

# 50 years of Prolonged Occupation

By Issam Younis

On June 5, 2017, the Israeli occupation of Palestinian territories marked 50 years of what has become an indefinite and unpredictable presence. At 50 years, it is the longest among the occupations in modern history. During this period, the Palestinian territories have witnessed systematic violations of the rule of international law: the occupation has given itself far-reaching legislative and administrative powers which it has used to alter the geography and demography of the Palestinian territories. They go far beyond those foreseen by the law of occupation which puts focus on preserving the character of occupied territory until the soon-to-come point of ending the occupation comes. It has therefore been able to create new facts on the ground that can never achieve either security or peace and that violate the legal rules that govern relations between the occupying power and the civilian population and their property, laws that stable nations have recognized for a very long time.

Immediately after Israel occupied the Palestinian territories on June 5, 1967, the international community and the International Committee of the Red Cross considered the territories as occupied, and recognized Israel as a belligerent occupying power as per international law. The Fourth Geneva Convention of 12 August 1949 Relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV) applies in this case, and Israel is legally bound to enforce the provisions of this convention and others that are relevant. Nevertheless, while Israel recognizes that The Hague Convention of 1907 is part of Customary International Law, it

persistently refuses to acknowledge that the Palestinian territories are in fact occupied, and that the Geneva Convention IV is applicable.

Israel promotes a number of pretences to justify this contention: one is that the land was not taken from its rightful sovereign owners, as both Egypt and Jordan ruled the Gaza Strip and the West Bank including Jerusalem, respectively, at the time, were not the rightful sovereigns. A second pretence is that these territories were occupied in a unique manner, as they were occupied in a defensive war and not an offensive one, in addition to the long-term nature of the occupation and emerging practical problems that would render these provisions useless.<sup>1</sup>

Based on these two claims, among others, Israel refuses to recognize the applicability of the Geneva Convention IV in the occupied Palestinian territories. This position violates the provisions of the Geneva Convention IV, Article 2, which states:

*In addition to the provisions which shall be implemented in peace-time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.<sup>2</sup>*

*The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance. Although one of the Powers in conflict may*

Issam Younis is the General Director of Al Mezan Center for Human Rights in Gaza and Deputy Commissioner-General of the Palestinian Independent Commission for Human Rights. He is also a Board of Trustees member of al Azhar University in Gaza and of the Palestinian Coalition for Integrity and Accountability in Ramallah, West Bank. Before 2000 he worked with al Haq: Law in the Service of Man and with the Palestinian Center for Human Rights. Mr. Younis holds a Master's degree in Human Rights from Essex University (UK). In 2008 he was a recipient of the Weimar Human Rights Award.

<sup>1</sup> See Raja Shehadeh, *Occupier's Law, Israel and the West Bank*, Institute for Palestine Studies and Kuwait University, Beirut, 1990, p. 5–7.  
<sup>2</sup> Diakonia, *The applicability of IHL in the Occupied Palestinian Territories*. <https://www.diakonia.se/en/IHL/Occupied-Palestinian-Territory/IL--oPT/Applicability-of-IHL-in-the-oPT/>



*"Philadelphi Corridor" in Rafah, Gaza Strip, on the border with Egypt, 2007. Israel destroyed houses on the border and enlarged the corridor, a military road between Gaza and Egypt, in order to create a buffer zone and to stop the building of tunnels under the border. Courtesy of Bettina Marx*

not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.<sup>3</sup>

This article stresses that the Geneva Convention IV must be enforced in all cases, because the essence of it is to provide protection to civilians living under occupation, regardless of the manner in which these territories fell into the grip of the opponent, whether in defensive or offensive war, whether they were taken from its sovereign rulers or not, and whether it was total or partial occupation. The main purpose of the article is to provide protection to civilians and their property as soon as they become occupied. The applicability of the Geneva Convention IV was reaffirmed repeatedly in UN General Assembly resolutions, in the International Justice Court advisory opinion in 2004 on the segregation wall and in Security Council resolutions, most recently Resolution 2334, which was adopted in December 2016, on ceasing settlement activity, which states:

