

**On the Right of Self-determination of the Palestinian People
in light of
Israel's Regime of Occupation-Apartheid-Colonialism and its Policy of Population Transfer**

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PART I: The Right to Self-Determination of the Palestinian People

Self-determination under international law

“By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.”¹

The right to self-determination is among the most fundamental manifestations of positive law and is enshrined in numerous legal instruments including in Article 1(2) and 55 of the UN Charter as well as Common Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Social, Economic, and Cultural Rights. UN General Assembly resolution 2625, quoted above, confirms the preeminence of the principle of self-determination and its status in international law as a customary norm.

While established in the context of decolonization, subsequent General Assembly resolutions, human rights instruments, and state practices have extended its application beyond the colonial context.² This includes internal self-determination among indigenous communities for collective autonomy or statehood, to peoples enduring a racist regime as was the case for South Africans under the apartheid regime, as well as to analogous cases like peoples under belligerent occupation who seek sovereignty.

Self-determination as applicable to Palestinians in particular

By 1920, the League of Nations had affirmed the applicability of the right to self-determination to the people of Palestine and decided to establish a temporary Mandatory system to facilitate Palestine’s independence in accordance with Article 22 of its Covenant.³ Article 22 stated that “[c]ertain communities formerly belonging to the Turkish empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.”

In 1947, the United Nations reaffirmed this principle in General Assembly Resolution 181, or the Partition Plan for Palestine. Significantly, the Partition Plan referred to the self-determination of all people living in Mandatory Palestine, meaning Arabs and Jews living in both the “Jewish” and

¹ The United Nation General Assembly Resolution 2625 (XXV): Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, 24 October 1970.

² See Art. 1(3) and UNDOC A/C.3/SR644, para. 10.

³ See, for example, The Treaty of Peace between the Allied and Associated Powers and Turkey, signed at Sèvres, August 10, 1920, Part II, Section VII, Art. 94.

“Arab” states, respectively. Article B(10)(d) of the Resolution recognizes the national heterogeneity of each state and set out to guarantee “to all persons equal and non-discriminatory rights in civil, political, economic and religious matters and the enjoyment of human rights and fundamental freedoms, including freedom of religion, language, speech and publication, education, assembly and association.”

Since the failure of the UN Partition Plan and as a result of the ensuing wars, hostilities, and events of forced displacement, the Palestinian people have defined themselves as the indigenous⁴ people of Mandate Palestine comprised of three main sectors: those living under occupation since 1967; those displaced during war in 1948 and 1967 who now constitute a 6.5 million refugees, and Palestinian citizens of Israel.⁵ These people, the Palestinian people in their entirety, are entitled to self-determination.

Today, the Palestinian right to self-determination is unequivocal as noted by the International Court of Justice, the world’s highest judicial authority, in its 2004 Advisory Opinion on the legal consequences of Israel’s wall in the Occupied Palestinian Territory (OPT). The Court also found that “Israel is bound to comply with its obligation to respect the right of the Palestinian people to self-determination and its obligations under international humanitarian law and international human rights law.”⁶

The United Nations has affirmed this right since at least 1974. When the UN recognized the Palestine Liberation Organization (PLO) as the representative of the Palestinian people and granted it observer status, it explicitly recognized that Palestinians constitute a people entitled to self-determination. Numerous General Assembly Resolutions have affirmed this right as particularly applicable to the Palestinian people, including Resolutions 2535 (10 Dec. 1969);⁷ 2649 (30 Nov 1970)⁸; 3236 (22 Nov 1974); 43/177 (15 Dec. 1988); and 48/94 (20 Dec. 1993). Of particular note is Resolution 3236, which reaffirms and specifies the inalienable rights of Palestinian people in Palestine as including: a) the right to self-determination without external interference; b) the right to national independence and sovereignty; and, the c) “inalienable right of the Palestinians to return to their homes and property from which they have been displaced and uprooted.” The Resolution emphasizes that “full respect for and the realization of these inalienable rights of the Palestinian people are indispensable for the solution of the question of Palestine.”

Self-determination: A collective and individual right

General Assembly Resolution 3236 addresses the complementary nature of the collective rights of

⁴ Secretariat of the Permanent Forum on Indigenous Issues, PII/2004 (19-21 January 2004) (“Indigenous communities, peoples and nations are those which, having a historical continuity with pre invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.”)

⁵ See also UNDOC E/CN.4/Sub.2/AC.4/1983/CRP. 1, annex and UNDOC E/CN.4/Sub.2/AC.4/1985/WP.5.

⁶ International Court of Justice, Legal Consequences of the Construction of a Wall on Occupied Palestinian Territory (9 July 2004) at para. 149.

⁷ “[T]he problem of the Palestine Arab refugees has arisen from the denial of their inalienable rights under the UN Charter and the Universal Declaration of Human Rights.”

