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A L - H A Q

## Al-Haq Position Paper:

**Unmasking the “Freeze”: Israel’s alleged Moratorium on Settlement Construction Whitewashes Egregious Violations of International Law**



The 26 September 2010 brings a formal end to the ten-month Israeli moratorium on settlement construction in the West Bank.<sup>1</sup> Israeli government officials have stated that once the moratorium comes to an end, construction in the West Bank is expected to resume at its previous rate.<sup>2</sup> However, in light of its terms and its application in practice, the moratorium itself amounts to nothing more than a hollow political gesture in the form of an alleged “freeze”, whilst Israel’s illegal settlement activity continues almost unabated.<sup>3</sup>



Revava (near Salfit) - Public building for religious purposes (synagogue or Jewish seminary) under construction. August 2010 – Al-Haq©

As part of the recent negotiations, Prime Minister Netanyahu has announced that Israel will be taking an intermediate stance on the extension of the moratorium: Israel does not intend to order a comprehensive resumption of construction works, but it will also not extend the moratorium.<sup>4</sup> Netanyahu has recently proposed to “extend the freeze” in the form of a newly devised moratorium that would allow for “partial construction”, with more lenient terms than those of the alleged “freeze”.<sup>5</sup> Many contractors and settlement councils have already resumed construction works without even waiting for the formal end of the “freeze”.<sup>6</sup>

<sup>1</sup> Decision No. B/22 of the Cabinet of the Committee of Ministers for National Security Matters (the Political-Security Cabinet) from 25 November 2009, on the “Suspension of Construction in Judea and Samaria”, available in Hebrew at <http://www.pmo.gov.il/PMO/Archive/Decisions/2009/11/des22.htm> (hereinafter: the Moratorium or the “Freeze”); [Order concerning the suspension of construction](#), delivered to the Heads of the Regional Councils in the West Bank by the Head of the Civil Administration, Deputy Chief of Staff Yoav Mordechai, in accordance with the Cabinet’s Decision, available in Hebrew at <http://news.walla.co.il/?w=/1/1615232/621123/5/@/@/media>; See also, “Statement by PM Netanyahu on the Cabinet Decision to suspend new construction in Judea and Samaria”, Israeli Ministry of Foreign Affairs, 25 November 2009, at [http://www.mfa.gov.il/MFA/Government/Speeches+by+Israeli+leaders/2009/Statement+by+PM\\_Netanyahu\\_suspend\\_new\\_construction\\_Judea\\_Samaria\\_25-Nov-2009.htm](http://www.mfa.gov.il/MFA/Government/Speeches+by+Israeli+leaders/2009/Statement+by+PM_Netanyahu_suspend_new_construction_Judea_Samaria_25-Nov-2009.htm).

<sup>2</sup> Recently, Israel’s Prime Minister Benjamin Netanyahu has announced that the parties have reached a quiet agreement that “the security bodies in the Territories will not sign new construction plans but formally the government will not decide on the extension of the freeze order”, See, Akiva Eldar and Natshe Mozgobiye, “The freeze order for construction in the territories will not be extended but the security system will not authorise construction work”, *Haaretz*, 8 September 2010 (in Hebrew).

<sup>3</sup> At least 600 housing units in over 60 different settlements have started to be built during the freeze (half the normal construction pace). At least 492 of those housing units are in direct violation of the law of the freeze. Some 2,000 housing units are currently under construction in the settlements, See, Hagit Ofran, “Eight Months into the Settlement Freeze”, *Peace Now*, August 2010.

<sup>4</sup> Atila Shompalbi, “Netanyahu gives up? An intermediate option for the construction freeze”, *Ynet News*, 12 September 2010 (in Hebrew).

<sup>5</sup> Ali Wakad, “At stake in the talks: release of prisoners, exchange of territories”, *Ynet News*, 15 September 2010 (in Hebrew).

<sup>6</sup> Tani Goldstein, “Construction resumes in Modi’in Ilit”, *Ynet News*, 14 September 2010 (in Hebrew).

This opinion paper discusses Israel's practices and policies of settlement construction in the Occupied Palestinian Territory (OPT), and examines the legal implications of Israel's policies and the nature of the ensuing obligations of the international community.

