











**JOINT SUBMISSION TO FACT-FINDING MISSION ON ISRAELI SETTLEMENTS IN THE OCCUPIED  
PALESTINIAN TERRITORY BY THE**

**PALESTINIAN HUMAN RIGHTS ORGANISATIONS COUNCIL –**

**ENDORSED BY THE CIVIC COALITION FOR PALESTINIAN RIGHTS IN JERUSALEM**

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## INTRODUCTION

1. The Palestinian Human Rights Organisations Council (PHROC)<sup>1</sup> welcomes the opportunity to provide the International Fact-Finding Mission on Israeli Settlements (hereafter “the Mission”) with analysis, findings and recommendations regarding the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory (OPT).
2. PHROC commends the members of the Mission for the accessibility and flexibility demonstrated by their engagement with civil society organisations and rights holders to date. We further appreciate the broad legal scope the Mission has adopted. Nonetheless, PHROC is compelled to express its concern regarding apparent operational restrictions placed on the Mission, namely the limited timeframe and budget, which may encumber its ability to conduct and fulfil its responsibilities to the extent we believe its mandate permits.
3. It should be noted that this joint submission is not intended to comprehensively catalogue all violations committed in the OPT,<sup>2</sup> but rather to present the Mission with broad observations and recommendations considered by the members of PHROC to be most pressing. Though we consider the submission and presentation process to be a primary element of civil society’s contribution to the work of the Mission, we will continue to provide supplemental information through individual formal submissions and as otherwise appropriate.
4. This joint submission is divided into two sections. The first section outlines how the settlement enterprise is part of a systematic and comprehensive colonial

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<sup>1</sup>The Palestinian Human Rights Organisations Council (PHROC) includes Addameer Prisoner Support and Human Rights Association, Al-Dameer Association for Human Rights, Al-Haq, Al-Mezan Center for Human Rights, Badil Resource Center for Palestinian Residency and Refugee Rights, Defense for Children International – Palestine Section, Ensan Center for Human Rights and Democracy, Hurriyat – Centre for Defense of Liberties and Civil Rights, Jerusalem Center for Legal Aid and Human Rights, Ramallah Center for Human Rights Studies, and the Women’s Center for Legal Aid and Counseling. This report has also been endorsed by the Civic Coalition for Palestinian Rights in Jerusalem.

<sup>2</sup> This information will be supplemented by oral and written briefings provided to the Mission by a number of PHROC members.

policy resulting in the annexation of portions of the OPT and the denial of the right of the Palestinian people to self-determination. In the second section, PHROC provides recommendations to the Mission and outlines recommendations PHROC believes the Mission should address to the United Nations, the European Union, Third State Parties, and the Palestinian Liberation Organisation. Furthermore, these recommendations seek to ensure that victims of international crimes relating to the settlement enterprise are granted access to justice mechanisms.

## PRELIMINARY CONSIDERATIONS

5. The prolonged nature of Israel's military occupation has allowed for the institutionalisation of its discriminatory and degrading treatment of the Palestinian people as a matter of policy. This is exemplified by Israel's policies of construction and expansion of Israeli settlements and their related infrastructure and forcible population transfer, along with other policies that have led to *de facto* annexation of the OPT. The policy of land appropriation for the establishment and expansion of settlements is a clear attempt to systematically create facts on the ground and is at the core of Israel's denial of Palestinian self-determination.
  
6. Israel has consistently employed a range of measures to establish and expand the colonial settlement enterprise in the OPT. These include direct measures, such as extensive property destruction and land appropriation justified by claims of 'public necessity' or the declaration of land as 'nature reserves,' 'closed military zones,' 'abandoned land' or 'State land.' Alongside these direct measures, Israel employs other purportedly "legal" or "administrative" measures, such as a discriminatory and arbitrary permit regime that controls and severely restricts all Palestinian movement within the OPT. This combination of direct and indirect measures, coupled with daily physical and psychological harassment by the Israeli armed forces and settlers, result in the forcible transfer of Palestinians from their lands into non-contiguous enclaves elsewhere in the OPT. Unlawful forcible displacement extends to Palestinians living near settlements and its infrastructure, especially in Occupied East Jerusalem and those isolated by the Annexation Wall, who are compelled to leave their homes because of the unbearable living conditions created by the annexationist policies of Israel. Furthermore, through a system of ID deprivation and confiscation, dictated by Israel's territorial and demographic interests, Palestinians are forced out of the OPT completely. Israel, as a High Contracting Party to the 1949 Fourth Geneva Convention, has repeatedly violated its obligations under Article 49(1), which states: "Individual or mass forcible transfers, as well as deportations of protected

persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.”