*Reaffirming the obligation of Israel, the occupying Power, to abide scrupulously by its legal obligations and responsibilities under the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice.<sup>4</sup>*

Israel claims that, although it does not acknowledge the applicability of the law de jure, it does acknowledge it de facto, by applying its humanitarian aspects. Obviously, the Geneva Convention IV is a humanitarian treaty that seeks to provide protection to civilians and their property, and preserve the character of the occupied territory during the expectedly short-term occupation. The question here is: are the annexation of Jerusalem by the occupying power, the confiscation of publicly and privately owned lands and the building of settlements, with transfer of populations opposite way; i.e. Palestinians out and Jewish Israeli in, and the construction of the separation barrier and the

closure and blockade imposed on Gaza for 11 years, part of the humanitarian principles that Israel applies?<sup>5</sup>

The practical definition of occupation is that it involves a temporary nature, and that the occupation power is prohibited from annexing occupied territory or parts of it, which is reaffirmed by international law: the occupier only has administrative powers in occupied territory, but does not have any sovereignty rights over them. This was confirmed repeatedly in the case of Palestine by international legal institutions, UN bodies and other organizations that have also reaffirmed the applicability of basic conventions in international law, especially after Israel began building settlements, annexed Jerusalem and enforced Israeli law there in 1980.<sup>6</sup>

## 50 years on: violations and lack of protection

Israel has been violating International Humanitarian Law and International Human Rights Law since it occupied the Palestinian territories in 1967: it demolished tens of thousands of Palestinian homes and properties, displaced whole communities and confiscated large swathes of land in a gradually implemented move to change the geographical features of the occupied territories. The new reality was only possible to achieve through a complex set of laws that favor one set of the population over the other; the guiding principle simply being as few Palestinians as possible and as many Israelis as possible on the land.

Israel's policy in building and expanding settlements in the occupied Palestinian territories, which is undoubtedly illegal under international law, is considered to be a grave violation of the Geneva Convention IV, which specifically prohibits the transfer of the occupying power's civilian population into the occupied territory, and is one of the main factors behind the wide range of human rights violations. Israel also controls most of the natural resources in these territories, such as water, minerals and agricultural land, which it allocates to its own interests and gives incentives to the

<sup>3</sup> <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/380>

<sup>4</sup> <http://www.un.org/webcast/pdfs/SRES2334-2016.pdf>

<sup>5</sup> See, International Court of Justice Reports Of Judgments, Advisory Opinion and Orders, On the Legal Consequences of the construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of 9 July 2004, pp. 41 – 44, <http://www.icj-cij.org/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>

<sup>6</sup> Ian Scobbie, "International law and prolonged occupation of Palestine", a paper presented to the United Nations Roundtable on Legal Aspects of the Question of Palestine, The Hague, 20-22 May 2015, p. 1. See also UN resolution No. 476/ 1980, which condemns Israel's annexation of Jerusalem, considers it void and without legal value and demands ending the long-term occupation of the Palestinian territories.

*Dozens of men, most of them injured in the 2014 Israeli war on Gaza, roll off the starting line in the Persistence Marathon, Gaza City. The adaptive sports event was organized by the al-Salam Association for Disabled People. 29 November 2016. Mahmud Hams/AFP/Getty Images, via Institute for Palestine Studies.*



estimated 600,000 Israeli settlers in the West Bank and East Jerusalem.<sup>7</sup> International law prohibits the exhaustion of natural resources in occupied territory if it is not directed to the benefit and wellbeing of the civilian population under the occupation.