⁸ It reaffirmed “the legitimacy of the struggle of peoples under colonial and alien domination recognized as being entitled to the right of self-determination to restore to themselves that right by any means at their disposal; [and] condemns those Governments that deny the right to self-determination of peoples recognized as being entitled to it, especially of the peoples of southern Africa and Palestine.”

the Palestinian people to self-determination, national independence and sovereignty, and the individual right of return of the Palestinian refugees. The General Assembly adopted the resolution in response to the Palestinian National Council's 1974 Political Program in which the PLO recognized that the collective right to self-determination in form of national independence and sovereignty could be exercised in any part of the Palestine. Throughout successive peacemaking efforts, the PLO has continued to insist on the compatibility and complementary nature of the collective right to self-determination and the individual right of the refugees to return.

Whereas Palestinians insist that they are entitled to define and exercise their right to self-determination without external interference, interpretations of the practical meaning of this right have been shaped in response to the international political environment and the Israeli policies that continue to change the reality on the ground. In the current context, where this right is severely violated by Israeli policies of population transfer, colonialism, and apartheid. Despite the international community's inaction and the severity of the human rights violations borne by Palestinians as a result of Israel's policy of population transfer and its discriminatory regime, most Palestinians understand their right to self-determination to encompass the following:

1. National independence and sovereignty in the OPT, including East Jerusalem;
2. Free exercise of the Palestinian right to return to their homes and properties in Israel; and
3. Collective national representation in Israel by its indigenous Palestinian citizens.

Whether it be in its refusal to end its occupation over the Palestinian territories it occupied in 1967, its failure to extend equal rights to its Palestinian citizens, or in its denial of the right to return for Palestinian refugees, Israel continues to subvert the Palestinian right to self-determination.

Hindrances to the realization of self-determination and the key to achieving it

Israel's policies not only violate the right of Palestinian self-determination but they also run counter to the UN's stipulation for establishing a Jewish homeland in the 1947 Partition Plan (General Assembly Resolution 181), in which the UN both acknowledged the right of the indigenous Arab and non-Jewish Palestinian population to the land as well as conditioned Israel's establishment on its non-discriminatory character. International legal scholar, Antonio Cassese considers self-determination to be an anti-racist postulate and comments that "[i]nternal' self-determination amounts to the right of an ethnic, racial, or religious segment of the population in a sovereign country not to be oppressed by a discriminatory government."⁹ That Palestinian citizens of Israel are not recognized as a national minority and are relegated to second-class status by law and decree amounts to apartheid within Israel and fundamentally undermines the right of Palestinian citizens of Israel to self-determination. Similarly, Israel's construction of legal barriers to prevent Palestinian refugees—the largest segment of the Palestinian people—to return to their homes and its failure to extend nationality to them, is also an ongoing affront to Palestinian self-determination.

Within the OPT, Israel's policy of population transfer, colonialism, and apartheid jeopardizes the territorial integrity of the land intended to constitute the state of the Palestinian people. Please see an illustrative description of these policies in the following section (Part II).

The primary hindrance to the realization of self-determination by the Palestinian people has been the UN's failure to hold Israel accountable for its international obligations to respect the inalienable rights of the Palestinian people and to end its policy of population transfer, apartheid and colonialism. In the first instance, the UN admitted Israel into its multilateral fold based on General

⁹ Cassese, Antonio, *International Law in a Divided World* (1986: 134-135) as quoted in Patrick Thornberry, *Self-Determination, Minorities, Human Rights: A Review of International Instruments*, *The International and Comparative Law Quarterly*, Vol. 38, No. 4 (Oct., 1989) at 877.

Assembly Resolution 273 (11 May 1949) which pronounced Israel to be a "peace-loving state which accepts the obligations contained in the Charter," notwithstanding its violation of Resolutions 181 (1947). Since its admission to the UN, Israel has enjoyed all the benefits and privileges of membership while continuing to deny the Palestinian right to self-determination, including the right of return of Palestinian refugees, the individual and collective rights of its Palestinian citizens, and Palestinian national independence and sovereignty in the OPT, including East Jerusalem.

In the second instance, the UN has failed to uphold a framework of Israeli-Palestinian peace that would ensure respect of the full scope of the inalienable rights of the Palestinian people, as defined by the Palestinian people and the United Nations in General Assembly Resolution 3236. Since the Madrid-Oslo peace process, the UN assumed that the Palestinian people could exercise their inalienable rights by means of (sovereign or non-sovereign) statehood in the OPT, including East Jerusalem, alone.¹⁰ This assumption has given rise to an apparent contradiction between the right of self-determination of the Palestinian collective in the OPT and the individual and collective rights of the Palestinian refugees and citizens of Israel.

The PLO, as the representative of the Palestinian people, had accepted a territorial compromise for the exercise of national independence and sovereignty in the OPT, including East Jerusalem, based on the assumption that the UN and its member states would take measures that ensure Israel's acceptance of the inalienable rights of the Palestinian people to self-determination and the return of Palestinian refugees to their homes and properties. Instead, Palestinian independence and sovereignty in the OPT is seriously jeopardized, the Palestinian refugees are destitute, and the Palestinian citizens of Israel have their individual rights violated and have no access to collective rights.

