

An International Paradigm Shift Recognising  
the Root Causes of Palestine's Struggle?  
**Reflection on the UN SR's Report and Recent  
Developments in the Discourse on  
Palestine/Israel**



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## I: Background

On October 18, 2022, pursuant to Human Rights Council resolution 5/1, Dr. Francesca Albanese, the newly elected UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, [published her first report focusing on the Palestinian Right to Self-Determination](#) and the international responsibility towards achieving it. Regarding it as an important precedent, and perhaps a milestone, in the international legal scene on Palestine, [Law for Palestine published a summary of the report](#).

Remarkably, two days following the SR's report, the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, shortly referred to as the UN Col on OPT and Israel, [issued an important report](#) establishing that "there are reasonable grounds to conclude that the Israeli occupation of Palestinian territory is now unlawful." This means that the Israeli occupation is illegal in itself, not just its consequences; and hence it should be ended immediately with no linkage to negotiations.

This report accelerated the Palestinian quest to obtain a new advisory opinion from the International Court of Justice (ICJ) on the legality/illegality of the prolonged Israeli occupation, and the responsibility of third states towards its end. A [draft resolution](#) in this regard has been [approved](#) last month by the UN Fourth Committee (Special Political and Decolonization), and will now be voted during the current UN General Assembly session -vote expected to take place within the next few days-. If approved, this important matter will be on the table of the ICJ to emit a legal opinion.

Not long ago, several NGO's as well as the former UN SR Prof. Michael Lynk in his [final report](#) stressed the issue of apartheid as a framework to view the current situation, to be completed now by Albanese report's highlighting of the anti-colonial angle.

All these UN and NGO reports are a clear indication that the international legal discourse is moving on from the status quo-based discourse (the discourse based on the realities on the ground) –that has been dominant since the Oslo accords- towards dealing with the root causes of the struggle; just as was the case before the beginning

of the peace process: a discourse of self-determination, anti-racism and anti-colonialism.

Considering it as one of the most recent and significant developments in the international legal discourse on Palestine, as we argue, this detailed article discusses the importance and details of Albanese report and explains why this report is different, and how to deal with it and translate it into actions.

In our point of view, Albanese's report is not merely an additional documentative report describing the crimes and violations committed by Israel, but rather a legal and policy report dotting the i's and crossing the t's, on the way to changing the international community's attitude to take a serious stand to find a just and rights-based solution grounded in respect for history and international law. As such, the report differs from other UN reports, that mostly follow the approach of 'International Legal Subalternity', [as coined and explained by Prof. Ardi Imseis](#), which simply highlights the daily violations of IHL and HR with no regards to the root causes.

Instead, this report deals with the core of the problem. It frames occupation within its wider context citing the plans and strategies of Israeli founding fathers and their successors and moves on from the ineffective repetition of the same old solutions that proved impossible to achieve (like ending occupation through negotiations)! These solutions are no more of giving an anesthetic to someone bleeding while ignoring the injury.

## **II: A Thorough Insight into the Report**

### **Zooming out then back in**

The report starts with building a historically sound narrative referring to the British Mandate and the 1948 Nakba when the plight started to take place on another level. It is true that the report, as did the SR explain in her introduction, does not include the Palestinian people in total, excluding those who are citizens of Israel and the refugees. It should be noted that it was only due to the procedural constraint of her mandate;

being limited to the occupied Palestinian territories since 1967 (which may need an intervention from the Human Rights Council to expand the mandate). However, the premise of the report, which is the right to self-determination, is related to all Palestinians in total, *as a people*, regardless of their geography or legal status. In para. 15, the SR makes it clear that the right to self-determination constitutes the “collective right par excellence, and the “platform right” necessary for the realisation of many other rights.” Without this right, “other rights will almost certainly not be realized” as she explains.

This premise makes us but think about why the UN was so inattentive to the Palestinian right to self-determination in 1947!? Why was there no referendum to see what Palestinians wanted back then!? Why was there no referendum about the Partition Plan!?