7. Israel has subordinated the economy of the OPT to its own, depriving the occupied population of the capacity to effectively govern and execute its economic affairs. Through the settlement enterprise and structural economic measures it has imposed on the OPT, Israel has succeeded in exerting near exclusive control over its natural resources. The flourishing agricultural environment in the West Bank, particularly in the Jordan Valley area, coupled with the exploitation of water and other natural resources found in the occupied territory, has in fact turned Israeli settlements into profitable corporations. This has been done through the establishment of water infrastructure, crops and export companies, to the exclusion of the local Palestinian population whose economic development has been gravely affected by the expansion of the settlements.<sup>3</sup> By virtue of the temporary nature of the situation of occupation, Israel must be regarded only as the administrator of the natural resources belonging to the OPT, and is obliged to administer them in accordance with the rule of usufruct and for the benefit of the occupied population.
  
8. Furthermore, it has been affirmed that mining and extracting natural resources for the economic benefit of the Occupying Power and its nationals amounts to the war crime of pillage, entailing international and criminal responsibility for the State of Israel and for individuals who commit such a crime. International humanitarian law protects property, whether private or public, against pillage.

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<sup>3</sup> The Palestinian economy is severely constrained by Israeli restrictions on movement, and access to markets and natural resources. The annual cost of these restrictions has been estimated at EUR 5.2 billion or 85% of the total Palestinian GDP. [Palestinian Ministry of National Economy and Applied Research Institute –Jerusalem (ARIJ), ‘The Economic Costs of the Israeli Occupation for the Occupied Palestinian Territory’ (September 2011)  
<<http://www.un.org/depts/dpa/qpal/docs/2012Cairo/p2%20jad%20isaac%20e.pdf>> accessed 15 November 2012.

The prohibition of pillage reflects customary international law and is codified both in Article 47 of the 1907 Hague Regulations and Article 33(2) of the Fourth Geneva Convention. Both norms confer duties of a positive nature on the State, which is therefore not only prohibited from ordering as well as authorising the commission of pillage, but is also obliged to prevent and stop pillage committed by private individuals. Additionally, Israel's extensive appropriation of Palestinian land, water and minerals from the OPT violates Article 1(2) of the ICCPR and ICESCR containing the prohibition of depriving individuals of "their own means of subsistence." Being deprived of their lands, of the possibility to freely control, access and use their water resources and of developing their economy through the prospecting and exploring of their natural wealth, Palestinians have virtually been dispossessed of any means of long-term survival.<sup>4</sup>

9. Israel is under an obligation to return the land, orchards, olive groves, and other immovable property seized from any natural or legal person for purposes of constructing settlements, and all related infrastructures, including the Annexation Wall and bypass roads, in the OPT.
  
10. Settlement construction and expansion is facilitated by and has resulted in the creation of two parallel and unequal societies. The first society is an Israeli colonial society, which benefits from superior living conditions and greater protections under Israeli civil (as opposed to military) law and international human rights law, neither of which Israel considers applicable to the Palestinians in the OPT. The second is the disadvantaged Palestinian society living in the same territory, which, by contrast, is denied many of its basic rights as a result of the expansion of the settlement project, including through the imposition of discretionary military laws.

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<sup>4</sup> In its most recent report, the World Bank stated, "Ultimately sustainable economic growth and an end to the fiscal crisis will require unleashing of the Palestinian private sector's potential. This in turn necessitates a lifting of Israeli restrictions on access to land, water, a range of raw materials, and export markets." World Bank, 'Stagnation or Revival? Palestinian Economic Prospects – Economic Monitoring Report to the Ad Hoc Liaison Committee' (21 March 2012) <<http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/WorldBankAHLCreportMarch2012.pdf>> accessed 15 November 2012.