Recommendations

The key to realizing the Palestinian right to self-determination is political will. Exercise of all possible forms of Palestinian self-determination depend upon the political will of the UN and its members to bring Israel into compliance with international law and end its policies of population transfer and its regime of occupation, apartheid, and colonialism which oppresses the Palestinian people. As under apartheid in South Africa, no progress can be achieved towards Palestinian self-determination as long as Israel's discriminatory regime is permitted to prevail. We urge the High Commissioner of Human Rights to address this human rights crisis by:

- Examining Israel's regime of occupation, apartheid, and colonialism and its policy of population transfer, including the illegal blockade of the occupied Gaza Strip, during her upcoming visit to the OPT and making public her findings on how those violate Israel's obligations under international humanitarian and human rights law;
- Affirming the inalienable rights of the Palestinian people to self-determination, including sovereignty and independence in the OPT, including East Jerusalem, full access to individual and collective rights of the Palestinian citizens of Israel, and the right of return of the Palestinian refugees;

¹⁰ See UN Security Council Resolution 1515 (2003) (19 Nov 2003) (Resolution 1515 endorses the Road Map to a Permanent Two-State Solution and "[reaffirms] its vision of a region where two States, Israel and Palestine, live side by side within secure and recognized borders.") See also the Road Map for Peace which suggests that establishment of two independent states, Israeli and Palestinian, is sufficient for establishing a viable peace without mention of the inalienable rights of Palestinian people.

- Finally, we urge the High Commissioner to make use of the mandate of her office (OHCHR) to address the failures of the United Nations in ensuring realization of the Palestinian people's right to self-determination. In this context, we call upon the High Commissioner to instruct her office to **commission a study to explore the existence, manifestations, impact and legal consequences of Israel's policy of population transfer and its regime of apartheid within Israel as well as the OPT.** Based on its findings, the OHCHR should make recommendations accordingly to UN Human Rights Council, the General Assembly, the Secretary-General, and other UN organs. We also urge the High Commissioner **to re-iterate earlier calls by the UN Special Rapporteur on Human Rights in the OPT for the UN to withdraw from the *Quartet*,** whose statements and actions violate the UN's own resolutions and international law on the rights of the Palestinian people.

Part II – Illustrative Facts & Figures (Occupied West Bank since 1967)¹¹

Since 1967, Israel as occupying power, has systematically violated its obligations under international humanitarian and human rights law in the OPT by establishing a regime of *apartheid*¹² and implementing a policy of *population transfer*¹³, with the intention and result of *de jure* and *de facto* permanent requisition and annexation of occupied Palestinian land. This regime and policy have caused massive dispossession and displacement among the occupied Palestinian population and have prevented the exercise of the right to self-determination, independence and sovereignty of the Palestinian people in the OPT.

