# Expert Opinion Relating to the Conduct of Prolonged Occupation in the Occupied Palestinian Territory

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# Fifty years of Israeli occupation of Palestinian territory – a legal balance sheet

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## 1. The problems of a long-term occupation

The territory of the so-called West Bank, i.e. the territory between the River Jordan and the 1949 armistice line (the line drawn by the armistice between Israel and Jordan) was in 1967 invaded by Israel and has been under Israel's control since. The same holds true for the Gaza Strip, but the particular situation of this area is not treated in the present Opinion. The current rights and duties of Israel, on the one hand, and of the Palestinian side, on the other, in relation to this territory, are highly controversial. The same holds true for the future of the territory. If peace is brought about through a two-State solution, that territory, in the view of the Palestinian side and of most States of the world, will be that of the Palestinian State, perhaps subject to minor corrections.[1] But this view is not accepted by the current Israeli government, which postulates a much greater expansion of Israeli territorial rights.[2] In the view of the Quartet[3] and of the Security Council,[4] this policy erodes the prospects of a peaceful settlement of the conflict based on a two-state-solution.

In the light of these controversies, a stocktaking of the legal situation resulting from the realities and consequences of the protracted occupation is warranted in order to obtain a clear legal foundation for evaluating the reciprocal claims.

## 2. Scope and fundamental principles of the law of belligerent occupation

The international community regards the status of the territory, from 1967 to the present time, as being under belligerent occupation. Therefore, the current international political and legal debate is to a large extent concentrated on the issue of long term or prolonged occupation as a problem of the *ius in bello,* namely the law of belligerent occupation. This must be the starting point of the analysis. Belligerent occupation is a provisional *de facto* situation which is regulated by international law:[5] one party to a conflict has invaded the whole or parts of the territory of the other party, displaced the authorities of the adversary, and taken over effective control of the territory. As the conflict is not over, that situation

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[1] See the Report of the Middle East Quartet, 1 July 2016, at 2, 5 *et seq.,* available at www.unsco.org/Documents/Key/Quartet%20Report%20and%20Statement%201&20July%202016.pdf. The "Quartet" trying to reach a peace agreement relating to Palestine is composed of the Russian Federation, the United States, the European Union and the UN Secretary General.

[2] O.M. Dajani, 'Israel's Creeping Annexation', in: Symposium on Revisiting Israel's Settlements, 111 *AJIL Unbound* (2017) at 51 *et seq.*; see the statement published by the Israeli Ministry of Foreign Affairs, 'Israeli sttlements and international law', 20 November 2015, available at http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/israeli%20settlements%20and%20international%20law.aspx.

[3] Report (note 1), 2.

[4] Resolution 2334 of 23 December 2016.

[5] M. Sassòli, 'The Concept and Beginning of Occupation', in A. Clapham/P. Gaeta/M. Sassòli (eds.), *The 1949 Geneva Conventions. A Commentary*, OUP 2015, 1389-1419, at 1393 *et seq.*; T. Ferraro, 'Determining the beginning and end of an occupation under international humanitarian law', 94 *IRRC* no. 885, 133-163 (2012), at 135.

may or may not change again before a final solution of the fate of the territory is reached. In this situation, the law regulating the current situation of occupation has to adequately satisfy certain needs or interests:[6]

- Fundamental interests of the population have to be protected. This interest is mainly safeguarded by a duty of good governance which derives from both the Hague Regulations, from basic human rights and from relevant provisions of the Fourth Geneva Convention (GC IV) and the First Additional Protocol (AP I).[7]
- The interest of the displaced party, which is served by rules safeguarding the provisional character of the situation of occupation, the maintenance of pre-existing law[8] and the prohibition of status changes, e.g. through annexation or other forms of attempted institutional changes.
- The interest of the occupying power, which are served by rules enabling that power to take measures for its security.

As to treaty law, the relevant rules are mainly contained in GC IV and in AP I. The Hague Regulations on Land Warfare, which contain the most important body of law in this respect, for various reasons do not apply as treaty rules.[9] But they also formulate the customary law of belligerent occupation,[10] which is also true for the relevant provisions of GC IV and probably AP I.[11]

Although belligerent occupation is conceived as a transitional or provisional legal regime, the law of belligerent occupation applies as long as the factual situation of occupation, as defined by the Hague Regulations, exist. These rules continue to apply also in case of a prolonged occupation.[12] There is no time limit in the Hague Regulations, nor in AP I.[13] As to the oPt, this is the uniform view held by many institutions of the international community, in particular the UN.[14]

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[6] M. Bothe, 'The Administration of Occupied Territory', in A. Clapham et al., *op.cit.* note 5, at 1460; see also E. Benvenisti, 'Occupation, Belligerent', MN 24, in R. Wolfrum, *Max Planck Encyclopedia of Public International Law* (MPEPIL)

[7] For a detailed analysis, see Bothe, *loc.cit.* note 6, at 1466 *et seq*.

[8] R. Kolb/A. Vité, *Le droit de l'occupation militaire,* Brussels : Bruylant 2009, 187 *et seq.*

[9] The Hague Convention only applies if all parties to a conflict are contracting parties (Art.2 Hague Convention IV). Israel is not a party to the convention.

[10] ICJ, *Legal consequences of the construction of a wall in the occupied Palestinian territory,* Advisory Opinion of 9 July 2004, para. 89; Y. Dinstein, The International Law of Belligerent Occupation, CUP 2009, 5; Bothe, *loc.cit.* note 6, at 1457, 1460.

[11] Unclear in this respect Dinstein, *op.cit.* note 10, at 8.

[12] V. Koutroulis, 'The application of international humanitarian law and international human rights law in situation of prolonged occupation: only a matter of time?', 94 IRRC no. 885, 165-205 (2012), at 172 *et seq.*

[13] Art. 6 para. 3 GC IV, which contains a time limit, is either considered as overtaken by customary law or interpreted in a way which does not exclusively rely on the time element, *cfr.* A. Roberts, 'Prolonged Military Occupation: the Israeli Occupied Territories since 1967', 84 *AJIL* 44-103 (1990), at 55 *et seq*.; J. Grignon, 'The Geneva conventions and the End of Occupation', in Clapham/Gaeta/Sassòli (eds.), *op.cit.* note 5, 1575-1596, at 1577 *et seq.*; Koutroulis, *loc.cit.* note 12, at 173 *et seq.*

[14] The most recent utterances of UN bodies are SC resolution 2334 (2016) as well as GA resolutions 70/89 of 9 December 2015 and 71/97 of 23 December 2016.