The building of settlements contravenes international laws that prohibit the occupying power from making permanent alterations in occupied territories. Privileges and economic incentives given directly to citizens or local Jewish authorities to increase the residents' quality of life are among the tools used for this purpose.<sup>8</sup>

While Israel controls urban planning in most of the occupied territories and refuses to issue building permits for Palestinians, it also demolishes Palestinian homes, under the pretext of failing to produce the required permits, or as punishment. It also imposes very strict limitations that prevent Palestinians residing in Jerusalem from acquiring building permits in the city. This is also the case in 60% of West Bank territories that falls under exclusive Israeli control, known as Area C.<sup>9</sup> Between January and November 2016, Israeli forces demolished

925 residential buildings and Palestinian establishments in the West Bank (including East Jerusalem). Most were demolished for lacking a building permit, displacing 1,347 people, mainly women and children.<sup>10</sup>

Israel has also erected a long and winding separation barrier in the form of a fence or a wall, which swallows up to 46% of the West Bank area. While it is described as a "security barrier", 85% of the fence/wall is located within the West Bank, and only 15% on the border or in Israel, where it should be built. The erection of this wall/fence restricts Palestinians' access to their property, land and services, which has had serious social and economic consequences that contribute to the increase in poverty and number of people living in poverty in the West Bank and occupied Jerusalem.<sup>11</sup>

On the other hand, Israel subsidizes security, administration, housing, education and healthcare services to settlers in the West Bank and Jerusalem. It paves separate roads for them that Palestinians are prohibited to use, and facilitates the issuance of building permits and the establishment of associations and organizations that reinforce Jewish

<sup>7</sup> The occupation forces deny Palestinians their water rights; the Palestinians share of water aquifer did not exceed 15% compared to 85% for the Israelis. The Palestinian's share of the coastal aquifer basin was only 18%, while the Israeli's share was 82%, in a clear violation of Article 55 of the regulations annexed to The Hague Convention, which commits the Occupying State to administer the occupied lands in accordance with the rules of usufruct, a legal term referring to the right of one individual to use and enjoy the property of another, provided its substance is neither impaired nor altered.

<sup>8</sup> <http://www.btselem.org/arabic/settlements>

<sup>9</sup> These procedures violate Article (53) of the Geneva Convention, which prohibits the Occupying Power from destroying any real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, except where such destruction is rendered absolutely necessary by military operations.

<sup>10</sup> Human Rights Watch, World Report 2016, Israeli/ Palestine Events of 2016. <https://www.hrw.org/world-report/2016>

<sup>11</sup> <http://www.aljazeera.net/encyclopedia/citiesandregions/2014/11/21/%D8%AC%D8%AF%D8%A7%D8%B1-%D8%A7%D9%84%D9%81%D8%B5%D9%84-%D8%A7%D9%84%D8%A5%D8%B3%D8%B1%D8%A7%D8%A6%D9%8A%D9%84%D9%8A>



*Lights glow at the Ashkelon power station in Israel, seen from the nearby beach in Gaza City. Extended power cuts are a daily fact of life in Gaza. 10 June 2016. Christopher Furlong/Getty Images, via Institute for Palestine Studies.*

Israeli presence in the occupied territories. Furthermore, it launches multimillion dollar economic projects in the settlements located in occupied territories, and exports settlement products to the world worth hundreds of millions of dollars every year.<sup>12</sup>

Although the West Bank is an occupied area, and not part of Israel's sovereign territories, Israel enforces its law on settlements and settlers. Consequently, settlers enjoy all the rights enjoyed by citizens of a democratic state, and by Israeli citizens who live in Israel. On the other hand, Palestinians continue to live under a military-judiciary regime that systematically violates their rights and prevents them from having a real influence in developing policies regarding the space they occupy. Increasingly, the Israeli Knesset has been legislating for Palestinians under Israeli occupation, as Israeli law is applied to individuals from Gaza and in East Jerusalem, and the regularization law regulates land allocation in the West Bank completely in favour of Israeli settlers.<sup>13</sup> This way, a parliament elected by Israeli citizens is legislating for Palestinians who live under the control and occupation of Israel.

Regarding the Gaza Strip with its two million inhabitants, Israeli forces continue to isolate this narrow strip of land on the Mediterranean shore from the West Bank through imposing a

comprehensive closure and a naval blockade. The closure policy affects their daily life and harms civilians in far-reaching ways. It has destroyed a once vibrant economy, and pushed education, healthcare and public health services backward. The closure regime imposes strict restrictions on the movement of persons and goods. Along with the closure, a buffer zone regime is enforced along the border and in the sea, restricting civilian access to the sea for fishing and to arable land for agriculture. Power cuts and restrictions on construction materials that are crucial for the maintenance of water and sanitation infrastructure forced Palestinians to dump billions of litres of untreated sewage into the sea, which seeps into the only aquifer in Gaza.