## **The Israeli Moratorium and Settlement Construction in the Occupied Palestinian Territory**

### *The Terms of the Moratorium*

The terms of the recent Israeli moratorium, which is not the first of its kind in the contemporary history of the Palestine-Israel conflict, were announced on 25 November 2009 in [Decision No. B/22 of the Cabinet of Ministers for National Security Matters](#). The terms are so narrow as to effectively allow many types of building to continue.

The following are the terms of the moratorium as defined by the Cabinet's Decision of 25 November 2005:

- Construction of public buildings will not be affected by the moratorium;
- The suspension of construction will not apply to construction for security needs;
- Permits granted before the order will not be suspended if the very initial stage of the foundations has been completed;
- The Head of the Civil Administration is authorised to single-handedly issue an order, general or specific, annulling the suspension and permitting construction in a wide set of circumstances that fulfil the requirement of being for public safety or for the protection of human life, or in other undefined exceptional cases;
- A special claims committee is established to hear cases from those who were directly affected by the moratorium, and to examine appeals against the rejection by the Head of the Civil Administration of applications for construction during the alleged "freeze".

Eminently, the moratorium's terms do not apply to occupied East Jerusalem, and its greater surrounding,<sup>7</sup> allowing settlement construction there to continue as usual. These factors, in conjunction with a lack of enforcement by the Israeli authorities of even the limited terms of the moratorium, means that settlement construction has continued with almost no change of pace throughout the period of the alleged "freeze".<sup>8</sup>

### *Facts on Israel's Settlement Policy*

The first Israeli settlement in the OPT was established only a few months after the start of Israel's occupation in 1967. In 2005, 16 settlements in the Gaza Strip, together with four settlements in the northern West Bank were evacuated by Israel as part of the unilateral "Disengagement Plan". Prior to the evacuation, 7,595 settlers controlled 38 percent of the Gaza Strip. By September 2009, 121 Israeli settlements (excluding

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<sup>7</sup> Considerable lobbying has been conducted on behalf of various groups with the support of different ministers and members of the Knesset (Israeli Parliament) to exclude settlements located outside of Israel's municipal borders for Jerusalem from the terms of the moratorium; See, for instance, the case of Givat Ze'ev Iliit, a new section of Givat Ze'ev settlement near Ramallah; See, Moshe Rot "Construction continues in the new Givat Ze'ev Iliit" *NPV News*, 10 March 2008, available in Hebrew at [http://www.npvnews.com/news\\_h.php?id=659](http://www.npvnews.com/news_h.php?id=659).

<sup>8</sup> Ethan Bronner, "Despite Settlement Freeze, Buildings Rise", *New York Times*, 14 July 2010.

unauthorised outposts) had been constructed in the West Bank, not including those in East Jerusalem.<sup>9</sup>

The built-up area of the settlements consists of less than 3 percent of the area of the West Bank, but the area under their municipal jurisdiction, constitutes 9,28 percent of the West Bank.<sup>10</sup> In September 2009, the number of settlers reached about 500,000 in the West Bank, about 200,000 of whom live in East Jerusalem.<sup>11</sup> The annual growth rate of the settler population in the West Bank (excluding East Jerusalem) is 3.7 percent, which is significantly higher than the population growth inside Israel.<sup>12</sup>

Many settlements exceed their jurisdictional area and gradually gain control over more parts of the West Bank. The total area controlled by settlements is about 42 percent of the West Bank.<sup>13</sup>



*Modi'in Ilit – (near Ramallah) – Apartment buildings in final stage of construction. August 2010 – Al-Haq©*

## **Israeli Settlement policy in the Occupied Palestinian Territory and International Law**

Israel's policy of settlement construction in the OPT results in violations of the most fundamental principles of international humanitarian law (IHL) and international human rights law. These legal frameworks serve to guarantee their underlying historical premise of safeguarding against colonial practices and the unlawful acquisition of territory, as well as uphold the peremptory right to self-determination. The following legal analysis examines Israel's violations under the prism of international humanitarian law and human rights as well as the relevant general principles of public international law.