3. The law of occupation – relation between *ius in bello* and *ius contra bellum*

It will be shown that the problems of prolonged occupation are not only subject to the *ius in bello,* but that rules pertaining to the prohibition of the use of force, the *ius contra bellum,* and the right of self-determination are also relevant.

It is a fundamental principle of the law of armed conflict that it applies equally to both sides of the conflict, regardless of the causes thereof. The *ius in bello* applies independently of the question as to which party has violated the *ius contra bellum* in the beginning.[15] This is the principle of the equality of the parties under the law of armed conflict.[16]

Nevertheless, there are connections between the two fields of international law. This is so because and where the *ius in bello* protects the same interest as the *ius contra bellum.* Where the law of occupation, as part of the *ius in bello,* prohibits measures changing the status of the occupied territory, in particular its annexation during the armed conflict, the rule of the *ius contra bellum* which prohibits territorial changes being effected by force is also at stake.[17]

There is a similar connection between the law of belligerent occupation and the right of self-determination. A long-term occupation as such may be considered as depriving the population of that right. This is *a fortiori* the case where an occupying power takes measures, in violation of the law of belligerent occupation, which are able to freeze the *de facto* situation where the population is unable to decide its own political fate.

In the law of belligerent occupation, the second principle mentioned above, namely safeguarding the provisional character of the regime of occupation, is enshrined in a number of different norms which require the maintenance of the status quo (*principe de stabilité juridique*)[18] or which modify that status quo by introducing institutional changes. As to the first type of norms, Art. 43 Hague Regulations prescribes that the Occupying Power shall take all measures in its power to ensure the wellbeing of the population "while *respecting*, unless absolutely prevented, *the law in force in the country*".[19] The major example of the other type is Art. 47 GC IV. It prohibits the diminution of protections provided by the Convention through any institutional change affecting the rights of the population, in

[15] The term *ius contra bellum* is preferable to *ius ad bellum,* as the essence of the relevant norms is to restrict the use of force, not to allow it.
[16] See AP I, preamble para. 5; K.J. Partsch, in M. Bothe/K.J. Partsch/W.A. Solf, *New Rules for Victims of Armed Conflicts. Commentary to the Two 1977 Protocols Additional to the Geneva Conventions of 1949.* 2nd ed. Reprint revised by M. Bothe, Leiden/Boston: Nijhoff 2013, at 31; H.P. Gasser, 'International Humanitarian Law', MN 2, in MPEPIL (note 6).
[17] See below note 21.
[18] Kolb/Vité, *op.cit.* note 8, at 187 *et seq.*
[19] See Kolb/Vité, *op.cit.* note 8, 188.

particular annexation. This provision is based on the experiences of World War II when the Axis Powers tried to diminish the protection of the population by establishing puppet governments or by institutional changes relating to the territory, including its annexation. Taken literally, Art. 47 does not address these changes as such, but only prohibits their recognition. The provision is based, however, on the view of the drafters of the Convention that these (attempted or alleged) changes were indeed illegal and invalid.[20] Thus, Art. 47 GC IV is clearly based on the premise that the annexation of occupied territory by an occupying power is unlawful.

This rule of the *ius in bello* coincides with the prohibition of the use of force which renders any annexation achieved by a violation of that prohibition, i.e. of the applicable *ius contra bellum,* unlawful and invalid, and makes any recognition of that annexation unlawful, too.[21] At the same time, such institutional change or annexation undertaken against the will of the population concerned constitutes a violation of the right of self-determination. This legal situation has been clearly stated by the ICJ in the Advisory Opinion relating to the construction of a wall in the occupied Palestinian territory.[22]

This enlightened interpretation of the principles of the law of belligerent occupation must in a general way guide the policies of an Occupying Power in a situation of long term occupation. A policy which systematically prevents a solution of the conflict and thus leads to an abusive perpetuation of the occupation, at best, or to an exploitation of the situation for the purpose of annexation, at worst, is a violation of both the principle of good governance and that of the provisional or temporary character of occupation.[23]

## 4. The particular problems of a long-term occupation (*ius in bello*)

Although the law of belligerent occupation is designed to safeguard the provisional character of the *de facto* situation of occupation, it imposes no specific time limit on it.[24] In practical terms, however, a long duration of the occupation is at odds with its provisional character.[25]

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[20] J. Pictet (dir.), Les Conventions de Genève du 12 août 1949, vol. IV, La Convention de Genève relative à la protection des personnes civiles en temps de guerre, Geneva : ICRC 1956, 296 *et seq.* ; Sassòli, *loc.cit.* note 5, 1405 ; Bothe, *loc.cit.* note 6, 1465.

[21] See the formulation of the principle of the prohibition of the use of force in the so-called Friendly Relations Declaration (Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, UNGA Resolution 2625 (XXV), 24 October 1970): "No territorial acquisition resulting from the threat of use of force shall be recognized as legal." In the same sense, Art. 5 para. 3 of the Definition of aggression (UNGA Resolution 3314 (XXIX), 14 December 1974): "No territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful." The rule was already formulated in the Stimson doctrine 1931, T.D. Grant, 'Doctrines (Monroe, Hallstein, Brezhnev, Stimson)' MN 8 *et seq.,* in MPEPIL (note 6).

[22] ICJ, *Construction of a Wall,* Advisory Opinion, paras. 86 *et seq*.

[23] See below text accompanying note 26.

[24] See above text accompanying note 13.

[25] Koutroulis, *loc.cit.* note 12, at 167 *et seq.*; Dinstein, *op.cit.* note 10, 116 *et seq.*, Benvenisti, *The International Law of Occupation,* 2nd ed., Oxford: OUP 2012, 246 *et seq.*

This makes the legal assessment of certain measures which may be taken by the occupying power difficult.

The duty of good governance,[26] for instance, requires the occupying power to take measures to ensure the welfare of the population. This may imply measures changing the *status quo*[27] or requiring a certain permanence in order to be effective. Both requirements are difficult to reconcile with the provisional character of the regime of occupation. An interpretation of the law of occupation is thus necessary which in a way harmonizes the two different interests at stake, namely that of protecting the population and that of the displaced authority. Safeguarding the provisional character of the occupation may not generally stand in the way of the occupying power taking measures changing the status quo or having a permanent character, but they must be taken with due consideration for that provisional character.[28]

The use of natural resources may serve as an example. According to Art.55 of the Hague Regulations,[29] the occupying power shall be regarded "only as administrator and usufructuary" thereof. "It must safeguard the capital of these properties and administer them in accordance with the rules of usufruct." This could be read as a prohibition of exploiting non-renewable resources. The exploitation of non-renewable resources, such as minerals, has a permanent effect. After their exploitation, these resources are gone. Nevertheless, it may be in the interest of the economy of the occupied territory to exploit them in the same way as would have been the case in the absence of occupation. However, the duty to protect at least the interest of the population of the territory would prohibit an exploitation only in the interest of the occupying power or of an enterprise belonging to the occupying power. An interpretation of the law of occupation appropriately balancing the interests at stake would require that the proceeds of that exploitation are reserved for the benefit of the population of the territory and are not used for the benefit of the occupying power alone.

## 5. The quadruple limitation of the rights of the occupying power

It results from the reasoning developed so far that different fields of international law coincide in limiting the rights of an occupying power. The relevant areas of international law are the international law relating to the prohibition of the use of force (*ius contra bellum*), the law relating to the self-determination of peoples, international humanitarian law (*ius in bello*) and international human rights law.

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[26] Bothe, *loc.cit.* note 6, at 1466 *et seq.*
[27] Dinstein, *op.cit.* note 10, 117 *et seq.,* more cautious E. Benvenisti, *op.cit.* note 25, 246 *et seq.*
[28] Koutroulis, *loc.cit.* note 12, at 188 *et seq,* 193.
[29] Bothe, *loc.cit.* note 6, at 1477.

A. The prohibition of the use of force (***ius contra bellum***) prohibits any annexation achieved by using force. In the Friendly Relations Declaration,[30] which in this respect constitutes a formulation of international customary law,[31] the formulation of the prohibition of the use of force contains the following sentences:

> "The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal."

The definition of aggression adopted by the General Assembly,[32] also an expression of customary law,[33] formulates the same rule. The list of acts qualifying as aggression contains the following:

> "Article 3
> …
> (a) … any annexation by the use of force of the territory of another State or any part thereof."

A formal declaration of annexation is not the only way in which the prohibition is violated. What matters is the factual acquisition of the territory, which is well reflected in the Friendly Relations Declaration. This may be attempted by such a declaration, also called *de iure* annexation,[34] but also by other legal instruments purporting to exercise sovereign rights over an annexed territory or by factual activities having an equivalent effect. The ICJ holds such activities to be a prohibited "*de facto* annexation".[35] Its Advisory Opinion formulates this verdict in respect of the construction of a wall which prevented the freedom of movement as well as the beneficial use of land by the Palestinian population, caused it to move away and thus changed the demographic structure of the oPt in favour of Israel. The same applies to the settlements policy and to other measures causing members of the Palestinian population to move away from places where they live and want to stay.[36]

An annexation achieved by exploiting a situation of occupation can also fall under the same prohibition. The invasion by which the occupation originated may have constituted an

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[30] See note 21.
[31] ICJ, *Case concerning Military and Paramilitary Activities in and against Nicaragua, Nicaragua v. United States of America,* Judgement of 27 June 1986, para. 191.
[32] Definition of Aggression, UNGA Resolution 3314 (XXIX), 14 December 1974, see note 21.
[33] ICJ, *Case concerning Military and Paramilitary Activities in and against Nicaragua, Nicaragua v. United States of America,* Judgement of 27 June 1986, para. 195.
[34] Hereinafter, the term "formal annexation" is preferred, as "*de iure* annexation" might convey the wrong impression that the annexation was lawful.
[35] ICJ, *Construction of a wall,* Advisory Opinion, para. 121.
[36] See below text accompanying note 65.

unlawful use of force, and taking advantage of a situation created by such unlawful conduct is also unlawful.

But even if the original invasion amounted to a lawful act of self-defense, taking advantage of the situation for the purpose of annexation is not covered by the justification as self-defense. It would go beyond the limits of what is allowed as self-defense namely measures which are militarily necessary and proportionate means of self-protection.[37]

B. In a relevant case, the **right of self-determination** may lead to the same result. If the occupying power makes it impossible for a population to exercise this right by deciding its own system of government and, thus, its own political fate, this amounts to a deprivation of that right. A situation of long-term occupation has the potential of producing such effect. This is *a fortiori* the case where the occupying power takes measures making such situation permanent, whether this is declared in a legal form, e.g. an act of legislation, or whether a measure just has the same practical effect and thus constitutes a *de facto* annexation.[38]

C. The law of belligerent occupation is a part of the ***ius in bello***. That body of law applies regardless of the question which party to the armed conflict started the conflict in violation of the *ius contra bellum*.[39] This body of law applies once a party to the conflict has established an effective *de facto* control over the territory of the other. Israel's view concerning the application of the law of belligerent occupation to the oPt is not uniform. Except for East Jerusalem, it accepts the application of the customary law of belligerent occupation to the West Bank, but it denies the applicability of GC IV, [40] arguing that GC IV only applies to the occupation of the territory of another Party to the Convention, and that the territory had not become part of Jordanian territory after 1949 (argument of the "missing reversioner"). That view is flawed for a number of reasons.[41] The decisive point is that the occupation is the result of an armed conflict between parties to the Geneva Conventions, namely Israel and Jordan. The Israeli view has been adamantly rejected by the International community and the ICJ in particular.[42]

The law of belligerent occupation prohibits a number of different measures which, taken together, affect the demographic structure of the occupied territory.[43] Therefore, not only is each of these measures unlawful, but they are also unlawful because of their combined

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[37] ICJ, *Legality of the Threat or Use of Nuclear Weapons,* Advisory Opinion, 8 July 1996, para. 41; C. Greenwood, 'Self-Defence', MN 25 *et seq.,* in MPEPIL (note 6); E. Crawford, 'Proportionality', MN 10, in MPEPIL (note 6).
[38] ICJ, *Construction of a Wall,* Advisory Opinion, para. 121 et seq.
[39] See above text accompanying note 16.
[40] M. Shamgar, 'The Observance of International Law in the Administered Territories', 1 IYHR (1971), at 262 *et seq.*; Roberts, *loc.cit.* note 13, 62 *et seq.*
[41] Roberts, *loc.cit.* note 13, 66.
[42] ICJ, *Construction of a Wall,* Advisory Opinion, paras. 90 *et seq.* Dinstein, *op.cit.* note 10, at 20 *et seq.,* also expresses doubts as to the validity of the official Israeli position. The Supreme Court of Israel accepts at least the application of the customary law of belligerent occupation to the West Bank, excluding however East Jerusalem, *Jamait Askan* case, HCJ 393/82, 14 IYHR (1984), at 301.
[43] ICJ, *Construction of a Wall,* Advisory Opinion, paras. 121 *et seq.,* 133.

