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ISRAEL'S RETALIATORY SEIZURE OF TAX

A WAR CRIME TO PUNISH PALESTINIAN ICC MEMBERSHIP

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Israel has seized the taxes paid by the occupied Palestinian population in order to collectively punish that population for the lawful and peaceful diplomatic actions of its representatives in the international legal system. Between December 2012 and March 2013, Israel seized the tax payments of the Palestinian population in response to Palestine's call for a vote to be accorded "non-member observer State status" at the United Nations (UN). Similarly, from January to March 2015, Israel seized Palestinian taxes in response to Palestine's accession to the Rome Statute of the International Criminal Court (Rome Statute). The tax payments seized by Israel amount to nearly three quarters of monthly Palestinian National Authority (PA) revenue. Due to the crippling of the private economy by Israel's occupation of the Occupied Palestinian Territory (OPT), the occupied Palestinian population is unusually reliant on public sector salaries and public stimulus of the private economy. This income is used to maintain the civil life of the occupied Palestinian population, including with regard to education, health, food, housing, work (including just and favourable conditions of work), social security and a decent standard of living. As such, Israel's seizure of such a huge proportion of public revenue has dire consequences for the whole Palestinian population.[1]

Though Israel announced on Friday 27 March 2015 that it would release the seized funds at the beginning of April, it stated that it would keep a proportion of this cash to pay down alleged, though largely illegitimate, 'debts' to State owned Israeli service companies. Additionally, Israel is reported to be making the resumption of future transfers of the taxes paid by Palestinian people and businesses conditional on Palestine not pursuing charges at the ICC, further violating Palestinian rights.

1 For a detailed account of Israel's punitive seizure of Palestinian tax payments and the extremely detrimental effect of this on the whole occupied Palestinian population, see Section 1.

ISRAEL'S CONTROL OF THE PALESTINIAN TAX REGIME

Israel has occupied the West Bank, including East Jerusalem, and the Gaza Strip since 1967. As belligerent occupant, Israel is under no obligation to collect the taxes paid by the occupied Palestinian population. However, Israel, as the *de facto* authority in the OPT, is obliged under Article 43 Hague Regulations to ensure "public order and civil life" in the territory, meaning that any changes made to the governance of the occupied territory on this basis must be strictly for the benefit of the occupied population. As such, it may collect taxes from the occupied population in order to cover the cost of this obligation, as well as the cost of maintaining its own security while administering the OPT. Article 48 Hague Regulations obliges the Occupying Power to collect taxes "in accordance with the rules of assessment and incidence in force", meaning that it cannot alter the taxes set by the legitimate sovereign, whose authority it has replaced on a merely *de facto* basis. Further, it is obliged to use the taxes raised to "defray the expenses of the occupied population to the same extent as the legitimate [authority] was so bound", meaning the occupying power may not re-direct the revenue as it sees fit, but must use it to maintain the civil life of the occupied population in line with the spending obligations set by the legitimate authority. In the context of Israel's occupation of the OPT, the legitimate authority in question is the PLO, which is universally recognised as the "sole legitimate representative of the Palestinian people", including by Israel. The Article 48 tax obligations are an expression of the general obligation under Article 43 Hague Regulations to respect "unless absolutely prevented, the laws in force in the country".[2]

In the 1990s, a series of agreements known as the Oslo Accords were concluded between the PLO and Israel. Under the Oslo Accords, the PLO, by agreement with Israel, established the Palestinian National Authority (PA) as a "Self-Government Authority" to exercise those functions of government over the people and territory of the OPT that the *de facto*

2 For a full analysis of the overarching international legal framework in the OPT, set by Article 43 Hague Regulations, and the tax framework, set by Article 48 Hague Regulations, see Sections 2.1.2 and 2.1.3 respectively.

authority, Israel, agreed to delegate. The 1994 Paris Protocol, annexed to the second Oslo Accord (Oslo II), prescribes the economic relations between Israel and the PA. Under the Protocol, the PA can set various taxes on Palestinian individuals and businesses in order to raise the funds necessary administer those aspects of the civil life of the OPT for which it was given responsibility. However, the PA was not authorised to collect many of these taxes itself. The protocol stipulates that, for a fee of three per cent, Israel will collect the taxes paid by the occupied Palestinian population and transfer them to the PA on a monthly basis. Though not stated expressly in the Protocol, this is the means by which the Oslo Accords stipulate that Israel is to fulfil its obligation under Article 43 Hague Regulations to ensure the civil life of the OPT.[3]