The Israeli forces restrict humanitarian access, even to those it recognizes as "humanitarian cases"; such as patients. Prominent businessmen, a category Israel frequently declared would be allowed to move, have also been held back by changing closure policy. In the first half of 2016, an average of 500 Palestinians passed through the Erez crossing daily, compared to an average of 24,000 crossing daily in the year 2000. The average exported volume of goods in the first ten months of 2016 was 158 trucks per month, which is only 15% of the 1,964 trucks monthly before the closure was imposed in June 2007.<sup>14</sup> Tens of thousands of households lost their livelihoods and became dependent

<sup>12</sup> The Israeli government approved the commencement of building more than 1000 new residential units in West Bank settlements in the first half of 2016, an increase of 17% in comparison with the same period in 2015, according to the Palestinian Central Bureau of Statistics. Recently, the Israeli government announced plans to build thousands of new housing units in the current settlements, in addition to building two new settlements in the occupied West Bank. For more information visit: <http://www.pcbs.gov.ps/site/512/default.aspx?lang=en&ItemID=1769>, and <http://www.btselem.org/settlements>

<sup>13</sup> see "JOINT PRESS RELEASE: 17 West Bank Palestinian municipalities, 3 human rights groups petition Israeli Supreme Court against Settlements Law," 10 February 2017, available online at <http://mezan.org/en/post/21791>.

<sup>14</sup> Human Rights Watch, World Report 2016, Israeli/ Palestine Events of 2016 <https://www.hrw.org/world-report/2016>



on aid to survive. This accelerated economic and social problems, as conservative statistics put unemployment in Gaza at 41.7%,<sup>15</sup> with women and youth disproportionately affected. The poverty level was estimated at 38.8%.<sup>16</sup> Consequently, the number of households depending on humanitarian aid continues to hover around 80% of the households in the Strip.<sup>17</sup>

## Protection and prolonged occupation

The main purpose of the law of occupation is to protect the civilian population; who are the potential victims of occupation, and to ensure that those falling in the grip of a belligerent power are treated humanely. The law is also meant to ensure that the occupation does not have a free hand in imposing its repressive measures; and thus, obliges it to strike a balance between the humanitarian considerations of the civilian population and the military necessity of the occupying power. It also prohibits the occupying power from making any one-sided permanent alteration in the economic and legal regimes, or in the political regime in the occupied territories in general, that would sustain sovereign rights over it, awaiting the restoration of sovereignty by re-establishing self-determination, which is an inalienable right for all peoples under the contemporary international order.

What is unique about the Israeli occupation is that it is prolonged, surpassing its 50-year mark in June 2017. It strives forcefully and systematically to annex land and entrench itself to create new realities that Israel hopes would not be undone. To this end, significant alterations in the legal regime, regulations and procedures have been enforced in a clear violation of the rules of international law, which strictly confine such actions to military necessities related to the security of the armed forces and the interest and welfare of civilians, who are supposed to be protected when living under occupation.

Treaty law makes almost no reference to long-term occupation; this case is not mentioned in any of the main conventions that govern occupation, and the issue was seldom discussed by experts of law prior to the Israeli occupation becoming clearly prolonged. Professor Ian Scobbie argues that the recurring idea among commentators and experts on the law of military occupation is that the regulations annexed to The Hague Convention 1907 and Fourth Geneva Convention assume that the duration of the occupation shall be limited, and those who drafted these conventions did not imagine that it could last for decades, and it is often said that the provisions of these conventions are not suitable to regulate long-term occupation.<sup>18</sup>

Long-term occupation requires a stricter system to protect civilians and their property and to restrict the authorities of the occupying power. This was noted in the 1958 Commentary to the Fourth Geneva Convention:

*Furthermore, two cases of an occupation being prolonged after the cessation of hostilities can be envisaged. When the Occupying Power is victorious, the territory will obviously be freed before one year has passed; on the other hand, if the Occupying Power is victorious, the occupation may last more than a year, but as hostilities have ceased, stringent measures against the civilian population will no longer be justified.<sup>19</sup>*

Israel, as an occupying power, has been systematically violating the rules of international law for over 50 years now. Interestingly, Israel considers that its occupation, being long-term, is of a unique nature; however, in a sense to justify failing to uphold the Geneva Convention IV and to relieve itself from abiding by its provisions. Conversely, this should stress the importance of enforcing the rules of International law, especially providing protection for civilians and implementing the Geneva Convention IV. This was pointed out in Article 3/b in Protocol 1 additional to the Geneva Convention IV, which states:

15 Palestinian Central Bureau of Statistics. Palestine in Numbers. Ramallah – Palestine.

16 The poverty rate was calculated based on the Household Expenditure and Consumption Survey 2011.

Developments and changes occurred on the security, economic and social aspects, which indicates that poverty rates are much higher than this percentage. This is also confirmed by UNRWA's data which indicates that 80% of the population depends on UNRWA's aid for their food.

17 From 2000 until 2017, occupation forces killed 7,348 Palestinians in the Gaza Strip, including 549 women and 1,708 children, and partially or completely demolished 53508 houses, destroyed 3,906 commercial or industrial establishments, 20,141 public establishments, and destroyed thousands of dunums of agricultural lands. Statistics and documentation from al Mezan Center for Human Rights.

18 Ian Scobbie, *ibid*, pp. 2-3.

19 <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/COM/380-600009?OpenDocument>



*In Gaza, cousins paddle a boat entirely constructed of scrap metal and recycled plastic bottles. The 13-foot vessel, which took three months to build, was improvised by five friends confined by the Israeli siege of the territory.*

*18 April 2015, Mohammed Abed/AFP/Getty Images, via Institute for Palestine Studies.*

The application of the Conventions and of this Protocol shall cease, in the territory of Parties to the conflict...and in the case of occupied territories, on the termination of the occupation...

Without room for doubt, the Geneva Convention IV and other relevant law is applicable to occupied territories as long as the occupation has not been terminated. The fact that Israel did not ratify this Protocol does not change it,<sup>20</sup> since it is considered customary law applicable to all states.

Israel's conduct over 50 years in the occupied Palestinian territories represents grave violations of the rule of international law, sometimes rising to the level of war crimes. Given the continuation of these practices without effective access to justice, Palestinian civilians living under occupation must enjoy international protection according to the rules of international law, as a step towards terminating occupation. This point was reaffirmed by Security Council Resolution 467/1980 on the annexation of Jerusalem, which states that the Security Council "[r]eaffirms the overriding necessity for ending the prolonged occupation of Arab territories occupied by Israel since 1967, including Jerusalem".<sup>21</sup>

Given Israel's failure to provide such protection, the onus on the international community, and especially the High Contracting Parties to the Geneva Convention IV, Article 1, is clearly two-fold: to respect the convention, and to ensure respect of the conventions. This obligation stands regardless of the circumstances,

especially when a third state violates these rules. The long-term Israeli occupation significantly altered the geographic features and demographic composition of the occupied territories, which could represent a real threat to international peace and security. Avoiding such a threat was, no doubt, one of the goals of the international community after World War II when it agreed to the Geneva Law; including Geneva Convention IV.<sup>22</sup> Without effective enforcement of international law, we are left with the bleak alternative: another 50 years of occupation, more violence and more instability.

*Translated from Arabic*

<sup>20</sup> Protocol (1) Addition to Geneva Convention IV on 12/8/1949 regarding the protection of victims of international armed conflicts. <https://www.icrc.org/ara/resources/documents/misc/5ntccf.htm>

<sup>21</sup> [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/476\(1980\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/476(1980))

<sup>22</sup> Article 1, which is a common article in all Geneva Conventions states: "The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances."