



General Assembly

Distr.: General
30 May 2019

Original: English

Human Rights Council

Fortieth session

25 February–22 March 2019

Agenda item 7

Human rights situation in Palestine and other occupied Arab territories

Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, with a focus on access to water and environmental degradation

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*

Summary

The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, hereby submits his third report to the Human Rights Council. In his report, the Special Rapporteur addresses a number of concerns pertaining to the situation of human rights in the West Bank, including East Jerusalem, and in Gaza, with a particular emphasis on access to water and environmental degradation. In particular, he focuses on the responsibilities of Israel as the occupying Power to act strictly as trustee in the best interests of the protected people throughout the occupation and to ensure the right of the Palestinian people to self-determination, including their ability to develop, manage, conserve and dispose of their own resources and natural wealth.

* The present report was submitted after the deadline in order to reflect the most recent developments.



I. Introduction

1. The present report is submitted by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 to the Human Rights Council pursuant to Commission on Human Rights resolution 1993/2 A and Human Rights Council resolution 5/1.
2. The Special Rapporteur would like to draw attention once again to the fact that he has not been granted access to the Occupied Palestinian Territory, nor have his requests to meet with the Permanent Representative of Israel to the United Nations been accepted. The Special Rapporteur re-emphasizes that an open dialogue with all parties is essential for the protection and promotion of human rights. In addition, he notes that access to the territory is key to the development of a comprehensive understanding of the human rights situation on the ground. While he recognizes the exemplary work of experienced and competent civil society organizations, which provides an excellent basis for his work, he laments being unable to meet many of those carrying out this work, owing to his exclusion from the territory and the barriers faced by many individuals when seeking to obtain exit permits from the Israeli authorities, in particular from Gaza.
3. The present report is based primarily on written submissions and consultations with civil society representatives, victims, witnesses and United Nations representatives. The Special Rapporteur undertook his annual mission to the region, to Amman, from 25 to 29 June 2018.
4. In the present report, the Special Rapporteur focuses on the human rights and humanitarian law violations committed by Israel.¹ The mandate of the Special Rapporteur focuses on the responsibilities of the occupying Power, although he notes that human rights violations by any State or non-State actor are deplorable and will only hinder the prospects for peace.
5. The Special Rapporteur wishes to express his appreciation for the full cooperation with his mandate extended by the Government of the State of Palestine. The Special Rapporteur acknowledges the essential work being done by civil society organizations and human rights defenders to create an environment in which human rights are respected and violations of human rights and international humanitarian law are not committed with impunity and without witnesses.
6. The present report is set out in two parts. First, it provides an overview of the current human rights situation in the Occupied Palestinian Territory. This discussion, while not exhaustive, aims to highlight those human rights concerns the Special Rapporteur has identified as particularly pressing. In the second part of the report, the Special Rapporteur examines access to natural resources and environmental degradation in the territory.

II. Current human rights situation

7. Palestinians living under occupation are increasingly without hope as the occupation continues into its second half-century and the human rights situation steadily deteriorates. Although it is not possible to provide a comprehensive review of all human rights concerns in the period since the previous report of the Special Rapporteur to the Human Rights Council (A/HRC/37/75), the Special Rapporteur would like to highlight several situations that merit particular attention, namely, the demonstrations in Gaza and the ongoing humanitarian and human rights crisis for Gaza residents; the continued advancement of settlements in the West Bank, including East Jerusalem, together with decisions that appear to pave the way for mass evictions of Palestinians in East Jerusalem; and the situation of human rights defenders, an issue on which the Special Rapporteur focused in his first report to the Human Rights Council (A/HRC/34/70).

¹ As specified in the mandate of the Special Rapporteur set out in resolution 1993/2.

A. Gaza

8. The humanitarian and human rights crisis in Gaza, as well as the security of its population, deteriorated significantly in 2018, as reflected in the high number of deaths and injuries suffered by Palestinians. The majority of the casualties occurred in the context of large-scale demonstrations that began on 30 March 2018 along the perimeter fence between Israel and Gaza, known as the Great March of Return.² Demonstrators called for the right of return for Palestinian refugees and an end to the blockade of Gaza. Although the demonstrations were largely peaceful, some demonstrators reportedly burned tires, threw stones and Molotov cocktails and flew kites bearing incendiary devices over the fence into Israel. While acts of violence must be condemned, the excessive use of force by Israel against the demonstrators is of grave concern (see A/73/447, para. 12).³ Between 30 March and 31 December 2018, 180 Palestinians, including more than 30 children,⁴ were killed by Israeli security forces in the context of demonstrations, while a further 24,000 were injured. The World Health Organization estimated that, of those injured, 1,200 would require long-term limb reconstruction and extensive rehabilitation.⁵ In the same period, one Israeli was killed and three injured. In total, 260 Palestinians in Gaza were killed by Israeli forces in 2018,⁶ the highest death toll since the Gaza conflict in 2014.

Access to health care

9. In response to the demonstrations, Israel tightened the blockade on Gaza. These additional punitive measures have had a detrimental impact on an already untenable situation for Palestinian livelihoods and well-being. Permits for travel outside Gaza have been severely restricted, as have the import and export of goods, including the passage of essential fuel supplies into Gaza. Medical patients have been particularly affected, either by the denial of exit permits or because of the deteriorating conditions in hospitals within Gaza and the lack of needed supplies and electricity. As at October 2018, almost half of essential medicines were completely depleted in Gaza.⁷ Israel continued to prevent patients from leaving Gaza for medical treatment, including life-saving care, if they had a family connection with Hamas.⁸ Such a sweeping travel ban, which aims to assert political pressure on Hamas, represents a form of collective punishment prohibited under article 33 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention). In a positive development, the Israeli High Court annulled the practice in its ruling of August 2018.⁹

Realization of economic and social rights

10. As the blockade on Gaza enters its twelfth year, the economy has all but collapsed,¹⁰ compounding the daily suffering of the population. The enjoyment of the most basic

² The demonstrations were ongoing at the time of reporting.

³ According to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, law enforcement officials must see an imminent threat to life or of serious injury for the use of lethal force to be permissible.

⁴ See www.ochaopt.org/content/humanitarian-snapshot-casualties-context-demonstrations-and-hostilities-gaza-30-march-31-0.

⁵ See www.emro.who.int/images/stories/palestine/documents/WHO_Health_Cluster_SitRep_23_Sep_6_Oct_2018.pdf?ua=1.

⁶ See www.ochaopt.org/data/casualties?tab=palestinianfatalities&tab=palestinianfatalities.

⁷ 44 per cent according to the Central Drug Store in Gaza, as reported by Human Rights Watch (see www.hrw.org/world-report/2019/country-chapters/israel/palestine).

⁸ See www.timesofisrael.com/government-to-ban-all-humanitarian-visits-to-israel-by-hamas-members/. Access to treatment has also been restricted when patients have family members living in the West Bank without a permit (see www.haaretz.com/israel-news/.premium-gazan-patients-face-new-limitation-on-travel-for-medical-treatment-1.6573119).

⁹ See www.i24news.tv/en/news/international/middle-east/182789-180827-israel-s-high-court-allows-vital-medical-treatment-to-hamas-relatives.