11. Combined with the settlement enterprise, the discriminatory military orders not only place extensive restrictions on Palestinians' right to, *inter alia*, a fair trial, freedom of movement, expression, association and assembly, but act as a means of legitimising the exploitation and appropriation of land and natural resources for the benefit of the Israeli population.
12. Various UN treaty bodies, including the Human Rights Committee,<sup>5</sup> the Committee on Economic Social and Cultural Rights,<sup>6</sup> the Committee against Torture,<sup>7</sup> and the Committee on the Elimination of Discrimination Against Women, have "all noted that obligations under international human rights conventions as well as humanitarian law apply to all persons brought under the jurisdiction or effective control of a State party and have stressed the applicability of the State party's obligations under international human rights conventions to the Occupied Territories."<sup>8</sup> Declarations, reports, and resolutions by various UN bodies, including the Security Council and the General Assembly, have all affirmed that fundamental human rights can be invoked to "complete in certain respects and lend support to the international instruments especially those applicable in conditions of armed conflict."<sup>9</sup> Equally, the ICJ has repeatedly stated that an Occupying Power remains responsible for fulfilling its obligations stemming from human rights conventions in occupied territory.<sup>10</sup>

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<sup>5</sup> Human Rights Committee (Sixty-third session), UN Doc CCPR/C/SR.1675 (21 July 1998), paragraph 21. Similarly, in both its initial report to the Committee on Economic, Social and Cultural Rights in 1998 and in a further report in 2001, Israel argued that the Palestinian population is not subject to its sovereign territory and jurisdiction and Palestinians are therefore excluded from both the report and the protection of the ICESCR. Committee on Economic, Social and Cultural Rights, 'Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel. 12/04/1998' UN Doc E/C. 12/1/Add.27 (4 December 1998).

<sup>6</sup> Human Rights Committee, UN Doc CCPR/C/ISR/CO/3 (3 September 2010), paragraph 5; Human Rights Council, 'Concluding Observations of the Human Rights Committee: Israel. 05/08/2003' UN Doc CCPR/CO/78/ISR (5 August 2003), paragraph 11 and Human Rights Committee, 'Concluding Observations of the Human Rights Committee: Israel. 08/18/1998' UN Doc CCPR/c/79/Add.93 (18 August 1998), paragraph 10.

<sup>7</sup> Committee on Economic, Social and Cultural Rights, UN Doc E/C.12/1/Add.27 (4 December 1998).

<sup>8</sup> Committee on the Elimination of Discrimination against Women, 'Concluding Observations of the Committee on the Elimination of Discrimination against Women on the Occasion of its Consideration of the Fourth and Fifth Reports of Israel UN Doc CEDAW/C/ISR/4 and CEDAW/C/ISR/5 in UN Doc CEDAW/C/ISR/CO/5 (18 January 2011).

<sup>9</sup> UNGA Official Records (Twenty-Fifth Session) 'Respect for Human Rights in Armed Conflict: Report of the Secretary General' UN Doc A/8052 (18 September 1970).

<sup>10</sup> ***The Legality of Threat or Use of Nuclear Weapons*** (Advisory Opinion) ICJ Rep 1996, paragraph 25; ***Armed Activities on the Territory of the Congo – (Democratic Republic of the Congo v Uganda)***, ICJ Rep 2005, paragraph 175; ***Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*** (Advisory Opinion) ICJ Rep 2004, paragraphs 102-113.

13. The system of Israeli military law, imposed not on the Israeli settler population, but only on a Palestinian population that is denied even the most basic human rights by the primary duty bearer, provides for the formalisation and codification of Israel's discriminatory policies with regard to the Palestinian population, amounting to a system of institutionalised racism. The systematic lack of law enforcement measures, for example, against Israeli settlers responsible for attacks on Palestinians in the OPT have produced a climate of impunity that contributes to fuelling further violations. By contrast, when violent acts have been committed, or are suspected of having been committed, by Palestinians against settlers in the OPT, the Israeli authorities mobilise large-scale arrests and investigations to apprehend the perpetrators. Israel's two-tiered legal system in the OPT grants settlers the protections of Israeli civil and constitutional law under the jurisdiction of Israeli civil courts, whilst subjecting Palestinians living in the same territory to a military law system, the procedures and practices of which violate, among others, fundamental due process rights.<sup>11</sup>
14. Palestinians do not have access to any effective form of redress or remedy for victims of violations of law. Israel's High Court of Justice, in fact, has provided the proverbial rubber stamp for many of Israel's violations in the OPT and has simply declared others to be non-justiciable.<sup>12</sup> This includes Israel's practices and policies on the existence and construction of settlements in the occupied

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<sup>11</sup> See, for instance, Military Order No 101 (27 August 1967) concerning the Prohibition of Incitement and Hostile Propaganda Actions. This Military Order has represented the basis for the majority of Israeli military prosecutions of Palestinian human rights defenders in the OPT who condemn Israel's occupation and promote accountability for its violations of international law. The order is applied broadly to all cases in which a person is seen as engaging in activities that may influence public opinion. For instance, on 24 August 2010 an Israeli Military Court convicted the Palestinian human rights defender Abdullah Abu Rahmeh for incitement and organising illegal demonstrations in light of his membership in the Bilin committee against the Wall and due to the possession of ammunition in the form of discharged M16 bullets, and empty sound bomb and gas grenade canisters all of which he collected at demonstrations after they were used against protesters by Israeli army. See —, 'Military Court convicts West Bank Palestinian Activist of Incitement' *Haaretz* (24 August 2010) <<http://www.haaretz.com/news/diplomacy-defense/military-court-convicts-west-bank-palestinian-activist-of-incitement-1.310007>> accessed 15 November 2012.

<sup>11</sup> Al-Haq, 'Legitimizing the Illegitimate? The Israeli High Court of Justice and the Occupied Palestinian Territory' (2010) <[http://www.alhaq.org/publications/publications-index/item/legitimising-the-illegitimate?category\\_id=8](http://www.alhaq.org/publications/publications-index/item/legitimising-the-illegitimate?category_id=8)> accessed 15 November 2012.

<sup>12</sup> Al-Haq, 'Legitimizing the Illegitimate? The Israeli High Court of Justice and the Occupied Palestinian Territory', Report, (2010) (Describing Israeli High Court of Justice's manipulation of law to approve violations and to allow for the entrenchment of Israel's settlement policies).



territory and its establishment of a discriminatory legislative and regulatory regime in the OPT that privileges Israeli settlers, while depriving the occupied Palestinian population of their rights under international law.

15. Israel's policies in the OPT, which constitute the subjection of the Palestinian people to an institutionalised regime of domination, amount to a violation of Article 2 of the Convention on the Suppression and Punishment of the Crime of Apartheid. The three core elements of the definition of Apartheid as contained in Article 2 of the Apartheid Convention require that <sup>(1)</sup> two distinct racial groups can be identified; <sup>(2)</sup> inhuman acts are committed against the subordinate group <sup>(3)</sup> acts of systematic oppression are committed in the context of an institutionalised regime of domination by one group over the other, distinguishing apartheid from other forms of racial discrimination.<sup>13</sup> The Convention defines apartheid as "inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them." Israel's laws and policies in the OPT afford a preferential legal status and material benefits for individuals with Jewish identity over others. The product of these policies is an institutionalised system that privileges settlers and discriminates against Palestinians.

16. The International Court of Justice (ICJ), in its 2004 *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion on the Wall), highlighted that "Israel has the obligation to make reparation for the damage caused to all natural or legal persons concerned." Yet, the current constitutional structure and legislation in Israel leaves very little room, if any, for Palestinians to seek compensation. The

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<sup>13</sup> A group of high-profiled international legal experts found that Israel's exercise of control in the OPT with the purpose of maintaining a system of domination by settlers over Palestinians constitutes a breach of the prohibition of Apartheid. Human Sciences Research Council, 'Occupation, Colonialism, Apartheid? A Reassessment of Israel's Practices in the Occupied Palestinian Territory under International Law' (May 2009) <<http://www.setav.org/ups/dosya/24515.pdf>> accessed 15 November 2012.

international community must provide for an additional or alternative mechanism of effective remedy and reparation for damage or loss resulting from violations of Palestinians' human rights by the Israeli settlement enterprise. Even if Article 41(2) ILC Draft Articles does not explicitly specify such an obligation to provide reparation, it imposes specific obligations for third states, namely not to aid or assist and not to recognise. If those states violate these specific obligations they incur what Article 2 ILC Draft Articles defines as an 'internationally wrongful act of a State'. According to article 28 ILC Draft Articles, the international responsibility of a State that is entailed by an internationally wrongful act in accordance with the provisions of Part One involves legal consequences as set out in Articles 29, 30 and 31. Those are the duty of performance of the obligation, cessation, non-repetition and reparation.

17. For over 45 years of occupation and Israeli settlement *policy*, Israel has repeatedly and consistently failed to provide a fair or balanced source of legal redress for the Palestinian people. We therefore emphasise the urgent need for concrete action by external parties to achieve justice and resolution with regard to the settlement enterprise and its impacts on the rights afforded to the Palestinian people under international human rights and humanitarian law.

## RECOMMENDATIONS

### **PHROC calls upon the International Fact-Finding Mission (FFM) to:**

18. *Reiterate* that Israel has continued with its settlement activities unabated since 1967 despite countless condemnations of these practices by the international community, including numerous resolutions of the UN Security Council and UN General Assembly.<sup>14</sup> The Fact-Finding Mission must emphasise the need to move beyond condemnation and towards the utilisation of international legal mechanisms to hold Israel and individual perpetrators accountable for violations of international law, including international humanitarian and human rights law.
19. *Highlight* that Israel's settlement policy is resulting in forcible population transfer, which constitutes a grave breach as per Article 147 of the Fourth Geneva Convention, giving rise to individual criminal responsibility.
20. *Unequivocally recognize* that Israel's settlement policies in the West Bank, including East Jerusalem, constitute annexation of large portions of the OPT.
21. *Reiterate* that Israel's annexation of territory through the settlement policy amounts to the violation of the right of the Palestinian people to self-determination. It must be noted that the right to self-determination is a peremptory norm of international law whose violations trigger Third States Party responsibility.

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<sup>14</sup> See, *inter alia*, UNSC Res 452 (20 July 1979) UN Doc SC/RES/452/1979; UNSC Res 465 (1 March 1980) UN Doc SC/RES/465/1980; UNSC Res 471 (30 May 1980) UN Doc SC/RES/471/1980; UNGA Res 62 (10 January 2008) UN Doc A/RES/62/108.

22. *Caution* against the potential of Israel's continued non-compliance with its obligations under international law and its consistent effort to undermine the international legal framework as a whole. .
23. *Highlight* that Israel's policies in the OPT, which ensure that the Palestinian people are subjected to an institutionalised regime of domination, amount to a violation of Article 3 of the Convention on the Suppression and Punishment of the Crime of Apartheid.
24. *Promote* practical initiatives to address the unsustainable and deplorable living conditions of the Palestinians who continue to live under a prolonged military occupation. The Mission should register that Israel's policies are well documented initiatives<sup>15</sup> to be aimed at the annexation<sup>16</sup> of the OPT by creating facts which are bound to influence the ultimate status of the OPT, and which will thus prevent Palestinians from exercising their right to self-determination.
25. *Advise* the Palestinian Liberation Organisation (PLO) on any means to enhance protection of the Palestinian population, in particular by acceding to international legal mechanisms, including the International Criminal Court (ICC).

**PHROC calls on the Fact-Finding Mission to make the following recommendations to Israel, as primary duty-bearer in the OPT:**

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<sup>15</sup>For instance, as early as 1967 the so-called Allon Plan was developed with the objective of redrawing the borders of the State of Israel to include the Jordan Valley within the territory of the State. See T Segev, *1967: Israel, the War, and the Year that Transformed the Middle East* (Metropolitan Books, New York, 2007), 504 and W Harris, *Taking Root. Israeli Settlement in the West Bank, the Golan and Gaza-Sinai 1967-1980* (Research Studies Press, New York-Toronto, 1980), 106-108. See also World Bank (n 4), 5.

<sup>16</sup> On 12 February 2012, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Ms. Raquel Rolnik, in her preliminary remarks on the mission to Israel and the Occupied Palestinian Territory stated, "Throughout my visit, I was able to witness a land development model that excludes, discriminates against and displaces minorities in Israel which is being replicated in the occupied territory, affecting Palestinian communities. The Bedouins in the Negev – inside Israel – as well as the new Jewish settlements in area C of the West Bank and inside Palestinian neighbourhoods in East Jerusalem - are the new frontiers of dispossession of the traditional inhabitants, and the implementation of a strategy of Judaisation and control of the territory." <<http://unispal.un.org/UNISPAL.NSF/0/880AE0D2C48A3C4F852579A3005831F0>> accessed 15 November 2012.

26. To immediately halt its construction and development of all settlements, and to promptly dismantle the entire settlement enterprise, including the Annexation Wall, and supporting infrastructures. The withdrawal of Israel from the OPT must comprise of (1) the withdrawal of Israel's civilian populations and military structures and (2) the restoration of the land to the Palestinian population or, in the absence of such, the provision of reparations as established under international law.
27. To afford victims of the settlement enterprise effective legal remedy and reparations, in accordance with international law standards.<sup>17</sup> This entails establishing new mechanisms within the Israeli legal system as the current bodies are structurally discriminatory and do not meet international standards. Moreover, these bodies should be supervised internationally as Israel has repeatedly shown that it is unwilling to conduct serious, independent, prompt and transparent investigations.<sup>18</sup>

**Recognising that complete dismantlement will require time, we call upon the FFM to recommend Israel, in the intermediate period:**

28. To immediately cease its unlawful appropriation of Palestinian land, property and natural resources, including by stopping, investigating and prosecuting all entities involved in the war crime of pillage.

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<sup>17</sup>UNGA A/RES/60/147 (21 March 2006) 'Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,' Article IX.

<sup>18</sup> Israel showed grave deficiencies in its criminal investigations conducted after Operation Cast Lead, which had led to fourteen hundred deaths. Only 52 criminal investigations were opened, and they had to be authorized by the Military Advocate General, who was simultaneously involved in issuing and approving combat orders. Therefore, without international supervision and pressure, and without a drastic change in Israel's legal system, international standards for the implementation of justice will not be respected. More recently, updated figures show that less than nine percent of investigations ended in the filing of an indictment. An examination of circumstances in which investigations were closed shows that some 84 percent of investigations were closed due to investigatory failures. The failure rate is particularly high in the investigation of property crimes (such as arson, damage to property or crops, damage to trees, theft of agricultural produce etc.) Indictments were served in less than 3% of these cases. 95% of these files were closed in circumstances that indicate investigative failure. Yesh Din, 'Law Enforcement upon Israeli Civilians in the West Bank' (12 March 2012)

<[http://www.yesh-din.org/userfiles/file/datasheets/LawEnforcement\\_dat sheet\\_Eng\\_March\\_2012\\_Final.pdf](http://www.yesh-din.org/userfiles/file/datasheets/LawEnforcement_dat sheet_Eng_March_2012_Final.pdf)> accessed 10 November 2012.

29. To immediately cease illegal appropriation, and demolitions or destruction of private and public property without legitimate grounds, as outlined in Article 53 of the Fourth Geneva Convention and Articles 46, 53 and 55 of the Hague Regulations.
30. To immediately cease all restrictions of movement currently imposed without legitimate grounds for military necessity, as well as putting an end to its persistent violations of the right to freedom of assembly and association.
31. To immediately halt the concession of any financial incentives to settlements and settlers in the OPT, as well as withdrawing all construction and natural resource extraction permissions granted to Israeli and international companies and organisations working in, or in cooperation with, the settlement enterprise.
32. Take all necessary measures to ensure the protection of the Palestinian population from settler violence through concrete and effective measures of law enforcement against the settler population in the OPT. Israel is obliged to provide the necessary legal protection and access to justice for Palestinians living under the constant threat of individual and collective violence at the hands of the settlers, who must be held accountable for their crimes.

**PHROC calls on the Fact-Finding Mission to recommend the United Nations:**

33. To urge the UN Security Council and General Assembly to take action and promote mechanisms to reverse Israel's policies of forcible population transfer of the Palestinian people, conducted under a racial and segregationist enterprise, as violating the right of the Palestinian people to self-determination enshrined in Common Article 1 of the International Covenant on Civil and Political Rights and of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

34. In view of the gravity of the violations of international humanitarian and human rights law including war crimes, resulting from the establishment and expansion of the settlement enterprise, the Mission should call upon the UN Human Rights Council to take all necessary measures to bring its report to the attention of the UN Security Council. The Security Council acting, in turn, must compel the government of Israel, under Article 40 of the UN Charter to:

- a. Halt all planned and dismantle all existing settlements within a defined period.
- b. Take all appropriate steps, within a defined period, to launch impartial and independent investigations into planning and implementation of the settlement enterprise, including settlement violence. This includes providing victims with access to effective legal remedies including reparation.
- c. Recommend that the UN Security Council concurrently establish an independent committee of experts in international humanitarian and human rights law, based in the OPT, to monitor and report on any domestic legal or other proceedings undertaken by the Government of Israel in relation to the aforesaid investigations.
- d. To recommend that the UN General Assembly request the UN Security Council to report to it on measures taken with regard to ensuring accountability for serious violations of international humanitarian and human rights law in relation to the settlement enterprise.