effect. Such unlawful measures are, for instance, those which restrict the freedom of movement of the population to the extent that a meaningful activity, in particular gainful activity is not possible.[44] They induce the members of the population to move away from the places where they used to live. Demolition of houses has the same effect. They cause persons living there to move away. Finally, deportations of parts of the population and the transfer of parts of the population of the Occupying power (forbidden pursuant to Art. 49 GC IV) are forbidden acts having the same effect. Because of their permanent impact on the demographic structure, they violate the principle of the transitional *de facto* nature of the control over the territory exercised by the Occupying Power.

These measures are therefore equivalent to institutional changes affecting the rights of the population of the occupied territory which are forbidden by Art. 47 GC IV. As pointed out above,[45] Art. 47, taken literally, only addresses the forbidden effect of such measures, namely a negative impact on the rights of the population.[46] But the provision is clearly based on the premise that such changes, in particular annexation, are prohibited. The prohibition does not only cover an annexation declared in legal form, in this sense a *de iure* annexation, but also measures which *de facto* have an equivalent effect are prohibited. In its Advisory Opinion concerning the construction of a wall in the oPt, the ICJ has therefore held that a measure leading to a change in the demographic composition of the population may fall under this prohibition. Thus, even where certain such measures are carried out under the appearance of lawful measures of an occupying power, for instance requisitions allowed pursuant to Art. 52 Hague Regulations, they are nevertheless prohibited. They violate the principle of good faith and constitute an abuse of rights if and because they amount to, or are designed to lead to, a permanent change of the territorial status. The modern law of belligerent occupation does not condone an occupying power's policy of using occupation as a means of territorial gain, be it through *de facto* annexation, or be it by other means which prevent a solution of the conflict by placing the State or the people whose territory is occupied in a position where it is impossible to reach a sustainable solution of the conflict. [47]

D. Many of the guarantees provided by the Hague Regulations and Geneva Convention IV are mirrored by **human rights law**, and human rights law adds to the protections provided by the Hague Regulations and the Geneva Conventions.[48] This relates in particular to freedom of movement and the prohibition of forced movements. A violation of these rules may also lead to a change in the demographic structure and therefore amount to a forbidden *de facto* annexation.

The parallel application of human rights law, international humanitarian law and the rules of the *ius contra bellum* as well as the principle of self-determination provide important

[44] ICJ, *Construction of a Wall,* para. 133 *et seq.*
[45] See text accompanying note 20
[46] Dinstein, *op.cit.* note 10, 124.
[47] Benvenisti, *op.cit.* note 25, at 349.
[48] Kolb/Vité, *op.cit.* note 8, 303 *et seq.*

protections in the case of prolonged occupation. Measures taken by the occupying power restricting the freedom of movement and of economic activities violate human rights and international humanitarian law, but in addition, when they threaten or impact the demographic structure, they are elements of a violation of the right to self-determination and of the prohibition of enquiring territory by force. They thus constitute acts of aggression.

## 6. Palestine – a legal evaluation of fifty years of Israeli occupation

In the light of the foregoing analysis of applicable law, an attempt will be made to assess the conduct of Israel, starting from its crossing of the armistice lines in 1967 and going through fifty years of occupation policy.

When Israel in 1967 crossed the armistice lines with Egypt and Jordan, this was a violation of frontier lines Israel was bound to respect and, according to the standards formulated by the Friendly Relations Declaration[49] which may be taken as an expression of customary law, a violation of the prohibition of the use of force.

> "Every State … has the duty to refrain from the threat or use of force to violate international lines of demarcation, such as armistice lines, established by or pursuant to an international agreement to which it is a party or which it is otherwise bound to respect."

Such an act could only be justified if Israel acted in self-defense. This is indeed the view put forward by Israel, but challenged by many political actors and legal writers both as a matter of fact and law. A distinction must be made between various fronts. The war started at the armistice line between Israel and Egypt. After first claiming that Egypt had fired the first shot, Israel's claim was later changed to the effect that Egypt was about to immediately attack Israel, and that Israel was justified in reacting to that immediate threat by way of anticipatory self-defense on the basis of a strict application of the so-called "Caroline formula", exceptionally allowing such action of self-protection.[50] Whether that threat really existed and whether even the Israeli government of the time believed it to exist is subject to serious doubt.[51] The Arab side has never accepted that line of argument.[52] As to the Eastern front, Israel justified its actions against Jordan and Syria by the fact that these countries had

[49] See above note 21.
[50] J. Quigley, *The Six-Day War and Israeli Self-Defense: Questioning Legal Basis for Preventive War,* CUP 2013, 152 *et seq.*; on the Caroline doctrine see C. Greenwood, 'The Caroline', MN 5 *et seq.*, in MPEPIL (note 6); C. Greenwood, 'Self-Defence', MN 45, in MPEPIL (note 6).
[51] Quigley, note 50, 141 *et seq*.
[52] In the debate of the Fifth Emergency Special Session of the General Assembly, many delegates referred to the Israeli invasion simply as aggression, not admitting any justification as self-defense, see ICJ, *Legal Consequences of the Construction of a Wall,* Written Statement of the League of Arab States, January 2004, 35 *et seq.*

started to fire shells at targets in Israel.[53] If the Israeli version of facts and law were true, the Jordanian action could not be justified as collective self-defense and Israel would have been justified to react against the Jordanian attacks in self-defense. If the Israeli version were not true, Jordan would have been justified to act against Israel on the basis of collective self-defense and Israel's military action against Jordan could not be justified as self-defense, but would constitute an unlawful use of force and thus an act of aggression.

