



INTERNATIONAL
COMMISSION
OF JURISTS

**INTERNATIONAL COMMISSION OF JURISTS SUBMISSION
TO THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
ON THE EXAMINATION OF THE THIRD PERIODIC REPORT OF ISRAEL
UNDER THE INTERNATIONAL COVENANT ON ECONOMIC SOCIAL
AND CULTURAL RIGHTS**

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ICJ submission to the Committee on Economic, Social and Cultural Rights on the Examination of the Third Periodic Report of Israel

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The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the examination by the Committee on Economic, Social and Cultural Rights (the Committee) of the Third Periodic Report of Israel under the International Covenant on Economic, Social and Cultural Rights (the Covenant).

INTRODUCTION

This submission does not represent a full alternative report, but is instead focused on reiterating the applicability of the Covenant to the occupied Palestinian territory (oPt) and on providing an illustration of how Israeli conduct in the oPt impacts on the enjoyment of economic, social and cultural rights by Palestinians. As it relates to the Committee's *List of Issues to be taken up in connection with the Consideration of Israel's Third Periodic Report concerning articles 1 to 15 of the International Covenant on Economic, Social and Cultural Rights* (List of Issues, or LOI), this submission concerns itself with the general information section of the LOI rather than with specific questions raised within the LOI. This submission makes general observations concerning: (1) the legal framework and applicability of the Covenant to the oPt; (2) violations of international human rights law; and (3) violations of international humanitarian law. The ICJ does not express a view one way or another on remaining issues, nor concerning other articles, or other features of articles, in the Covenant.

ICJ GENERAL OBSERVATIONS

Legal framework and applicability of the Covenant to the occupied Palestinian territory

Israel's international legal obligations, not only under the Covenant, but also under international human rights law (IHRL) and international humanitarian law (IHL) generally, are concurrently applicable to the occupied Palestinian territory, including the West Bank, the Gaza Strip and East Jerusalem.

Israel has obligations as a State Party to many of the principal international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR),¹ the International Covenant on Economic, Social and Cultural Rights (ICESCR),² the International Convention on the Elimination of All Forms of Racial Discrimination (CERD),³ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),⁴ the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁵ and the Convention on the Rights of the Child (CRC).⁶

¹ Israel signed the *International Covenant on Civil and Political Rights* on 19 December 1966 and ratified it on 3 October 1991.

² Israel signed the *International Covenant on Economic, Social and Cultural Rights* on 19 December 1966 and ratified it on 3 October 1991.

³ Israel signed the *International Convention on the Elimination of All Forms of Racial Discrimination* on 7 March 1966 and ratified it on 3 January 1979.

⁴ Israel signed the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* on 22 October 1986 and ratified it on 3 October 1991.

⁵ Israel signed the *Convention on the Elimination of all Forms of Discrimination against Women* on 17 July 1980 and ratified it on 3 October 1991.

⁶ Israel signed the *Convention on the Rights of the Child* on 3 July 1990 and ratified it 3 October 1991. In addition, it has signed the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* and *Optional Protocol to the Convention on the Rights of the*

In respect of IHL, Israel has obligations under the Geneva Conventions of 1949, including the Fourth *Geneva Convention relative to the Protection of Civilian Persons in Time of War*.⁷ Customary international humanitarian law, including as reflected in the Hague Conventions and Regulations respecting the Laws and Customs of War on Land of 1907, and to a large extent by the Additional Protocols to the Geneva Conventions of 1977, also binds Israel.⁸ While this Committee is primarily responsible for reviewing the compliance with Israel under the Covenant, it is important that it give due regard to the IHL obligations Israel for two reasons. First, IHL establishes that Israel is an Occupying Power in respect of the oPt, as a consequence of which it must assume the obligations of an Occupying Power, which include in the case of Israel the human rights obligations contained in the Covenant. Second, where an IHL violation adversely impairs or nullifies the enjoyment of economic, social and cultural rights guaranteed under the Covenant, such a violation constitutes *prima facie* indicia of a violation under the Covenant itself.