In August 1947, an 11 members UN Committee; UN Special Committee on Palestine (UNSCOP), issued its report to the UNGA with the majority of its members recommending partitioning Palestine into separate Arab and Jewish states with Jerusalem internationalized. This majority plan became the basis for the UNGA decision to partition Palestine. [According to the UN former Special Rapporteur for Palestine Prof. Michael Lynk](#), none of those 11 members, who decided the fate of Palestine and Palestinians without at least consulting their leadership, ever visited Palestine, “or indeed knew much about it, before their appointment.”

So as not to make this much of a blame game and a “what-if” sort of discussion, it is not too late to make up for that grave historic mistake and have a referendum for the entirety of the Palestinian people; particularly those in the occupied Palestinian territories and the refugees.

For example, as a part of a regular [surveys among Palestinian refugees conducted by Badil Center](#), the results demonstrated that the right to return is an inherent part of the identity of Palestinian refugees. Belief in the feasibility of return was exceptionally high among Palestinian youth, with 81.3% in total; reaching up to 97% in case the Internally Displaced Persons in 1948 were excluded. This is to say that Palestinians should be involved in deciding for their fate.

## Why Self-Determination, and why now?

Before making the case for self-determination, Madame Francesca explained why the occupation framework is both out-dated and insufficient, as will be explained later on in this commentary. She emphasized that the newly advanced “apartheid normative framework, while being quite necessary to highlight the Palestinian plight and “overcome a certain tendency to scrutinize Israeli violations often individual and decontextualized”, has several major limitations; especially if not considered as a part of “a holistic examination of the experience of the Palestinian people as a whole.”

First, the ‘territorial’ nature of the apartheid discourse (as presented in the most newly published reports) is problematic, as it excludes Palestinian refugees and is limited to Palestinians inside the OPT. Secondly, the focus on the apartheid discourse misses “the inherent illegality of Israel’s occupation” of Palestinian territories and the subsequent violations. Thirdly, the apartheid framework cannot, when taken alone, address the root-causes of the Palestinian plight; which should be taken in full historical and settler-colonial context.

## Navigating the settler-colonial root cause

The report explains that ever since the beginning of the occupation of the West Bank and Gaza, Israel started a process of de-Palestinianization of the occupied territories through several strategies developed by Israeli strategists such as the Allon Plan.

**Israel, the report illustrates, followed the strategies of (1) ‘strategic fragmentation’ of the territory to circumvent Palestinian sovereignty, (2) preventing economic prosperity and means to flourish through exploiting natural resources, (3) preventing identity through erasing Palestinian cultural and civil rights, and (4) preventing political existence (and resistance) and statehood to circumvent any chance of Palestinians being able to practice their Right to Self-Determination. These four elements constitute the basis of what can be described as an “Israeli settler colonial regime”.**

Here, some may claim that colonialism is equated with violating sovereignty and annexing the colonised territories; something that Israel has not fully done publicly so far.

However, declaring an act as a form of colonialism is no condition to its consideration as one. Actions on the ground that lead to the realisation that this is an act of colonialism are enough to conclude that there is a *de facto colonialism*. Nowadays, since colonialism has stopped being 'fashionable', states work hard on avoiding being called so, so alternatively they practice it without naming it accordingly. This makes it no less of a colonialism. Even states who illegally invade other countries work hard on coming up with a 'legal' justification as a pretext. They do not declare themselves to be "aggressors". Therefore, it is the responsibility of the international community to set clear criteria for what constitutes colonialism instead of waiting for the state practicing it to announce or accept the title.

Furthermore, let us remember that Israel did officially annex East Jerusalem and Golan Heights.

## Negotiating the illegal

In paragraphs 33-42, the report places occupation in its wider context. It analyses how it started and what was the vision of Israeli leaders, not just to criticise them for violating international law, but also to legally characterize the situation in a way that departs from the parrot-like attitude of repeating "the occupation ends by negotiations"; the dominant attitude right now. While the international community is so invested in a negotiations-based solution, Israeli leaders make it no secret that all the land is a part of the Greater Israel and that [there will be no Palestinian state](#). Practice on the ground makes it even far more clear.

The UN Col recent report spoke in detail about how the Israeli occupation is considered illegal in itself for its permanence and defacto annexation policies. Paragraph (30) of the report reads:

*"The establishment, maintenance and expansion of Israeli settlements throughout the West Bank, including in East Jerusalem, has fragmented and isolated Palestinians from their lands as well as from other Palestinian communities."*

After studying the nature and the practices of the Israeli occupation of the OPT, the Commission concluded in paragraph (75) that:

*"... there are reasonable grounds to conclude that the Israeli occupation of Palestinian territory is now unlawful under international law owing to its permanence and to actions undertaken by Israel to annex parts of the land de facto and de jure. Actions by Israel that are intended to create irreversible facts on the ground and expand its control over territory are reflections as well as drivers of its permanent occupation."*

Former SR for Palestine, Prof. Michael Lynk, mentioned in [his report in 2017](#) that the Israeli occupation in the occupied Palestinian territories has crossed the threshold of legality; an opinion he further stresses in [following writings](#). Lynk lays out a four-part test to check whether a military occupation has crossed the threshold of legality; (i) An Occupying Power cannot annex any of the Occupied Territory, (ii) An Occupation is inherently temporary, and the Occupying Power must seek to end the occupation as soon as reasonably possible, (iii) During the Occupation, the Occupying Power is to act in the best interests of the people under Occupation, (iv) The Occupying Power must act in good faith. In drawing his conclusion, he quoted the ICJ Advisory Opinion on Namibia where "the ICJ found South Africa to have become an illegal mandatory as a result of its aspirations for annexation, its prolonged stay, its failure as a trustee, and its bad faith administration". Therefore, Lynk concluded that Israel, as an occupant, has crossed the red line of legality.

This opinion is explained further in Prof. Ardi Imseis' article "Negotiating the Illegal: On the United Nations and the Illegal Occupation of Palestine, 1967–2020,"<sup>1</sup> detailing the illegality of the Israeli prolonged occupation of the OPT, explaining the systematic

<sup>1</sup> Ardi Imseis, "Negotiating the illegal: on the United Nations and the illegal occupation of Palestine, 1967–2020", European Journal of International Law, vol. 31, No. 3 (2020), pp. 1055– 1085.

violation of three *jus cogens* norms: the prohibition on the acquisition of territory through the threat or use of force, the obligation to respect the self-determination of peoples, and the obligation to refrain from imposing alien regimes inimical to humankind, including of racial discrimination. In his 2020 [EJIL blog "Of Straw Men, the United Nations and Illegal Occupation: A Rejoinder to David Hughes"](#), Imseis further explains that occupation does not represent an illegal state of affairs that requires an immediate termination. Rather, the "legality of an occupation as measured through the systematic violation of these norms triggers specific obligations under the law of state responsibility to end occupation forthwith and unconditionally."

This brings back to our attention the multiple of UNGA resolutions' description of the Israeli occupation as illegal in the seventies.<sup>2</sup> This description faded away with the progression of time, mostly for political reasons like what happened with the [UNGA resolution equating Zionism with racism](#). It is quite challenging to imagine that an occupation turned illegal, and then we realised again it is legal!

Here, Madame Albanese in her report re-emphasised the same conclusion that the former SR Prof. Lynk reached to and was confirmed recently by the afore-mentioned UN Commission of Inquiry. This indicate an increasing international realisation, accelerating in the past few years, that the Israeli occupation, even if it hypothetically-speaking started as a legal one, has crossed the threshold of legality and is an illegal occupation. These reports, in our opinion, do not create a new description, but rather resume the original legal stance of the UNGA as it was in the decolonisation era: Israeli occupation is Illegal!