In fact, the Protocol codified and entrenched a pre-existing system of "economic annexation",[4] whereby the Israeli economy was to benefit at the expense of the Palestinian economy. Regarding taxation, the system by which Israel collects and transfers the taxes paid by Palestinians systematises a process of 'leakage', whereby an estimated USD 300 million (2010 estimate) of Palestinian tax revenue annually is diverted away from the PA and into the Israeli treasury. From there it is spent for the benefit of the Israeli, rather than the occupied, population, in clear violation of the Article 48 Hague Regulations obligation to use the taxes collected to "defray the expenses of the occupied population".[5] Further,

3 Regarding the establishing of the Oslo framework, including the tax regime, see *infra* footnotes 8 & 9 and associated text, and Section 5.

4 For example, in 1976 Israel introduced a Value Added Tax in the OPT, which had not previously existed, in blatant violation the Article 48 Hague Regulations obligation to collect taxes "in accordance with the rules of assessment and incidence in force". This was pegged to the rate of the equivalent tax that had just been introduced in Israel, and was justified as being for the purpose of augmenting the free flow of goods and services between the two territories, and as such as being for the benefit of both populations. In fact, the operation of the system made clear that this measure was introduced to protect Israeli businesses from being undercut by Palestinian competitors and to entrench the dependence of the occupied Palestinian population on Israeli products, thus ensuring the free flow of goods for sale from Israel into the OPT, and the free flow of money from the OPT into Israel. The Paris Protocol maintained this system, only now allowing Israeli businesses to undercut Palestinian businesses, but not the reverse.

5 Under Article 47 of the Fourth Geneva Convention (GCIV), no agreement between the Occupying Power and the occupied authorities may derogate from the protections afforded to the occupied population under IHL. On this basis, any such provision of the Oslo Accords has no legal validity. It is not clear whether such provisions invalidate the Oslo Accords in total, or whether the offending provision may be severed.

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Israel has repeatedly used its *de facto* (though not legal) ability to withhold the tax revenue collected from Palestinians in order to punish actions of the PA that transgress behaviours with which Israel arbitrarily wishes to enforce compliance,[6] having devastating effects for the whole occupied Palestinian population. Such Israeli actions violate both the Paris Protocol and Articles 43 and 48 Hague Regulations, amounting to an unlawful seizure of enemy property, and constitute both extensive appropriation of property carried out unlawfully and wantonly, a grave breach of the fourth Geneva Convention prosecutable at the ICC, and collective punishment, a war crime under customary international law.[7]

6 Israel attempts to justify such acts as lawful countermeasures for Palestinian violations of the Oslo Accords. However, the lawful and peaceful diplomatic actions being punished do not amount to violations of the Oslo Accords, and even if they did, a countermeasure that indiscriminately punishes millions of protected persons in violation of the protections of IHL would be manifestly unlawful. Further, in its public communications Israel tries to link the seizure of Palestinian taxes to the failure of the PA to pay alleged 'debts' to Israeli State owned service companies. This is an attempt to imply that its actions are for the benefit of occupied population, which would otherwise have essential services such as water and electricity cut off. However, the express statements of Israeli officials, what Israel actually does with the funds it seizes, and numerous other factors, make clear that this is merely an elaborate smoke screen created to try and hide Israel's true intention – the punishment of the Palestinian people.

7 Regarding Israel's attempts to justify its actions in terms of the Oslo Accords, the violations of IHL inherent in the Paris Protocol and the pre-Oslo regime, and how Israel's seizure of Palestinian taxes violates the Paris Protocol, see Section 5. Regarding how Israel's attempts to justify its actions in terms or alleged Palestinian 'debts', and for how its seizure of Palestinian taxes violates international law, see Sections 2 and 3.