¹⁰ See www.worldbank.org/en/news/press-release/2018/09/25/cash-strapped-gaza-and-an-economy-in-collapse-put-palestinian-basic-needs-at-risk.

socioeconomic rights – employment, health care, housing, food, water and sanitation – is a luxury in scarce supply, if at all. The statistics reveal the dire reality of life in Gaza. Ninety-five per cent of the population does not have access to clean water,¹¹ while the sewage crisis has prompted an imminent threat of an endemic disease outbreak.¹² The unemployment rate across the Occupied Palestinian Territory is the world’s highest according to the International Labour Organization.¹³ In Gaza specifically, more than half the workforce is unemployed and 78 per cent of women are without work.¹⁴ The situation for young people in Gaza, who make up almost 30 per cent of the population,¹⁵ is particularly dire, with 70 per cent unemployed according to the World Bank.¹⁶ The bleak economic prospects, coupled with the constant climate of fear and insecurity caused by the hostilities, have had a severe impact on the mental health of the population. According to the humanitarian country team, 210,000 residents of Gaza already suffer from severe or moderate mental health disorders, while a further 52,098 people, including 26,049 children, are in need of mental health and psychosocial support responses in the wake of the violence surrounding the Great March of Return.¹⁷

11. Poverty in Gaza is pervasive, with 53 per cent of the population surviving on less than \$4.60 per day and two thirds subsisting on less than \$3.60 per day.¹⁸ Access to food is one of the most fundamental challenges facing the population in Gaza, where 68 per cent of households are severely or moderately food insecure.¹⁹ Although residents of Gaza have rich farmland and 40 km of coastline, the Israeli blockade has severely restricted their ability to properly exploit domestic food sources available through agriculture and fishing. The strict limitations on fishable waters, which have been reduced at certain points to as little as 3 nautical miles,²⁰ have severely hampered the livelihood of Gaza fishers, 95 per cent of whom already live below the poverty line.²¹ Fishers are routinely pursued by Israeli security forces for having allegedly transgressed the permitted fishing zone, resulting in arrests, the confiscation of vessels and, in extreme cases, the use of lethal force by Israeli security forces. In the past two years, Israeli security forces have killed two fishers and injured dozens with rubber-coated metal bullets.²² Although the maritime restrictions were extended to 12 nautical miles in January 2019,²³ they remain subject to frequent change, causing uncertainty among fishers, and still fall far short of the 20 nautical miles established under article XIV of the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip of 1995.

12. The agricultural potential of the Gaza Strip has been equally undermined by the blockade, with some 35 per cent of farmland falling within an Israeli-enforced “buffer zone”.²⁴ Farmers wishing to use this arable land do so in constant threat of being targeted

¹¹ See www.unrwa.org/where-we-work/gaza-strip.

¹² See www.ochaopt.org/content/study-warns-water-sanitation-crisis-gaza-may-cause-disease-outbreak-and-possible-epidemic.

¹³ See www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_630876/lang--en/index.htm.

¹⁴ World Bank, “Economic monitoring report to the ad hoc liaison committee”, 27 September 2018, p. 9. Available at <http://documents.worldbank.org/curated/en/413851537281565349/pdf/129986-REVISED-World-Bank-Sept-2018-AHLC-Report-final.pdf>.

¹⁵ Data from the Palestinian Central Bureau of Statistics, 2017. Available at www.pcbs.gov.ps/post.aspx?lang=en&ItemID=3215. “Young people” covers individuals between the ages of 15 and 29 years.

¹⁶ See www.worldbank.org/en/country/westbankandgaza/overview.

¹⁷ Humanitarian country team in the Occupied Palestinian Territory, “2019 humanitarian needs overview”, December 2018, p. 17. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/humanitarian_needs_overview_2019-%281%29.pdf.

¹⁸ *Ibid.*, p. 24.

¹⁹ *Ibid.*

²⁰ *Ibid.*, p. 25.

²¹ See www.btselem.org/gaza_strip/20190211_gaza_fishermen_plight_due_to_israeli_restrictions.

²² *Ibid.*

²³ See www.timesofisrael.com/israel-to-reopen-gaza-crossing-extend-fishing-zone-if-quiet-remains/.

²⁴ Palestinian Centre for Human Rights, “Gaza Strip: attacks in the border areas and their consequences”. Available at <https://reliefweb.int/sites/reliefweb.int/files/resources/ReliefWeb%20>

by Israeli security forces, including with live fire. Meanwhile, Israel has damaged Palestinian farmland in Gaza by aerially spraying the land with herbicides. In one such operation by Israel in January 2018, 550 acres of agricultural lands belonging to 212 farmers were affected, with an estimated loss of \$1.3 million.²⁵

13. While the blockade by Israel on air, sea and land is a predominant cause of the economic crisis within Gaza, the situation has been exacerbated by other internal and external factors. A significant reduction in international aid, in particular the loss of critical funding from the United States of America to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), has had crippling effects.²⁶ In addition, as the Palestinian Authority continues to withhold salaries of civil servants in Gaza as part of an ongoing political divide, the livelihoods of thousands of employees hang in the balance.²⁷ In such a political climate, the economic crisis is set to continue its rapid decline, at the expense of the most fundamental human rights and the basic human dignity of the population of Gaza.

B. West Bank, including East Jerusalem

Settler violence

14. Tensions between Israeli settlers and Palestinians in the West Bank have reached a boiling point. Israeli settler violence increased significantly throughout 2018, resulting in the killing of three Palestinians and the injury of 83 others, including 20 children, and numerous cases of vandalism, stone-throwing and intimidation.²⁸ More than 200 instances of violence by Israeli settlers were recorded in 2018, representing the highest monthly average of incidents since 2014.²⁹ Meanwhile, 144 attacks by Palestinians against Israeli settlers and other Israeli civilians in the West Bank were reported between January and October 2018, including seven fatalities.³⁰ As of early 2019, the tension has shown no signs of abating, in particular in the governorates of Nablus, Hebron and Ramallah.

15. Specific concerns have arisen since the removal of the Temporary International Presence in Hebron, an international observatory task force assigned to monitor the situation in the divided city.³¹ The Palestinian population in the H2 zone of the city, an area under the security control of Israel,³² has been subject to attacks of increasing frequency and severity. Reports of aggression by settlers have been particularly prominent on Al-Shuhada Street and in the Tall al-Rumeyda neighbourhood,³³ where Palestinian residents live in constant fear of attack on their person and property. The few international protective actors who have remained in Hebron have also been subject to harassment, intimidation and

Mail%20-%20%5BPchrgaza-e%5D%20Fact%20Sheets_%20Gaza%20Strip_%20Attacks%20in%20the%20border%20areas%20and%20their%20consequences.pdf.

²⁵ Office for the Coordination of Humanitarian Affairs, "The humanitarian impact of restrictions on access to land near the perimeter fence in the Gaza Strip", 3 August 2018. Available at www.ochaopt.org/content/humanitarian-impact-restrictions-access-land-near-perimeter-fence-gaza-strip.

²⁶ See www.independent.co.uk/news/world/middle-east/palestine-us-cuts-un-refugee-agency-united-nations-speak-out-a8521396.html.

²⁷ Amira Hass, "Abbas suspends salaries, allowances to over 5,000 Gazans", *Haaretz*, 15 February 2019.

²⁸ See www.ochaopt.org/content/high-level-violence-israeli-settlers-rise-israeli-fatalities.

²⁹ *Ibid.* The Office for the Coordination of Humanitarian Affairs has recorded 217 incidents, including assault and damage to Palestinian property, attributed to Israeli settlers.

³⁰ *Ibid.*

³¹ See www.haaretz.com/israel-news/.premium-israel-to-expel-international-monitoring-force-in-hebron-after-20-year-presence-1.6883412.

³² See www.ochaopt.org/sites/default/files/h2_fs_2018_v5_english11.pdf.

³³ See www.maannews.com/Content.aspx?id=782539.

threats from settlers. Such incidents have prompted several organizations to pull out of the city, owing to safety concerns for their staff.³⁴

16. Settler violence continues to go largely unchecked by Israeli security forces.³⁵ Widespread impunity emboldens settlers in their campaign of harassment against Palestinian residents. With the withdrawal of the Temporary International Presence in Hebron, as well as the decreasing presence of international monitors, Palestinians in the H2 zone are left in a grave and precarious situation with little recourse or protection from settler violence.

17. Settler violence is one factor that contributes to the existence of a coercive environment in many parts of the West Bank, including East Jerusalem. In such an environment, Palestinians may feel that there is no choice but to leave their homes, which could amount to forcible transfer – a grave breach of the Fourth Geneva Convention and a war crime under the Rome Statute of the International Criminal Court (see A/71/554, para. 34).

Forced evictions in East Jerusalem

18. Across the occupied West Bank, home demolitions and forced evictions continue, resulting in the displacement of Palestinians and raising serious concerns of forcible transfer.³⁶ At the same time that Israel is supporting the expansion of settlements, including those built on private Palestinian land,³⁷ it continues to order the demolition of Palestinian homes, ostensibly for the lack of planning permission, although Palestinians are systematically denied building permits. These double standards are manifestly discriminatory, while the settlements themselves are illegal under international law.³⁸

19. Occupied East Jerusalem is home to 3,500 Israelis living in settlements in the heart of Palestinian communities.³⁹ The East Jerusalem neighbourhood of Shaykh Jarrah has been particularly affected by settler activity owing to its location near the Old City, as well as competing historical legal claims to land rights. In 1956, under an agreement between UNRWA and the Government of Jordan, which at the time controlled the West Bank, 28 Palestinian refugee families were resettled in Shaykh Jarrah.⁴⁰ The families initially rented the homes, on the understanding that they would eventually receive legal title to the property.⁴¹ After the Six-Day War and subsequent occupation by Israel of East Jerusalem in 1967, land administration matters came under the control of Israeli authorities. In this context, two Jewish committees claimed ownership of the land in Shaykh Jarrah on the basis of historical and religious affiliation. Legal disputes to the land have been ongoing for decades,⁴² and more than 200 Palestinians are currently at risk of eviction in Shaykh Jarrah.⁴³

20. The Sabbagh family is among those facing imminent forced eviction and a heightened risk of forcible transfer. The Sabbaghs are Palestinian refugees originally from Jaffa who were settled in Shaykh Jarrah under the 1956 agreement between UNRWA and the Government of Jordan. Although their original home still stands in Jaffa, they are

³⁴ See www.oikoumene.org/en/press-centre/news/wcc-pulls-accompaniers-from-hebron-due-to-security-concerns.

³⁵ See www.timesofisrael.com/leftists-on-tour-of-hebron-confirmed-in-view-that-settlers-already-won/.

³⁶ See www.ochaopt.org/theme/displacement.

³⁷ See www.haaretz.com/israel-news/.premium-israel-says-will-legalize-west-bank-homes-built-on-private-palestinian-land-1.6919910.

³⁸ Security Council resolution 2334 (2016).

³⁹ See www.ochaopt.org/content/un-officials-and-ngo-partners-call-halt-plans-displace-palestine-refugees-sheikh-jarrah.

⁴⁰ See www.adalah.org/uploads/oldfiles/newsletter/eng/feb10/docs/Sheikh_Jarrah_Report-Final.pdf.

⁴¹ *Ibid.* In accordance with certain conditions, including surrendering their refugee ration card and paying nominal rent.

⁴² *Ibid.*

⁴³ See www.ochaopt.org/content/un-officials-and-ngo-partners-call-halt-plans-displace-palestine-refugees-sheikh-jarrah.

precluded from reclaiming it under Israeli law.⁴⁴ After a protracted legal battle against an Israeli settler organization over the disputed landownership, including a failed appeal to the Israeli High Court of Justice,⁴⁵ the family was given an eviction notice by the Law Enforcement and Collection Authority of Israel on 3 January 2019.⁴⁶ Thirty-two members of the Sabbagh family, including six children, face forced eviction from their home in East Jerusalem, while an additional 19 members will be directly affected by the loss of the family property in the event of the eviction.⁴⁷ There are serious concerns that the decision of the High Court not to rehear the case will pave the way for similar evictions across East Jerusalem.

21. This situation of forced eviction in Shaykh Jarrah is mirrored in other Palestinian neighbourhoods across East Jerusalem, including Bayt Hanina, Bayt Safafa, the Old City, Ra's al-Amud and Silwan. The Office for the Coordination of Humanitarian Affairs estimates that 199 Palestinian households are subject to eviction cases, placing 877 people, almost half of whom are children, at risk of displacement.⁴⁸ The eviction cases, the majority of which have been brought by settler organizations, exist within the context of the unilateral annexation by Israel of occupied East Jerusalem. The Security Council, in its resolutions, affirms that all legislative and administrative measures taken by Israel to alter the character and status of Jerusalem are null and void.⁴⁹

22. Forced evictions constitute gross violations of human rights, including civil, cultural, economic, political and social rights.⁵⁰ Forced evictions have devastating impacts in particular on the enjoyment of the rights to adequate housing, food, water, health, education, work, security of the person, freedom from cruel, inhuman and degrading treatment and freedom of movement.⁵¹ In addition, forcible transfer, which may result from forced eviction, is a grave breach of the Fourth Geneva Convention (art. 147) and a war crime.⁵²

C. Human rights defenders

23. Since the report of the Special Rapporteur to the Human Rights Council at its thirty-fourth session (A/HRC/34/70), there has been a rise in intimidation and threats against civil society actors who advocate the protection of international human rights and humanitarian law in the Occupied Palestinian Territory. Israeli authorities have continued to use a number of measures to obstruct the work of human rights defenders and narrow the space for advocacy and litigation. Such measures include movement restrictions in the form of travel bans and visa denials, public stigmatization, arbitrary arrests and prosecutions and ill-treatment.

24. Of particular concern are the harmful practices employed by the political leadership and State authorities in Israel to silence the criticism by human rights defenders of certain government policies. Such measures include verbal attacks, disinformation campaigns and delegitimization efforts, as well as the targeting of civil society funding sources. For example, in the Money Trail reports, published in May 2018 and January 2019, the Ministry of Strategic Affairs of Israel accused the European Union of granting financial aid to organizations that allegedly promote boycotts against Israel. Those accused included respected European and Palestinian organizations such as Al-Haq, the Palestinian Centre for Human Rights and the Al Mezan Center for Human Rights. The Ministry also alleged

⁴⁴ See <http://peacenow.org.il/en/sabagh-family-sheikh-jarrah>.

⁴⁵ See www.haaretz.com/middle-east-news/palestinians/premium-israel-s-top-court-won-t-rehear-case-on-eviction-of-palestinians-in-east-jerusalem-1.6830318.

⁴⁶ See www.ochaopt.org/content/imminent-eviction-palestinian-family-east-jerusalem.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Inter alia, Security Council resolutions 252 (1968), 267 (1969), 471 (1980), 476 (1980) and 478 (1980).

⁵⁰ See www.ohchr.org/Documents/Publications/FS25.Rev.1.pdf.

⁵¹ See www.ohchr.org/en/issues/housing/pages/forcedevictions.aspx.

⁵² Rome Statute of the International Criminal Court, art. 8.

that several of the non-governmental organizations have ties to terrorism. In the report, a list of statements or actions allegedly supporting boycotts of Israel purportedly made by each organization is provided, followed by a screenshot showing the funding provided to each organization by the European Union. The European Union strongly rejected the allegations as unsubstantiated.

25. Further legitimization of the harm inflicted on human rights defenders is reflected in recent legal developments. In the words of the Human Rights Defenders Fund in Israel, “the damage to human rights organizations in Israel is being formally imposed and institutionalized by parliamentary activity”.⁵³ The organization provides legal counselling and representation to human rights defenders in an attempt to mitigate the curtailment of the rights to freedom of association, expression and assembly. It cites as examples the anti-boycott law of 2011 (which allows the State to withdraw benefits to organizations calling for boycotts and does not distinguish between boycotts of goods produced in illegal Israeli settlements in the Occupied Palestinian Territory and boycotts of goods produced by Israel), the non-governmental organization transparency law of 2016 (which requires Israeli organizations that receive more than half of their public funding from abroad to disclose this in all publications, a rule that predominately affects human rights organizations and has the effect of singling them out, while organizations receiving private funding are not affected) and the amendments of 2017 to the Entry into Israel Law (which restrict the entry into Israel of individuals calling for boycotts of Israel and its settlements). These initiatives have seriously curtailed the ability of human rights defenders to carry out their legitimate work, provide protection and call for an end to violations of human rights in the Occupied Palestinian Territory.

III. Right to water, natural resources and the environment

26. A cluster of Palestinian villages in the south Hebron hills have had their newly laid water pipes, which had finally brought them clean running water, destroyed by the Israeli Civil Administration, forcing them to buy expensive trucked-in water for their homes and animals.⁵⁴ In Gaza, the collapse of the coastal aquifer, the only natural source of drinking water in the Strip and the water from which is now almost entirely unfit for human consumption, is contributing to a significant health crisis among the 2 million Palestinians living there.⁵⁵ Throughout the West Bank, Israeli quarry companies extract approximately 17 million tons of stone annually, almost all of which is destined for the Israeli local market, notwithstanding strict prohibitions in international law against a military power economically exploiting an occupied territory.⁵⁶ The Dead Sea and its plentiful natural resources, part of which lie within the Occupied Palestinian Territory, are off-limits to any Palestinian development, while Israeli companies are permitted to harvest the minerals in an apparent act of pillage.⁵⁷ Groves of West Bank olive trees, which are both an economic wellspring for thousands of Palestinian farmers and a symbol of Palestinian identity, are routinely destroyed by Israeli settlers with virtual impunity.⁵⁸ The transfer of Israeli industrial waste to treatment plants in the West Bank, through the creation of so-called “sacrifice zones” that are less rigorously regulated, contributes to the environmental scarring of the occupied territory, without the involvement or consent of the Palestinians.⁵⁹

⁵³ See <http://hrdf.org.il/legislative-initiatives/>.

⁵⁴ See www.haaretz.com/israel-news/.premium-why-doesn-t-israel-want-palestinians-to-have-running-water-1.6959524.

⁵⁵ Shira Efron and others, *The Public Health Impacts of Gaza’s Water Crisis: Analysis and Policy Options* (Santa Monica, RAND Corporation, 2018).

⁵⁶ Yesh Din, “The great drain: Israeli quarries in the West Bank”, 14 September 2017.

⁵⁷ Claudia Nicoletti and Anne-Marie Hearne, *Pillage of the Dead Sea: Israel’s Unlawful Exploitation of Natural Resources in the Occupied Palestinian Territory* (Ramallah, Al-Haq, 2012).

⁵⁸ See www.timesofisrael.com/olive-tree-sabotage-plagues-palestinian-farmers/.

⁵⁹ Adam Aloni, *Made in Israel: Exploiting Palestinian Land for Treatment of Israeli Waste* (B’Tselem, 2017).

27. For the almost 5 million Palestinians living under occupation, the degradation and alienation of their water supply, the exploitation of their natural resources and the defacing of their environment are symptomatic of their lack of any meaningful control over their daily lives, as Israel, the occupying Power, exercises its military administrative powers in a sovereign-like fashion, with vastly discriminatory consequences. All peoples, including peoples under occupation, enjoy the sovereign right to control their natural wealth,⁶⁰ and what an occupying power may do with the resources of an occupied territory is strictly regulated in international law. Nevertheless, the Israeli occupation, with its appetite for territory and settlement implantation and its sequestration of natural resources, has become virtually indistinguishable from annexation (see A/73/447).

28. Accordingly, in the present section, the Special Rapporteur focuses on whether Israel has fulfilled its solemn duty under international law to protect the right of the Palestinian people to their water, their natural resources and their environment in the context of its five-decade-long occupation.

A. Sovereignty, occupation and the right to natural wealth under international law

International humanitarian law

29. The relevant body of international humanitarian law, including the law of occupation, applies in toto to the Palestinian territory: the West Bank, including East Jerusalem, and Gaza.⁶¹ As the occupying Power, Israel is restricted by law to acting only as the temporary administrator of the Palestinian territory until it returns the territory in full, in as short and as reasonable a time as possible, to the inherent sovereign and protected population: the Palestinian people.⁶² An occupying power acquires no sovereign right over any of the occupied territory and is prohibited from taking any steps towards annexation.⁶³ It must govern the occupied territory in good faith and act as trustee in the best interests of the protected people throughout the occupation, subject only to its own legitimate security and administrative requirements (see A/72/556). In previous reports, the Special Rapporteur has determined that Israel is in breach of these foundational principles of international humanitarian law, and it is now presumed to be the unlawful occupant of the Palestinian territory (ibid.; and A/73/447).

30. While Israel is acting as the temporary occupant, among its most important legal duties is to respect and preserve the fundamental rights of the protected population under international law.⁶⁴ With regard to the natural wealth of an occupied territory, which includes its water, its soil and lands, its environment and its finite and renewable natural resources, the occupying power assumes a number of specific legal responsibilities.

31. First, the occupying power is entitled only to a limited use of the public natural resources of the occupied territory. Article 55 of the Regulations respecting the Laws and Customs of War on Land (The Hague Regulations) of 1907 stipulates that the occupying power acts “only as administrator and usufructuary” of the public immovable property of the occupied territory. It must therefore safeguard the capital of these resources according to the principle of conservation.⁶⁵ Accordingly, the occupying power has no legal authority to exploit any of the resources or property of the territory for the benefit of its own

⁶⁰ General Assembly resolution 73/255, third preambular para.

⁶¹ Security Council resolution 2334 (2016), third preambular para.

⁶² Aeyal Gross, *The Writing on the Wall: Rethinking the International Law of Occupation* (Cambridge, Cambridge University Press, 2017).

⁶³ Orna Ben-Naftali and others, *The ABC of the OPT: A Legal Lexicon of the Israeli Control over the Occupied Palestinian Territory* (Cambridge, Cambridge University Press, 2018).

⁶⁴ P. Spoerri, “Law of occupation”, in *The Oxford Handbook of International Law in Armed Conflict*, Andrew Clapham and Paola Gaeta, eds. (Oxford, Oxford University Press, 2014).

⁶⁵ Michael Bothe, “The administration of occupied territory”, in *The 1949 Geneva Conventions: A Commentary*, Andrew Clapham, Paola Gaeta and Marco Sassòli, eds., (Oxford, Oxford University Press, 2015).

economy.⁶⁶ The purpose of this rule is to remove any incentive for the occupying power to act in a predatory or avaricious manner towards the occupied territory and its wealth, thereby discouraging war and prolonged alien rule.

32. The occupying power may use the natural wealth of the territory to furbish its armed forces during the occupation only as strictly required by security, military and administrative necessity and without exceeding normal use.⁶⁷ It is required to take steps to restore the economy by enabling the extraction of the territory's natural wealth for the benefit of the protected people, as long as these assets are not wasted, neglected or abused, or usurped for the benefit of the occupier's economy.⁶⁸ Any use of such wealth beyond these allowances would likely amount to looting and pillage, which are forbidden under the laws of occupation.⁶⁹ Furthermore, the occupying power is prohibited from destroying or appropriating moveable private property, except for requisitions in kind for the occupying army and in proportion to the resources of the territory.⁷⁰

33. Second, the occupying power is absolutely forbidden under the Fourth Geneva Convention (art. 49 (6)) to transfer any of its civilian population into the occupied territory, and such transfer is considered a war crime under the Rome Statute (art. 8 (2) (b) (viii)). This rule is meant to eliminate the temptation of annexation and colonialism. One of the inevitable consequences of transferring the civilian population is the occupying power's requisition of the territory's natural wealth to sustain this colonizing population. In such circumstances, this wealth is invariably appropriated in a deeply discriminatory fashion to the detriment of the protected population (see A/HRC/22/63).

34. Third, the occupying power's duty to act as trustee towards the protected population includes the obligation of good governance.⁷¹ This obligation requires the occupying power, among other things, to safeguard, to the extent possible, the ability of the protected population to enjoy at least an adequate standard of living, including all the necessities for personal and economic life, environmental conservation and the sustainable use of natural resources.⁷² These principles of trusteeship and good governance incorporate the duty to preserve and protect the territory's natural wealth in preparation for the expeditious end of the occupation and the full restoration of sovereignty.⁷³ They also include the strict prohibition of discrimination.⁷⁴

International human rights law

35. International human rights law applies at all times to all peoples during all occasions, including during armed conflict and military occupation.⁷⁵ Notwithstanding the distinct purposes of international human rights law and international humanitarian law, international human rights law is to be read as being complementary to international

⁶⁶ Iain Scobbie, "Natural resources and belligerent occupation: perspectives from international humanitarian and human rights law", in *International Law and the Israeli-Palestinian Conflict: A Rights-Based Approach to Middle East Peace*, Susan Akram and others, eds., (London, Routledge, 2011).

⁶⁷ Regulations respecting the Laws and Customs of War on Land (The Hague Regulations), art. 52.

⁶⁸ Ben Saul, "The status of Western Sahara as occupied territory under international humanitarian law and the exploitation of natural resources", *Global Change, Peace & Security*, vol. 27, No. 3 (2015).