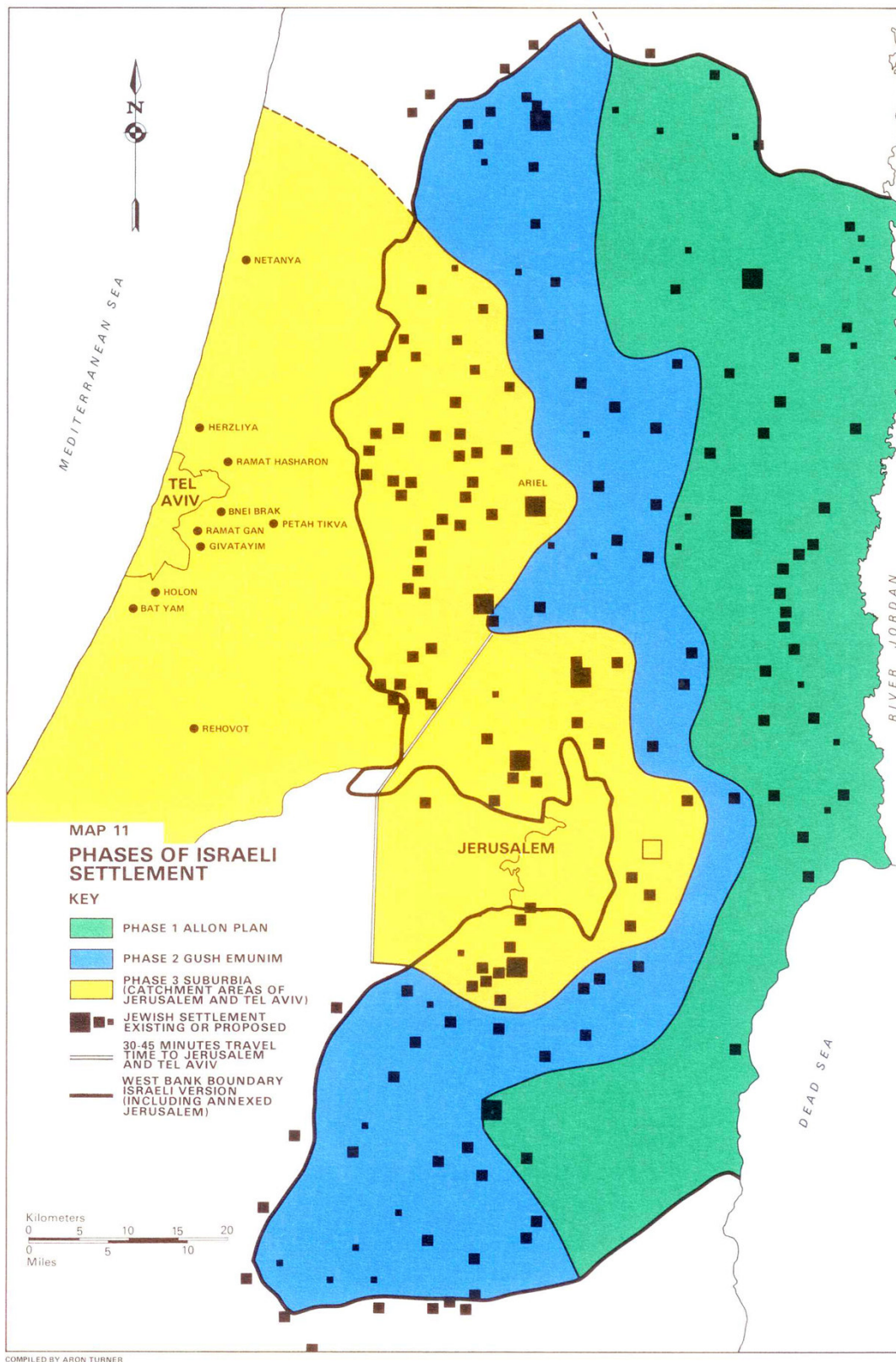
All Israeli governments, in conjunction with the World Zionist Organization (WZO), have developed and implemented plans for the implantation of Jewish settlers and the integration of large sections of the OPT into Israeli state territory. Whereas some 70 sqkm of the West Bank were immediately annexed and integrated into the Israeli municipality of Jerusalem in 1967, **three plans for Jewish settlement of the remainder of the West Bank were in various stages of implementation already by 1984** (see the map below).¹⁴

¹¹ Israel has applied a similar regime and policy to the occupied Gaza Strip since 1967. The particular context and consequences of this regime and policy for Palestinians in Gaza, however, requires a separate discussion, including the question whether Israel's restriction of Palestinian movement to/from Gaza (at least since 2000) and the total blockade (since 2006) constitute unlawful segregation and confinement of the occupied population.

¹² Apartheid is defined and constitutes an international crime under the 1976 Convention on the Suppression and Punishment of the Crime of Apartheid and the 2002 Rome Statute of the ICC.

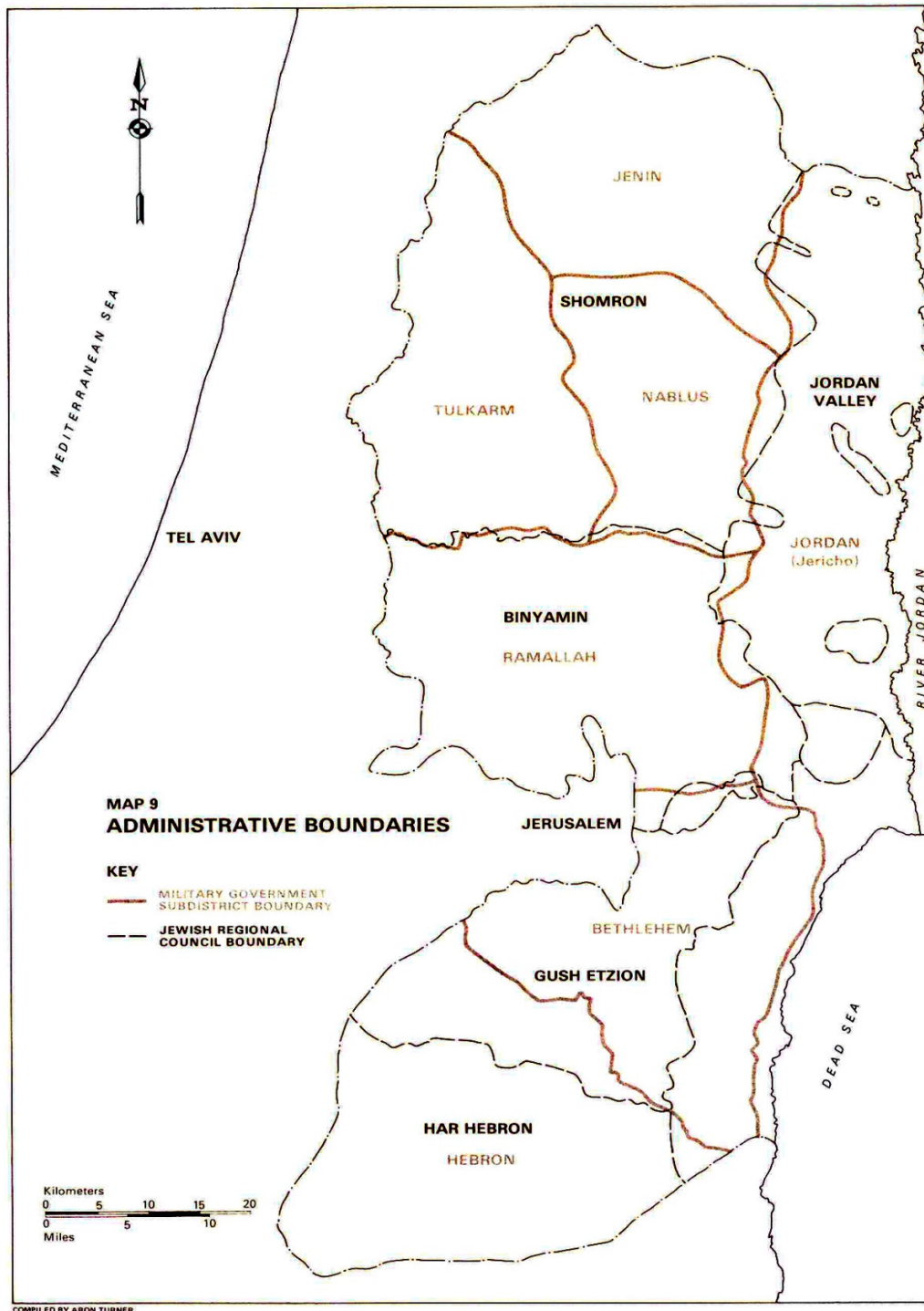
¹³ Population transfer has been defined as the "systematic, coercive and deliberate ... movement of population into or out of an area ... with the effect or purpose of altering the demographic composition of a territory, particularly when that ideology or policy asserts the dominance of a certain group over another." See: *The human Rights Dimensions of Population Transfer including the Implantation of Settlers*, Preliminary Report prepared by A.S. al-Khawasneh and R. Hatano. Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities, Forty-fifth Session, 2-27 August 1993, E/CN.4/Sub.2/1993/17, 6 July 1993, paras. 15 and 17. It has also been defined as "the movement of large numbers of people, either into or away from a certain territory, with state involvement or acquiescence of government and without the free and informed consent of the people being moved or the people into whose territory they are being moved." See: UNPO, Conference on Human Rights Division of Population Transfer in Christopher M. Goebel, "A Unified Concept of Population Transfer," *Denver Journal of International Law and Policy*, Vol. 21:1, 1992, p.37-39. Population transfer (ethnic cleansing) constitutes a war crime and a crime against humanity under IHL/Geneva Convention IV and the Rome Statute. For relevant case law, see for example the ICTY investigation and prosecution of those responsible of ethnic cleansing in the former Yugoslavia.

¹⁴ Source: Meron Benvenisti, *The West Bank Data Project. A Survey of Israel's Policies*. American Enterprise Institute for Public Policy Research, Washington and London, 1984; map 11, p. 93



Since 1979, Israel has established a **dual administrative system** in the OPT, whereby the Jewish settlements were formerly separated from the “local” municipal and planning system operated by Israel's military government with the purpose and effect of confining the development of the

occupied Palestinian population. Jewish local and regional councils were established for the settlements in the OPT based on military orders which are identical with Israeli legislation regulating the powers of local and regional councils inside Israel, resulting in the full integration of the Jewish councils in the OPT into Israel's municipal system and related ministries and budgets. **The following map illustrates the separate, discriminatory and competing administrative boundaries for Palestinian and Jewish settlers in the occupied West Bank by 1984¹⁵:**



¹⁵ Source: Meron Benvenisti, *The West Bank Data Project*, 1984; p. 89. For detail regarding history and legal status of the separate administrative systems, see Chapter 5: "The dominant purpose. Legal and Administrative Considerations." Also: Btselem: *Land Grab. Israel's Settlement Policy in the West Bank*, 2002; Chapters 4 and 6.

Since 1967, Israel has expropriated private and public Palestinian land in the OPT in order to confine growth and development of the Palestinian communities for the benefit of its settlement enterprise. The permanent character of these expropriations is illustrated by:

- the fact that the large majority of the confiscated land (at least 40% of the occupied West Bank) has meanwhile been declared “State Land” and part of “Israeli state domain” land based on military orders and an Israeli cabinet decision passed in 1980. Land declared “State Land” (based on a request by the *Custodian of Absentee and Government Property* and approval by the State Attorney) is administered by the *Israel Land Authority* (ILA) and transferred to the *Ministry of Housing* and/or the *World Zionist Organization* for development and settlement.¹⁶ Israel's land laws bar the restitution of land declared State Land (in Israel and the OPT) if taken by the state in “good faith”, even if the owner can credibly claim that it was confiscated by mistake; and
- the allocation of confiscated Palestinian land for the development of permanent civilian Jewish settlement infrastructure.