It is beyond the scope of the present Opinion to express a judgment on these controversial matters of fact. For a number of reasons, even if the Israeli version on the beginning of the invasion were true (*quod non*) its ensuing actions concerning the West Bank violate the *ius in bello.* A claim of self-defense defense fails because self-defense is only that military action which is necessary and appropriate to repel an attack, a limitation of self-defense upheld by the ICJ in a number of cases, in particular the *Nicaragua, Nuclear Weapons* and *Oil Platforms* cases.[54] In the light of the swift withdrawal of the opposing Jordanian forces, it is more than doubtful that the continued presence of Israeli forces in the West Bank was "necessary" for the defense of Israel. The establishment of an occupation regime lasting for decades is certainly beyond anything "necessary and appropriate" for the purpose of defense. For this reason the continued Israeli presence is flawed under the *ius contra bellum* regardless of the controversial question of the first shot.

Furthermore, even if there had been any initial right of Israel to remain present in the occupied territory, that right was legally terminated by the Security Council already in its Resolution 242, dated November 22, 1967. Without naming Israel, it emphasized the prohibition of the use of force and, most importantly, "the inadmissibility of the acquisition of territory by war". Consequently, it demanded "withdrawal of Israel armed forces from territories occupied in the recent conflict". The absence of the definite article relating to "territories" is often understood as meaning that Israel is not obliged to withdraw from all, but only from some territories held by it. That interpretation is controversial. The Arab side has never accepted it.[55] If not before, it is since that resolution that Israel is obliged to withdraw from all territories occupied since the 1967 invasion. The ICJ, in its advisory opinion in the *Wall* case, held that the armistice line of 1949, the so-called Green Line, was the frontier of Israel and that the rights of the Arab population, in particular its right to self-determination, circumscribed by the Court, extended to that line without any diminution.[56] Thus, the continued presence of Israel in the West Bank is also legally flawed as a violation of Security Council resolution 242 binding according to Art. 25 of the Charter.

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[53] Quigley, *op.cit.* note 50, 87 *et seq*.

[54] ICJ, *Case concerning Military and Paramilitary Activities in and against Nicaragua, Nicaragua v. United States of America,* Judgement of 27 June 1986, para. 176, 194; *Legality of the Threat or Use of Nuclear Weapons,* Advisory Opinion, para. 41; *Case concerning Oil Platforms, Islamic Republic of Iran v. United States of America,* Judgement of 6 November 2003, para. 67. As to the proportionality of Israel's response to the Egyptian measures, see Quigley, *op.cit.* note 50, 57.

[55] ICJ, *Legal Consequences of the Construction of a Wall,* Written Statement of the League of Arb States, January 2004, at 37.

[56] ICJ, *Construction of a Wall,* Advisory Opinion, *loc. cit.* note 22, paras. 72-78.

The foreign military presence, once established by a violation of the *ius contra bellum,* e.g. by an unlawful invasion or by action in excess of lawful self-defense, constitutes a continuous unlawful act, which pursuant to the law of State responsibility must be discontinued.

Regardless of the illegality of the presence of the Occupying Power under the *ius contra bellum,* a new situation is created under the *ius in bello:* The rights and duties of an occupying power, once effective control of the territory being established, are determined by the law of belligerent occupation. But this does not exclude that certain acts committed by the Occupying Power which strengthen or prolong that continuous violation must still, in addition, be evaluated in the light of the *ius contra bellum.* In this sense, the ICJ came to what can be called a cumulative verdict of illegality. It held the construction of the wall to be a violation of the *ius in bello* and of human rights[57] as well as of the *ius contra bellum*[58] and of the right to self-determination.[59]

The first of these additional measures was the annexation of East Jerusalem. It was an attempted change in territorial status which could not be justified as self-defense. Any annexation achieved by an unlawful use of force is a violation of the prohibition of the use of force, constitutes an act of aggression and is invalid.[60] This the view held by UN organs and by the international community at large.[61]

The annexation of East Jerusalem was an attempted formal annexation which through different legal acts occurred in two phases. First in 1967, the scope of application of Israeli law was extended to the enlarged area of East Jerusalem.[62] Then, in 1980, the Basic Law declared Jerusalem as a whole to be the capital of Israel.[63]

Other measures of the occupying power amounted to a *de facto* annexation which is also forbidden as its practical effect is equivalent to a formal annexation. These are measures designed to change the demographic structure of the Palestinian population by excluding the use of the territory by Palestinians and causing the Palestinian population to move away from parts of the territory.[64] This is the combined effect of the establishment of Israeli settlements, coercive measures of different types causing Palestinians to move away from their traditional homes and settlements, and as the ICJ has expressly stated, the construction

[57] Para. 134 of the Opinion.
[58] Para. 115-117 of the Opinion.
[59] Paras. 118-122 of the Opinion.
[60] See above text accompanying notes 30-33.
[61] Security Council resolution 242, 22 November 1967 (confirmed by 338, 22 October 1973); 298, 25 September 1971; 452, 20 July 1979; 465, 1 March 1980; 478, 20 August 1980.
[62] Measures held invalid by GA resolution 2253 (ES-V), 4 July 1967, and SC resolution 252, 21 May 1968.
[63] Basic law dated 30 July 1980, held invalid by SC resolution 478, 20 August 1980.
[64] ICJ, *Construction of a Wall,* Advisory Opinion, para. 122.

of a wall and its associated regime.[65] Furthermore, the population is also evicted from certain areas by declaring them closed areas for the exclusive use by the Israeli military.[66] Taken together, this Israeli policy is designed to achieve the *de facto* annexation of territory adjacent to the Green Line as well as of the Jordan valley, and to create bridges of Israeli territory between the Green Line and the Jordan Valley. This would concentrate the Palestinian population to areas between these territorial bridges, mainly urban areas, including at least three so-called "relocation sites" designated by Israel. This concept has rightly been called the segregation of the Palestinian population.[67] All these measures, taken together, constitute a violation of the prohibition of the use of force. As they amount to annexation, they thus constitute (additional) acts of aggression.[68]

These measures also constitute a violation of the right of self-determination of the Palestinian people. The ICJ has confirmed in clear terms that the Palestinian people possess this right.[69] In a number of ways, the occupying power prevents the Palestinian people from exercising this right. The occupation alone renders impossible any decision by the Palestinian people regarding its political fate. This violation becomes all the more serious the longer the occupation lasts. This obstacle to self-determination is deepened by the said change of the demographic structure.[70] Furthermore, the territorial design just described destroys the territorial contiguity of the Palestinian State, thus compromising its viability.[71] Putting into jeopardy the viability of the Palestinian State is a further element of the violation of the right to self-determination.

It has been shown that that the law of belligerent occupation has since the invasion 1967 been applicable to the West Bank, including East Jerusalem. The measures just described, and a number of others, constitute violations of the law of belligerent occupation. Changing the status of the occupied territory, or of parts thereof, in a way meant to be permanent, or any *de facto* or *de iure* annexation are prohibited. This is the effect of the systematic establishment of Israeli settlements which constitutes a transfer of the Occupying Power's population into the occupied territory prohibited by Art. 49 GC IV.[72] The arguments put

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[65] ICJ, *Construction of a Wall,* paras. 122, 134.
[66] See Bothe, *loc. cit.* note 6, 1483; for more details see M. Bothe, 'Limits of the right of expropriation (requisition) and movement restrictions in occupied territory, available at www.acri.orgil/en/wp-content/uploads/2013/01/Michael-Bothe_918-position.pdf.
[67] Benvenisti, *op.cit.* note 25, at 238 *et seq.*
[68] See above text accompanying note 32 and note 21.
[69] ICJ, *Construction of a Wall,* Advisory Opinion, para. 118. See J. Dugard, 'A Tale of Two Sacred Trusts: Namibia and Palestine', in T. Maluwa (ed.), *Law, Politics and Rights. Essays in Memory of Kader Asmal,* Leiden/Boston: Nijhoff 2014, 287-305, at 299 *et seq.*; D. Momtaz, 'La controverse sur le statut de la Palestine', in R. Wolfrum/M. Seršić/T.M. Šošić (eds.), *Contemporary Developments in International Law. Essays in Honour of Budislav Vukas,* Leiden/Boston: Brill/Nijhoff 2016, 102-115, at 105 *et seq.*
[70] ICJ, *Construction of a Wall,* Advisory Opinion, *loc. cit.* note 22, para. 122.
[71] Quartet Report, *loc.cit.* note 1, at 2.
[72] ICJ, *Construction of a Wall,* Advisory Opinion, para. 120.

forward by Israel to the contrary have unanimously been rejected by the international community, including the ICJ.[73]

Israel as the Occupying Power has practiced a number of different measures which are prohibited under the law of belligerent occupation. A first example is the construction of a wall in the oPt, which restricts the freedom of movement of the Palestinian population and therefore has an impact on the demographic structure of the oPt. Another example are house demolitions executed for different reasons. Through changes in the existing (Jordanian) planning and zoning laws, Israel systematically hinders Palestinians ability to beneficially use their land.[74] Buildings, including school houses, are then destroyed alleging a lack of building permits, which is due to the said flaws of the building and planning laws. Demolitions are also used as sanctions of unlawful behaviour of members of the family of the owner,[75] which constitutes a violation of the guaranty of private property enshrined in the Hague Regulations[76] and of the prohibition of collective punishments.[77]

All these restrictions on the exercise of civil rights are part of a policy. They are systematic and, thus, have *de facto* a permanent character. They have rightly been called a creeping annexation.[78] They contradict a fundamental principle of the law of occupation, namely the provisional and temporary character of the occupation regime.

That principle as well as the Palestinian right to self-determination and the prohibition of acquisition of territory by force is in a general way violated by the current policy of Israel which systematically creates obstacles to the birth and life of the Palestinian State. The negotiating powers of the Palestinian side are jeopardized by the need, and impossibility, of undoing the effects of the Israeli measures just described. Even if individual measures, taken in isolation, might not be unlawful, the permanent effect of the measures taken by Israel, however, make negotiations ending the occupation and facilitating the exercise of the right to self-determination difficult if not impossible, and thus constitute an abuse of rights[79] Israel might otherwise have pursuant to the law of occupation.

Certain violations of the law of belligerent occupation (*ius in bello*) described above constitute war crimes and/or grave breaches of the Geneva Conventions.[80]

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[73] See, *inter alia,* Security Council Resolution 446, 22 March 1979; 452, 20 July 1979; 465, 1 March 1980.
[74] Bothe, *loc.cit.* note 6, at 1474 *et seq.*; M. Rishmawi, 'The Administration of the West Bank under Israeli Rule', in E. Playfair (ed.), *International law and the Administration of Occupied Territories,* Oxford: Clarendon Press 1992, 267, at 288.
[75] On the practice of demolitions, see the Report of the Special Committee to Investigate Israeli Practices Affecting Human Rights of the Palestinian People and other Arabs of the Occupied Territories, UN Doc. A/71/352, 23 August 2016, at 14.
[76] Art. 46 Hague Regulations.
[77] Art. 50 Hague Regulations; Art. 33 GC IV.
[78] Dajani, *loc.cit.* note 2.
[79] Benvenisti, *op.cit.* note 25, 245, 349.
[80] Demolitions (Art. 8(2)(a)(iv), 8(2)(b)xiii) ICC Statute; settlements (Art. 8(2)(b)(viii)).

This is what must be regarded as the definite negative legal balance sheet of fifty years of occupation.

## 7. Remedial action and the duties of the international community

That negative balance raises the question of possible or even necessary remedial action.[81]

There are three types of remedial action to be considered:

- action by Palestine represented by the Palestinian Authority;
- action by third States and/or intergovernmental organizations;
- action by affected individuals.

### 7.1. The Palestinian Authority

Third party settlement of disputes requires the consent of the parties. There is no such agreement establishing a "jurisdictional link" between Israel and Palestine which could serve as the legal bases for a third party settlement procedure between Palestine, i.e. the PA, and Israel. There is thus no possibility for a judicial or arbitral procedure. Both sides can only rely on negotiations.

With Palestine now being a party to the Statute of the ICC, there is the possibility that the PA refers the situation in Palestine to the ICC because certain acts committed by the occupation authorities could constitute war crimes falling into the jurisdiction of that Court. The relevant provision is Art. 13 ICC Statute:

> The Court may exercise its jurisdiction with respect to a crime referred to in Art. 5 … if
> (a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with Art. 14; …

The scope of this jurisdiction is defined in Art. 12:

> 2. In the case of Art. 13, paragraph (a) … the Court may exercise its Jurisdiction if one or more of the following States are Parties to this Statute …
> (a) The State on the territory of which the conduct in question occurred …

It is then the task of the Prosecutor (Art. 14)

[81] Certain procedural consequences of the illegality of the construction of a wall have been analyzed by the ICJ, *Construction of a Wall*, Advisory Opinion, paras. 143 *et seq.*

to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes.

The ICC would thus have jurisdiction over any war crime or crime against humanity committed on Palestinian territory after the entry into force of the Statute for Palestine. The basis for this jurisdictional is territorial. The fact that the State to which the perpetrator belongs is not a party does not exclude this jurisdiction.

For the purpose of applying these provisions, the entire occupied territory including East Jerusalem is to be considered as the territory of the State of Palestine.

### 7.2. Action by third States and/or intergovernmental organizations

There are two different bases of action for third States, namely Art. 1 common to the GC and the fact that most of the violations stated relate to obligations *erga omnes*.[82]

Art. 1 common to the GC obliges States parties to the GC "to respect and ensure respect" thereof. This means that practically all States are obliged to use all means at their disposal to induce other States violating the GC[83] to cease violations and to undo the consequences of violations.[84] These measures must be in conformity with international law, which means in particular that they may not involve the use of force. Such measures would include diplomatic demarches, but also formal action if available. The EU Guidelines on ensuring respect for international humanitarian law[85] contain useful examples of possible actions. The General Assembly has called upon all States to use the potential of common article 1.[86]

The *erga omnes* character of the relevant obligations has a similar effect. It gives non-injured States a right to invoke the international responsibility of the State having committed an unlawful act.[87] It follows already from the said Art. 1 common to the Geneva Conventions that the provisions of the Conventions and the Protocols additional thereto are valid *erga omnes*.[88] It is generally recognized that core provisions of human rights law have the same

[82] ICJ, *Construction of a Wall,* Advisory Opinion, para. 155 *et seq.*
[83] This is the external compliance dimension of Art. 1, see R. Geiß, 'The Obligation to Respect and to Ensure Respect for the Conventions, in Clapham/Gaeta/Sassòli (eds.), *op.cit.* note 5, 111-134, at 121.
[84] Geiß, *loc.cit.* note 83, at 123.
[85] Updated European Union Guidelines on Promoting Compliance with International Humanitarian Law (IHL), OJ C 303, 15 December 2009.
[86] GA Resolution 79/89, 15 December 2015, OP 10.
[87] Art.48 ARS.
[88] ICJ, *Construction of a Wall*, Advisory Opinion, para. 157.

effect.[89] The same is true for the prohibition of the use of force. According to the ICJ, the right to self-determination has the same character.[90]

As a consequence of the *erga omnes* character of the prohibition of the use of force, all States are obliged not to recognize territorial changes achieved through a violation of that prohibition (the so-called Stimson doctrine).[91] This is relevant, *inter alia,* for trade between third States and/or the EU with Israel, on the one hand, and the occupied territory, on the other. Recognition can be expressed in many ways. Recognizing a certificate of origin issued in the oPt as certifying Israeli origin could amount to recognition.[92] Therefore, the EU does not accept Israeli certificates of origin for products originating in Israeli settlements situated in the oPt.[93]

### 7.3. Lawsuits

Another way in which third States may become involved is through the redress which their courts may provide against violations of international law which may have been committed by Israeli authorities or under the cover of Israeli law. Attempts to seek redress by taking the cause of victims of violations of the laws of war have been made, but their success has been limited.[94] They pose a number of general problems[95] which are beyond the scope of this Opinion.

### 7.4. UN bodies

The situation regarding the oPt is of great concern for the UN,[96] from the point of view of the maintenance of peace and security as well as from that of self-determination and of human rights. To take measures for promoting self-determination for, in human rights in, Palestine constitutes all the more a duty of the UN as it follows from the duty to fulfill the "sacred trust" which was the central purpose of the original mandates system and which remained a valid postulate as the purpose of the original Palestine mandate has remained unfulfilled.[97]

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[89] This rule is based on the *Barcelona Traction* Judgment of the ICJ where the concept of *erga omnes* norms was developed, see J.A. Frowein, 'Obligations erga omnes', MN 2, in MPEPIL (note 6).
[90] ICJ, *Construction of a Wall,* Advisory Opinion, para. 156, relying on *Case concerning East Timor (Portugal v. Australia,* Judgment of 30 June 1995, para. 29.
[91] ICJ, *Construction of a Wall,* Advisory Opinion, para. 159, see also above note 21.
[92] M. Cremona, *Developments in EU External Relations Law,* OUP 2008, at 76.
[93] In this sense, yet on narrower grounds, *Brita GmbH v. Hauptzollamt Hamburg-Hafen,* ECJ Case C-386/08, Judgment of 25 February 2010.
[94] As to the U.S. see G. Skinner, 'The Nonjusticiability of Palestine: Human Rights Litigation and the (Mis)application of the Political Question Doctrine', 35 *Hastings International and Comparative Law Review* 99-128 (2012).
[95] Benvenisti, *op.cit.* note 25, 333 *et seq.*
[96] Benvenisti, *op.cit.* note 25, 343 *et seq.*
[97] Dugard, *loc.cit.* note 69, 301 *et seq.*; see also ICJ, *Construction of a Wall,* para. 88.

### 7.4.1. The Security Council

The continued occupation of the oPt constitutes, as the Security Council has repeatedly determined, a threat to international peace. Since Resolution 242 already mentioned, the Security Council has on this basis taken action under Ch. VII of the Charter.[98] A resolution under Ch. VII would be the only UN action which could lead to a binding decision (Art. 25 UNCh). In the light of the possibility of a U.S. veto, this possibility will only materialize in exceptional circumstances,[99] for instance in the case of SC Resolution 2334 of 23 December 2016. In that resolution the Council stated that the Israeli settlement policy is a violation of international humanitarian law, without, however, taking any enforcement action.

Action taken by any other UN body does not lead to a legally binding result. The political impact of such an action may nevertheless be considerable.

### 7.4.2. The General Assembly

There are two different tools at the disposal of the General Assembly to remedy the illegal situations resulting from prolonged occupation: on the one hand, statements having a political effect, on the other hand ascertaining facts and monitoring violations of applicable law. The General Assembly has on many occasions condemned Israeli practices relating to the oPt.[100] It has established a Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and other Arabs in the Occupied Territories.[101] The GA could once more declare Israeli occupation or specific action taken by Israel as an occupying power to be illegal. Even if not legally binding, such action could induce and politically legitimize third States to take the action as described above.

To strengthen that position, the GA could even ask for another Advisory Opinion of the ICJ. That possibility, however, has to be handled with some degree of caution. If there is no perspective for action beyond that already undertaken, the Court might well use its discretionary power not to give an answer to the request,[102] a further clarification by the

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[98] See above notes 61 and 62. Relevant resolutions are 242 (1967), 338 (1973), 446 (1979), 452 (1979), 465 (1980), 478 (1980), 1397 (2002), 1515 (2003), 1850 (2008), 2334 (2016).