⁶⁹ International Court of Justice, *Democratic Republic of the Congo v. Uganda*, Judgment of 19 December 2005, paras. 222–250.

⁷⁰ The Hague Regulations, art. 52.

⁷¹ The Security Council, in its resolution 1483 (2003), directed the military coalition occupying Iraq to promote the welfare of the Iraqi people through the effective administration of the territory.

⁷² Michael Bothe, "The administration of occupied territory".

⁷³ The Security Council, in its resolution 1483 (2003), recognized, with respect to the occupation of Iraq, "the right of the Iraqi people freely to ... control their own natural resources, welcoming the commitment of all parties concerned to support the creation of an environment in which they may do so as soon as possible, and expressing resolve that the day when Iraqis govern themselves must come quickly".

⁷⁴ Fourth Geneva Convention, art. 27.

⁷⁵ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, para. 112.

humanitarian law in situations of occupation, thereby satisfying the purpose of both of these bodies of law to provide a broad protection of rights to everyone, including protected peoples under occupation (see E/C.12/1/Add.90, para. 31).

36. As such, the full panoply of social, economic, cultural, political and civil rights enshrined in international human rights law is available to peoples living under occupation to protect their sovereignty over their natural wealth. Most importantly, the right to self-determination is expressly affirmed in the opening paragraph of common article 1 (1) of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.⁷⁶ The right of the Palestinian people to self-determination has been widely and repeatedly recognized by the international community.⁷⁷ A fundamental right guaranteed to all peoples in the exercise of their right to self-determination is the ability to, “for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence”.⁷⁸

37. The unwarranted exploitation of the natural resources of a country or territory by an alien authority, including an occupying power, would be a breach of the fundamental human right of the people under alien rule to be able to develop, manage, conserve and dispose of their own resources in accordance with their right to self-determination.

38. Furthermore, the international guarantee of human rights is to be enjoyed by people without discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁷⁹ This right includes the right to enjoy the natural wealth and resources of the occupied territory without discrimination, including during occupation.

39. The right of everyone to an adequate standard of living and to the continuous improvement of living conditions is recognized in the International Covenant on Economic, Social and Cultural Rights. In the case of an occupation, the occupying power is required to take the appropriate steps to ensure the realization of this right,⁸⁰ including the facilitation of the necessary access of the protected people to their natural wealth and resources of the territory to enable an adequate standard of living and the continuous improvement of living conditions to be achieved.

40. An emerging human right is the right to development, first proclaimed by the General Assembly in 1986.⁸¹ The Declaration on the Right to Development contains a number of recognized human rights which are binding under international law that are applicable to access to and the protection of the natural wealth in the Occupied Palestinian Territory, including the following:

- (a) Full sovereignty over one’s natural resources (art. 1);
- (b) The elimination of foreign domination and occupation (art. 5);
- (c) The prohibition of discrimination and the flagrant abuse of human rights (art. 6);
- (d) The full enjoyment of all human rights and fundamental freedoms, including socioeconomic rights (arts. 6 and 8).

⁷⁶ See also International Court of Justice, *Portugal v. Australia*, Judgment of 30 June 1995, para. 29; and *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, para. 88.

⁷⁷ General Assembly resolution 73/158.

⁷⁸ International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights, common art. 1 (2).

⁷⁹ International Covenant on Economic, Social and Cultural Rights, art. 2 (2).

⁸⁰ *Ibid.*, art. 11.

⁸¹ General Assembly resolution 41/128. The Special Rapporteur devoted his first report (A/71/554) to the application of the right to development to occupied Palestine.

B. Right to water in the Occupied Palestinian Territory

41. Water is an indispensable precondition for life, a vital public good, an economic cornerstone, a finite resource and a necessary crucible for ensuring human dignity. It distinguishes Earth from the barren planets around it. The United Nations has recognized access to water as both a fundamental human right in itself and an integral component for the realization of all other human rights, including the right to a healthy environment and the right to development.⁸² As Richard Jolly, formerly of the United Nations Development Programme, wrote:

To emphasize the human right of access to drinking water does more than emphasize its importance. It grounds the priority on the bedrock of social and economic rights, it emphasizes the obligations of States parties to ensure access, and it identifies the obligations of States parties to provide support internationally as well as nationally.⁸³

42. The right to water requires that water supplies are sufficient, safe, acceptable for consumption, physically accessible and affordable.⁸⁴ It also commands that access to safe and clean drinking water and sanitation must be equitable and non-discriminatory, both within societies and among States.⁸⁵ Furthermore, States are required to refrain from interfering with the enjoyment of the right to water, including by refraining from any practice that would limit access to or destroy water services and infrastructure as a punitive measure or for the purpose of driving out the protected population.⁸⁶ Under the laws of occupation, groundwater is considered immovable public property, and its appropriation by the occupying power is restricted to normal use for military and administrative needs.⁸⁷

43. Water, and its effective control and management, is an essential component for the exercise of sovereignty in the modern world. As the 51-year-old occupation by Israel has become more entrenched, however, the deeply inequitable distribution of water imposed by Israel illustrates the utter lack of any substantive control of Palestinians over their daily lives. With the collapse of the natural sources of drinking water in Gaza and the inability of Palestinians to gain access to most of their water sources in the West Bank, water has become a potent symbol of the systematic violations of human rights occurring in the Occupied Palestinian Territory. While Israelis, including those living in illegal settlements, enjoy unlimited running water year-round, several million Palestinians endure water shortages caused by either contamination or lack of access.⁸⁸ The irony is manifest: while Israel has created world-class hydro technology for the creation and export of desalination plants, advanced irrigation systems and the recovery and productive recycling of wastewater, the Palestinian territory it occupies is water insecure. Indeed, the World Bank stated in 2009 that the Palestinians in the occupied territory have the lowest access to fresh water resources in the region, notwithstanding the fact that the Palestinian territory has ample water resources.⁸⁹

⁸² The General Assembly, in its resolution 64/292, recognized the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights.

⁸³ Richard Jolly, "Water and human rights: challenges for the 21st century", address at the conference of the Royal Academy for Overseas Sciences of Belgium, Brussels, 23 March 1998.

⁸⁴ See www.un.org/waterforlifedecade/human_right_to_water.shtml.

⁸⁵ Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water.

⁸⁶ *Ibid.*; and Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts, art. 54 (2).

⁸⁷ The Hague Regulations, art. 55; and Iain Scobbie, "Natural resources and belligerent occupation".

⁸⁸ Elena Lazarou, "Water in the Israeli-Palestinian conflict", European Parliamentary Research Service, briefing, January 2016.

⁸⁹ World Bank, *West Bank and Gaza: Assessment of Restrictions on Palestinian Water Sector Development*, Report No. 47657-GZ (Washington, D.C., 2009). Indeed, Ramallah has a higher average annual rainfall than London.

C. Water in the context of the Israeli occupation

44. There are three primary sources of natural fresh water in the Occupied Palestinian Territory: (a) the Jordan River; (b) the coastal aquifer; and (c) the mountain aquifer, which is divided into the western aquifer basin, the north-eastern aquifer basin and the eastern aquifer basin. Although the Jordan River forms the eastern boundary of the Occupied Palestinian Territory, Israel has prohibited the Palestinians from drawing any of its waters since the occupation began in 1967 by declaring its riverbanks a closed military zone and by destroying Palestinian pumps and irrigation ditches.⁹⁰ The coastal aquifer lies beneath Gaza and the coastal plain of Israel, but its availability as a source of drinking water for Gazans has been severely compromised by overpumping and the infiltration of seawater and sewage.⁹¹ The mountain aquifer is located primarily in the West Bank but also crosses the Armistice Line of 1949. It is the largest water source in the region. Israel annually extracts far above its population share of the waters from this aquifer.⁹²

45. Following the beginning of its belligerent occupation in 1967, Israel placed all Palestinian water usage and development under its military control. In accordance with military order No. 92 of August 1967, authority over all water resources in the occupied territory was transferred to the Israeli military, while Palestinians were prohibited from constructing new water installations or maintaining existing installations without a military permit under military order No. 157 of November 1967. These orders remain in force and apply only to Palestinians and not to Israeli settlers, who are governed by Israeli law. In 1982, ownership of all West Bank water supply systems was assumed by Mekorot, the Israeli national water company, which is 50 per cent owned by the Government of Israel.⁹³

West Bank

46. Although some governance powers were devolved to the Palestinian Authority in accordance with the Oslo Accords (the Declaration of Principles on Interim Self-Government Arrangements and the Interim Agreement on the West Bank and the Gaza Strip) signed by Israel and the Palestine Liberation Organization in the early and mid-1990s, Israel did not relinquish its primary domination over the waters of the West Bank. For the purposes of the present report, the Oslo Accords signified three significant developments.