1 FACTUAL BACKGROUND AND CONTEXT

In the 1990s, a series of agreements known as the Oslo Accords were concluded between the PLO and Israel.[8] Under the terms of the 1994 Paris Protocol, annexed to the second Oslo Accord (Oslo II) and prescribing the economic relations between Israel and the PA, Israel collects three kinds of tax payments from the occupied Palestinian population.[9] Israel is obliged to transfer this revenue to the PA for expenditure to ensure the 'civil life' of the occupied population, in accordance with its obligations as the Occupying Power under Articles 43 and 48 Hague Regulations.[10]

1.1 DIPLOMATIC PALESTINIAN ACTION, PUNITIVE ISRAELI REACTION

1.1.1 Seizure of Palestinian Taxes[11] – A Pattern of Punishment

Israel's recent seizure of the taxes paid by the occupied Palestinian population as retribution for acts of Palestinian international diplomacy follows a long line of tax reprisal measures carried out to collectively punish the Palestinian population. For example, Israel withheld tax revenue it should have transferred in August and September 1997 following a bombing in Jerusalem; from December 2000 until December 2002 during the second

8 Yoram Dinstein, **The International Law of Belligerent Occupation**, 2009, CUP, Cambridge, paras.36-40.

9 Direct taxes – income tax on the wages of Palestinians working in Israel or in settlements; indirect taxes – VAT, purchase taxes and any other taxes, excise or levies on goods traded between Israel and the OPT; import taxes – as levied on OPT imports from the international market via Israel. Palestine Economic Policy Research Institute (MAS), **Background Paper: On the Clearance of Tax Revenue between Israel and the Palestinian Authority**, 2013; Articles 3, 5 & 6, and Appendices 1 & 2, *Protocol on Economic Relations 1994* (Paris Protocol), annexed to *The Palestinian-Israeli Interim Agreement on the West Bank & The Gaza Strip 1995* (Oslo II).

10 Regarding Israel's obligations to use the taxes it collects to 'defray the expenses of the administration of the occupied territory' so as to ensure the 'civil life' of the occupied population, see Sections 2.1.2 and 2.1.3.

11 Many reports refer to Israel "confiscating" or "withholding" Palestinian tax revenue (see, e.g., articles referenced *infra* at footnotes 19 and 21), which may be seen by some as implying that this is an administrative act within the legitimate powers of Israel. This paper demonstrates that the taxes paid by the occupied Palestinian population are Palestinian property, merely being administered by Israel, and, as such, Israel's "freezing" of the clearance of this revenue to the PA amounts to the unlawful seizure of Palestinian financial resources.

Intifada; from March 2006 until July 2007 after Hamas' electoral victory and formation of government; after the PA signed a reconciliation agreement with Hamas in May 2011;[12] and after Palestine attempted an upgrade of status at the UN and was accepted as a member of the UN cultural agency UNESCO in November 2011.[13]

1.1.2 2012 – 2013: Non-member observer State status accorded at the UN

On 27 September 2012, at the 67th Session of the UN General Assembly (UNGA), Mahmoud Abbas, Chairman of the Executive Committee of the Palestine Liberation Organisation (PLO) and President of the Palestinian Authority (PA), stated that Palestine had "begun intensive consultations with various regional organizations and Member States aimed at having the General Assembly adopt a resolution considering the State of Palestine as a non-Member State of the United Nations".[14] He further called on UN member States to immediately "[s]upport the realization of a free,

12 International Monetary Fund (IMF), **Recent Experience and Prospects of the Economy of the West Bank and Gaza, Staff Report Prepared for the Meeting of the Ad Hoc Liaison Committee**, Brussels, 21 Mar 2012, Appendix A para 4; United Nations High Commission for Refugees (UNHCR), **Chronology for Palestinians in Israel**, <http://www.unhcr.org/refworld/country,,,CHRON,ISR,,469f38a8c,0.html>, accessed 25 March 2013.