Proceeding from the illegality of the Israeli occupation of the OPT, and that "special agreements [within the terms of the Fourth Geneva Convention] cannot violate peremptory rights nor can they derogate from or deny the rights of 'protected persons' under occupation",<sup>3</sup> paragraph 65 of Albanese report makes a clear reference to the limitations of the Oslo Accords:

<sup>2</sup> See, U.N.G.A. Res. 32/20 (Nov. 25, 1977), G.A. Res. 33/29 (Dec. 7, 1978), G.A. Res. 34/70 (Dec. 6, 1979), and G.A. Res. 35/122E, (Dec. 11, 1980) for example.

<sup>3</sup> [ICC-01/18 \(2021\)](#), para. 25.



*"...the Oslo Accords cannot waive Palestinians' right to self-determination. Such a fundamental jus cogens norm cannot be negatively affected in negotiations, especially considering the asymmetry of negotiating power between the occupier and the occupied (i.e., between the colonizer and the colonized).<sup>4</sup> Any interpretation of the Oslo Accords that negates the right to self-determination of the Palestinian people would render the Accords themselves questionable, if not invalid."<sup>5</sup>*

This in a way goes in line with [the words of the ICC former Prosecutor Madame Fatou Bensouda](#) about the Oslo Accords.<sup>6</sup>

**The major issue with Oslo Accords, and the whole negotiations-based approach of the peace process, is that they proceeded from the perception that Israel is a regular occupying power and, consequently, a mutually satisfactory solution would be achieved through negotiations as was the case in several other examples around the world.**

However, as is shown clearly in the current report along with the former SR's report and that of the UN Commission of Inquiry: we are witnessing an intentionally acquisitive, segregationist and illegal occupation of settler-colonial nature, and any negotiations within this formula would be in favor of the stronger side; the colonizer. It is not possible to imagine a negotiated solution between a colonizer who considers staying in the colonised lands as the basis of its politics, and a colonized people who want liberation. Therefore, the UN was always responsible for decolonization.

The SR makes a clear reference to this in paragraph 75:

*"As the Oslo process has shown, politically mandated peace negotiations cannot succeed without resolving the Palestinians' enduring subordinate status, ergo without challenging Israeli settler colonial endeavours."*

<sup>4</sup> Imseis, "Negotiating the illegal: on the United Nations and the illegal occupation of Palestine, 1967–2020". p. 1065.

<sup>5</sup> ICC, Asem Khalil and Halla Shoaibi, case No. ICC-01/18-73 (2020), para. 71.

<sup>6</sup> Public Annex A to the decision of the Pre-Trial Chamber I (ICC-01/18), paragraphs 75-77

In 2012, after more than 2 decades of the peace process, [the former Norwegian foreign minister](#) and chair of the Ad Hoc Liaison Committee (AHLC), Jonas Gahr Stoere, [indicated](#) that the peace process was basically perpetuating the status quo rather than contributing to peace. In short, the game is over, but the price was heavy: more settlements, continued suffering of refugees some of whom were re-exiled like those in Syria, and worse than all of that, the Palestinian right to self-determination has become more of an “ideological slogan or a rallying cry, rather than as a legal tenet from which no derogation is allowed, and clear legal obligations emanate”, as mentioned the SR in paragraph 15.

In light of the internationally growing understanding that the peace process perpetuated and increased the suffering of the Palestinians, the SR adds in paragraph 66 a message that should not be ignored by Palestinians and their supporters:

***“..any solution that perpetuates the occupation, that does not acknowledge the power asymmetries between the subjugated Palestinian people and the occupier State of Israel and that does not address once and for all Israeli settler-colonialism, violates the Palestinians’ right to self-determination, among other critical provisions of international law.”***

## The right to resistance

While navigating the right to self-determination, the SR's report stressed two intertwined components: a *political component* and an *economic component*. The political one ensures the capacity of a people to choose its own government and govern itself without interference; which entails an internal dimension (the entitlement of the people) and an external one (being free from external control and alien domination). The economic component is about the collective right of a people to enjoy their natural wealth and resources as an expression of permanent sovereignty over them. This means, as the report explained in paragraph 19, that the political component's external dimension implies the *right to resist* alien domination, subjugation and exploitation that may impede the fulfilment of self-determination.

This goes in line with what was previously put down by Virginia Tilly in her edited study [“Occupation, Colonialism, Apartheid? A re-assessment of Israel’s practices in the occupied Palestinian territories under international law”](#), classifying an occupation as colonialism has two vital legal consequences. First, an occupation which is found to be also practising colonialism is required to withdraw without any conditions or reservations according to the fifth paragraph of the Declaration on Decolonization. Second, such identification opens the door for *the right to resistance* for the occupied people under colonialism on the way to achieving their right to self-determination. This right to resistance is entitled to endorsement and support by the international community as articulated in the [Declaration on Principles of International Law concerning Friendly Relations](#).

While this previous point may be understood to indicate that people have the right to resist the colonial powers; as many would try to push for restricting it to this, we find it important to emphasise that the international legal framework deals with this right also within the framework of occupation. The Third and Fourth Geneva Conventions, and Article 1 (4) of the First Additional Protocol state this clearly. Article 1 (4) provides that armed conflicts in which peoples are fighting against colonial domination, alien occupation or racist regimes in the exercise of their right to self-determination are to be considered international conflicts. The UNGA as well had several resolutions in the 1970’s and 1980’s calling clearly for supporting the right of the Palestinian people to resist and called upon the international community to support it.

What is significant here is that this report of Francesca Albanese is the first time since the beginning of the peace process three decades ago that a high-level UN report cites the Palestinian right to resistance. Therefore, this report could be regarded as the resumption of the de-colonisation efforts of the 1970’s that started to fade away in the 1980’s. Despite that the international political atmosphere now is quite different from then, it would still be a chance to push those states that were victims of colonialism to join again the struggle for Palestinian right to self-determination and ending the colonial regime imposed on them.

## International community is responsible!

The international community has agreed in the UNGA [Declaration](#) on the Granting of Independence to Colonial Countries and Peoples on the necessity of bringing all forms of colonialism to an end and restoring people's right to self-determination, sovereignty and territorial integrity. Because it builds on fundamental *jus cogens* rights in international law, the declaration was argued by many scholars to be of customary nature.<sup>7</sup> The UNGA also [called](#) on every state render assistance to the UN in order to "bring a speedy end to colonialism".

Placing the Israeli occupation within the settler-colonial context means that we are talking about binding customary laws from which third-partied; states, cannot derogate. States are obliged to reject, abstain from supporting, and working on ending colonialism.

Paragraph 23 of her report, reads:

*"The inviolability of the right to self-determination stems from its erga omnes and jus cogens character. Erga omnes means that all States have an inherent interest in the realization of and obligation to respect the right to self-determination, owed by and to the international community as a whole.<sup>8</sup>... The international community is obliged to ensure that all peoples entitled to self-determination effectively achieve it, and that all obstacles are removed.<sup>9</sup>"*

This means that third states are to take measures to pressure the states violating the right of self-determination of another people to respect it and cease its violations, as understood from Article 1(3) of the ICCPR and ICESCR.

Proceeding from this, in paragraph 24, the SR brings a clear example of how third states lived up to this responsibility in the cases of Namibia and Ukraine:

<sup>7</sup> Tilley, V. (2009). Occupation, colonialism, apartheid? a re-assessment of Israel's practices in the occupied Palestinian territories under international law.P.42

<sup>8</sup> Cassese, Antonio. Self-determination of peoples: a legal reappraisal. Vol. 12. Cambridge University Press, 1995.

<sup>9</sup> Advisory opinion rendered on 9 July 2004 by the International Court of Justice (ICJ), on the legal consequences of the construction of a wall in the Occupied Palestinian Territory.

*“International practice from occupied Namibia in the 1950s to occupied Ukraine in 2022 documents how the international community, whether through international tribunals, such as the International Court of Justice,<sup>10</sup> the International Criminal Court (ICC)<sup>11</sup> and ad hoc tribunals,<sup>12</sup> or the General Assembly,<sup>13</sup> the Security Council,<sup>14</sup> and individual States through domestic jurisdictions and sanctions,<sup>15</sup> have used the means provided by international law to end illegal occupations and forms of subjugation. Under the law of external self-determination, the Palestinian people are entitled to and must enjoy comparable international cooperation and determined action.”*

Through this paragraph, the SR draws an action plan for what should be done by the international community for Palestine. **This action plan is not based on ‘inviting’ two dissymmetric parties to unending negotiations, but rather on concrete measures stemming from the responsibility upheld in the UN Charter to end colonialism.** In Paragraph 75, she emphasizes that:

*“The end of the settler-colonial occupation must be the sine qua non condition for Palestinians to enjoy their right to self-determination in the occupied Palestinian territory, without being compelled to negotiate the conditions of their subjugation.”*

Further on third party responsibility, paragraph (89) of the report of the UN Col explains that the ICJ “has emphasized that, under article 1 of the Fourth Geneva Convention, every State party is under an obligation not to recognize the illegal situation resulting from the construction of the wall ... and not to render aid or assistance in maintaining the situation created by such construction. It has further expressed the view that the

<sup>10</sup> ICJ, Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution [276 \(1970\)](#).

<sup>11</sup> International Criminal Court (ICC), “ICC Presidency assigns the Situation in Ukraine to Pre-Trial Chamber II” (2 March 2022).

<sup>12</sup> Security Council resolution [827 \(1993\)](#).

<sup>13</sup> General Assembly resolution 43/106 (1988)

<sup>14</sup> Security Council resolution 264 (1969).

<sup>15</sup> Government of the United States, Comprehensive Anti-Apartheid Act of 1986, Public Law. No. 99-440 (1986).

United Nations... should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated regime.”

Paragraph (90) of the same report was clearer about the responsibility of third parties explaining that:

*“Articles 146 to 148 of the Fourth Geneva Convention further require States parties to provide penal sanctions for persons committing, or ordering to be committed, grave breaches...such as the unlawful deportation or transfer, or unlawful confinement of a protected person, and the extensive destruction and expropriation of property not justified by military necessity and carried out unlawfully and wantonly.”*

## **Naming a spade, a spade!**

In light of this report, and all the reports that preceded from former SRs, along with the latest report of the Commission of Inquiry and the NGO reports unequivocally stating, and condemning, that Israel is practicing apartheid, the question that arises here is: **was it really only a matter of misreading the situation or was it the absence of political will where certain powers, particularly the US with its imperial history, were consciously seeking to shield Israel from accountability at all costs!?**

In paragraph 8, the SR says that the international community through the humanitarian, political and economic development approaches “seem(s) to believe that the occupation will end when the parties, starkly unequal in power, are able to achieve a negotiated solution”.

**But again, the question is: was it really an issue with the beliefs and thoughts (or lack of thereof) of the international community and hence a matter of ‘difference of opinion and visions’, or rather a part or a larger colonial policy backed by certain great powers or, at least, an easy way out of a problem they no longer want to deal with!?**

The international approaches that look at the two sides equally, ignore two facts: First that the Palestinian Authority is under the control of the Israeli occupation and is not

an equal to it, and that its leadership is under occupation and is unable to move from one Palestinian city to another without the permission of the occupation authorities. Second, They ignore that there is a people living in a state of well-being, moving comfortably within their country, traveling from the airport of their country to anywhere in the world, and marrying whomever they want. On the other hand, there are people, half of them are refugees scattered around the world, and the other half are under merciless occupation, siege and checkpoints, and are unable to make the simplest life decisions like [marrying](#) someone from outside the occupied territory!

