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Israeli settlements as an obstacle to peace – possible ways forward

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CHECK AGAINST DELIVERY

PLENARY II

**Legal aspects of Israeli settlements in the Occupied Palestinian Territory,
including East Jerusalem**

Paper presented by

Mr. Shawan Jabarin
General Director, Al Haq
Ramallah

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Israeli Impunity and the Strengthening of the Settlement Enterprise
Shawan Jabarin

2014 drew attention to the brutality of the occupation. The highest number of Palestinian civilians were killed since the occupation began in 1967. In the West Bank, Israel killed 57 civilians, including 18 children, and injured 5,686 people. Seventeen of the civilians killed were targeted during demonstrations across the West Bank. During the offensive against Gaza, over 2,200 Palestinians were killed. Alongside incidents committed by the IOF, settler violence also rose in 2014; Al-Haq documented 110 incidents.

Land confiscation in 2014 was at one of its highest levels in years, with 4,000 acres of Palestinian land appropriated by Israel. Even though there was international condemnation for these countless extreme incidents, little has changed in 2015.

We have seen the continued takeover of Palestinian homes in East Jerusalem by settlers, a surge of home demolitions in Area C, and even more extreme settler violence, including the burning to death of Palestinian infant Ali Dawabsheh and his father Saad.

The situation that we see is much more than “Israeli settlements as an obstacle to peace” as noted in the conference title. Israel’s occupation and settlement enterprise is more than a deprivation of universal human rights, it is one where internationally recognized crimes are taking place.

Extensive Destruction and Appropriation of Property

The extensive destruction and appropriation of property is a grave breach of the Fourth Geneva Convention and a war crime under the Rome Statute of the International Criminal Court. In the context of the Occupied Palestinian Territory, the destruction and appropriation of property exacerbate the already harsh living conditions Palestinians face in Area C. The South Hebron Hills, Jordan Valley, and East Jerusalem, are targeted areas for settlement expansion and flashpoints for various breaches of international humanitarian and human rights law.

Israel has implemented a discriminatory permit system in East Jerusalem and Area C, where over 90% of permits for construction, building rehabilitation, or simple infrastructure projects are denied. In order to accommodate for natural growth of neighborhoods and homes or even undertake basic renovations, Palestinians are forced to do so without permits. These “illegal” structures are then subject to demolition.

Israel has recently intensified its destruction of Palestinian property in Area C. In one week in August alone, Israel destroyed 63 homes and basic structures, which included a portable latrine,

animal pens, and tents financed by the European Union.¹ One hundred and thirty-two, individuals, including 82 children, became homeless.

Structures to sustain livelihoods are also targeted for destruction. Earlier this year, on 24 March 2015, Israeli forces demolished and destroyed a privately owned Palestinian water well in Khirbet Al-Hafira, Jenin. The well, which was approximately 30 meters deep, was built over a year ago for agricultural and drinking purposes. The owner of the land, Abd Al-Rahman Sadeq Zayud, told Al-Haq that he was not given prior notice for the demolition. The residents of Khirbet Al-Hafira depend on water wells for water collection and use, as the village is not connected to water networks. This lack of basic infrastructure is similar to most Palestinian communities in Area C.²

The appropriation of property also aims to solidify and expand Israel's settlement enterprise, and bolsters the Israeli economy. Israel appropriates Palestinian land under the pretext of state land, closed military zones, archaeological sites, nature reserves, and absentee property. State land declarations are often the first step towards settlement expansion and exploitation of Palestinian natural resources.

The procedures associated with land appropriation, beginning from the notice of the confiscation to the appeals process, lack fairness and impartiality. The Military Appeals Committee, which hears objections concerning such declarations, is a body of the Israeli Civil Administration.³ Accordingly, the same body that issues the order is responsible for its review.

Land appropriation has a protracted impact on Palestinian communities. For example, in 2002 Israeli settlers stole seven dunums of land located near the Kiryat Arba' settlement from the Ja'bari family. The settlers had illegally set up a tent and turned it into a synagogue. Because Israeli forces always accompany settlers, little could be done to remove them from the property. On 19 January 2015, the Ja'bari family received a document issued by the Kiryat Arba' local council, requiring them to pay around USD 22,430 in property taxes for the land that had been confiscated and turned into a synagogue by the settlers. The document stated that if the family did not pay the amount, the land in question would be sold at auction. According to Abd Al-Karim Al-Ja'bari, the synagogue was demolished and reconstructed at least four times since January 2015. By 15 June 2015, settlers were still present on the land, and were performing their prayers, and harassing Palestinians in the area. The family is awaiting an Israeli court's order to be issued soon.⁴