In its written replies to the Committee's List of Issues, the Israeli Government has argued that since the September 2005 disengagement from Gaza "involving the full withdrawal of all Israel's forces, the dismantling of its military administration and the evacuation of over 8,500 civilians from the Gaza Strip, and the rise of a Hamas-led terrorist administration, committed violence and the destruction of Israel" the State of Israel cannot be any longer considered an occupying power exercising effective control over the Gaza Strip and therefore bears no general obligation to ensure the appropriate living conditions and welfare of the civilians in that territory.⁹

The ICJ rejects this position and recalls that under article 42 of the Hague Regulations "[t]erritory is considered occupied when it is actually placed under the authority of the hostile army".¹⁰ Despite the disengagement of its troops in 2005, the Israeli Defence Forces continue to exercise effective control over the airspace and territorial waters of the Gaza Strip, not allowing any movement of people or goods in or out of the Gaza Strip, and continues to control most aspects of day-to-day life in Gaza, including electricity, water, telecommunications networks and population registry.¹¹ The degree of effective control in respect of parts of the West Bank and East Jerusalem is even greater.¹²

Even if Israel were not formally an Occupying Power under IHL, the State Party, because it exercises effective control over territory and persons in respect of the oPt, would still be responsible for securing the rights under the Covenant.

Israel, however, continues to reject the premise that human rights treaties are applicable in the occupied Palestinian territory, arguing that the protection granted in a conflict situation should be found in international humanitarian law, whereas human rights treaties are

Child on the involvement of children in armed conflict on 14 November 2001. Ratification on 23 July 2008 (OP Sale Child) and 18 July 2005 (OP Children Armed Conflict).

⁷ Ratification on 6 July 1951.

⁸ The customary nature of IHL has been recognised by the Israeli Supreme Court decision 7015/02 *Ajuri v. IDF Commander in the West Bank* of September 2002. See *Ajuri v. IDF Commander in West Bank*, Case N° HCJ 7015/02 [2002], Israel Law Report 1, Supreme Court of Israel, 3 September 2002, para.13.

⁹ Committee of Economic, Social and Cultural Rights, *Israel's Replies to List of Issues to be taken up in Connection with the Consideration of Israel's Third Periodic Report concerning articles 1 to 15 of the International Convention on Economic, Social, and Cultural Rights*, UN Doc E/C.12/ISR/3 (2011), pp. 3-4.

¹⁰ Convention (IV) respecting the Laws and Customs of War on Land and its Annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907.

¹¹ See Security Council resolution 1860 (2009); General Assembly resolutions 64/92 (2009) and 64/94 (2009). See also Human Rights Council, *Report of the international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance*, UN Doc A/HRC/15/12 (2010), paras.63-64.

¹² International Court of Justice, *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* of 9 July 2004, para.78.

intended to protect citizens from their own government in times of peace.¹³ The Israeli Government has consistently concluded in its written replies to the List of Issues that although recognising that “there is a profound connection between Human Rights Law and the Law of Armed Conflict, and that there may well be a convergence between these two bodies-of-law in some respects. However, in the current state of international law and state-practice worldwide, it is Israel’s view that these two systems-of-law, which are codified in separate instruments, nevertheless remain distinct and apply in different circumstances”.¹⁴

Israel does not recognise the Palestinian Authority as exercising the governmental authority of a sovereign state, nor has it transferred any of its own competences in respect of the discharge of its human rights obligations to the Palestinian authority. The consequence of the position of Israel in this respect would be to leave a legal vacuum in the oPt. It may well be the intent of Israel to recognise the de facto responsibility of the Palestinian Authority for realising such rights in the oPt. If that is the case, Israel must not prevent the Palestinian Authority from respecting, protecting and fulfilling economic, social and cultural rights, where the latter is in the position to do so, and should refrain from raising obstacles to the enjoyment of such rights.

The ICJ would underscore that the record is replete with impediments to the enjoyment of economic, social and cultural rights, for which Israel bears State responsibility, from the onerous restrictions on housing construction to the destruction of olive trees by Israeli settlers in the West Bank. Attacks on Palestinian persons by Israeli settlers have the effect of preventing the economic development in the West Bank and deeply affect the enjoyment of economic, social and cultural rights by the Palestinian people. As the oPt Office of the High Commissioner for Human Rights recently reported, despite the Governmental measures adopted in order to lessen movement restrictions for Palestinians in the West Bank, severe impediments remain:¹⁵

“...often resulting in persons effectively being prevented from exercising many economic, social and cultural rights. Movement restrictions into East Jerusalem remained particularly severe, and the Government of Israel indicated that it intends to markedly tighten these restrictions in 2011 [...] Not only did settler violence against Palestinians and their property continue, but there were indications that settler violence was developing beyond sporadic incidents into organized efforts to destroy Palestinian livelihoods and culture (e.g. through the desecration of mosques and the uprooting of olive trees).”