### *Violations of International Humanitarian Law and War Crimes*

The authorities of the Occupying Power in occupied territory are governed by the fundamental obligation "to take all measures in his power to restore, and ensure, as far as possible, public life and safety."<sup>14</sup> One of the basic principles underlying this obligation is that belligerent occupation is a transitional authority with no conferral of sovereignty upon the occupying power.<sup>15</sup> With respect to the administration of public civilian property of the occupied territory, the Occupying Power is recognised only as an

<sup>9</sup> B'tselem, *By Hook and By Crook: Israeli Settlement Policy in the West Bank*, July 2010.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> Haim Levinson, "Civil Administration Report: Rate of Population Growth in 66% of Settlements Higher than in Israel," *Haaretz*, 2 February 2010 (in Hebrew).

<sup>13</sup> B'tselem, July 2010.

<sup>14</sup> Article 43, Hague Regulations 1907.

<sup>15</sup> Yutaka Arai-Takahashi, *The Law of Occupation: Continuity and Change of International Humanitarian Law, and its Interaction with International Human Rights Law* (Martinus Nijhoff, Leiden, 2009), 42-43.

administrator and usufructuary of such property, and not as its owner.<sup>16</sup> Under the usufructuary rule, the Occupying Power is obliged to safeguard the capital of such property and is therefore prohibited from disposing of it in a manner that would irreversibly change its character.

Settlements are built on private Palestinian land that Israel appropriates through different methods and mechanisms.<sup>17</sup> Israel's land appropriations in occupied territory is an extensive and systematic practice, pursued under the guise of instrumental security and military justifications and with the support of a multiplicity of local and international actors.<sup>18</sup> Once the land is appropriated, agricultural resources and aquifers are also destroyed and countless olive trees are uprooted in the process of building the settlement and its surrounding roads, fences, water and sewage systems; all for the benefit of the settler population.

The unlawful confiscation of land from Palestinians and the destruction thereof in the course of building and expanding settlements constitute a violation of international law. In a situation of belligerent occupation, IHL permits the seizure of public property only in exceptional circumstances, namely when it is required by imperative military



*Givat Zeev Ilit (near Ramallah) – Ongoing construction in what Israel considers a neighbourhood of Jerusalem despite it being outside the Israeli-drawn borders of the Jerusalem Municipality.*

necessity.<sup>19</sup> Private property in occupied territory is forbidden from being confiscated.<sup>20</sup> Destruction of property in occupied territory is also forbidden, barring exceptional circumstances of absolute imperative military necessity.<sup>21</sup> The extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly, is a grave breach of the Geneva Conventions.<sup>22</sup> Even under the circumstances applicable to public immovable property, the confiscation or destruction must comply with the principle of proportionality, being in stringent proportion

<sup>16</sup> Article 55, Hague Regulations 1907; See also, Yutaka Arai-Takahashi, (2009), 196-198.

<sup>17</sup> Nearly 32 percent of the total land area on which the settlements sit is, according to official data of the Israeli Civil Administration, privately owned by Palestinians; See, Peace Now, *Breaking the Law in the West Bank - The Private Land Report*, November 2006.

<sup>18</sup> B'tselem, July 2010; B'tselem and Bimkom, *Under the Guise of Security: Routing the Separation Barrier to Enable the Expansion of Israeli Settlements in the West Bank*, December 2005; B'tselem, *Land Grab: Israel's Settlement Policy in the West Bank*, May 2002; see also, Chris McGreal, "Gambling with peace: how US bingo dollars are funding Israeli settlements", *The Guardian*, 19 July 2009, at <http://www.guardian.co.uk/world/2009/jul/19/us-bingo-funding-israeli-settlements>.

<sup>19</sup> Article 55, Hague Regulations 1907.

<sup>20</sup> Article 46(2), Hague Regulations 1907. At most, the temporary requisition of buildings and land may be justified only for the needs of the occupation, as set forth in Article 52, Hague Regulations 1907.

<sup>21</sup> Article 53, Hague Regulations 1907.

<sup>22</sup> Article 147, Fourth Geneva Convention 1949; Article 8(2)(b)(iv), Rome Statute of the International Criminal Court 2002.

to the specific military objective.<sup>23</sup> The extensiveness of the appropriations and the use of the land for the construction of settlements, make it apparent that such confiscations are not justified by military necessity and are disproportionate, thereby constituting *prima facie* evidence of their unlawfulness.