13 *Haaretz*, **Israel to release withheld tax funds to Palestinian Authority**, 01 Dec 2011, http://www.haaretz.com/print-edition/news/israel-to-release-withheld-tax-funds-to-palestinian-authority-1.398823, accessed 09 Feb 2013. Further, additional Israeli actions demonstrate that Israel wishes to punish the Palestinian people for the lawful and peaceful diplomatic actions of their representatives. For instance, on 30 November 2012 a senior Israeli diplomatic source told *Haaretz* newspaper that, "in response to the Palestinians' successful bid for recognition at the UN General Assembly," Israel was planning to build 3,000 new housing units in East Jerusalem and West Bank settlements. Further, the source stated that Israel planned to advance long-frozen plans for development in the E1 area. If the E1 area is annexed by Israel this will virtually cut the West Bank in two, making a future contiguous Palestinian State nearly impossible. *Haaretz*, **In response to UN vote, Israel to build 3,000 new homes in settlements**, 30 Nov 2011, <http://www.haaretz.com/news/diplomacy-defense/in-response-to-un-vote-israel-to-build-3-000-new-homes-in-settlements.premium-1.481695>, accessed 09 Feb 2013; for an explanation of why the building of settlements gives rise to violations of international law, including the right to self-determination, see Al-Haq, **Feasting on the Occupation: Illegality of Settlement Produce and the Responsibility of EU Member States under International Law**, 2013, p9.

14 Statement by H.E. Mr. Mahmoud Abbas, President of the State of Palestine, Chairman of the Executive Committee of the Palestine Liberation Organization, President of the Palestinian National Authority, before United Nations General Assembly, Sixty-seventh Session, General Debate, New York, 27 September 2012, <http://gadebate.un.org/67/palestine-state>, accessed 26 Feb 2015.

independent State of Palestine."[15] On 29 November 2012, the UNGA adopted Resolution 67/19,[16] according Palestine non-member observer State status at the UN.[17]

Prior to and following the adoption of the UN General Assembly resolution, senior Israeli politicians publicly denounced this diplomatic action, threatening retaliatory measures against the PA. On 24 October 2012, in a meeting with European Union (EU) Foreign Affairs Representative Catherine Ashton, Israel's Foreign Minister Avigdor Lieberman warned:

> "[i]f the Palestinians go to the UN General Assembly with a new unilateral initiative, they must know they will be subject to severe measures by Israel […]. If they persist with this project, I will ensure that the Palestinian Authority collapses."[18]

Similarly, Minister for Finance Yuval Steinitz stated that, "If the Palestinians continue to advance their unilateral move they should not expect bilateral cooperation. We will not collect their taxes for them and we will not transfer their tax revenues."[19]

Three days after the adoption of UNGA Resolution 67/19, Israel announced that Prime Minister Benjamin Netanyahu and Finance Minister Steinitz would suspend the transfer of the tax payments made by the occupied Palestinian population that Israel collects on behalf of the PA (clearance revenue). In a speech on 12 December 2012 Foreign Minister Lieberman outlined, "Israel is not prepared to accept unilateral steps by the Palestinian side, and anyone who thinks they will achieve concessions and gains this

15 n14

16 UNGA Press Release, GA/11317, 29 Nov 2012, <http://www.un.org/News/Press/docs//2012/ga11317.doc.htm>, accessed 09 Feb 2013. The Resolution was adopted by 138 votes to 9, with 41 abstentions.

17 A/RES/67/19, para.2.

18 *Al Jazeera*, **Israel to counter Palestinian attempt at UN**, 06 Nov 2012, <http://www.aljazeera.com/news/middleeast/2012/11/201211616172352831476.html>, accessed 09 Feb 2013.

19 *Haaretz*, **Israel confiscates NIS 460 million in Palestinian Authority tax funds**, 02 Dec 2012, <http://www.haaretz.com/news/diplomacy-defense/israel-confiscates-nis-460-million-in-palestinian-authority-tax-funds.premium-1.481888>, accessed 09 Feb 2013.

way is wrong." He further added, "[t]he Palestinians can forget about getting even one cent in the coming four months, and in four months' time we will decide how to proceed."[20]