Settlers’ violence has also recently been condemned by three UN experts, namely the Special Rapporteur on the right to adequate housing, Ms. Raquel Rolnik; the Special Rapporteur on the right to food, Olivier De Schutter; and the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque. In a Press Release from late September 2011, the three experts affirmed that: “Palestinian property is not only destroyed by the Israeli Civil Administration authorities and military but also by Israeli settlers. In some places, there are nearly weekly burnings of Palestinian villagers’ land, trees and crops by Israeli settlers.” They added that “With no effective action by the police and security forces, there is neither accountability for nor effective protection against these serious crimes, which further encourages the perpetrators to continue committing them,” stressing the need for Israeli authorities to “take all necessary measures to prevent attacks by Israeli settlers

¹³ See Summary legal position of the Government of Israel in the Report of the Secretary-General prepared pursuant to General Assembly Resolution ES-10/13, UN Doc A/Es-10/248 (2003), p.8, para.4. See also, Human Rights Committee, Israel’s Second Periodic Review Report, UN Doc CCPR/C/ISR/2001/2 (2001), para.8.

¹⁴ Committee on Economic, Social and Cultural Rights, *Israel’s Replies to List of Issues to be taken up in Connection with the Consideration of Israel’s Third Periodic Report concerning articles 1 to 15 of the International Convention on Economic, Social, and Cultural Rights*, UN Doc E/C.12/ISR/3 (2011), p. 4.

¹⁵ Office of the High Commissioner for Human Rights, *OHCHR Report 2010, OHCHR in the field: Middle East and North Africa (OHCHR-OPT)*, pp. 211-212.

against Palestinians and Palestinian property in the West Bank, including East Jerusalem, and investigate and prosecute criminal acts committed by settlers in an independent, impartial, effective, thorough and timely manner".¹⁶

Violations of international human rights law

The aforementioned examples make clear that Israel is not only failing to respect economic, social and cultural rights in the oPt by denying the applicability of the Covenant to the territory, but it is also, by action and omission, raising obstacles to the respect, protection and fulfilment of such rights by the Palestinian Authority and to the enjoyment of those rights by the Palestinians living there. This conduct constitutes a breach of its obligations under the Covenant. Under Part II, article 2(1) establishes that "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation... with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means...."¹⁷ Under Part III, the following substantive rights are particularly affected by the abovementioned conduct: the right to an adequate standard of living, including the right to food, water and housing (article 11), the right to work (article 6), the right to health (article 12), the right to education (article 13) and the right to family life (article 10).

With regard to extra-territorial obligations of States concerning economic, social and cultural rights, it is clear that at the very least jurisdiction attaches where there is effective control over territory or persons. There is in fact consensus at the universal and regional levels that human rights treaties apply wherever a State "exercises jurisdiction", including where a State exercises effective control over persons and territory. The Human Rights Committee has affirmed in its General Comment N° 31 that "a State Party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party."¹⁸ The International Court of Justice in its *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* has also affirmed that the international human rights treaties, including the ICCPR, the ICESCR and the CRC apply whenever a State acts in the exercise of its jurisdiction outside its own territory.¹⁹ Referring specifically to economic, social and cultural rights, the International Court affirmed that:²⁰

"Israel is bound by the provisions of the International Covenant on Economic, Social and Cultural Rights. Furthermore, it is under an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities."

The Human Rights Committee,²¹ the Committee on Economic, Social and Cultural Rights,²² the Committee on the Elimination of Racial Discrimination,²³ the Committee on the Rights of

¹⁶ Office of the High Commissioner for Human Rights, *West Bank: demolitions and attacks against Palestinians must stop – UN experts*, press release, 27 September 2011. Settlers' violence has also been recently condemned by Human Rights Council Resolution 16/31, UN Doc A/HRC/16/31 (March 2011) para.4 (a).

¹⁷ This principle was already affirmed by article 1(3) of the UN Charter listing the achievement of "international co-operation in solving international problems of an economic, social, cultural, or humanitarian character" among the purposes of the United Nations.

¹⁸ Human Rights Committee, General Comment N° 31, *Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, para.10.

¹⁹ International Court of Justice, *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* of 9 July 2004, paras.111, 112 and 113.

²⁰ *Ibid.*, para.112.

