer and displacements of protected persons.
International human rights law similarly prohibits the practice of forced evictions as a violation of the right to adequate housing\textsuperscript{118} as well as the right to be protected against the arbitrary or unlawful interference in the home.\textsuperscript{119} Additionally, in the context of the West Bank, the practice of forced displacement or relocations violates the human right of protected persons to free movement and to choose their place of residence within the occupied territory.\textsuperscript{120}

Forced relocations may be permissible in limited circumstances based on the enforcement of domestic laws as noted in CESCR General Comment No. 7 of 1997, but only under the condition that the evictions are carried out “in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights”. Moreover, the enforcement of domestic law is subject to the Occupying Power’s obligations under IHL to prevent forced transfer and to respect the local customs and manners of the protected population.\textsuperscript{121} This is especially pertinent in the case of Bedouin communities facing the threat of forcible relocation by Israel based upon plans which take neither their customs nor their chosen way of life into account.\textsuperscript{122}

The UN Special Rapporteur on the situation of human rights in the oPt characterised Israeli policies and practices as an “overall pattern combining forced expulsions of Palestinians outwards and of Government–supported voluntary transfers of Israeli settlers inwards reflect[ing] a systematic policy of Israel to set the stage for an overall dispossession of Palestinians and the establishment of permanent control over territories occupied since 1967.”\textsuperscript{123} He further elaborated on the effect of forced transfer on herding communities, prevalent in Area C, criticising the “Israeli policy of systematic demolition of the traditional […] infrastructure essential for maintaining the Bedouin people’s nomadic and agricultural way of life, which the occupying Power contends is unlicensed, and thus subject to removal.”\textsuperscript{124}

Therefore, under current circumstances, particularly given that the institutions and policies of the Israeli planning regime are unlawful, the practice of the removal of families from their homes and places of residence against their will, regardless of whether a demolition order has been issued, could amount to a violation of the prohibition of forced transfer. The illegality is especially visible in cases where Palestinians are demanded by the Military Commander to relocate or be displaced to allow for the expansion of settlements or the construction of the Wall, as this facilitates the entrenchment of unlawful policies and practices.\textsuperscript{125} The mass relocation of entire villages and communities in Area C constitutes one of the clearest violations of the very basic rationale of Article 49(1), which prohibits any intervention by the Occupying Power in the demographic composition of the occupied territory.

\textit{Denying the right to self-determination}

All peoples have the right to self-determination, which provides that all peoples can freely determine their political status and pursue, without restriction, their economic, social and cultural development.\textsuperscript{126} The right of all peoples to self-determination is a central principle of international law and a peremptory norm from which no derogation is permitted. In addition, the \textit{erga omnes} responsibility to ensure the enjoyment of this right to all peoples is borne by each State and the international community as a whole. The right is rooted in the UN Charter and is enshrined in several international instruments, notably common Article 1 of the ICCPR and ICESCR, as well as being reiterated by the ICJ in its 2004 Advisory Opinion.\textsuperscript{127} Furthermore, various UN institutions, including the General Assembly and the Security Council have reaffirmed both the right of the Palestinian people to self-determination and Israel’s persistent denial of this right.\textsuperscript{128}

The right is of particular importance because its realisation is essential for the effective guarantee and observance of individual human rights. It follows that all states should take positive action to facilitate the realisation of and respect for the right to self-determination. This assertion was authoritatively upheld by the ICJ, which declared that “[e]very State has the duty to refrain from any forcible action which deprives peoples...of their right to self-determination.”\textsuperscript{129}
However, in the case of the oPt, the changes made by Israel to the local planning legislation appear not to be of a temporary nature as they continuously deprive the local Palestinian population of any control over the land, natural resources, demography and development in Area C for an undefined period. As has been established, to do so is in violation of the very basic rules of IHLL and IHRL, particularly given that Palestinians have no representation in the planning institutions and very marginal participation in the planning process. While the Israeli planning regime is a major component in the determination of the future of Area C, the local protected population has little or no involvement in deciding what this future should be. As Sassoli and Boutruche note, the impact of the current planning regime is reasonably expected to outlive the permissible period of occupation.\textsuperscript{130}

Taking into consideration the rationale of the ICJ in its Advisory Opinion on the Wall, in addition to the negative current and reasonably expected consequences of the planning regime i.e. the likelihood of further and sustained alterations to the demographic composition of the occupied territory and the de facto permanent Israeli control over Area C, it is clear that the planning regime impedes the exercise by the Palestinian people of their right to self-determination.\textsuperscript{131}

It is important to note that permanent sovereignty over natural resources, which is a fundamental principle of customary international law,\textsuperscript{132} is intrinsically linked to the self-determination of peoples, an association that was made by the General Assembly\textsuperscript{133} and codified by the ICCPR and ICESCR.\textsuperscript{134} All nations have the right to hold and decide what is to be done with their natural wealth and resources. Furthermore, it is not permissible to deprive a people of its own means of subsistence.\textsuperscript{135} In a situation of prolonged occupation, the right to permanent sovereignty over natural resources becomes even more pronounced. By virtue of its complete control over the planning process in Area C, including the severe limitations on development and pursuit of livelihood, and coupled with the restrictions on freedom of movement and access to land and water, Israel is violating the inalienable right of the Palestinian people to sovereignty over their natural resources.

The permit and planning regime is characterised by the denial of protected status to the Palestinian population. In addition, the system involves the denial of the basic needs and human rights of the protected population, the changing of domestic laws unlawfully, and support for settlements, the Wall and the annexation of East Jerusalem. The widespread and systematic nature of destruction and appropriation, which are often followed by displacement and forced transfer, as enforcement measures of this regime, is similarly unlawful.\textsuperscript{136} Administrative measures must reflect the Occupying Powers' efforts to use all available, lawful and proportionate means to ensure public order, safety and civilian life in good faith.

### Economic effects of Israeli planning restrictions in Area C

#### Agriculture

Agriculture is an important source of livelihood for the Palestinian population in the West Bank, and one of those most affected by the Israeli planning regime and land restriction system, specifically in Area C. A census taken by Israel in 1968 showed that nearly 42\% of Palestinian labour in the West Bank and the Gaza Strip worked in agriculture.\textsuperscript{1} In 2011, the Palestinian Authority's Central Bureau of Statistics (PCBS) reported that only 13.8\% were employed in the agriculture sector.

According to a survey done between 1982 and 1984, the total area cultivated by Palestinians in the West Bank was between 1,600,000 dunams and 1,700,000 dunams.\textsuperscript{2} According to PCBS statistics from 2010, only 1,105,000 dunams were being actively cultivated by Palestinians in the West Bank; this means that one third of total Palestinian agriculture land in the West Bank is not accessible today to its owners.
Due to the permit system applied by the Israeli Civil Administration (ICA) under its planning regime, 242 families were directly affected by destruction of their agriculture structures during the first half of 2012 alone; this deprived 1452 people from their essential source of livelihood. The Jordan valley has been particularly affected by Israeli restrictive regime: around 60,000 dunams of agricultural land have become unavailable for Palestinians, and 98% of Palestinian farmers have lost production capacity.