Since Israel began the implementation of its settlement policies in the OPT, the construction and expansion of settlements is initiated, supported and financed by the state authorities in a systematic and institutional manner. Settlement expansion is further supported by the encouragement of state authorities through social benefits and favourable economic conditions afforded to those who move to these areas.<sup>24</sup> The building of new settlements and the expansion of existing ones, violate Article 46(9) of the Fourth Geneva Convention, which prohibits the transfer by the Occupying Power of parts of its civilian population into occupied territory.

The growing control over land and natural resources by Israeli settlers in occupied territory as well as the extensive human rights violations caused by the presence of settlements, their infrastructure and ensuing hardships,<sup>25</sup> such as settler violence, in intent or effect, are creating an environment leading to the indirect forcible transfer of the Palestinian population.<sup>26</sup> Israel's systematic vast land appropriation policy, and the ensuing physical and psychological harassment of the local Palestinian population through restrictions on movement, as well as decreased access to natural resources and services for Palestinians all cumulatively create unbearable living conditions that make it practically impossible for people to remain in their homes.<sup>27</sup> These actions result in the indirect forcible transfer of the occupied population to other areas, which amounts to a grave breach of IHL, and a war crime upheld in the jurisprudence of international tribunals.<sup>28</sup>

Israel's policy of creating 'facts on the ground', undertaken through the construction of settlements and the Annexation Wall along with its accompanying components (e.g.,

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<sup>23</sup> Article 46, Hague Regulations 1907, Article 53, Fourth Geneva Convention 1949; *See also*, Jean-Marie Henckaerts, Louise Doswald-Beck, *Customary International Humanitarian Law: The Rules* (Cambridge, 2005), Rule 51.

<sup>24</sup> The coercive nature of Israel's action is implicit in the cumulative effect of the means of encouragement used by state authorities; *See*, Article 11 of the ILC Articles on State Responsibility for International Wrongful Acts, states "[c]onduct which is not attributable to a State...shall nevertheless be considered an act of that State under international law if and to the extent that the State acknowledges and adopts the conduct in question as its own."

<sup>25</sup> A UN OCHA study has determined that almost 40 percent of the West Bank is now taken up by Israeli infrastructure, in which settlements, linked by a major highway system to Israel, have geographically fragmented Palestinian communities; *See*, UN OCHA, "The Humanitarian Impact on Palestinians of Israeli Settlements and Other Infrastructure in the West Bank", July 2007.

<sup>26</sup> Indirect transfers are not ordered by a government, but result from governmental actions or policies that create social and economic conditions intolerable to such civilians. Such hostile social and economic conditions include fear of threat, harassment and attacks by other civilians; *See*, Amicus Brief by Legal Expert Dr. Yutaka Arai, presented in the HCJ Qabalan case, at <http://www.hamoked.org/Document.aspx?dID=Documents1236>

<sup>27</sup> UN OCHA, "Unprotected: Israeli settler violence against Palestinian civilians and their property", December 2008, 2-3, 6, 15; *See also*, UN OCHA report, July 2007, 26, 117.

<sup>28</sup> *The Prosecutor v Blagojevic and Jokic*, Case No. IT-02-60-T, Trial Chamber I, Judgement, 15 March 2002, para. 475 (whether a transferred person exercised genuine choice depends on the prevailing situation, atmosphere, and all other relevant circumstances, including the victim's vulnerability); *Prosecutor v Krstic*, Case No. IT-98-33-T, Trial Chamber I, Judgment, 2 August 2001, para. 521 (the term 'force' comprises factors other than force itself that render a particular act involuntary, such as "taking advantage of coercive circumstances"); *See also*, *Prosecutor v Stakic*, Case No. IT-97-24-T, Appeals Chamber, Judgement, 22 March 2006, para. 300; *The Prosecutor v Krajsnik*, Case No. IT-00-39-T, Trial Chamber I, Judgement, 27 September 2006, para. 729.

depth barriers, asphalt roads and trace paths), aims at creating measures that are not temporary and will affect any final status agreement. These practices, and the policies that guide them, stand in blatant contradiction to the principle of the temporary nature of the occupation, which prohibits the implementation of fundamental demographic changes in the composition and status of the occupied territory.<sup>29</sup> These illegal practices are a stark indicator of the colonial character of Israel's occupation in furtherance of its 'creeping annexation' of large tracts of the OPT.