Mechanisms and estimated scope of land confiscation in the occupied West Bank (most of which is declared State Land today):

Absentee Property - 430 sqkm confiscated from Palestinian inhabitants/refugees who fled hostilities in the West Bank in 1967 or before.

State Land registered with the Jordanian government - 687 sqkm confiscated in 1967 and soon after. This includes approximately 25-30 sqkm of land owned by Jews before 1948 (administered by the Jordanian Custodian of Enemy property), mainly in Gush Etzion and the Jerusalem metropolitan area.

Expropriation for military needs – at least 47 sqkm were confiscated for settlements in 1968 – 1979. Since 1994 more land was confiscated for “by-pass roads” to facilitate movement of Jewish settlers in the reality created by the Oslo Accords (4.4 sqkm by 1996), the 2nd intifada, and for Israel's illegal West Bank Wall (approximately 50 sqkm).

Expropriation for public purpose – mainly applied in occupied and annexed Jerusalem (based on the British Ordinance of 1943) where 24.5 sqkm (i.e., one third of the total annexed area) have been confiscated. Another 30 sqkm of Palestinian land for the settlement of Ma'aleh Adumim (1975), as well as for settler/by-pass roads.

Private (“free market”) acquisition – mainly by the Jewish National Fund/Himanuta and private entrepreneurs, estimated at 100 sqkm by 1983.

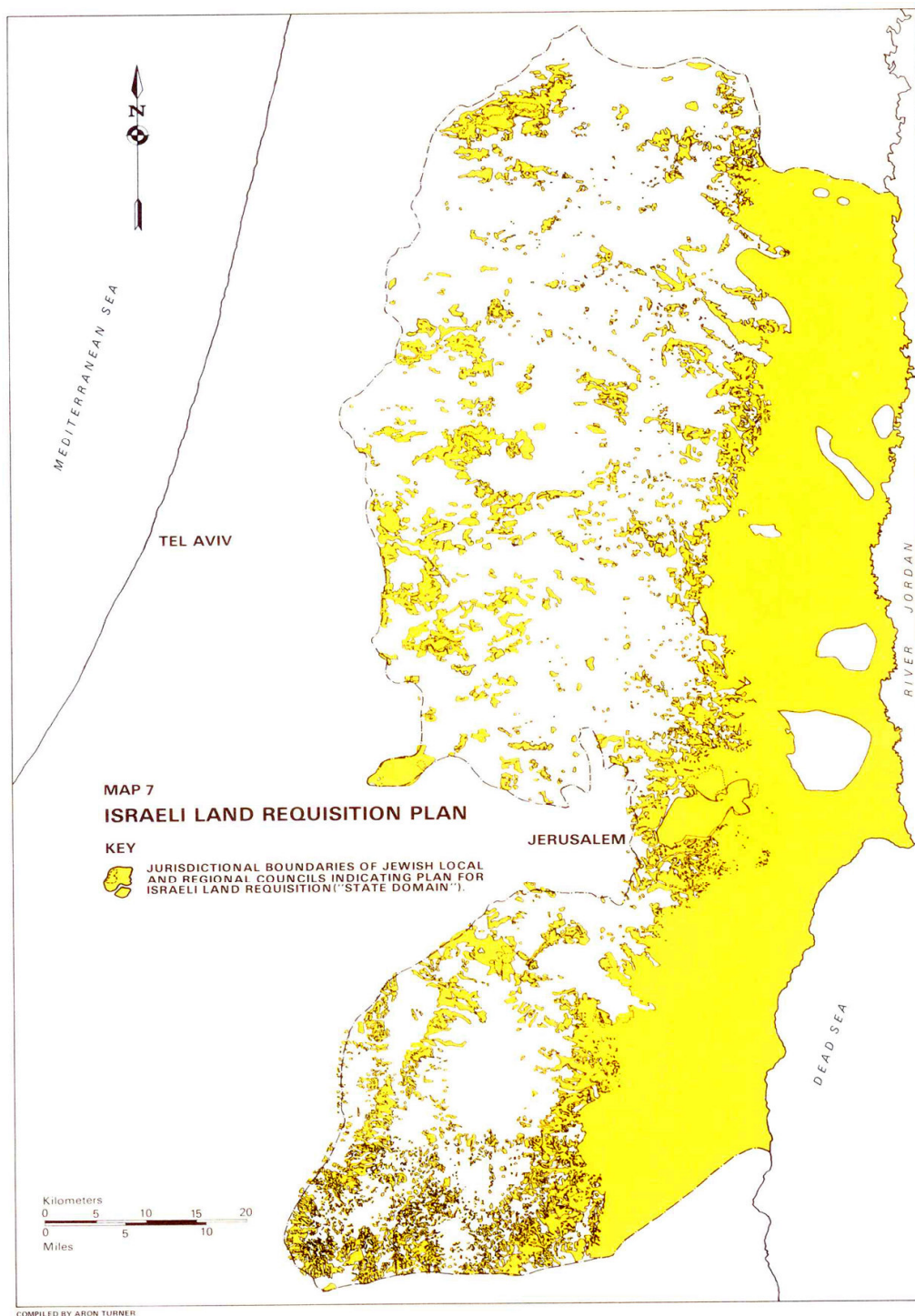
Declaration of State Land – in 1980, Israel expanded its definition of State Land to comprise all land in the West Bank which was not cultivated and/or registered as private Palestinian property. Approximately 1,500 sqkm of additional land in the West Bank were thus identified as potential State Land, raising the total (including previous expropriations) to 2,150 sqkm, i.e. 40% of the occupied West Bank (not including the annexed area of Jerusalem). The areas declared/slanted for declaration as State Land were demarcated and mapped (see below). By 1984, approximately 800 sqkm of the additional 1,500 sqkm had been requisitioned as State Land; no updated information has since been provided by the Israeli authorities.¹⁷