Studies have showed that while aid can mitigate the impact of this loss of capacity, real results can only be achieved by eliminating Israeli restrictions. According to a 2012 study, removal of existing Israeli restrictions would allow cultivation of an additional 50,000 dunams in the Jordan valley, contributing around $1 billion of income to the Palestinian economy (or around 9% of GDP).

Olive harvesting, one of the key sectors of Palestinian agriculture faces significant threat from land restrictions and planning regulations under the ICA. Areas that the Israeli military deem 'security-related' areas have had to shift to less perishable (and less valuable) crops, i.e. moving from growing fruits and vegetables to growing cereals and grains. This trend has worsened since the second Intifada, and consequently wages in the agriculture sector have fallen by 18% between 2000 and 2011.

The inability of Palestinians to access their land is further entrenched by the Wall and the permit system associated with it. By 2008 10% of the total cultivated area in the West Bank was affected by access restrictions, that is equal to 8% of agriculture production (or $38 million), moreover almost half of the communities with lands behind the wall no longer have regular access to their lands. In the Jordan Valley, around 274,000 dunams of agricultural land are also under severe restrictions due to various planning procedures, including declaring land as natural reserves, fire zones, and security areas associated with settlements. This also includes 80% of Palestinian rangeland for herding.

Construction, infrastructure and services

Construction is completely prohibited in 71% of Area C, with 31% reserved for natural reserves, fire zones, the “buffer zone”, and another 40% under the regional council of settlements. The remaining 29% is under a military permit regime that “practically eliminates the possibility of obtaining building permits”. The Israeli ministry of defense released data showing that during the period 2000–2007 only 6% of construction permits were approved.

The March 2013 World Bank report states that the restricted access to land in Area C due to the planning regime has been a major constraint to the development of infrastructure, and that as a result decisions to invest in transport, energy, or water infrastructure cannot be developed in an optimal manner.

The provision of public services in Area C is dependent on the ability of the PA to obtain permits for infrastructure; this includes electricity distribution, water supply, waste management and telecommunication.

According to the World Bank all Israeli proposed projects for water (except one) were approved, while 106 Palestinian water projects were still pending, sometimes back from 1999. In 2011, only 3 out of 38 projects submitted by the Palestinian Water Authority were approved. This has restricted capacity for agriculture and manufacturing activities in Area C, and limited the supply of
water for Palestinians compared to excessive usage by Israeli settlers. The Jordan valley is a clear example where the 10,000 Israeli settlers use one third of accessible water sources available for the 2.5 million Palestinian in the whole of the West Bank.

This in turn has affected human capital by restricting access to services, especially education and health services. Statistics show that 31% of schools in area C lack adequate water and sanitation facilities. Similarly one fifth of communities in the area have limited access to health services. It is also important to note that since the summer of 2011, 18 schools were threatened with destruction orders.

**General economic activity**

One of the most important external constraints facing the Palestinian economy is the effect of Israeli restrictions, including the planning and permit systems; as recently highlighted by the World Bank in its report to the Ad Hoc Liaison Committee (AHLC) meeting in March 2013. This report notes that while financial support to the PA is essential, much greater attention must be given to the removal of Israeli obstacles to allow real Palestinian private sector-led growth. The report states that “private investment is unlikely to increase substantially given the ongoing Israeli constraints on trade, movement and access and investment in area C”, and goes on to note that without the removal of these obstacles, the private sector will not be able to generate sufficient job opportunities to face the increasing unemployment in the Palestinian labour force, which reached 24% in the first quarter of 2013, including a 35% rate for females and 41% rate for youth between 20–24.

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2. Ibid
5. In current prices
10. Due to the current Israeli control over planning, property in Area C lost any option of being used as collateral, internal Palestinian laws and regulations cannot be enforced, hence there no chance for any mortgage–based housing development or projects in Area C.
V. THE LEGAL FRAMEWORK FOR THE DELIVERY OF AID IN AREA C AND IMPLICATIONS FOR THIRD PARTY RESPONSIBILITY

As outlined above, the current Israeli planning system undermines a series of basic protections provided for by international humanitarian and human rights law. The Israeli process has led to numerous serious violations of the Hague Regulations and the Fourth Geneva Convention, including grave breaches, and is inherently unlawful. In addition, in the context of the oPt, Israel utilises the same regime to regulate the delivery of aid and development projects within Area C, thereby posing a set of challenging questions for those who are forced to engage with the current system. Humanitarian and development actors aiming to provide aid to Palestinian communities in Area C in the form of infrastructure face many of the same challenges and restrictive planning regulations as individual Palestinians do. This section of the paper will outline how international law regulates the delivery of aid.

The obligation to facilitate the delivery of aid under international law

The delivery of aid in occupied territory is guided by international humanitarian and human rights law provisions. While the primary responsibility for providing for the needs of the occupied population lies with the Occupying Power (Article 55 GCIV), if the basic needs of the population are not met, Article 59 of GCIV states that the Occupying Power must allow and facilitate aid by third parties. However, the latter may object to aid solely based on genuine military and security grounds, or prescribe technical changes to enhance the effectiveness of the delivery (control rights).

While international law does not specify the exact format for the coordination with the Occupying Power, certain aspects can be derived from the legal framework. The process should be: reasonable (i.e. time-wise); effective; non-discriminatory; and conducted in good faith to positively facilitate aid to the fullest extent possible. In addition, as noted above, the principle of agreeing to and facilitating the delivery of aid is subject to certain caveats, notably the control rights of the Occupying Power which are permitted in order to achieve two goals—to ensure its security and to guarantee the effective delivery of aid to its destination. 137

Any restriction on the delivery of aid based on security grounds must also be carefully examined. Restrictions are permitted only if they are based on the presumption that another party to the conflict will accrue a definite advantage if aid delivery is allowed.138 Even in such cases, any constraints on aid delivery must be proportional to the expected harm to the protected civilian population in terms of the timing, nature and scope of restrictions. At all times, such action must also be preceded by due process, i.e. prior assessment by the Occupying Power of the potential harm to civilians due to prescribed restrictions, while ensuring the ability of potentially affected persons to exercise the right to appeal. In addition, restrictions on aid cannot facilitate policies and practices that violate IHRL.