47. First, the accords created three separate areas of control in the West Bank, with Israel exercising overall security control over the entire territory and the Palestinian Authority exercising civil control over 40 per cent of the territory of the West Bank and, within that, nominal security control over only 18 per cent. In Area C, comprising 60 per cent of the West Bank, Israel has exclusive civil and security control. All West Bank settlements of Israel are in Area C, which also contains the majority of the agricultural lands, water sources and underground reservoirs of the Occupied Palestinian Territory, to which the Palestinian Authority has no access.

48. Second, in article 40 of the Interim Agreement on the West Bank and the Gaza Strip of 1995, it was provided that Israel would recognize “Palestinian water rights” in the West Bank; however, these rights were not defined. The allocation of the waters from the mountain aquifer under the 1995 agreement was overwhelmingly in favour of Israel – Israel was to receive 80 per cent of the waters and the Palestinians only 20 per cent.⁹⁴ Under the agreement, the Palestinian Authority acquired some powers to manage water, but only within Areas A and B; most of the infrastructure for water acquisition and development happens to lie in Israeli-controlled Area C.⁹⁵ Although the Oslo Accords were designed to

⁹⁰ Elisabeth Koek, *Water for One People Only: Discriminatory Access and “Water-Apartheid” in the OPT* (Ramallah, Al-Haq, 2013).

⁹¹ United Nations country team in the Occupied Palestinian Territory, “Gaza: ten years later”, July 2017.

⁹² Al-Haq, 2019 water report (forthcoming).

⁹³ Amnesty International, *Troubled Waters: Palestinians Denied Fair Access to Water* (London, 2010).

⁹⁴ B’Tselem, “Water crisis”, 11 November 2017.

⁹⁵ Amnesty International, *Troubled Waters: Palestinians Denied Fair Access to Water*, p. 17: “[The Palestinian Authority] acquired only the responsibility for managing the supply of the insufficient

last only until 1999, they remain in place, and their inequitable water arrangements have in fact widened. In 2014, it was estimated that the share of the mountain aquifer waters was 87 per cent for Israel and 13 per cent for the Palestinians.⁹⁶

49. Third, under the 1995 agreement, the Israeli-Palestinian Joint Water Committee was established, comprising an equal number of designated water officials from Israel and the Palestinian Authority. The Committee is authorized to regulate water and sanitation in the West Bank, including granting permits, drilling wells and extracting water. As the World Bank noted, however, the Committee created an effective Israeli veto over any management measures and infrastructure projects proposed by the Palestinian Authority. Furthermore, the World Bank observed that “Israeli territorial jurisdiction in Area C ... consolidates this control, which makes integrated planning and management of water resources virtually impossible for the Palestinian Authority”.⁹⁷ In 2012, the Committee stopped meeting because the Palestinian members were no longer willing to accept the Israeli insistence on a quid pro quo arrangement, which entailed the approval of Israeli water projects to service the Israeli settlements in exchange for the approval of some Palestinian water projects.⁹⁸ The Committee resumed its work in 2017, with modified approval procedures: Palestinians can now lay water pipes and networks without Committee approval, but Israel can also develop its separate water system for the Israeli settlements without Committee approval.⁹⁹ According to water expert Jan Selby, the widening water inequalities have remained constant as “the West Bank has become progressively more dependent on Israel for its water supplies” and “though Palestinians will now have autonomy to lay pipelines, what they won’t have is any additional water to go in them – except with Israeli consent”.¹⁰⁰

50. Among the many features of the inequitable arrangements for water use and management in the West Bank, two in particular can be identified for the purposes of the present report.

51. First, there is a significant disparity between Israelis and West Bank Palestinians in their access to and consumption of water. A recent estimate found that residents of Israel and Israeli settlers consume approximately three times more water per person per day (250 litres) than West Bank Palestinians (84 litres).¹⁰¹ According to B’Tselem, the Palestinians are currently extracting only about 75 per cent of their share of water as specified in the Oslo Accords (20 per cent of the total aquifer), notwithstanding the fact that the Palestinian population in the West Bank has nearly doubled since 1995.¹⁰² There are several reasons for this, including the technical failure of new drilling and the administrative obstacles erected by Israel with regard to permission for replacing older pipelines and drilling wells in Area C. As a result, the Palestinian Authority has to purchase significant quantities of water from Mekorot, much of which has been extracted from the mountain aquifer within the West Bank. When summer droughts occur, Palestinian communities that are connected to the Mekorot network often suffer lengthy water outages, while neighbouring settlements are largely spared any significant water reduction.¹⁰³

52. Second, the Israeli settlements have played a significant role in perpetuating the discriminatory extraction and use of water in the West Bank. All Israeli settlements are linked to the Mekorot national water system and receive developed-world levels of water

quantity of water allocated for use by the Palestinian population and for maintaining and repairing a long-neglected water infrastructure that was already in dire need of major repairs.”

⁹⁶ Al-Haq, 2019 water report (forthcoming).

⁹⁷ World Bank, *West Bank and Gaza: Assessment of Restrictions on Palestinian Water Sector Development*, p. vii.

⁹⁸ Jan Selby, “Cooperation, domination and colonisation: the Israeli-Palestinian Joint Water Committee”, *Water Alternatives*, vol. 6, No. 1 (2013).

⁹⁹ See <https://al-shabaka.org/briefs/apolitical-approach-palestines-water-crisis/>.

¹⁰⁰ See www.opendemocracy.net/en/north-africa-west-asia/what-hope-for-two-state-solution/.

¹⁰¹ Elena Lazarou, “Water in the Israeli-Palestinian conflict”. The World Health Organization recommends a minimum of 100 litres of water per person per day for household use.

¹⁰² B’Tselem, “Water crisis”.

¹⁰³ See www.haaretz.com/israel-news/.premium-palestinian-city-parched-after-israel-cuts-water-supply-1.5401178.

for drinking, sanitation and commercial use. By contrast, approximately 180 Palestinian communities in Area C have no connection to a water network, leaving them either to rely on shallow wells or to purchase water from tankers at a considerable price.¹⁰⁴ The disparities are most acute in the Jordan Valley: figures from 2013 reveal that the 10,000 Israeli settlers in the Valley were provided with the lion's share of the 32 million m³ of water drilled that year from the mountain aquifer by Mekorot for their domestic and agricultural use. In comparison, the 2.7 million Palestinians across the West Bank were allocated only 103 million m³ from the western aquifer.¹⁰⁵ In addition, some Israeli settlements have taken control of Palestinian water springs in the West Bank with the assistance of the Israeli military. The Palestinians who have lost access to their springs often have no connection to water networks and had relied upon the springs as their main or only source of drinking water and for agricultural requirements.¹⁰⁶ Demonstrations by Palestinian villagers against the seizures have led to violence and deaths.¹⁰⁷