35. To recommend the UN General Assembly establish an adequately-resourced mechanism to assess the damage caused by the settlement enterprise in the OPT, with a mandate to serve as a record, in documentary form, of the damage caused to all natural and legal persons concerned as a result of the establishment of the settlement enterprise by Israel in the OPT, including in and around East Jerusalem. This assessment mechanism must fulfil the necessary standards to ensure that the materials it produces can be used in legal

proceedings to hold perpetrators accountable and provide reparations for victims.

36. To request that the UN Human Rights Council call for the reconvening of the Conference of the High Contracting Parties to the Geneva Conventions, as suggested in the Report of the “UN Fact-Finding Mission on the Gaza Conflict,” with a view of finding a clear mechanism to enforce the Occupying Power’s obligations under the Conventions.
37. To request that the UN Environment Programme and, when applicable, other UN specialised agencies, conduct an assessment on the impact of the settlement enterprise on environmental, social, and economic characteristics in the OPT in the last 45 years.
38. To recommend the ICJ give an advisory opinion on the question of the legality of the practices and policies of the settlement enterprise as a whole and State responsibility and third State obligations towards ending the settlement enterprise.
39. To elaborate mechanisms for States to cooperate under Article 41 of the International Law Commission in order to end, through lawful means, the settlement enterprise and the serious breaches of international law it entails.

**PHROC calls on the Fact-Finding Mission to make the following recommendations to the European Union:**

40. To put as a condition for enhanced bilateral relations that Israel immediately halts its construction and development of all settlements and dismantles the entire settlement enterprise in the OPT, including the Annexation Wall, and supporting infrastructures.
41. To invert the burden of proof on Israel to ensure the differentiation between settlement products and products from Israel proper by amending the Technical



Arrangement concluded in the framework of the EU-Israel Association Agreement.

42. To ensure that the European trade policies and preferential trade schemes concluded by its member States do not contribute to the perpetration of violations of international humanitarian and human rights law.
43. To act in accordance with its own guidelines on promoting compliance with international humanitarian law, which foresee the EU's responsibility to ensure Israel's compliance with international humanitarian law provisions and provide for the possibility of adopting practical measures in case of their violation. The EU as a whole has also committed itself to contribute to the "strict observance and the development of international law" in its relations with the wider world.<sup>19</sup>
44. To strengthen its efforts to ensure that its neighbouring countries, which participate in the European Neighbourhood Policy framework, comply with their international legal obligations, including by appropriately implementing the recent EU strategic framework and Action Plan on Human Rights and Democracy. Thus also ensuring the integration of the promotion of human rights in its trade policies vis-à-vis Israel.
45. To comply with its customary international law obligations and act in accordance with Article 215(5) of the Treaty on the Functioning of the European Union so as to ban produce originating from Israeli settlements in the OPT, because of the serious violations of peremptory norms of international law that settlements enterprise entails.<sup>20</sup>

**In the interim:**

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<sup>19</sup> Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, 13 December 2007, Article 3(5),

46. To adopt binding guidelines on labelling to retailers so as to provide EU customers with clear information about the origin of both agricultural and manufactured products sold in EU stores, thus enabling the consumers to make a conscious and informed choice about the products purchased.
47. To exclude settlement products and companies from public procurement. In tendering of public contracts, e.g. for catering services or supply of equipment, EU institutions, governments, and state-funded bodies should specify that no settlement products or services may be supplied under the contract and that companies operating in settlements are excluded. This must be done before Israel is allowed increased access to public procurement markets in the EU, as currently envisaged under the EU-Israel Action Plan.
48. To call for the abolition of financial and tax incentives and direct and indirect subsidies by EU member countries for companies involved in the trade of settlement produce, and the withdrawal of exemptions benefiting the settlements and their inhabitants.<sup>21</sup>
49. To adopt adequate safeguard clauses or mechanisms that ensure that Israel does not extra-territorially extend the applicability of EU agreements to its illegal settlements. As such, before implementing the Protocol on Conformity Assessment and Acceptance of Industry Products (ACAA), the EU needs to safeguard against the EU's unlawful implementation of the ACAA by insisting that Israel limit the territorial competence of its nominated authority to the territory of Israel as defined according to international law. The EU shall also include similar safeguard clauses or mechanisms to the Protocol regarding Israel's participation in Community programs to ensure that "Legal entities

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<sup>21</sup> Recent EU documents reveal that the EU is aware of the need to ensure that settlement products do not enter its market with preferential treatment. The EU-Israel Association Council recalled "the importance of the Technical Arrangement between the EU and Israel on products originating from settlements" and declared that "[i]n order to increase transparency and efficiency, Commission services are proceeding with some adjustments in its implementation." The Council of the European Union, 'Eleventh Meeting of the EU-Israel Association Council - Statement of the European Union' (Brussels, 24 July 2012), 12938/12 PRESSE 353, paragraph 26. The EU also stated that it will continue to fully and effectively implement existing EU legislation and the bilateral arrangement applicable to settlement products. (paragraph 8).