¹⁶ This section is based on Meron Benevisti (1984), Chapter 4; Btselem (2002), Chapter 3; and, Raja Shehadeh: “Some Legal Aspects of Israeli Land Policy in the Occupied Territories”, in: Erik Fosse, Ebba Wergeland and Ibrahim Abu - Lughod (eds): *Arab Studies Quarterly: Israel and the Question of Palestine*, Volume 7. Nov 2 & 3, 1985. p. 42 – 61.

¹⁷ Btselem (2002), p. 54. Peace Now estimates that 900 sqkm were requisitioned by 2008: “Despite Promises – Land

Occupied West Bank: areas requisitioned/slanted for requisition as State Land by 1984

Source: Meron Benvenisti, *The West Bank Data Project*, 1984; p. 85.

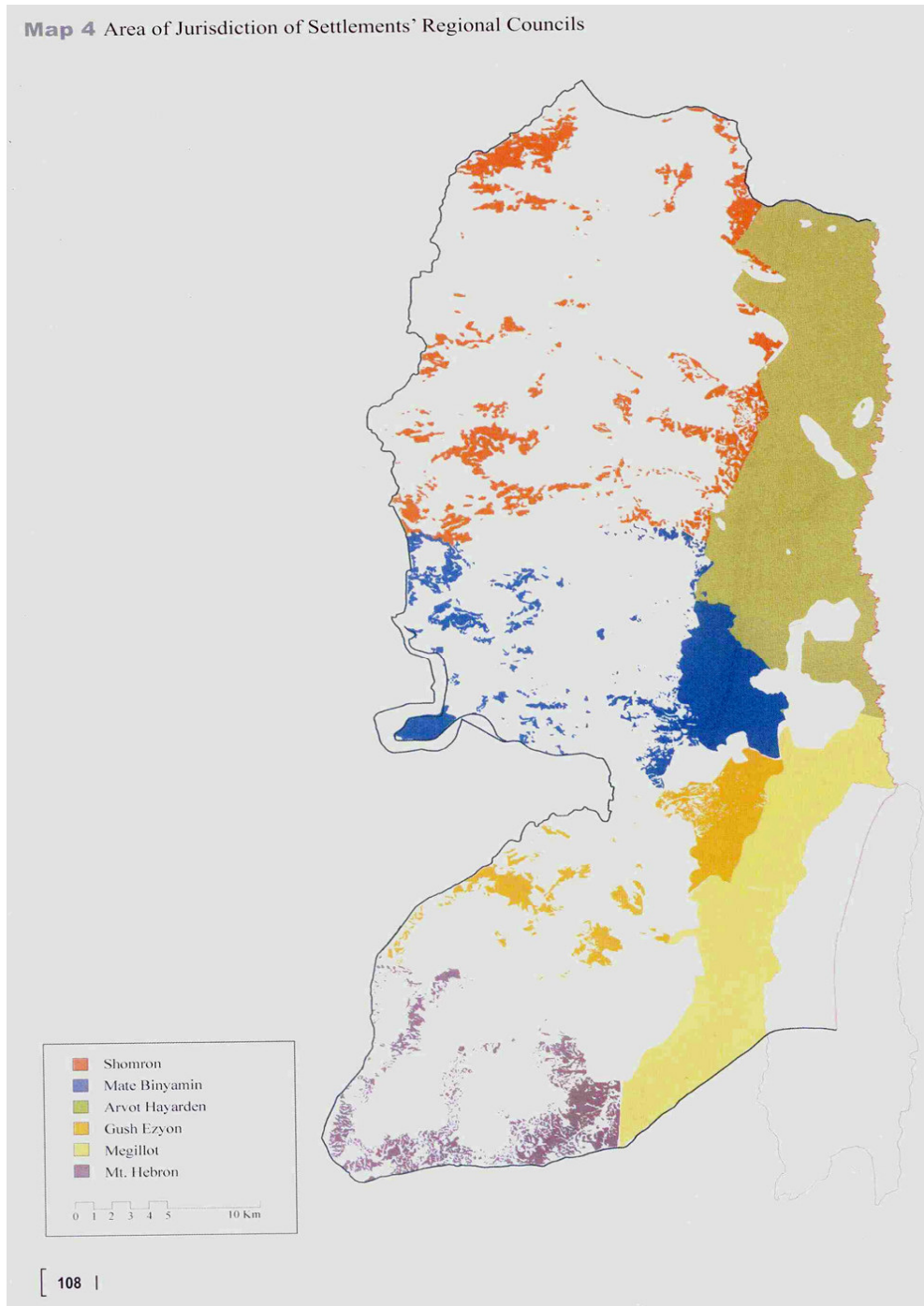


Israel has manipulated the Oslo Peace Process to confiscate additional land. Under the Oslo Accords between Israel and the PLO, the status-quo-ante of land ownership titles has been preserved. Powers over land registration and planning transferred to the Palestinian Authority are confined to areas of dense Palestinian population, intensive construction and cultivation, which Israel had not previously slated for requisition, i.e, areas A and B which amount to a total of 40% (2,215 sqkm) of land in the occupied West Bank.



Source: Btselem (2002), p. 109.

Israel retained sole control over land registration and development in area C, i.e., in 60% of the occupied West Bank, where most of the land previously slated for requisition and development of Israel's settlement enterprise is located. **Based on the land requisition plans from the 1980s and the separate administrative system set up in the 1980s, Israel has meanwhile allocated all expropriated State Land, including “fire-zones” and “nature reserves”, to the areas of jurisdiction of its Jewish settlement local and regional councils.** The latter are empowered to design and implement development plans according to their needs at the expense of the occupied Palestinian population and their right to self-determination, independence and sovereignty in this area.



Source: B'tselem (2002), p. 109.

By means of a regime which combines occupation, apartheid and colonialism, and the policy of population transfer, **Israel has changed ownership and control over land and altered the demographic composition of the occupied West Bank.**

By 2002, Israel had confiscated and *de jure* annexed 2,346 sqkm of private and public Palestinian land. This area amounts to 41.9% of the occupied West Bank, including East Jerusalem, and exceeds the 2,150 sqkm of “State Land” slated for requisition in the 1980s. Israel has allocated this land to the municipalities, local and regional councils which compose its Jewish settlement enterprise:

Eastern Strip (Jordan Valley) settlements: 1,279 sqkm

Mountain Strip settlements: 472 sqkm

Western Hills Strip (Tel Aviv metropolitan area): 375 sqkm