Gaza

53. The water situation in Gaza is a crisis verging on a humanitarian catastrophe. The United Nations estimated in 2017 that more than 96 per cent of the coastal aquifer groundwater – the sole source of natural water in Gaza – had become unfit for human consumption and the aquifer would be irreversibly damaged as a drinking source by 2020 without a radical intervention.¹⁰⁸ Gaza has been brought to the brink by multiple factors, including the following: its increasing population; the resulting overextraction of the source aquifer; the substantial contamination of the aquifer by sewage and seawater; a feeble and steeply shrinking economy coupled with extreme poverty; the repeated destruction afflicted on its water, sanitation and energy supply systems by Israel through its various military campaigns since 2006; the suffocating blockade by Israel, including the restrictions it imposes on the import of dual-use items (including water pumps, spare parts, pipes and purification chemicals); a serious intra-Palestinian political split; and declining funding from international donors.¹⁰⁹ About 86 per cent of water supplies in Gaza are pumped from the aquifer. In 2000, the public water network provided more than 98 per cent of Gazans with safe drinking water; by 2014, that figure had plunged to 10.5 per cent. Most Gazans – more than 60 per cent of whom are food insecure and more than 55 per cent of whom are unemployed – now rely on low- and medium-quality trucked water that is from 10 to 30 times more expensive. While the average cost of water in the West is 0.7 per cent of monthly wages, a third of the monthly wages of Gazans goes towards the purchase of water, for those who can afford it. Given the high levels of poverty, many residents of Gaza must rely on tainted water from the public taps that are operational only a few times a week.¹¹⁰

54. The water crisis in Gaza is creating a serious public health danger for its inhabitants. The lack of a secure power supply – because of a war-damaged power plant, a chronic lack of fuel to operate what remains of the plant and insecure external sources – has meant that the waste treatment system in Gaza functions poorly, when it functions at all. This results in the discharge of 110,000 m³ of partially or entirely untreated waste daily into the Mediterranean Sea. More raw sewage is collected in unstable lagoons and waste pools, which often leaches into the subsoil and the aquifer. All this has resulted in very high levels of nitrates, chemicals and chlorine in Gazan waters, which contributes to the threat of

¹⁰⁴ B'Tselem, "Water crisis".

¹⁰⁵ See www.haaretz.com/israel-news/.premium-no-shortage-of-discrimination-when-it-comes-to-water-in-the-west-bank-1.5404471.

¹⁰⁶ Office for the Coordination of Humanitarian Affairs, "How dispossession happens: the humanitarian impact of the takeover of Palestinian springs by Israeli settlers", March 2012.

¹⁰⁷ Ben Ehrenreich, *The Way to the Spring: Life and Death in Palestine* (New York, Penguin Books, 2017).

¹⁰⁸ United Nations country team in the Occupied Palestinian Territory, "Gaza: ten years later".

¹⁰⁹ Shira Efron and others, *The Public Health Impacts of Gaza's Water*.

¹¹⁰ Office for the Coordination of Humanitarian Affairs, "Gaza energy crisis: limited improvement in water and sanitation indicators; concerns over waterborne diseases remain", 10 November 2017; and United Nations country team in the Occupied Palestinian Territory, "Gaza: ten years later".

waterborne diseases. According to a RAND Corporation report of 2018, more than a quarter of all reported diseases in Gaza are the result of poor water quality and limited access to water supplies. It also noted that water-related diseases are the primary cause of child morbidity.¹¹¹ In a 2011 study cited by RAND, the United Nations Children's Fund found that 12 per cent of deaths among young children and infants in Gaza were caused by diarrhoea, an entirely preventable illness.¹¹² At hospitals in Gaza, the lack of safe water has meant serious problems for the sterilization of equipment and the hands of health workers, elevating the risk of infections.¹¹³ In its report, the RAND Corporation raised the epidemiological fear that, with the growing water emergency and the recent loss of international funding for immunization programmes, it will be only a matter of time before a serious epidemic occurs.

55. Solutions for the water crisis in Gaza are both technological and political. A large desalination plant is planned for central Gaza, but substantial international funding is still required for construction and the plant would be able to meet only a small portion of the water needs of Gaza. Rehabilitating the power network in Gaza to produce reliable and affordable electricity to enable the construction and operation of the desalination plant, to build, repair and operate sewage treatment plants, to revitalize the Gazan economy and to provide steady power and water to homes and workplaces is essential. Major investments in solar panel farms would be economically beneficial, environmentally sustainable and supportive of efforts to restore the water sources in Gaza.¹¹⁴ As observed in a recent medical study, however, "occupation and siege are the primary impediments to the successful promotion of public health in the Gaza Strip".¹¹⁵ Until Israel completely lifts its blockade of Gaza, and until Palestinians in Gaza can exercise their freedom of movement and their right to development free from occupation, even the most imaginative technological solutions to the water crisis in Gaza will always be susceptible to the vagaries of a lopsided power relationship and an asymmetrical war.

D. Natural resources and the occupation

56. The approach of Israel towards the natural resources of the Occupied Palestinian Territory has been to use them as a sovereign country would use its own assets. Rather than obey the repeated entreaties of the international community to respect and apply international law during its occupation, Israel has repeatedly relied on disfigured and fringe interpretations of the law and on raw economic entitlement to justify its exploitation of the natural wealth of the occupied territory.

Quarrying

57. Israel has granted mining concessions to 10 Israeli-operated quarries in Area C of the West Bank. According to Yesh Din, the volume of quarrying has increased substantially in recent years, with production reaching 17 million tons in 2015. Approximately 94 per cent of the production – which yields stone, gravel and gypsum – is shipped to Israel for construction and infrastructure purposes. These West Bank operations make up between 20 and 30 per cent of the annual quarrying requirements of Israel, with royalties paid to the Government of Israel.¹¹⁶ In 2011, Yesh Din challenged the legality of Israeli quarrying operations before the Israeli High Court of Justice.¹¹⁷ In a ruling that reflects the custom of

¹¹¹ Shira Efron and others, *The Public Health Impacts of Gaza's Water*.

¹¹² United Nations Children's Fund, "Protecting children from unsafe water in Gaza: strategy, action plan and project resources", March 2011.

¹¹³ Office for the Coordination of Humanitarian Affairs, "Study warns water sanitation crisis in Gaza may cause disease outbreak and possible epidemic", 16 November 2018.

¹¹⁴ Shira Efron and others, *The Public Health Impacts of Gaza's Water*.

¹¹⁵ Ron J. Smith, "The effects of the Israeli siege on health provision in the Gaza Strip: a qualitative and theoretical analysis", *The Lancet*, vol. 391, No. S37 (February 2018).

¹¹⁶ Yesh Din, "The great drain: Israeli quarries in the West Bank".

¹¹⁷ High Court of Justice of Israel, *Yesh Din – Volunteers for Human Rights v. Commander of the IDF Forces in the West Bank and others*, Judgment No. 2164/09 of 26 December 2011.

the Court to provide judicial approval for many aspects of the occupation,¹¹⁸ it dismissed the petition. The Court held that The Hague Regulations of 1907 provide for economic development and normal life under occupation, but it did so without distinguishing between the interests of the protected population and the legal prohibitions against economic exploitation by the occupying power. According to Michael Sfard, an Israeli human rights lawyer, the High Court ruling in the quarry case “transforms limitations on the powers of the occupant to exploit the natural resources of an occupied territory into an authorization to advance the very colonial enterprise they were set to eliminate”.¹¹⁹

Dead Sea

58. Part of the Dead Sea lies within the Occupied Palestinian Territory. It contains substantial natural and mineral wealth, including groundwater, salt, sand, potash and mud (which is used for the cosmetics industry). The sea lies within Area C of the West Bank, and significant portions of the land surrounding it have been declared by Israel as closed military zones and off-limits to Palestinians. According to a study conducted by Al-Haq in 2012, approximately 50 Israeli cosmetic factories were operating in the Dead Sea area (of which some were operating in occupied Palestine and others in Israel), extracting the mud and other related raw materials to create finished products for both the domestic and the export markets.¹²⁰

Oil and gas development

59. The State of Palestine is almost completely dependent upon Israel for its energy and power supplies. This not only results in large revenue losses because of duties and surcharges imposed by Israel for the import of gas, oil and petroleum through Israel into the Occupied Palestinian Territory, but also contributes to a distorted economy that cannot manage a vital feature of its own development. Nevertheless, there is potential, as substantial oil, gas and shale oil deposits lie in the Mediterranean Sea off the coast of Gaza and Israel. However, Israel has maintained a tight naval blockade of Gaza since 2006 and closed the Occupied Palestinian Territory waters to any resource exploration.¹²¹ Since 2016, Israel has been auctioning marine blocks off its coast for resource exploration by international oil and gas corporations. At least four of the marine blocks apparently lie in waters off the coast of Gaza, and human rights organizations, including Al-Haq, have warned potential bidders about the potential jeopardy associated with these blocks.¹²² Other oil deposits have been verified near the Armistice Line between the West Bank and Israel, and similar concerns have been expressed about sovereignty over these natural resources.¹²³

E. Environmental protection and the occupation

60. States are obligated to ensure that the enjoyment of human rights is not affected by environmental harm and to adopt legal and institutional frameworks that protect against environmental harm that interferes with the enjoyment of human rights (see A/HRC/25/53, paras. 79–84). Environmental justice is an integral part of international environmental law. This concept is grounded in the principles of care and prevention, which oblige both States and non-State actors to protect and nurture the environment and to reduce, limit and control

¹¹⁸ David Kretzmer, *The Occupation of Justice* (Albany, State University of New York Press, 2002).