²¹ See Human Rights Committee, *Concluding Observations: Israel*, UN Doc CCPR/CO/78/ISR (2003), para.11, and *Concluding Observations: Israel*, UN Doc CCPR/C/79/Add.93 (1998), para.10.

²² Committee on Economic, Social and Cultural Rights, *Concluding Observations: Israel*, UN Doc E/C.12/1/Add.90 (2003), para.15.

the Child,²⁴ the Committee on the Elimination of Discrimination against Women²⁵ and the Committee against Torture²⁶ have consistently held Israel responsible in respect of the occupied Palestinian territory under the respective human rights treaties, and have reaffirmed not only the extra-territorial applicability of these treaties but have also rejected Israel's argument that the law of armed conflict supersedes their applicability. This position was also reiterated on the former Special Rapporteur's on the promotion and protection of human rights and fundamental freedoms while countering terrorism Mission report on Israel, including the Occupied Palestinians Territory.²⁷ The Committee on Economic, Social and Cultural Rights in its Concluding Observations to Israel's second periodic review reiterated:²⁸

"The State party's obligations under the Covenant apply to all territories and populations under its effective control. The Committee repeats its position that even in a situation of armed conflict, fundamental human rights must be respected and that basic economic, social and cultural rights, as part of the minimum standards of human rights, are guaranteed under customary international law and are also prescribed by international humanitarian law. Moreover, the applicability of rules of humanitarian law does not by itself impede the application of the Covenant or the accountability of the State under article 2 (1) for the actions of its authorities."

Principle 5 of the very recently adopted *Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights* summarise the jurisdictional scope of the obligations in respect of Economic, Social and Cultural rights, including Covenant Rights:²⁹

"A State has obligations to respect, protect and fulfil economic, social and cultural rights in any of the following:

- "a) Situations over which it exercises authority or effective control, whether or not such control is exercised in accordance with international law;
- "b) Situations over which State acts or omissions bring about foreseeable effects on the enjoyment of economic, social and cultural rights, whether within or outside its territory;
- "c) Situations in which the State, acting separately or jointly, whether through its executive, legislative or judicial branches, is in a position to exercise decisive influence or to take measures to realise economic, social and cultural rights extraterritorially, in accordance with international law."

Given that Israel, as an occupying power, exercises effective control over the West Bank, the Gaza Strip and East Jerusalem, it is consequently bound by the obligation to respect, protect

²³ Committee on the Elimination of Racial Discrimination, *Concluding Observations: Israel*, UN Doc CERD/C/ISR/CO/13 (2007), para.32.

²⁴ Committee on the Rights of the Child, *Concluding Observations: Israel*, UN Doc CRC/C/15/Add.195 (2002).

²⁵ Committee on the Elimination of Discrimination against Women, *Concluding Comments: Israel*, UN Doc. A/60/38 (2005), paras.243-244.

²⁶ Committee against Torture, *Conclusions and recommendations: Israel*, UN Doc A/57/44 (2002), para. 5, 6 and 7.

²⁷ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mission to Israel, including visit to the Occupied Palestinian Territory, UN Doc A/HRC/6/17/Add.4 (2007), paras.8-9.

²⁸ Committee on Economic, Social and Cultural Rights, *Concluding Observations: Israel*, UN Doc E/C.12/1/Add.90 (2003), para.31.

²⁹ The Maastricht Centre for Human Rights of Maastricht University and the International Commission of Jurists, *Principles on Extra-Territorial Obligations (ETOs) of States in the area of Economic, Social and Cultural Rights*, 28 September 2011.

and fulfil economic, social and cultural rights in the oPt. Additionally, Principle 13 of the ETOs stipulates that:

“States must desist from conduct, including actions and omissions, that creates a real risk of the impairment of the enjoyment of economic, social and cultural rights. The responsibility of States is engaged where the resulting impairment is a foreseeable result of their conduct. Uncertainty about potential impacts does not constitute justification for said conduct”

By failing to act in order to prevent settlers from committing such abuses, or by failing to hold them accountable, Israel is in breach of its obligation to protect economic, social and cultural rights by abuses from third parties, including private individuals such as settlers, and is interfering in the enjoyment of economic, social and cultural rights by Palestinians in the oPt in violation of the Covenant.

Violations of international humanitarian law

A violation of IHL that impairs or nullifies the enjoyment of economic, social and cultural rights, will generally signify a breach of a State Party’s obligation under the Covenant. Land confiscations, violations of property rights and other practices such as the uprooting of olive trees also amount to violations of international humanitarian law. Under the IHL regime, property can only be destroyed by the Occupying Power if it is “absolutely necessary” in preparation for, or during the conduct of, fighting. The uprooting of trees is thus a clear violation of article 23(g) of the Hague Regulations of 1907, which forbids the “destr[uction] or seiz[ure] of] the enemy’s property unless such destruction or seizure be imperatively demanded by the necessities of war.”

Similarly, article 53 of the Fourth Geneva Convention states that:

“Any destruction by the Occupying Power of 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, is prohibited, except where such destruction is rendered absolutely necessary by military operations.”

Article 33 of the Fourth Geneva Convention also prohibits collective punishment and states that:

“No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.”

Principle 18 of the ETOs in relation to belligerent occupation and effective control establishes that:

“A State in belligerent occupation or that otherwise exercises effective control over territory outside its national territory must respect, protect and fulfil the economic, social and cultural rights of persons within that territory. A State exercising effective control over persons outside its national territory must respect, protect and fulfil economic, social and cultural rights of those persons.”

Concerning the issue of the application of IHRL in times of war, concerning both international and non-international armed conflicts, individuals enjoy dual legal protection

from both international human rights law and international humanitarian law. As the International Criminal Tribunal for the Former Yugoslavia has stated:³⁰

“The general principle of respect for human dignity is... the very *raison d'être* of international humanitarian law and human rights law; indeed in modern times it has become of such paramount importance as to permeate the whole body of international law”.

The International Court of Justice has similarly affirmed, on at least 3 occasions, including in respect of Israel and the oPt the concurrent applicability of IHL and IHRL in situations of armed conflict, most recently in the case of *DRC. v. Congo*: “The Court first recalls that it had occasion to address the issues of the relationship between international humanitarian law and international human rights law and of the applicability of international human rights law instruments outside national territory in its Advisory Opinion of 9 July 2004 on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory [...] It thus concluded that both branches of international law, namely international human rights law and international humanitarian law, would have to be taken into consideration. The Court further concluded that international human rights instruments are applicable ‘in respect of acts done by a State in the exercise of its jurisdiction outside its own territory’, particularly in occupied territories.³¹

The Human Rights Committee has similarly affirmed in respect of the ICCPR that:³²

“the Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be specially relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive.”

CONCLUSION

The ICJ is concerned by Israel’s continuous refusal to recognise the applicability of the Covenant to all Palestinians in the oPt, and its failure to report to the Committee about the situation of the rights under the Covenant in those territories. This conduct severely undermines the enjoyment of economic, social and cultural rights by the Palestinian people in the oPt. Israeli settler’s attacks in the oPt jeopardise, amongst other human rights, the right of Palestinians to enjoy the rights guaranteed in the Covenant. Ensuring criminal accountability for the individuals responsible for such attacks, as well as guaranteeing the right to an effective remedy and to reparations for victims of the attacks, is paramount.

RECOMMENDATIONS

Against the background of the information provided within this submission, and in the context of the thematic areas considered in this submission, the ICJ suggests that the Committee make the following recommendations to the Israeli authorities:

1. To recognise and give effect to the provisions of the Covenant in relation to the

³⁰ Trial Chamber, Judgment of 10 December 1998, *Prosecutor v. Arto Furundizija*, case No. IT/95-17/I-T, para.183.

³¹ International Court of Justice, *Armed activities on the territory of the Congo (Democratic Republic of the Congo v. Uganda)*, ICJ Reports (19 December 2005), at para.216. See also International Court of Justice, *Advisory Opinion on The Legality of the Threat or Use of Nuclear Weapons*, of 8 July 1996, International Court of Justice Reports 1996, para.25.

³² Human Rights Committee, General Comment N° 31, *Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, para.11.

occupied Palestinian territory, and consequently to report to the Committee on the situation of economic, social and cultural right in the oPt.

2. Take immediate steps to prevent and protect the population from the continuation of settlers' attacks and their destruction of Palestinian infrastructure and property in the oPt, as acts that undermine Palestinians' right to enjoy the economic, social and cultural rights guaranteed in the Covenant in violation of both international human rights law and international humanitarian law.
3. Condemn settlers' violence against Palestinians in the oPt, and take immediate steps to hold criminally responsible individuals carrying out such attacks, and afford to victims and members of their families effective remedies, including full reparations.