In the [First International Conference](#) of Law for Palestine's Jurists for Palestine Forum, the former UN Special Rapporteur Prof. [Richard Falk directly called for calling the "spade, a spade!"](#) What we witness before our eyes is an apartheid regime and illegal occupation that emerged out of a settler-colonialism!

Calling a spade, a spade would absolutely make it difficult for those who want an easy way out without achieving the Palestinian inalienable rights. The governments that are complicit with the status quo would eventually run out of pretexts to justify their policies before their people and electorates. It will put such governments in a clear position that it supports a colonial regime. And as Falk mentioned at the same conference, this situation triggers the need for **"a militant civil society"** who decisively pushes forward towards ending colonialism, apartheid and illegal occupation.

### **III: So, why this report is different?**

**Thus, we believe that this report is a very important step forward in viewing, and dealing with, the Palestinian struggle and pursuit of justice and accountability. It is no one more addition to a long list of reports as it clearly presents the needed facts and calls for concrete action.**

- **First, this is the first time that the colonial root cause** of the Palestinian struggle is brought to the forefront by a top UN expert, since the demise of the anti-colonial discourse in the UN and the beginning of the peace process in the 1990's. This could –and should- lead several UN bodies and figures to revisit the

anti-colonial discourse and deal with the 'conflict' from those lenses with serious efforts to mitigate the root-causes.

- **Secondly**, the report's **holistic approach was unprecedented** by any UN expert or even body. The report holistically put the elements of the struggle together; a struggle of a people against colonialism, apartheid and illegal occupation in pursuit of their right to Self-Determination.
- **Thirdly**, this report is the first, since the demise of the anti-colonial discourse within the UN institutions, to **highlight the historical context and root-causes of the struggle**; starting from the British Mandate to the 1948 expulsion of Palestinians to the occupation of the remaining territories from the Mandate blocking the chance for a viable two-states solution. It touched upon the peace process naming things the way they are and explaining that it was not a rights-based negotiations and now has become some sort of "negotiating the illegal".
- **Fourthly**, the report clearly **made reference to the plight and rights of the Palestinian refugees**, who have been absent on any international fora or reports since the beginning of the peace process; except for humanitarian purpose. The report clearly affirmed the rights of the Palestinian refugees and called for **"devising a plan for reparations...for the Palestinian refugees."**

In short, this report, if taken responsibly, could represent a milestone in shifting the discourse on Palestine-Israel within and outside the UN, leading to an eventually rights and victims-based approach to finding a just solution for the Palestinian struggle.

## **IV: Other issues that need to be attended to by the UN in the future**

**While the report, in our opinion, could represent a milestone in shifting the international legal discourse on the struggle, there are issues that, we believe, should be included in future reports.**



- **Geography**

The issue of the geography where Palestinians are to practice their right to self-determination remains ambiguous. While it is clearly mentioned for those in the OPT, what about the Palestinian refugees (constituting the majority of the Palestinian people; almost 60%), and the Palestinian citizens of Israel?

Moreover, since self-determination is connected to geography, what of the fact that the OPT are no more than 22% of Mandatory Palestine (much less than even the proposed Partition Plan)?

The limited mandate of the Special Rapporteur, being restricted to the occupied Palestinian territories, makes it hard for her to present a holistic vision and approach. Perhaps this stresses the need to consider expanding the mandate to cover all Palestinians, whether in occupied Palestine, Israel, or the diaspora.

- **The Demonisation of Palestinian Resistance**

While the international community and its institutions were, rightfully, so quick to condemn the Russian invasion of Ukraine and support the Ukrainian right to self-defence (and resistance in the Ukrainian occupied territories, whether by the Ukrainian official army or the paramilitary forces), Palestinians were not treated on equal terms. Palestinian resistance was under constant attack and demonisation efforts by Israel and its allies in international fora. A wrongful act by members of the Palestinian resistance per se does not make the Palestinian right to self-defence and resistance illegitimate. Palestinians, of all factions, welcomed the ICC investigation into alleged crimes in the OPT including those allegedly against them.