### *Violations of the Palestinian Right to Self-Determination*

Settlements have grave consequences for the realisation of the Palestinian right to self-determination by fragmenting the territory of the OPT.<sup>30</sup> Infrastructure associated with settlements is the cause of severe restrictions on Palestinian freedom of movement, such as checkpoints, roadblocks and settler-only bypass roads, which effectively fragment the West Bank into enclaves. The possibility of a contiguous territory in which Palestinians can freely dispose of their natural resources is therefore severely limited, precluding any meaningful exercise of the Palestinian right to self-determination.

Measures that Israel has taken to assert its permanent control over the areas where settlements are built, including the creation of sophisticated infrastructure that links settlements to one another and to Israel, the extension of Israeli civil and administrative jurisdiction over settlements, and Israel's statements insisting that it will retain the settlements in any final status agreement, are manifest evidence of the fact that settlements are intended as permanent changes. Combined with the illegal annexation of East Jerusalem and settlement expansion therein, they are indicative of Israel's intent to acquire sovereignty over Palestinian territory

(despite Israel's denial of sovereignty claims over the West Bank) in breach of the prohibition of the acquisition of territory by force, enshrined in Article 2(4) of the UN Charter.



*Ravava (near Salfit) – Caravans in an outpost near Revava settlement. Earth mounted for further construction. August 2010 – Al-Haq©*

In so far as settlements contribute to the cumulative outcome of Israel's practices and policies of subjugation, domination and exploitation of large parts of the OPT, they constitute a form of unlawful exercise of *de facto* sovereign rights. The presence of settlements, in effect, aims to prevent and permanently deny the Palestinian population the exercise of their right to self-determination, revealing the colonial character of Israel's

<sup>29</sup> J. Pictet (ed.), *Commentary to Geneva Convention IV relative to the Protection of Civilian Persons in time of War* (ICRC, Geneva: 1958) Commentary to Article 49, 283; See also, Article 47, Fourth Geneva Convention 1949.

<sup>30</sup> B'tselem, *Jewish Settlements in the West Bank: Built-Up Areas and Land Reserves*, May 2002.

occupation.<sup>31</sup>

### *Violations of International Human Rights Law*

The settlement project is the source for a host of systematic and severe human rights violations against the local Palestinian population. The violence that ensues from the appropriations by the Israeli occupying forces and the settlers aggressive control of land results in raiding of Palestinian homes, destruction of Palestinian property, and severe restriction on freedom of movement, which harshly impact upon Palestinian family life, access to education, food, health care and other services.

In effect, settlement construction and expansion resulted in the creation of two parallel and unequal societies in the OPT. An Israeli settler society, which benefits from superior living conditions, greater protection under Israeli civil (as opposed to military) law, greater access to the resources of the OPT, including water, the freedom of movement and the enjoyment of all other human rights. The disadvantaged Palestinian society living in the same territory, by contrast, is denied many of its basic human rights as a result of the furtherance of the settlement project. For instance, restrictions on Palestinian freedom of movement are imposed in order to guarantee the freedom of movement of the settler population.

The International Convention on the Suppression and Punishment of the Crime of Apartheid (the Apartheid Convention) defines the crime of apartheid, which includes policies and systematic practices of racial segregation and discrimination, and criminalises certain inhuman acts committed for the purpose of establishing and maintaining domination by one racial group over another and systematically oppressing them. The Statute of the International Criminal Court lists the establishment of an institutionalised regime of systematic oppression and domination by one racial group over another under the category of crimes against humanity.<sup>32</sup>

This bifurcated system of norms legitimising the perpetration of inhuman acts against Palestinians in a systematic and institutionalised nature is reflective of a practice of apartheid by Israel in the OPT in violation of international law. In examining these practices, a study by a group of high-profiled international legal experts, published by the Human Sciences Research Council, found that Israel's exercise of control in the OPT with the purpose of maintaining a system of domination by settlers over Palestinians constitutes a breach of the prohibition of apartheid.<sup>33</sup>