(including any affiliated entities) whose participation, by the objectives they pursue, their place of establishment, the nature or the location of their activities, would cause the European Union to recognize as lawful or render aid or assistance in maintaining a situation created by a serious breach of international law (including international humanitarian law) where such breach has been established by a resolution of the United Nations Security Council or by a judgment or advisory opinion of the International Court of Justice, shall be excluded from participation in Horizon 2020”.

**PHROC calls on the Fact-Finding Mission to recommend Third State Parties:**

50. To cease recognition of the illegal situation resulting from the construction and expansion of the settlements, and all aid and assistance in the commission and maintenance of the situation created by such construction.
51. To ensure states application of extra-territorial jurisdiction to hold accountable nationals of the State that are criminally liable for their participation in Israel’s settlement enterprise and to exercise universal jurisdiction to prosecute alleged grave breaches of the Fourth Geneva Convention committed in the OPT, in accordance with Article 146 of the Convention.
52. To call on all States and any agencies or bodies working on behalf of that State to adopt appropriate measures, regulations and guidelines in bilateral trade relations with Israel to ensure that it complies with its obligations under international humanitarian law and human rights law.
53. To ensure that State policies and preferential trade schemes do not contribute to the perpetration of violations of international humanitarian and human rights law.
54. To adopt restrictive measures on the import of Israeli products originating from the settlements in the OPT, as a means of adequately addressing the serious violations of peremptory norms of international law that the settlement enterprise entails, principally by imposing a ban on settlement trade. Interim measures

which should be immediately adopted by individual Third States include adopting binding guidelines on labelling to retailers, discouraging European companies from trading with and investing in settlements and excluding settlement products and companies from public procurement.<sup>22</sup>

**PHROC calls on the Fact-Finding Mission to make the following recommendations to the Palestinian Liberation Organisation:**

55. To strongly encourage and advise the State of Palestine to formally accede to international legal instruments to protect human rights without delay, including the Statute of the International Criminal Court, and to modify internal laws to comply with standards of international law.
56. To urge the Palestinian Liberation Organization that international law must not only inform and facilitate the process of negotiations, but it is the foundation upon which this process must be based.
57. To emphasise to the Palestinian Liberation Organization that agreements on cessation of territory concluded in times of belligerent occupation are null and void under international law, as they violate fundamental principles of IHL.<sup>23</sup>

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<sup>22</sup> It has been recognised that Israeli settlements in the OPT constitute serious breaches of peremptory norms of international law. Through Article XXVI.5.(a), World Trade Organisation (WTO) law does not prohibit third States from abiding to their duty of non-recognition as enshrined in Article 41(2) of the Draft Articles on Responsibility of States for Internationally Wrongful Acts, 2001 (ILC Draft Articles). However, if a Panel or Appellate Body would err and apply General Agreement on Tariffs and Trade (GATT) to settlements in the OPT, then there would still be two ways to legally justify a trade ban. From one side, customary international law such as the duty of non-recognition of serious breaches of peremptory norms could apply directly in WTO dispute settlement mechanisms. From another side, if a Panel finds an actual violation of GATT Article XI (import restrictions), then GATT Article XX and Article XXI would be able to excuse such a violation, passing both the requirements of the two types of exceptions as well as the Chapeau. In particular, Article XX(a) of the GATT Regulations holds that the provisions included in the agreements cannot be construed to prevent the adoption or enforcement by any contracting Party of measures necessary to protect public morality. Hence, national authorities can invoke such a formula in order to justify a ban of settlement produce on ethical and moral grounds, in the sense that the trade in settlement goods supports grave violations of international law. In conclusion, it can be argued that the withdrawal of preferential trade terms and/or the establishment of a ban on certain products are not illegal actions and can be justified in terms of WTO/GATT obligations.

<sup>23</sup> Al-Haq, 'Exploring the Illegality of Land Swap Agreements under Occupation' (January 2012) <<http://www.alhaq.org/publications/publications-index/item/exploring-the-illegality-of-land-swap-agreements-under-occupation>> accessed 15 November 2012.