Jerusalem Metropolis: 220 sqkm¹⁸

Israel is in the process of annexing *de facto* an additional 20% of the West Bank Land located in area C and outside the boundaries of its Jewish local and regional councils. In these areas, Israel continues with confiscation of Palestinian land and construction of infrastructure (roads, Wall, etc.) which facilitates the integration and annexation of the Jewish settlements and their land basis.

The population of Jewish settlers in the occupied West Bank has grown dramatically as a result of Israel's land confiscation and annexation policy combined with the sustained and systematic preferential treatment (development policies, subsidies, tax deductions, a.o.) afforded to the Jewish settlements and settlers by all Israeli governments. The number of Jewish settlers has grown from 1,182 persons in 1972 and 27,500 persons in 1983¹⁹, to 191,600 (365,000) in 2000 and 487,700 in 2008.²⁰ At present, Israel's Jewish settlers thus constitute almost 17% of the entire population of the occupied West Bank, including Jerusalem; and use and develop approximately 42% of the land.

In contrast, the Palestinian population in the occupied West Bank, including Jerusalem, has grown from 867,500 in 1982 to 2.5 million in 2010.²¹ They constitute 83% of the entire population, but their control over land ownership and development is confined to no more than 40% of the land in the entire area (i.e., mainly areas A, B)²². De-development, urbanization and ongoing forced displacement of Palestinians are results of Israel's regime of occupation-apartheid-colonialism and its policy of population transfer, as Palestinian communities are forcibly removed and confined for the benefit of Jewish Israeli expansion and domination.

¹⁸ Btselem (2002), p. 116.

¹⁹ ICBS (excl. Jewish settlers in occupied and annexed East Jerusalem). In: Benvenisti (1984), p. 61

²⁰ Btselem (2002), p.17. Number in brackets includes East Jerusalem; Btselem Annual Report 2008 (incl. occupied and annexed Jerusalem). All figures based on ICBS data.

²¹ 1982: estimate cited in Benvenisti (1984), p. 1-2; for 2010: PCBS reports 2,514,845 Palestinians in the West Bank. These figures do not include Palestinian who became refugees in 1967 and their descendants (estimated at 955,247 in 2008, the majority originating from the occupied West Bank. Source: Badil Survey of Palestinian Refugees and Internally Displaced Persons 2008-2009.

²² Israel prevents Palestinian development in occupied and annexed Jerusalem. One third of the 70 sqkm has been confiscated from Palestinians. Israeli zoning plans prohibit Palestinian development on at least 89% of the remaining two thirds, leaving only 8-11% for Palestinian construction in an area which is mostly already built up.