From humanitarian relief to development – similar obligations

When it comes to development, the obligation to facilitate the delivery of development aid during occupation stems from the primary obligations on the Occupying Power to ensure public order, safety and civil life under Article 43 of the Hague Regulations as well as the obligation to protect and respect protected persons which grants basic rights under Article 27 of the Fourth Geneva Convention. The responsibility also stems from the UN Charter, which declares that all states are under an obligation to cooperate internationally to fulfil the economic, social and cultural rights of the people under their jurisdiction.139 Therefore, given that Israel is a state party to the human rights conventions, development and humanitarian aid form part of the Occupying Power’s obligation to promote international assistance and cooperation.140
This position was reaffirmed by the ICJ in its Advisory Opinion on the Wall, where it declared that “Israel is bound by the provisions of the International Covenant on Economic, Social and Cultural Rights. Furthermore, it is under an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities.” A state party to the International Convention on Economic, Social and Cultural Rights should “take steps, individually and through international assistance and cooperation...to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

Al Farisiya residents suffer multiples waves of demolitions

The Palestinian village of Al Farisiya is located in the Jordan Valley, in an area under full Israeli military control. The community of 47 households is identified as one of the poorest in the area and half of the residents are children. In 2010, the community suffered three waves of demolitions over the course of two months. These included demolitions of water and sanitation-related infrastructure, some of which was supported through international humanitarian aid.

On 19 July 2010, 79 structures in the village were demolished, forcing families into further impoverishment after years of harassment. Structures destroyed included homes, stables, storage sheds and over a dozen sanitary units, as well as water tanks and irrigation lines vital to the survival of crops and the livelihood of the community. Some of these had been donated by Oxfam in response to the severe summer drought and food scarcity. Trees and two tons of animal fodder, fertilizer and wheat were also destroyed. The estimated cost of the damage was approximately USD 29,000 (NIS 111,270).

An initial emergency humanitarian response provided the residents with emergency fodder and tents and replaced the water tanks. But three weeks later, on 5 August 2010, the community suffered another round of demolitions. Twenty–three tents were demolished along with other livelihoods items, further displacing another 22 people, and badly affecting those who were trying to recover from the previous demolitions.

A few days later, three families from the Al Farisiya community demolished on their own four residential tents, two kitchen units and one toilet unit. The demolitions were carried out following the receipt of ‘eviction’ orders from the IDF claiming that the community is located in a closed military area.

Aref, the head of the village, has few doubts about why the community has experienced these recurrent demolitions. “I have lived here for 50 years surrounded by settlements. There are so many problems, mainly around water. The Israeli military and settlers confiscate our water sources to force us to leave but we own this land and can prove it.”

© Courtesy of EWASH
The challenge of delivering aid and development in the context of the oPt

The delivery of aid in a context of armed conflict may also raise issues pertaining to the scope of responsibility of third states as well as of non-state actors such as international organisations and non-governmental organisations under general principles of international law. This is particularly pertinent when aid organisations and third states involved in international assistance are confronted by violations of international humanitarian and human rights law. The delivery of aid is also regulated by voluntary Codes of Conduct and Principles developed by the aid community. Those include for example the 1994 Code of Conduct for The International Red Cross and Red Crescent Movement and NGOs in Disaster Relief and the Humanitarian Principles set in UN General Assembly Resolution 46/182 from 1994.

International development and humanitarian assistance are subsidiary in nature. The primary obligation to ensure the provision of the protected population’s basic needs rests with the Occupying Power as a temporary de-facto substitute for the lawful sovereign. In case the Occupying Power is unable or unwilling to ensure the provision of basic needs, it has obligations to allow third parties to provide and protected persons to request assistance.

Similarly, Israel, as a state party to the ICESCR, has an obligation to respect and protect, as well to fulfil economic, social and cultural rights, which are at the core of development cooperation, including the right to an adequate standard of living of the Palestinian population. International assistance and cooperation with third states should be regarded as a tool to achieve the realisation of the state’s obligations, not a permanent alternative to it.

When analysing the legal implications of the delivery of aid one should recognise that aid may come in the form of humanitarian relief to answer immediate needs, other humanitarian assistance projects that may expand beyond strict emergency situations to include the provision of additional basic needs and development assistance which combines short-term and long-term goals such as economic viability and institutional capacity building.

The dividing line between humanitarian and development assistance is often difficult to distinguish, particularly in cases of assistance programmes during long-term occupation that result in a protracted humanitarian crisis. In situations of prolonged occupation, the basic needs of the civilian population expand over time, and as such the obligation to ensure the provision of humanitarian assistance cannot be exclusively limited to cases of emergency relief operations. Therefore, classic modes of post-emergency relief such as early recovery or even human-rights based humanitarian work take a comprehensive approach to international assistance.

From a technical legal perspective while there might be a difference in the nature of the obligations regarding the delivery of humanitarian relief versus other types of aid i.e. humanitarian and development, by third parties, the main obligation remains the same – the unimpeded delivery of aid should be facilitated in all cases, and limited only in strictly regulated circumstances involving genuine security concerns.

The obligation to respect and protect aid personnel

Aid personnel are first and foremost civilians and as such are afforded the protection of civilians in times of armed conflicts against harassment, arbitrary arrest and detention.

The Occupying Power is under the enhanced customary obligations to respect and protect humanitarian relief personnel as well as assist their relief mission to the fullest extent practicable. It should not impede the delivery of aid, but rather must take positive actions to ensure that the delivery is possible. The arbitrary arrest, detention or any other activity that obstructs the humanitarian delivery of assistance is contrary to the obligations of the Occupying Power under international law. Only in case of imperative military necessity may the activities of the relief personnel be limited or their movements temporarily restricted.
The obligation to respect and protect aid property

Property belonging to aid agencies and civilian property constructed by them is civilian property and protected as such under international law, as elaborated above. However, the Occupying Power has enhanced obligations with regards to the protection of and respect for objects used for humanitarian relief operations, and destruction of relief objects amounts to an impediment to humanitarian relief. In addition, the Occupying Power must pay special attention to the enhanced protection afforded to medical and humanitarian objects such as clinics that provide relief, community centres that provide emergency psycho-social support, as well as warehouses where humanitarian relief aid is stored, as long as they are administered by local or international relief organisations.

As elaborated previously, the destruction of any civilian property is not permitted unless absolutely necessary for military operations. In this particular context, administrative destruction of civilian property would be further prohibited due to the unlawfulness of the permit and planning regime as elaborated in the previous chapter.

Similar prohibition against the appropriation of movable property – including tents, water tanks and tractors – is applied to all types of objects provided by aid agencies. IHL specifically protects against the requisition of property of relief organisations and prohibits the diversion of relief consignments from the “purpose for which they are intended, except in cases of urgent necessity, in the interests of the population of the occupied territory and with the consent of the Protecting Power”.