¹ Surge in Israeli demolitions of Palestinian homes condemned by 31 international organizations, August 21, 2015, <http://www.amnesty.ca/news/public-statements/joint-press-release/surge-in-israeli-demolitions-of-palestinian-homes>

² Al-Haq Affidavit No. 10577/2015

³ Israeli settlements in the Occupied Territory, including East Jerusalem, and the occupied Syrian Golan, 9 October 2013, A/68/513, Para. 20

⁴ Al-Haq Affidavit No. 10368/2015

Palestinian natural resources

One consequent effect of Israel's extensive destruction and appropriation of land for its settlement enterprise has been the obstruction of the Palestinian right to self-determination and sovereignty over land and natural resources.

Area C is rich in natural resources- including water, minerals, and fertile land. Rather than benefit the local Palestinian population, these resources have all been used to advantage the Israeli economy, including reinforcing the viability of settlements, and for the benefit of Israeli and international companies. This occurs in breach of Israel's duties as Occupying Power. Under the Hague Regulations, the Occupying Power serves as the administrator or usufruct of immovable property, and does not become the owner of the property. Although Israel may use the "fruits" of such property, the resources may not be exploited in a way that undermines its capital, and can only be used to defray the costs of the occupation or for the benefit of the occupied population. Resources therefore cannot be exploited for the benefit of the Occupying Power's population.

Where a resource is finite and not renewable, such as oil or minerals, they are treated as immovable property, and not as "fruits" of such property. Accordingly, immovable property must be used in a manner similar to how it was used prior to the occupation. New mines and quarries may not be opened, and ones that existed before the occupation must be exploited at a similar rate.

Alongside Israel failing to uphold its duties as administrator of natural resources, it is failing to prevent pillage by individual settlers and individual companies. Pillage is prohibited under the Fourth Geneva Convention and is a war crime under the Rome Statute of the International Criminal Court.⁵

Notably, the appropriation of property includes that carried out by extraction, where possession of the resource is taken. In the Dead Sea area, Palestinian property- including land, minerals, and mud, were appropriated with the clear intention of depriving Palestinians, individually and collectively, from use of the natural resources present there. Beyond commercial use of resources, Palestinian civilians cannot access the Dead Sea in the OPT without entering through a settlement and paying an entry fee to settlers.

⁵ The elements include: "1. The perpetrator appropriated certain property. 2. The perpetrator intended to deprive the owner of the property and to appropriate it for private or personal use. 3. The appropriation was without the consent of the owner. 4. The conduct took place in the context of and was associated with an international armed conflict. 5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict." Elements of Crimes available at <http://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>

The Israeli cosmetics company Ahava exemplifies how the principles of international law are breached, and the war crime of pillage takes place.⁶ Ahava was founded in 1988, and is the only company authorized to mine mud from the OPT. Due to Israel's discriminatory permit system in Area C, any possibility of competition from nearby Palestinian communities has been effectively shut out. Instead, two settlements, *Mitzpe Shalem* and *Kalia*, own large shares in Ahava.

Moreover, numerous individuals from these settlements are employed there. Here, there is a clear structure to reinforce the livelihood of the settlements and the greater Israeli economy, while obstructing the local Palestinian economy.

In 2013, the World Bank estimated that the Palestinian economy loses \$3.4 billion annually due to Israel's control over Area C. If Palestinians had access to their natural resources, our economy could gain 918 million USD annually from the production of Dead Sea minerals, excluding the cosmetics industry, and another 241 million USD could be gained from marble and stone.

Persecution

While we see both the macro and micro level impacts of the extensive destruction and appropriation of property and pillage, we must consider these violations as part of a larger policy of persecution. Under the Rome Statute of the ICC, persecution is defined as a crime against humanity, where: 1) there is a severe depravity of fundamental rights; 2) the victim was targeted because they belonged to a group or collectivity; 3) the targeting was based on political, racial, national, ethnic, cultural, religious, or gender; 4) the conduct was linked to another crime within the jurisdiction of the Court; 5) and part of a widespread or systematic attack directed against a civilian population, and 6) the perpetrator had knowledge of the widespread or systematic nature of the attack.

In Palestine, this persecution has the aim of annexing Area C, and has created a situation of domination and control over Palestinian lives and territory. Therefore, when looking at the "legal aspects of Israeli settlements," we must go beyond the situation as it currently stands, and consider the entire environment since 1967. What actions has Israel taken to facilitate the presence of over 341,000 settlers in Area C and 200,000 settlers in East Jerusalem? What are the policies that target Palestinians?

It is first important to examine how a coercive environment is established that leads to the forcible transfer of Palestinians out of their community. As noted, due to Israel's discriminatory permit system in East Jerusalem and Area C, Palestinians are forced to build "illegally" and face potential home demolitions. Palestinians in Area C may also be subject to random appropriation, including the aforementioned state land declarations and the illegitimate process of appealing a land confiscation order before an Israeli military court.

⁶See Al-Haq Report "Pillage of the Dead Sea: Israel's Unlawful Exploitation of Natural Resources in the Occupied Palestinian Territory," 2012, available at <http://www.alhaq.org/publications/publications-index/item/pillage-of-the-dead-sea-israel-s-unlawful-exploitation-of-natural-resources-in-the-occupied-palestinian-territory>

Israel's policy of persecution includes the fragmentation of the West Bank via Jewish-only settlements, a segregated road system, the Annexation Wall, checkpoints, roadblocks, and countless other barriers, obstructing Palestinian freedom of movement, right to access holy sites, and other rights. The effect of these physical divisions have most clearly impacted East Jerusalem, which also is affected by an array of other practices. For example, Palestinian East Jerusalemites are subject to a "center of life" requirement, which allows Israel to revoke Palestinian IDs if an individual does not prove residing in Jerusalem within the previous 7 years.⁷ Israel has implemented countless other policies, ranging from punitive home demolitions to targeting weekly non-violent demonstrations against settlements, in order to reinforce its control and depopulate Palestinian communities.

Taking place alongside the persecution of Palestinians is the fortification of the settlement enterprise. The crime of transferring settlers into the OPT does not start or end based on settlers' physical presence. We must consider the entire process that leads up to it, ranging from the hardships imposed on Palestinians to the incentives settlers and businesses receive to relocate to settlements, to the continued exploitation of natural resources. The crime of transfer only ends when the land has been fully restored to its rightful owner.

Given this context that we are currently operating under and the continued crimes that take place, is it enough to keep calling Israel's actions in Palestine an "occupation?" Is it truly reflective of what is happening on the ground?

While Israeli policies, including the illegal annexation of East Jerusalem, speak for themselves, Israeli leaders also do not hide their objectives in Area C. Last year, Israeli Prime Minister Benjamin Netanyahu stated "there cannot be a situation, under any agreement, in which we relinquish security control of the territory west of the River Jordan."⁸ The current Israeli Minister of Education and Minister of Diaspora Affairs Naftali Bennett, amongst other Israeli leaders, speaks openly about annexing Area C.

The international community must recognize Israel's intent and what the "facts on the ground" signify. Israel has and continues to colonize the West Bank, including East Jerusalem.⁹ Third states must begin dealing with Israel as a colonialist regime.

We have reached this situation because of the climate of impunity within Israel, and the international community's failure to hold Israel responsible. This impunity has been reflected in one-sided negotiations, which have only reinforced existing power structures. Discussions of land swaps only serve to reiterate this point- Israel's illegal actions are either ignored or rewarded.

⁷See Al-Haq Report "The Jerusalem Trap", 2010, available at <http://www.alhaq.org/publications/publications-index/item/the-jerusalem-trap>

⁸*Netanyahu finally speaks his mind*, The Times of Israel, 13 July 2014, available at <http://www.timesofisrael.com/netanyahu-finally-speaks-his-mind/#ixzz3E93XJ5uP>

⁹See Occupation, Colonialism, Apartheid? A re-assessment of Israel's practice in the occupied Palestinian territories under international law, p.120-121, http://www.alhaq.org/attachments/article/236/Occupation_Colonialism_Apartheid-FullStudy.pdf

While there is a clear lack of political will to hold Israel accountable, Al-Haq continues to call on third states to fulfill their obligations under international law. In relation to ending the settlement enterprise, Al-Haq calls for the banning on imports of settlement products and the implementation of travel bans, including visa restrictions, on the entry of settlement leaders and settlers involved in violent acts.

Alongside third state responsibility, we actively use UN mechanisms in attempting to hold Israel accountable, and are now working on submissions to the International Criminal Court. While the process will undoubtedly be long, we believe that a neutral body that can examine the complex crimes occurring in Palestine will lead to justice.

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