¹¹⁹ Orna Ben-Naftali and others, *The ABC of the OPT: A Legal Lexicon of the Israeli Control over the Occupied Palestinian Territory*, chap. U.

¹²⁰ Claudia Nicoletti and Anne-Marie Hearne, *Pillage of the Dead Sea*.

¹²¹ Susan Power, *Annexing Energy: Exploiting and Preventing the Development of Oil and Gas in the Occupied Palestinian Territory* (Ramallah, Al-Haq, 2015).

¹²² See www.alhaq.org/advocacy/topics/housing-land-and-natural-resources/1322-al-haq-warns-third-states-and-gas-companies-against-bidding-for-gas-licenses-in-disputed-waters-off-the-israeli-and-palestinian-coast.

¹²³ Susan Power, *Annexing Energy*.

activities that would cause harm to it.¹²⁴ Public consultation and transparency are key to upholding these principles. In the Occupied Palestinian Territory, the occupying Power exercises substantial control over the fate of the environment, and, in some cases, its actions have negative human rights consequences, in particular as a result of the environmental impact of these actions. Furthermore, the environmental impact of Israeli practices may be felt by not only Palestinians but also Israelis and others in the region.

Waste disposal

61. At least 15 Israeli waste treatment facilities have been created in the West Bank – an area beyond the domestic environmental regulatory regime of Israel – to treat hazardous pollutants such as sewage sludge, used oils, solvents, electronic waste, batteries and infectious medical waste. In a recent report, B’Tselem argued that Israel has sought to transfer the high costs of complying with rigorous domestic environmental regulations by creating so-called “sacrifice zones” in the West Bank.¹²⁵ Israel views the West Bank as a separate legal entity where its environmental laws do not apply, yet it treats the territory as its own insofar as it does not seek the consent of the Palestinian Authority in order to dispose of waste. The actions of Israel would appear to violate its trustee obligations as an occupying Power and breach its human rights duties to ensure the provision of high-quality public health and hygiene services for the protected population.¹²⁶ In addition, the impact of these “sacrifice zones” on the local water supply and the health of people living in surrounding communities is unknown.

Red Sea-Dead Sea project

62. Since 2013, Israel, Jordan and Palestine have been negotiating a water project that would carry water from the Red Sea to the southern part of the Dead Sea, where it would be desalinated. As part of the project, an estimated 32 million m³ of water would be sold annually to the Palestinians and transported to the West Bank (22 million m³) and Gaza (10 million m³). Some have heralded the project as a harbinger of prosperity and political cooperation.¹²⁷ Others, in particular human rights experts, have raised concerns about the serious environmental damage already done to the Dead Sea through the significant overexploitation of its resources and waters.¹²⁸ An important litmus test for assessing the worth of the project would be whether it will enable the State of Palestine to gain any more authority over its waters. If control over the project remains primarily in the hands of the occupying Power, with no genuine ability for Palestinians to gain jurisdiction over the parts of the Dead Sea within the occupied territory, the project may result simply in the consolidation of more power in the hands of Israel on its road to annexation.

IV. Conclusions

63. An occupying power that takes its responsibilities under international law seriously would rule in the best interests of the population under occupation and aim to end its alien rule as soon as reasonably possible. It would recognize that the territory’s natural wealth, environment and resources belongs to the protected people. As such, it would encourage them to assume increasing authority and management over this wealth as a necessary precondition for a short and successful occupation and a peaceful and cooperative future. An occupying power governed by these principles would not pillage. It would respect both public and private property. Any development or use of the natural resources of the

¹²⁴ Philippe Sands, *Principles of International Environmental Law*, 2nd ed. (Cambridge, Cambridge University Press, 2003).

¹²⁵ “Sacrifice zones” is the term used to describe the phenomenon of the waste industry seeking out communities or countries in which the regulation of hazardous waste is less stringently regulated and enforced. Sacrifice zones are often located near poor and disempowered populations, who, as a result, suffer a disproportionate exposure to environmental harm.

¹²⁶ Adam Aloni, *Made in Israel: Exploiting Palestinian Land for Treatment of Israeli Waste*.

¹²⁷ See www.nytimes.com/2017/07/13/opinion/israelis-and-palestinians-water-deal.html.

¹²⁸ Claudia Nicoletti and Anne-Marie Hearne, *Pillage of the Dead Sea*.

occupied territory would be conducted strictly within the limits of usufruct. It would seek to conserve and to preserve. Above all, it would not appropriate the occupied territory's natural resources for its own gain or exploitation.

64. Israel has strayed extremely far from these legal responsibilities. Indeed, its temporary-permanent occupation of the Palestinian territory has been the exact opposite of what is required of a faithful occupying power. During its five decades as the occupant, it has appropriated private and public property without lawful authority. It has regarded the Palestinian territory as its own for acquisitive purposes and as someone else's territory with respect to the protection of the people under occupation. Its expropriation of Palestinian hydro resources breaches international humanitarian law and international human rights law and scorns the principles that underlie the right to water. Its usurpation of the territory's natural resources and its disregard for its environment robs the Palestinians of vital assets that they require should they ever achieve their freedom. The right to development in Palestine has become a dead letter. These realities belie any visible path to Palestinian self-determination and instead lead to a darker future that portends dangers to both peoples.

V. Recommendations

65. **The Special Rapporteur recommends that the Government of Israel comply with international law and bring an end to its 51 years of occupation of the Palestinian territory. The Special Rapporteur further recommends that the Government of Israel take the following immediate measures:**

- (a) **Comply fully with Security Council resolution 2334 (2016) concerning the settlements;**
- (b) **End the blockade of Gaza, lift all restrictions on imports and exports and facilitate the rebuilding of its housing and infrastructure, with due consideration given to justifiable security considerations;**
- (c) **Ensure the protection of individuals seeking to exercise their rights to freedom of peaceful assembly and association and to freedom of expression, including human rights defenders;**
- (d) **End forced evictions and home demolitions, which contribute to the existence of a coercive environment and may lead to forcible transfer, a grave breach of the Fourth Geneva Convention;**
- (e) **Create an international Marshall Plan for Gaza and the West Bank, including East Jerusalem, that would, hand in hand with the defined end of the occupation, encourage investment in and the modernization of the infrastructure of the Palestinian territory, increase its educational and training capacity, improve its legal culture of human rights and incentivize its economic and social sectors to meet the challenges of self-determination.**

66. **With respect to natural resources and the environment, the Special Rapporteur recommends that the Government of Israel immediately take the following measures:**

- (a) **End practices that infringe upon the access of Palestinians to their natural resources, in violation of the duties of Israel as an occupying Power, and that have a negative impact on the realization of human rights for the protected Palestinian population;**
- (b) **Ensure equitable access to clean water, which is a fundamental human right in itself and an integral component for the realization of a range of other human rights;**
- (c) **End the extraction of natural resources undertaken not for the benefit of the protected population but instead for the benefit of the occupying Power, a practice that is prohibited by international humanitarian law;**
- (d) **Ensure that hazardous waste is disposed of in compliance with international standards and that waste disposal does not infringe upon the human**

rights of the protected population, and recognize that the disposal of hazardous material is an issue that has an impact on all surrounding areas given the interconnectedness of the local environment;

(e) Ensure that, during its remaining time as the occupying Power, all prior agreements on water between Israel and the Palestinian Authority are renegotiated in order to establish true equity and cooperation in the ownership, exploration, distribution and use of water sources in the region.