According to the ICRC commentaries on the IVGC, “[a]rticles sent as relief supplies cannot be requisitioned by the Occupying Power. […] To invoke the reservation on a large scale would represent a violation of the [Fourth Geneva] Convention, whose authors wished to ensure that the intentions of the donors were followed as far as possible.”

The responsibility of third parties for violations of IHL and IHRL by parties to the conflict

Third states who are not parties to the conflict have a customary positive obligation to ensure respect for IHL, not to facilitate violations of IHL and to take all appropriate measures possible to end IHL violations. This can be done by using numerous lawful instruments of international cooperation. All states have a legal interest in ensuring that erga omnes obligations, the core rules of IHL and IHRL for which all states are responsible, are respected. This includes demanding that the Occupying Power cease the violations, gives guarantees of non-repetition and provides reparations to the victims. Likewise, third states that consider themselves to be affected by a violation of international law may ask for similar remedies from the violating party to the conflict.

With regard to serious breaches of peremptory norms (jus cogens – fundamental principles of international law, accepted by the international community of States, from which no derogation is ever permitted) all States are under an obligation not to recognise the unlawful situation as lawful, not to aid and assist in maintaining the unlawful situation, and to cooperate in order to bring the unlawful situation to an end. International organisations are commonly perceived to be similarly obliged by the above mentioned responsibilities.

The legal implications of the application of the ICA permit and planning regime on the delivery of aid

The Israeli planning regime, when it relates particularly to immovable objects such as schools and health clinics, in its current form, has proven to be a systematic impediment to the delivery of humanitarian and development aid to Area C. This has been increasingly recognised in recent years, resulting in more public criticism of the negative impact of the planning regime. Aid actors working in Area C have faced the following operational obstacles, amongst others, in association with Israel’s restrictive and discriminatory planning regime:
• Destruction of humanitarian assistance projects and equipment. According to UNOCHA figures, more than 150 donor-funded structures were demolished between January 2011 and October 2012.168
• Seizure or confiscation of assistance materials and equipment.
• Harassment of humanitarian workers delivering assistance in Palestinian communities, including emergency assistance following demolitions.

In addition, the frequent denial of consent for many aid projects in Area C similarly appears to be without lawful grounds. In some cases, military arguments are used to prevent access of aid personnel to firing zones despite the illegal nature of the requisition of land. In light of the demonstrated unlawfulness of the current Israeli planning regime in Area C, third States have to reassess their engagement with the planning regime in line with their international legal obligations, while still considering Israel’s legitimate but limited right of regulation over the delivery of aid.

The international community should demand that Israel implements a lawful coordination mechanism for the delivery of aid, one which effectively facilitates that delivery, and does not engage with or facilitate other violations of international law.

The question of the exact format for the coordination of aid is crucial in determining whether the Occupying Power lawfully applies its rights to regulate delivery of aid. The Occupying Power may introduce domestic law, as the coordination mechanism for projects requiring construction work, but may similarly decide on another mechanism to facilitate international assistance in conformity with its international law duties and obligations.

The Practice of Aid and Development Agencies

In March 2011, the Association of International Development Agencies (AIDA), an association of more than 80 international development and humanitarian agencies, submitted a position paper titled ‘Development Principles in the occupied Palestinian territory’ to the Ad Hoc Liaison Committee (AHLC). The paper focuses on the international community’s engagement in Area C, and specifically addresses the Israeli planning regime as a major barrier to humanitarian and development aid projects in the oPt.

According to AIDA, in order to reverse the trend of forced displacement of Palestinians, appropriation of Palestinian land, and expansion of Israeli settlements in the oPt, humanitarian and development aid interventions should be based on locally determined Palestinian priorities, and should systematically and formally consult and liaise with relevant Palestinian representatives and beneficiaries during the needs assessments, design and implementation of all projects.

AIDA recognised that the current planning and permit regime and other practices of the Military Commander violate both IHL and IHRL on several counts, and suggested a review of current modalities of engagement with the Israeli planning regime “in order for third states to avoid legitimizing illegal policies or practices. The revised policy for coordination with the Israeli authorities should be in line with international law standards and ensure that Palestinian development needs and rights are met.”169

The UN led Common Humanitarian Action Plan (also known as the Consolidated Appeals Process – CAP) allows for humanitarian organisations and donors to better plan their interventions and contributions, and to ensure the cohesion of the humanitarian response. It also complements efforts by humanitarian and development actors to strategically coordinate the Palestinian National Development Plan and Mid Term Recovery Plan processes. The CAP states that “restrictive zoning and planning regimes often result in demolitions, including of humanitarian projects. [...] This causes serious humanitarian concerns, particularly as the most vulnerable Bedouin or herding communities in Area C are often targeted”.170 The 2011 EU Heads of Mission (HoMs) report also identified this problem and
expressly called for dialogue to “transfer planning authority and empower local government units including by reinstalling local/district planning committees in Area C”. This would grant local communities provisional ownership over the planning process, compared to the current situation where they have no representation and therefore no involvement in the decision making process.

The UN Humanitarian Country Team’s Advocacy Strategy, contained within the CAP, clarifies advocacy priorities in the oPt and ensures protection is mainstreamed in all advocacy efforts. Adding to the criticism of the planning regime, it states that “Israeli authorities must bring the forced displacement of the civilian population to a halt. This includes immediately ceasing forced evictions and home demolitions in all parts of oPt, until Palestinians have access to fair and non-discriminatory zoning and planning.” The paper further calls Israel to “comply with its obligations as an occupying power to respect and protect relief personnel and facilitate impartial, rapid and unimpeded access in and between all areas of operation, specifically the West Bank, including East Jerusalem, and Gaza.”
VI. CONCLUSIONS AND RECOMMENDATIONS

The illegality of the planning regime—Institutions, policies, practices and their outcomes

This report concludes that the planning regime is inherently unlawful, both in form and in function. It does not respect the local laws, manners and customs of the protected population. Additionally, Israel’s planning policies and practices in Area C, as imposed by the Military Commander, are highly discriminatory, do not respect nor protect the Palestinian population and their property as safeguarded by international law.

The planning process fails to ensure the basic needs and public order, safety and civil life of the Palestinian population, particularly in Area C. Instead, the Israeli planning system undermines Palestinians rights and safeguards under both IHL and IHRL. Moreover, it facilitates unlawful acts, including the destruction of property and forcible population transfer, the appropriation of land, the establishment of settlements and their associated regime, and economic exploitation of occupied territory, including its natural resources, in addition to furthering the entrenchment of the Wall and the annexation of East Jerusalem.

Furthermore, the planning regime disenfranchises Palestinian ownership of appropriate planning institutes, denies the effective administration of justice and ultimately prevents exercise by the Palestinian People of their right to self-determination.