[99] In 2011, the U.S. vetoed draft resolution S/2011/24 demanding that Israel cease the settlement activity in the oPt.

[100] An early example is Resolution 2253 (ES-V), 4 July 1967 concerning Jerusalem; Resolution 33/29, 7 December 1978, reaffirmed by resolutions 34/70, 6 December 1979, 35/226, 17 December 1981, demanded the full withdrawal of Israeli forces from the occupied territories. A general condemnation of Israeli practices relating to the oPt is found in resolution 38/180, 19 December 1983, reaffirmed by resolutions 40/168, 16 December 1985, 41/162, 4 December 1986, 43/54, 6 December 1988. A complex statement regarding the oPt is contained in Resolutions 70/89, 9 December 2015 and 71/96, 23 December 2016.

[101] Resolutions 70/87 and 71/95, 23 December 2016..

[102] *Construction of a Wall,* Advisory Opinion, paras. 59 *et seq.*

Court not being necessary. The Court would refuse to give an answer to the request for an advisory opinion if this does not "serve a useful purpose".

### 7.4.3. The Human Rights Council and the High Commissioner for Human Rights

As indicated, the parallel application of human rights law, international humanitarian law and the rules of the *ius contra* bellum as well as self-determination[103] makes the procedures established for the implementation of human rights a useful instrument for remedying certain negative effects of prolonged occupation. These procedures are on the one hand the treaty bodies established under human rights conventions,[104] on the other hand the general human rights institutions established by the United Nations. The latter mainly consist of the Human Rights Council and the High Commissioner for Human Rights.

The treaty bodies of the Human Rights Conventions have indeed repeatedly dealt with questions relating to the oPt. The Committees established under the UN convention on Torture, the convention of the Rights of the Child and its Additional Protocols, CERD, CCPR, ICESCR and CEDAW all receive periodic reports from Israel. Israel, however, denies the applicability of these treaties to the oPt, while the said Committees insist on it.[105] It is the Committee on the Rights of the Child which in particular insists, in the basis of human rights considerations, on the need to stop the settlements policy and to end the occupation.[106]

The Human Rights Council is competent to deal with violations of human rights law and in practice includes in its scope of competence also international humanitarian law. The Council uses a number of tools for promoting respect for human rights and international humanitarian law. One of them is the appointment of thematic special rapporteurs. Since , a Special Rapporteur has been appointed for the situation in in oPt. They have regularly delivered reports critical for Israeli policies.[107]

Another possibility would be a new fact-finding mission mandated by the Council. It must be noted in this connection that Israel usually resists the activities of the Council in relation to the oPt and does not consider them to be relevant. Action by the Human Rights Council may nevertheless be politically relevant.

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[103] See above sec. 5.
[104] M. Bothe, ‚Compliance', MN 76 *et seq.*, in MPEPIL (note 6).
[105] See for example Human Rights Committee, Concluding observations on the fourth periodic report of Israel, UN Doc. CCPR/C/ISR/CO/4, 21 November 2014.
[106] Committee on the Rights of the Child, Concluding observation on the second to fourth periodic reports of Israel, adopted by the Committee at its sixty-third session (27 May-14 June 2013), UN doc. CRC/C/ISR/CO/2-4, 4 July 2013, paras, 3 and 7.
[107] Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, UN Doc. A/HRC/31/73, 11 January 2016.

8. Summary and Conclusion

a. The fact that the Israeli occupation of the West Bank and the Gaza Strip has now lasted for fifty years requires a thorough stocktaking of applicable international law and an assessment of patterns of violations which have transpired.

b. The situation of occupation is governed by rules belonging to four different fields of international law, namely international humanitarian law, international human rights law, the law relating to the use of force (*ius contra bellum*) and the law relating to the self-determination of peoples.

c. The *ius contra bellum,* first of all, determines the legality *vel non* of an invasion which leads to an occupation. The rights and duties of the Occupying Power are then determined by international humanitarian law (the law of belligerent occupation) and international human rights law. But acts of an Occupying Power, in particular those which perpetuate or solidify the effects of an invasion are in addition to be evaluated in the light of the *ius contra bellum* and the principle of self-determination.

d. The invasion which initiated the occupation of the West Bank was an act of aggression. Under the law of State responsibility, Israel was obligated to cease that illegal action and to withdraw from the territories it had invaded. This rule was confirmed in a legally binding way by Security Council Resolution 242 (1967).

e. The law of belligerent occupation is governed by norms serving three different interests:
- Fundamental interests of the population have to be protected. This interest is mainly safeguarded by a duty of good governance which derives from both the Hague Regulations and from basic human rights.
- The interest of the displaced party, which is served by rules safeguarding the provisional character of the situation.
- The interest of the occupying power, which is served by rules enabling that power to take measures for its security.

f. The annexation of East Jerusalem was a violation of the rule of the law of belligerent occupation which prohibits an action changing the status of occupied territory. In addition, it violated the rule of the *ius contra bellum* which prohibits the acquisition of territory by the use of force as being aggression.

g. The law of belligerent occupation was violated by a number of measures and policies adopted by Israel, in particular the establishment of Israeli settlements in the oPt and various measures restricting the freedom of movement of, and preventing the beneficial use of land by the Palestinian population. These measures include the

construction of a wall and systematic demolitions of houses. They also violate human rights. These measures went far beyond what could be justified by Israeli security interests.

h. Taken together, these measures amount to a policy which was designed to create a coercive environment which would permanently change the demographic structure of the oPt in favour of Israeli territorial interests, thus amounting to the *de facto* annexation of major parts of Palestinian territory, which violated the principle of the provisional character of occupation.

i. The *de facto* annexation also violated the prohibition of the acquisition of territory by the use of force, which constitutes aggression.

j. These measures also violate the right of the Palestinian people to self-determination.

k. The continued policy of blocking negotiations to end the conflict and of undermining the viability of a Palestinian State have the same effect and therefore also fall under these prohibitions.

l. Due to the fact that many of the norms which have been violated apply *erga omnes,* and in the light of the obligation of States parties to the Geneva Conventions to ensure the respect thereof, third States have the legal possibility and even the duty to take measures in order to induce Israel to comply with the relevant obligations. There is also a responsibility of the United Nations to the same effect.