The study found that Israel's laws and institutions, which seek to ensure its enduring Jewish character as a 'Jewish State', are channelled into the OPT to convey privileges to Jewish settlers to the disadvantage of Palestinians on the basis of their respective group identities. This domination is associated principally with transferring control over land in the OPT to exclusively Jewish use, thus also altering the demographic status of the territory.<sup>34</sup> It thereby concludes that this discriminatory treatment cannot be explained or

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<sup>31</sup> See, the analysis in Human Sciences Research Council, "Occupation, Colonialism, Apartheid? A re-assessment of Israel's practices in the occupied Palestinian territories under international law", May 2009, Full Report, 120-121; See also, General Assembly Resolution 1514 (XV) of 14 December 1960 (Declaration on the granting of independence to colonial countries and peoples).

<sup>32</sup> Article 7, Rome Statute of the International Criminal Court 2002.

<sup>33</sup> Human Sciences Research Council study, 271-276.

<sup>34</sup> *Ibid.*, Full Report, 152-276; Executive Summary, 9-15.



excused on grounds of citizenship, as it goes beyond what is permitted by ICERD.<sup>35</sup>

Furthermore, acts of organised violence are being systematically perpetrated by settlers against Palestinians,<sup>36</sup> particularly during the annual harvest seasons when Palestinian farmers try to access lands located nearby settlements. These acts, which are part of the settlers' violent reaffirmation of control over land, consist of beatings, shootings and the destruction of property. Israeli security forces generally fail to prevent, stop or redress instances of settler violence. Settlers are rarely held accountable for their acts, and when they are, the punishment is lenient. Al-Haq's documentation and monitoring of these incidents has shown that the actions of the Israeli law enforcement authorities in response to settler violence are either ineffective, nonexistent or verging on complicity.<sup>37</sup>

### *The Obligations of the International Community of State and Non-State Actors*

A number of important legal obligations of state and non-state actors arise from the construction of settlements in the OPT. First and foremost, Israel, as the Occupying Power in the OPT, is obliged by the Fourth Geneva Convention to immediately stop all construction of settlements. International law further demands that Israel dismantle the existing settlements, evacuate the settlers and return the land to its rightful owners, as closely as possible to full restitution.<sup>38</sup> Israel is also under a duty to facilitate the return of those forcibly transferred by its settlement policy to their homes,<sup>39</sup> and provide compensation for any damages incurred.

Third state parties also have obligations in relation to Israel's settlement construction resulting from the egregious character of the violations outlined above. Member States of the UN must ensure respect for the principles of the UN Charter, and promote respect for international human rights law. All High Contracting Parties to the Geneva Conventions, which are most states, have equally an obligation under Common Article 1 of the Geneva Conventions to ensure respect for the Conventions.

Since some of Israel's policies related to the settlement enterprise constitute war crimes, amounting to grave breaches of the Geneva Conventions, the High Contracting Parties to the Geneva Conventions have a positive duty to actively search for the perpetrators of grave breaches and to bring them to justice before their domestic courts, in accordance with the principle of universal jurisdiction.<sup>40</sup>

Moreover, states are under an obligation towards the international community as a whole (*erga omnes*) to bring to a halt violations of peremptory norms (*jus cogens*) of international law, including the denial of the Palestinian right to self-determination and the prohibitions of colonialism and apartheid. Third state parties are obliged to abstain

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<sup>35</sup> Furthermore, certain provisions in Israeli civil and military law provide that Jews present in the OPT, who are not citizens of Israel also enjoy privileges conferred on Jewish-Israeli citizens in the OPT by virtue of being Jews; *ibid.*

<sup>36</sup> See, e.g., UN OCHA, "Protection of Civilians Report: 1-14 September 2010": See also, B'tselem, *Documentation and Reports on Settler Violence*, at [http://www.btselem.org/English/Settler\\_Violence/](http://www.btselem.org/English/Settler_Violence/).

<sup>37</sup> Al-Haq, *Al-Haq: 25 Years Defending Human Rights 1979-2004*, Annual Report 2004, 149.

<sup>38</sup> Article IX, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted in Resolution 60/147 of the General Assembly, 21 March 2006; See also, Article 7, Draft Declaration of International Law Principles on Reparation for Victims of Armed Conflict, International Law Association, prepared by Prof. Rainer Hofmann, 2010.

<sup>39</sup> Article 49(2), Fourth Geneva Convention 1949 requires that persons forcibly transferred "shall be transferred back to their homes as soon as the hostilities in the area in question have ceased."

<sup>40</sup> Article 146, Fourth Geneva Convention 1949.

from recognising settlements, from aiding or assisting in their construction and maintenance.<sup>41</sup> Equally, they must actively pressure Israel to comply with international law, by denouncing the violations and cooperating to ensure that Israel not only puts an end to settlement construction but also dismantles all existing settlements in the OPT.

Non-state actors, such as companies and individuals who are contracted by Israel to develop settlements, or who assist in settlement construction and maintenance through the supply of equipment or the financing of settlement development, are likely to be complicit in the grave breach of the transfer of the civilian population of the Occupying Power into occupied territory, and as a result criminally responsible for their actions. Non-state actors, such as multinational companies, organisations and funds that engage in, finance or promote settlement construction are under an obligation to immediately desist from their acts of complicity.<sup>42</sup> The states under whose jurisdiction these companies and organisations operate and are legally registered are also under an obligation to monitor and regulate the activities of these entities, in and outside their territorial jurisdiction, and to ensure that they do not assist or support violations of international law.<sup>43</sup>



*Modi'in Ilit (near Ramallah) – The Canadian company Green Park advertising its properties under construction. August 2010 – Al-Haq©*

Moreover, the UN has an obligation towards the international community at large to maintain international peace and security. This responsibility is primarily embodied by the Security Council (SC), which issued a list of resolutions condemning Israeli settlements but failed to take concrete action for their enforcement. According to General

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<sup>41</sup> See, James Crawford, "Obligations towards the International Community as a Whole", *Indiana Journal of Global Legal Studies*, 2001; See also, Article 48 (1)(b) International Law Commission's Draft Articles on State Responsibility and paras. 2, 8–10 of the commentary to that provision.

<sup>42</sup> See, e.g., Norms and Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, UN Sub-Commission on the Promotion and Protection of Human Rights, adopted in August 2003; See also, OECD Guidelines for Multinational Enterprises (OECD 2008).

<sup>43</sup> Robert McCorquodale, Penelope Simons, "Responsibility Beyond Borders: State responsibility for Extraterritorial Violations by Corporations of International Human Rights Law" *70 Modern Law Review* 4, 2007; See also, Business and Human Rights: Towards Operationalizing the "protect, respect and remedy" Framework, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. A/HRC/11/13, 22 April 2009, para. 2

Assembly (GA) Resolution 377, “Uniting for Peace”, of 3 November 1950, if the SC fails to act in order to maintain peace and security, the matter should immediately be addressed by the GA. In this context, the GA has the power not only to condemn the illegality of Israeli settlements in the OPT but also to adopt collective measures with a view of ending the violations of Palestinians’ rights.

In failing to take and maintain a principled stance in face of decades of widespread and systematic violations of the fundamental rights of the Palestinian people, the international community is failing the cause of peace so often featured in political rhetoric. The longer the ‘peace process’ façade of hollow political gestures are allowed to mask Israel’s continuing policies of settlement and colonisation in defiance of international law, the more irreversible the situation will become.

### **Conclusion and Recommendations**

The policy of settlement construction by Israel in the OPT, which violates fundamental principles of international humanitarian and human rights law, cannot be redressed with political measures such as the recent moratorium. The terms of the moratorium do not represent a halt to the violations caused by the construction and presence of settlements in the occupied territory thereby disregarding Israel’s continuous violations of international law.

Al-Haq urges the international political community, as well the relevant non-state actors, to unmask and reject deceptive notions of a temporary settlement “freeze” in favour of insisting on the adherence to the fundamental principles of international law. International law unequivocally states that the only remedy to Israel’s settlement policy in the OPT, and the only basis for a just and lasting peace in the context of the Israel-Palestine conflict, is an immediate, unambiguous and permanent end to all settlement activity.