It is worth reiterating that parties to the conflict must bear in mind at all times the inviolability of the rights of the protected Palestinian population, as stipulated by Article 47 of the Fourth Geneva Convention. The protection afforded to the Palestinian population cannot be undermined by any changes to the institutions or government of the OPT, nor by any agreement between the authorities of the occupied territory and the Occupying Power. It should be noted in this regard, that the Interim Agreement on the West Bank and the Gaza Strip (including Annex III, Article 27: Planning and Zoning) cannot derogate from the fundamental protections granted to the protected population under the law of occupation, and cannot serve to codify or justify an unlawful planning regime put in place by Israel; or explain the detrimental impediment on Palestinians in initiating, preparing, amending and abrogating planning schemes, issuing building permits and supervising and monitoring building activities.

Planning Recommendations

In light of the violations of international law pursuant to the imposition of the institutions, policies and practices of the current Israeli planning regime;

Israel as the Occupying Power is under the following obligations to:

- cease the violations of international law instigated and facilitated by its unlawful planning regime, including the construction and expansion of settlements and the Wall, unlawful destruction and forcible population transfer, and provide guarantees for non-repetition and reparations to the victims;
- dismantle all settlements and those portions of the Wall within the OPT, in line with the recommendations of the 2004 ICJ Advisory Opinion and those of the UN Fact-Finding Mission on Israeli Settlements in the OPT;
- refrain from any intervention in the planning process except in temporary and strictly limited circumstances of genuine security concern, in line with its obligations under international law;
- full ownership of the planning regime should lie with the Palestinian population, allowing genuine representation in the decision making process. Ultimately, in order for this to be achieved, Israel must end the occupation of the West Bank, including East...
Jerusalem, and the Gaza Strip, and respect, protect and fulfil the right of the Palestinian people to self-determination.

Given that Israel’s violations relating to the planning regime, particularly the extensive destruction, facilitation of settlement establishment and expansion, and appropriation of property and the denial of self-determination, amount to serious breaches of international law, the international community has an obligation not to recognise, aid or assist the unlawful situation. In addition, all states must cooperate to bring the unlawful situation to an end. In doing so, they must:

- take all measures to ensure that Israel abides by its international obligations, and call on Israel to cease the unlawfulness of its planning regime;
- encourage Palestinian ownership of the planning regime in Area C and the remainder of the West Bank, including East Jerusalem.

Palestine should:
- take steps, individually and through international assistance and cooperation, to the maximum of its available resources, with a view to achieving progressively the full realisation of the civil, political, economic, social and cultural rights of Palestinians living in the West Bank;
- exert every effort to ensure that the Palestinian people are not adversely affected by its undertaking of nominal spatial planning, nor recognize the unlawful Israeli planning regime and its associated policies and practices;
- ensure that in concluding bilateral agreements with the Occupying Power, it does not concede the rights of the Palestinian people, as so far as spatial planning, including the sovereignty over natural resources, is considered.

**Failure of the planning regime to allow and facilitate the delivery of aid in Area C**

The current Israeli planning system, formally applicable to all development and humanitarian projects in so far as building permits are required, is unreasonably lengthy and involves unjustifiable delays, is highly ineffective for most international organisations, and is undeniably detrimental to the welfare of the local Palestinian population. As such, it violates Israel’s obligation to allow the rapid and unimpeded delivery of aid to the occupied population. On the basis of its policies and practices towards aid agencies whose mandate is to provide aid whenever needed, Israel's planning system in Area C represents an unlawful coordination mechanism.

Additionally, the planning regime, through its current structure, policies and practices, appears to subordinate Israel’s international humanitarian obligations to legislation amended by the Israeli Military Commander. It does so without genuine and legitimate legal grounds. Specific practices of destruction, appropriation of humanitarian objects and the harassment of aid personnel violate particular obligations with regard to the delivery of aid. Thus the current coordination mechanism respects neither Israel’s obligations towards relief personnel and objects, or their responsibilities for the humanitarian and development needs of the protected population.
**Aid Recommendations:**

**Israel**, as the Occupying Power, has the primary obligation to provide for the welfare of the occupied population, including through the delivery of aid. Given that they are failing to do so, they must at the very least:
- allow and facilitate the rapid, unimpeded, effective delivery of aid by international actors, including infrastructure, to the protected population in all parts of the West Bank;
- put in place a coordination mechanism for the delivery of aid, which require construction in Area C that will not oblige the aid community to engage with the unlawful planning regime.

Until such time as a lawful coordination mechanism is put in place by Israel, the international community should:
- inform the Occupying Power of development projects in a manner that will be effective, but not recognise nor engage with the unlawful planning regime;
- take all positive measures to ensure that Israel facilitates the effective delivery of aid;
- demand from Israel, in cases of unlawful interference with the delivery of aid, the cessation of the violation, guarantees of non-repetition and reparations.
**Timeline: Evolution of the planning regime in the West Bank**

- **1940s** The British Mandate Administration approves ‘regional plans’ for historic Palestine, two of which (RJ5 and S15) cover the territory of the West Bank.

- **1966** Jordan enacts Jordanian Planning Law No. 79.

- **1967** Israel occupies the West Bank and Israeli Military Commander (IMC) in the West Bank obtains civil and military powers over the West Bank.

- **1971** IMC enacts Military Order (MO) No. 418, abolishing district planning committees completely and local planning committees in villages. In cities local planning committees continue to function. Substituting the local planning committees in villages, the IMC establishes ‘village councils’. By doing this, the IMC centralises planning in the hands of Israeli officers. In parallel the IMC establishes ‘special’ local planning committees for settlements.

- **1982** Israeli Civil Administration (ICA) was established.

- **1987** Human rights organisations start monitoring the impact of the Israeli planning regime on the civilian life of Palestinians, especially the destruction of property and infrastructure.

- **End of 80s** ICA initiates around 400 ‘special outline plans’ for Palestinian villages in the West Bank. After the Oslo agreements partition the West Bank, only four of these villages will be located in Area C.

- **1995** Oslo agreements are signed. Israel retains planning powers in Area C, while pledging to transfer powers to the PA at term. PA planning law disregards changes made by MO 418 and establishes parallel planning system in areas A and B.

- **2005** ICA begins to initiate a limited number of ‘special outline plans’ for Palestinian villages in Area C.

- **2008** The Office of the Quartet Representative initiates planning for 14 villages in Area C. The initiative is adopted by the ICA. UNOCHA starts to systematically monitor destruction of civilian property and consequent affected and displaced persons in Area C. Local human rights organisations increase pressure on ICA to initiate detailed plans for unrecognised villages and stop the practice of demolition.

- **2009** Demolitions increase sharply. UNOCHA initiates Area C Humanitarian Response Plan, later adopted by the UN Humanitarian Country Team (UN HCT) which among other things call for a moratorium on all demolitions in Area C. The plan is submitted to Israeli authorities in January 2010. Despite the failure to facilitate the projects named in the plan, humanitarian actors continue to provide humanitarian assistance based on the ‘humanitarian imperative’. Negotiations with Israeli interlocutors continue to take place.

- **2011** Demolitions of Palestinian civilian structures increase by 40% between 2010 and 2011, another sharp increase. Simultaneously, the ICA makes minor improvements: mapping villages in Area C, setting criteria for village planning, initiating new detailed plans for selected villages and issuing clear guidance for Palestinian planners.

- Human rights organisations demand the transfer of planning powers back to Palestinian local and district planning committees.
• The Office of the Quartet Representative initiates bilateral negotiations with the Coordinator of Government Activities in the Territories (COGAT) and reaches an agreement on 19 health and education projects in Area C as a first phase.

• The European Heads of Missions in Jerusalem report on Area C and Palestinian state-building in July. The report calls to encourage Israel to change its policies and system in Area C and engage the Palestinian communities in obtaining access and development.

• Local organisation International Peace and Cooperation Centre (IPCC) starts submitting master plans for Palestinian localities in Area C to the ICA.

• 2012 In March, ICA issues new regulations establishing a fast track approval process for agricultural structures.

• In May, the EU Foreign Affairs Council adopts its conclusions on the Middle East peace process calling upon Israel to meet its obligations regarding the living conditions of the Palestinian population in Area C and to work out improved mechanisms for the implementation of the donor funded projects for the benefit of the Palestinian population in Area C.

• In July, the EU Parliament calls on the European External Action Service and the Commission to verify on the ground all allegations concerning the destruction of and damage caused to EU-funded structures and projects in the oPt, and submit the results to Parliament.
The occupied Palestinian territory (oPt) is the geographical territory comprised of the West Bank (including East Jerusalem) and the Gaza Strip that has been under Israeli military occupation since 1967. The State of Palestine applied for membership at the United Nations on 23 September 2011 based on its territorial sovereignty over the oPt (A/66/371–s/2011/592). The application is still pending before the Security Council. The State of Palestine was accorded non-Member Observer State status at the United Nations by General Assembly resolution (A/RES/67/19) on 29 November 2012.


3 Ibid.

4 ‘While Israel Is Talking About Peace...’ (PLO Negotiation Affairs Department, July 2013).


6 Israeli Committee Against house Demolitions (ICAHD) <http://www.icahd.org/the-facts>.

7 Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907 (Hague Regulations 1907), Art. 43.


10 Hague Regulations 1907.

11 Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949 (GCIV), Art. 49.


14 See for example the ICJ Advisory Opinion 2004 (n 15).

15 GCIV, Art. 4; see also ICRC Customary International Humanitarian Law, Jean-Marie Henkaerts and Louise Doswald-Beck (2005), ICRC and Cambridge University Press, Rules 1, 6.

16 For example, see GCIV, Arts. 27, 33, 49(1) and Hague Regulations 1907 (n 9), Art. 50.


18 GCIV, Arts. 14, 23, 50; ICRC Customary Law study 2005 Rule 150 (n 17); Protocol 1 (n 19), Art. 70 (1); Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) UNTS 1577 (CRC), Arts. 24, 26, 27, 28, 32.

23 See General Comment No. 4 of the Committee on Economic, Social and Cultural Rights (CESCR), 1991, on the right to adequate housing.
24 Settlers are civilians, but are not protected persons. The ICA ostensibly places Palestinians and settlers as equal beneficiaries of its services: “In Judea and Samaria, the civil administration operates to centralize operations opposite the Palestinians and the Jewish settlements”. Information obtained from Israeli Military Spokesperson, <http://dover.idf.il/IDF/English/units/other/coordinator/default.html>
27 Ibid, Art. 27; Art. 1 common to all Geneva Conventions GCIV, Art. 64.
28 ICCPR, Art. 1.
30 In May 2012 the EU Foreign Affairs Council adopted its conclusions on the Middle East Peace Process, calling upon Israel to meet its obligations regarding the living conditions of the Palestinian population in Area C and to work out improved mechanisms for the implementation of the donor funded projects for the benefit of the Palestinian population in Area C. See: <http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/130243.pdf>
31 EU FAC Conclusions, 14 May 2012.
32 UNSC Res 446 (22 March 1979) UN Doc S/RES/446
34 Legal Consequences of the Construction of a Wall (Advisory Opinion) 2004 (n 15)
35 “Failing To Make The Grade”, (AIDA 2013), 3
36 OCHA, Humanitarian Factsheet on Area C of the West Bank, January 2013.
37 Ibid.
40 AIDA FAC paper ‘Failing To Make The Grade’, (AIDA 2013) 6
41 ICAHD, <http://www.icahd.org/the-facts>
45 Note that the obligation is directed to the protected civilian population and not towards all civilians in the occupied territory. In the oPt, this would mean the Palestinians. See for example E.H. Schwenk, ‘Legislative Power of the Military Occupant under Article 43, Hague Regulations’, Yale Law Journal 54, 1944-1945, 415.
46 Sassoli and Boutrouche, 2011, 8
49 GCIV Arts. 27, 55; Protocol 1 Art. 69.
50 See Schwenk, 1944–1945, 309 on the obligation under regulation 43: “There seems little doubt that the term “to ensure public order and civil life” is not a definite and certain concept, but a notion depending on the circumstances of the particular case.” Additionally, according to the ICRC’s commentaries on Art. 69 First Additional Protocol, the definition of basic needs is contextual and depends on the relevant circumstances under which the protected population lives. <http://www.icrc.org/ihl.nsf/COM/470-7500887OpenDocument>, 812 (last accessed 28 December 2012)
51 The Israeli High Court of Justice (IHCJ) has repeatedly highlighted the growing needs of the civilian population under a prolonged occupation which justify putting additional social, economic and commercially-related obligations, and granting corresponding powers to execute those obligations, on the Occupying Power. HCJ 337/71. Christian Society for the Holy Land vs. Minister of Defence, PD 26(1), 574, 562 regarding the need to adopt policies to the changing times; HCJ 500/72 Abu Al Tin vs. Minister of Defence PD 27(1) 481 where it was stated that in long-term occupation the civilian needs of the population increase; HCJ 4154/01 Dudin vs. IDF Military Commander in the West Bank PD 46(1) 89, 93 where the court ruled that the obligation under Art. 43 relates to all aspects of fabric of life—social, economic and commercial—of the residents of the occupied territory.
53 sassoli and Boutruche 2011, 12.
54 Eyal Benvenisti, The International Law of Occupation (Oxford 2012), 87: “... already during occupation the occupant must take into account the post-occupation period and make the necessary provisions in anticipation of the termination of its control.”
56 Sassoli and Boutruche 2011, 7.
57 Compare to local municipal bodies – See HCJ 774/83 Amar v. Minister of Defence, PD 38(4) 645, 648; see also Yutaka Arai–Takahashi, The Law of Occupation: Continuity and Change of International Humanitarian Law, and its Interaction with International Human Rights Law, (Martinus Nijhoff Publishers, 2009) 138, 144–145. See Benvenisti, 2012 (n 54) 77: “It was not expected at that time that the occupant would have any self-interest in regulating those social functions”
58 Arai, 2009 (n 57), 13
59 Sassoli and Boutruche 2011, 23, 27
60 Sassoli and Boutruche 2011, 15
61 Sassoli and Boutruche 2011, 31: “It is up to the Occupying Power to prove that the situation under the legislation it has introduced is better than that under the previous legislation. If in a situation of long-term occupation it turns out that such enhancement did not occur, the change introduced cannot be justified and must be repealed.”
62 Sassoli and Boutruche 2011, 8.
63 Art. 1, GCIV sets the obligation to respect and ensure respect for IHLL. See also Sassoli and Boutruche 2011, 10. See Arai, 2009 (n 57)132–133 and the references there, and GCIV Arts. 7, 47 for the inviolability of the rights of protected persons.
64 GCIV Arts. 7, 47
66 Special outline plans refer to plans prepared by the Israeli Civil Administration for Palestinian villages. For more information on such plans see Bimkom’s ‘The Prohibited Zone’ <http://bimkom.org/eng/wp-content/uploads/ProhibitedZone.pdf>
Evidence of lack of good faith can be seen by comparing the planning system in Area C to the Israeli system as far as the concept of the welfare of the civilian population in planning is concerned. For example, the over-centralisation of planning institutions compared to the de-centralisation reform adopted by the Israeli government; the increased local participation in the planning process inside Israel compared to lack of such participation in Area C; and lack of proactive legislation to speed planning process for small structures and vulnerable communities, contrary to the existence of such laws inside Israel. 

Sassoli and Boutruche, 2011, 17.


Sassoli and Boutruche, 18.

ICESCR, Art. 2

CCPR, Art. 11

The right to water is recognized as part of the right to life (CCPR, Art. 6), adequate standard of living and the right to food (ICESCR, Art. 11), and the right to health (ICESCR, Art. 12). The Committee on Economic, Social and Cultural Rights clarified the scope and content of the right to water in General Comment No. 15 — the right to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. <http://www.unhchr.org/refworld/pdfid/4538838d11.pdf> (last accessed 28 December 2012).

ICESCR, Art. 12

ICESCR, Arts. 13, 14

ICESCR, Art. 15


ICJ Advisory Opinion, para. 112


See General Comment No. 25 of the Committee on Civil and Political Rights from 1996 which elaborates on Article 25 CCPR. <http://www.unhchr.ch/tbs/doc.nsf/0/d0b7f023e8d6d9898025651e004bc0eb> (last accessed 28 December 2012)

CCPR, Art. 14


ICPR, Art. 4.


Hague Regulations 1907, Art. 46

‘Seizure’ and ‘requisition’ are the temporary taking of property in return for compensation essentially for military purposes. See in Arai (n 57) the discussion around the different opinions on the right to change title in case of requisitions,228–229.
According to IHL, the confiscation of private property is an absolute prohibition from which no derogation is permitted. As affirmed in the recent Expert Opinion by Benvenisti, Kretzmer and Shany regarding the eviction of Palestinian residents of villages inside Firing Zone 918, the requisition of private property may amount to unlawful confiscation if in fact the taking of the land will absolutely prevent the owners of the land from living on it and routinely making use of it. See Benvenisti EO on Firing Zone 418.

ICRC commentaries warn that “bad faith in the application of the reservation may render the proposed safeguard valueless; for unscrupulous recourse to the clause concerning military necessity would allow the Occupying Power to circumvent the prohibition set forth in the Convention.” Therefore the commentaries caution the occupying power to “try to interpret the clause in a reasonable manner.” See ICRC commentaries to GCIV, Art. 53, 302.

Under GCIV, Article 147. Although Art. 147 seems to directly relate only to destruction argued by the Occupying Power based on military necessity as application of its power under Art. 53, it may be argued that it includes all types of demolitions carried out unlawfully, even for lack of a building permit. In any case, destructions that take place due to misuse of the military caveat, such as in buffer zones around settlements or the Wall, or unlawfully declared closed military areas seem to fall more clearly within Art. 147, as these are unlawful constructions to begin with.

Collective punishment is prohibited under GCIV, Art. 33 and Hague Regulations 1907, Art. 50.

Clarified in the expert opinion of Benvenisti, Kretzmer and Shany on the same case that the necessity referred to in Article 52 of the Hague Regulations of 1907 include only the immediate operational and temporary needs of the occupation army. See experts opinion sections 20, 37.<http://www.diakonia.se/documents/public/IHL/IHLDocs/Unofficial_translation_Heb_EO_BS_K_16Jan2013.pdf>

Hague Regulations 1907, Art. 52.

As clarified by Michael Bothe in his expert opinion regarding the case of Firing Zone 918 “[g]eneral training needs are not, as such, a “direct requirement” of the army of occupation”. Expert Opinion by Prof. Michael Bothe On The Limits of the right of expropriation (requisition) and of movement restrictions in occupied territory (Firing Zones), <http://www.diakonia.se/sa/node.asp?node=4394> (last accessed 28 December 2012)

Rulings by the Israeli High Court of Justice in the case of the wall, HCJ 2056/04 of Beit Surik and the case of access of Palestinians to their agricultural areas in HCJ 9593/04 of Morar advise the following guidelines:

1. The restriction on construction should be militarily necessary (Morar and Beit Surik).
2. The restrictions must be temporary in nature and minimize as much as possible the size of the designated area and the period for prevention of construction (Morar and Beit Surik).
3. Prior assessment was made taking into account the concrete and individual conditions of the designated area and nature of threats, as well as the potential harm to the specific Palestinian landowners, in terms of type and scope with a view to minimize harm (Morar).
4. The landowner should be able to exercise the right of appeal to the relevant institutions to challenge the planning restrictions in a closed military area before the final Israeli objection is made (Morar).

One can add that it has been established that if the Israeli military reasoning involves support for unlawful policies such as settlements, the Wall or annexation of East Jerusalem, they should not be followed. See the ICJ Advisory Opinion on the Wall (2004) and ILC Draft Articles on State Responsibility, Arts. 40,41 – Draft Articles on the Responsibility of States for Internationally Wrongful Act, Report of the ILC on the Work of its Fifty–third Session (adopted August 2001) UN Doc A/56/10

In particular, attention should be paid to the Occupying Power’s obligation to provide special protection to children and it should not adopt administrative measures that deny children of their entitlements. See GCIV, Art. 50.

“Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property”. Universal Declaration of Human Rights, 1948, Art. 17.


ICCCR, Art. 17.

While IHRL relates to shelter more basically as a necessary commodity, Protocol 1, Art. 6 only alludes to shelter as part of broader family rights. See GCIV, Art. 27 and see ICRC commentaries.

CESCR General Comment 4 (72), clarification on Article 11 of the ICESCR

UNGA Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, 14 September 2012 A/67/372

Ibid

ICRC Customary Law Study 2005 (n 17), Rule 51.

Hague Regulations 1907, Art. 55. For definition of usufruct see for example: “[a] right to use another’s property for a time without damaging or diminishing it, although the property might naturally deteriorate over time.” In Black’s Law Dictionary, Bryan A. Garner, ed. (7th ed.), West Group, 1999, p. 1542.

Arai 2009 (n57), 216.

GCIV, Art. 147

ICCR, Art. 129

Experts opinion by Benvenisti, Shany and Kretzmer, section 6 (n 90).

“Forced” is not to be interpreted in a restrictive manner, such as being limited to physical force. It may include the “threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment.” Prosecutor v. Radislav Krstic (Trial Judgement), ICTY (2001). See also Prosecutor v. Miladen Naletilić and Vinko Martinovic, IT–98–34–T (Trial Judgment) ICTY, (2003).


See a similar discussion over the application of Art. 49(1) on protected persons suspected of hostile activities in Yutaka Arai, 2009. 330 onwards (n 57).

Article 11(1) ICESCR. See CECR General Comment No. 7 of 1997 on Forced Evictions: <http://www.unhchr.ch/tbs/doc.nsf/0/959f71e476284596802564c3005d8d50> (last accessed 28 December 2012)

ICCPR, Art. 17(1)

ICCPR, Art. 12(1). The ICJ has emphasized the illegality of the Wall as a policy that violates the “freedom to choose one’s residence”, see ICJ Advisory Opinion 2004 (section 133).
Similarly, Hague Regulations, Art. 43 obliges the Occupying Power to respect domestic laws, which include also customs and manners in the field of planning and construction.

For further information, please see Diakonia’s ‘The forced transfer of Bedouins communities’ (November 2011) <http://www.diakonia.se/sa/node.asp?node=4164>

UNGA ‘Human rights situation in Palestine and other occupied Arab territories’ (10 January 2011) A/HRC/16/72

The ICJ in its Advisory Opinion on the Wall (para. 122) referred to the construction of the Wall as a policy that contributes to displacement and eventually serves as an impediment to Palestinians’ exercise of their right of self-determination.

See Articles 1(2) and 55 of the United Nations Charter.

See Article 1of both the ICCPR and ICESCR; ICJ Advisory Opinion 2004.


ICJ Advisory Opinion on the Wall 2004 (n 15).

Ibid

UNGA Res 1803 (XVII) (14 December 1962) UN Doc A/Res/1803(XVII)

See Article 1 of both the ICCPR and ICESCR

Ibid

Sassoli and Boutruche 2011, 32: “Demolitions of houses built without a permit may be considered to violate Art. 53 if the lack of permit is due to a system which is contrary to the legislative powers of the occupant.”

GCIV, Arts. 23, 59. ICRC commentaries to Art. 23 (182) mention three reasons: danger of misappropriation, supervision and ban on undue definite military advantage to the enemy.

GCIV, Art. 23; ICRC commentaries, 182.

UNCESCR has clarified that “in accordance with Article 55 and 56 of the Charter of the UN, with well-established principles of international law, and with the provisions of the Charter itself, international cooperation...for the realization of economic, social and cultural rights is an obligation of all States.” CESCR, General Comment 3, “The nature of State parties obligations” (Art. 2, para 1 of the Covenant), para.14.

ICESCR 1966, Art. 2(1).

ICJ Advisory Opinion 2004 (n 15), section 112.

ICESCR 1966, article 2(1).

See: ICRC, 1994. The Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief: “In the event of armed conflict, the present Code of Conduct will be interpreted and applied in conformity with international humanitarian law.” <http://www.icrc.org/eng/resources/documents/misc/code-of-conduct-290296.html>

GCIV, Arts. 55, 56, 59, 60; Protocol IArt. 69.

GCIV, Arts. 30, 59


For example, the obligations incumbent on the Occupying Power to “facilitate the proper working of all institutions devoted to the care and education of children” a fortiori stress the obligation to allow and facilitate the work of those institutions, be it relief, or generally humanitarian in nature. The benchmark for “proper” would change according to the circumstances of the case.

150 GCIV, Art. 59; Protocol I, Art. 70; ICRC Customary Law Study 2005 (n 17) Rules 32, 55

151 Protocol I, Art. 7; ICRC Customary Law Study 2005 (n 17) Rule 31

152 ICRC Customary Law Study 2005 (n 17) Rule 32


155 Ibid, Rule 32.

156 Ibid, Rule 32.

157 GCIV, Art. 53

158 GCIV, Art. 60.


160 Art. 1 Common to all four Geneva Conventions; ICRC Customary Law Study 2005 (n 17) Rule 144

161 For an elaboration of possible measures, see: the Diakonia IHL Resource Centre website at http://www.diakonia.se/sa/node.asp?node=949. See also Arts. 55, 56 of the UN Charter on international cooperation. See also Louise Doswald-Beck, Human Rights in Times of Armed Conflict and Terrorism (Oxford University Press; Oxford 2011), 32.

162 The ICJ stated in its Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons that “a great many rules of humanitarian law” 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”. It added that “these rules incorporate obligations which are essentially of an erga omnes character”. See Advisory Opinion, 1966 I.C.J. 226, 257, para. 79 (8 July, 1996). See also ILC Draft Articles on State Responsibility (n 98), Art. 48. See also the ICJ Advisory Opinion on the Wall of 2004 (n 15), para. 157.

163 ILC Draft Articles on State Responsibility (n 98), Art. 48. See also: Human Rights Committee General Comment no. 31 of 2004 on the above article.

164 ILC Draft Articles on State Responsibility (n 98), Art. 42.

165 ILC Draft Articles on State Responsibility (n 98), Arts. 16, 40, 41

166 ILC Draft Articles on the Responsibility of International Organizations, commentaries to Arts. 42, 49. “[A]ll economic, industrial or financial assistance, in the form of gifts, loans, credit, advances or guarantees, or in any other form. This prohibition is not confined to States. It naturally extends to institutions in which States have voting rights” Namibia advisory opinion, ICJ Rep 1971, 16, separate opinion of Judge Ahammad, 67 at 94–95, para.14.7.


168 CAP 2013 (n 10), 24


172 Represents the highest level humanitarian policy coordination in the oPt.

173 CAP 2012 (n170), 124
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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:

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