- **Anti-Palestinian Racism (APR) and the shrinking space for Pro-Palestinian activism**

Palestinians find themselves with less space and opportunities to defend themselves and advance their narrative through even peaceful approaches such as the BDS movement, that finds itself under fire in several countries, and the Anti-APR efforts. Palestinians and their supporters' right to freedom of expression is illegally being silenced and suppressed. The [UN Special Rapporteur](#) herself, the [UN Commission of Inquiry](#), and prior to that several

human rights organizations, such as [Human Rights Watch](#) and [Amnesty International](#), were not spared from misleading attacks and character assassination campaigns for speaking up against apartheid and colonial regime of Israel. The United Nations must take a role in this regard.

- **Ethnic cleansing of 1948**

The Palestinian refugees did not voluntarily decide to leave their homes in 1948! Allegations that what took place was a process of ethnic cleansing involving several acts of genocide should be investigated.

## **V: Now What? Translating the S.R. Report into Action**

**The report was unprecedented in many aspects and on many levels, as explained. Now it is time to make sure it does not go unnoticed and ignored by the relevant third parties' authorities and UN bodies. Therefore, we suggest the following:**

- Expanding the UN Special Rapporteur's Mandate temporally and geographically has become a necessity. It should be expanded to include Palestinians wherever they are. It should also be expanded temporally to cover the critical periods before the year 1967 for the developments in that year came in the context of what preceded. This report could be seen as a clear indication for the limitations of this procedural distinction as issues of Palestinian struggle are interconnected and intertwined.
- Reactivating the UN committees that used to work on ending colonialism. The international community has to adopt, and particularly push the states involved in Israel/Palestine to adopt and call Israeli practices for what they are: colonialism, apartheid and illegal occupation.
- Forming a UNGA Committee with the sole mandate of watching over the UNSC and UNGA resolutions ignored and breached by Israel.
- The UN and its institutions, particularly the UNGA, needs to form committees and working groups for accountability for businesses and individuals complicit

in those violations, and to work on specific recommendations of the report; including a plan to compensate refugees.

- As the report recommended, the international community should positively engage with the post-Oslo era, and follow a rights-based approach this time; acknowledging the factual extreme asymmetry in power and capacities of the two parties to pursue their ends.
- Proceeding from the conclusions of this report, pressuring Israel, and abstaining from supporting it and its policies, is no longer just a moral demand but a legal obligation according to international law. This should be the basis of advocacy, and possibly litigation for justice in Palestine.
- For the Palestinian negotiator, negotiations should proceed from the fact that the occupation itself is illegal and that no possible solution could be reached while the colonial, apartheid regime is illegally occupying the OPT.

## **A final note**

After more than a century since the British Mandate, more than 7 decades since the ethnic cleansing of 1948, and around 55 years since the occupation of the West Bank and Gaza, and 42 years after the official illegal annexation of East-Jerusalem, Palestinians find themselves being an 'issue' to be handled or at best appeased. Till the very day, no single referendum has taken place to seek Palestinians' wishes regarding self-determination.

The international legal discourse keeps evolving, from organising an occupation responsibility, to declaring it an illegal occupation, to calling it an apartheid, and re-describing it as a form of settler colonialism. No doubt, it is a good sign that the world is growing tired of Israel's colonial apartheid regime, but what may be concerning to some is that these titles have yet to be translated into actions. At the end, it is action that reduces people's suffering and helps them achieve their rights. It is also concerning that these titles have not been adopted by the major actors, including the Quartet, the EU and the US.

**This report, if taken responsibly by the relevant authorities, could represent a milestone in shifting the discourse on Palestine-Israel within and without the UN. This report has been the most ambitious and brave so far, and advancing this discourse would strengthen the victims' voices and take their rights and considerations to the higher level, leading to an eventually a rights and victims-based approach to finding a just solution for their long struggle and suffering.**