Israel also claimed, despite the multiple statements noted proclaiming otherwise, that the freeze on the transfer of Palestinian revenue was implemented to secure the repayment of 'debts' owed by the PA to the Government of Israel (GOI). These 'debts' were for loans the GOI had made to the PA to pay down 'debts' owed to the State owned Israeli electricity and water companies. It should be noted that the legitimacy of the 'debts' is highly questionable.[21] Following this, the taxes collected from the Palestinian people in November, totalling approximately USD 120 million,[22] and which should have been transferred to the PA in early December, were instead seized, and after being held for a period, were transferred directly to the State owned Israel Electric Corporation (IEC) to cover 'debts' Israel claimed were owed to the company by the Palestinian Jerusalem District Electricity Company (JDECO). The taxes collected from Palestinians for the months of December and January, which should have been transferred to the PA in early January and February respectively, were seized and withheld by the

20 *Al Jazeera*, **Israel to keep Palestinian funds for months,** 12 Dec 2012, <http://www.aljazeera.com/news/middleeast/2012/12/2012121272233865880.html>, accessed 09 Feb 2013.

21 *Jerusalem Post*, **Israel to withhold NIS 1.6b. of PA tax revenue**, 11 Dec 2012, <http://www.jpost.com/DiplomacyAndPolitics/Article.aspx?id=295553>, accessed 09 Feb 2013. The legitimacy of these 'debts' is highly questionable. See *infra* n23 and footnotes 93, 94, 95 and associated text.

22 While various media reports quote a figure for clearance revenue of approximately USD 100 million per month, the figure is in fact higher. According to figures from the Palestinian Ministry of Finance, clearance revenue for the month of November (that which was permanently appropriated) amounted to NIS 466.6 million (New Israeli Shekel). At an actual exchange rate NIS/USD of 3.9 for that month, this amounts to USD 119.6 million permanently appropriated. Palestinian Ministry of Finance (MoF), **Monthly Reports for 2012: Fiscal Operations - Revenues, Expenditures and Financing Sources, December Report**, <http://www.pmof.ps/web/guest/41>, accessed 30 March 2013.

GOI for an extended period.[23] On 25 March 2013 Israel announced that Prime Minister Netanyahu had "decided to allow the transfer of tax funds to the Palestinian Authority",[24] allowing for the transfer of the seized funds and restoring future clearance payments to their regular schedule. Despite Israeli claims that the seizure of Palestinian taxes was linked to PA 'debts', the political statements made by high-ranking Israeli government officials, as well as the fact that two of the three month's funds seized by Israel were not used for any 'debt' related purpose but were simply withheld to apply pressure to the PA and to the Palestinian population, clearly indicate that this was not the case. This action was taken in response to, and as punishment for, lawful and peaceful diplomatic actions taken by Palestinian representatives at the UN.[25]

1.1.3 2015: Accession to the Rome Statute

On 31 December 2014, the State of Palestine signed a declaration under article 12(3) of the Rome Statute of the International Criminal Court (Rome Statute) accepting the jurisdiction of the ICC over crimes committed "in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014".[26] On 1 January 2015, it lodged this declaration with the ICC, and on 2 January 2015, the Government of Palestine acceded to the Rome Statute, depositing its instrument of accession with the UN Secretary-General.[27] The Rome Statute will enter into force for Palestine on 1 April 2015,[28] giving the Court jurisdiction to investigate crimes within the jurisdiction of the ICC, including war crimes[29] occurring on Palestinian territory since 13 June 2014.[30]

Israel once more suspended the transfer of Palestinian tax revenues to the PA as punishment for accession to the Rome Statute. On 31 December 2014, Israeli Prime Minister Benjamin Netanyahu stated that Israel would "take steps in response" to the Palestinian actions.[31] On 2 January 2015, Israel was scheduled to transfer to the PA those taxes collected from the occupied Palestinian population during the month of December. Instead, Israel stopped the transfer, seizing the funds. A senior Israeli official informed Israel's *Haaretz* newspaper that, "the funds for the month of December were due to be transferred on Friday [2 January 2015], but it was decided to [halt] the transfer as part of the response to the Palestinian move [to join the ICC]." The paper went on to report as follows:

23 "[I]n December, the GoI [Government of Israel] withheld the transfer of clearance revenues collected for November and used them to clear electricity arrears owed by the Jerusalem District Electricity Company (JDECO) to the Israeli Electric Corporation (IEC). Clearance revenues collected for December and January were each transferred after delays." Though this permanent appropriation of funds belonging to the PA was ostensibly to repay arrears owed by the JDECO, the JDECO operates in some areas not even under the PA's jurisdiction. To hold the PA responsible for this debt, therefore, is manifestly unlawful. The World Bank, **Fiscal Challenges and Long Term Economic Costs: Economic Monitoring Report to the Ad Hoc Liaison Committee**, 19 March 2013, para.12. With regard to the debt allegedly owed by the PA to the Israeli water company, Mekorot, under international law much of the water sold by this company is Palestinian property that has been unlawfully appropriated by Israel and then sold back to Palestinians at a profit. Al-Haq, **Water For One People Only: Discriminatory Access and 'Water-Apartheid' in the OPT**, 2013. Consequently, any 'debt' predicated on such transactions is entirely illegitimate.

24 Prime Minister's Office, **PM Netanyahu Decides to Allow the Transfer of Tax Funds to the Palestinian Authority**, 25 March 2013, <http://www.pmo.gov.il/English/MediaCenter/Spokesman/Pages/spokemisim250313.aspx>, accessed 30 March 2013; *Haaretz*, **Israel approves transfer of tax revenues to the Palestinian Authority**, 29 Jan 2013, <http://www.haaretz.com/news/diplomacy-defense/israel-approves-transfer-of-tax-revenues-to-the-palestinian-authority.premium-1.500159>, accessed 10 Feb 2013; *Ma'an News*, **Israel restores tax transfers to Palestinian Authority**, 25 March 2013 (updated) 29 March 2013, <http://www.maannews.net/eng/ViewDetails.aspx?ID=578711>, accessed 30 March 2013; *BBC*, **Israel to resume transfer of PA tax revenue**, 25 March 2013, <http://www.bbc.co.uk/news/world-middle-east-21923648>, accessed 30 March 2013.

25 Israel further claimed that Palestinian actions regarding seeking recognition as a State at the UN were in violation of the Oslo Accords, and that as such it was entitled seize Palestinian taxes as a lawful counter-measure. For an explanation of why this is not the case, see Section 5.

26 International Criminal Court (ICC), **State of Palestine, Declaration Accepting the Jurisdiction of the International Criminal Court**, <http://icc-cpi.int/iccdocs/PIDS/press/Palestine_A_12-3.pdf>, accessed 27 February 2015.

27 ICC, **Palestine**, <http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/pe-ongoing/palestine/Pages/palestine.aspx>, accessed 27 February 2015.

28 ICC, **Palestine: Ratification and Implementation Status**, <http://www.icc-cpi.int/en_menus/asp/states%20parties/asian%20states/Pages/Palestine.aspx>, accessed 27 February 2015.

29 See Section 3.2.2.

30 Article 12(3) Rome Statute of the International Criminal Court 1998, in conjunction with the declaration referenced in the text.

31 Prime Minister's Office, **PM Netanyahu Comments on the Palestinian Authority Decision to Accede to Various International Treaties**, 31 December 2014, <http://www.pmo.gov.il/English/MediaCenter/Spokesman/Pages/spokerashap311214.aspx>, accessed 27 February 2015.

> "The halt in the transfer of funds is only a first step in response to the Palestinian moves at the United Nations, said the official. The broader and more significant response will come later, he said."[32]

Continuing this policy, the taxes collected from the Palestinian people throughout January 2015 and scheduled for transfer to the PA in early February were also seized. A "senior government official" addressing the Israeli media asserted that the practice would continue until Israel "finishes formulating its response to the Palestinian Authority's unilateral move to the ICC".[33]

For short periods on 23 and 25 February, the Israel Electric Corporation (IEC) cut off the electricity supply to the Palestinian cities of Nablus and Jenin and to all areas receiving power from the Palestinian Northern West Bank Electricity Company.[34] This was allegedly on the basis of unpaid PA debt to the IEC.[35] On 26 February, the Israeli government announced that it would transfer some of the funds it had seized from the Palestinian

32 *Haaretz*, **Israel to halt transfer of tax revenues to Palestinians following ICC bid**, 3 January 2015, <http://www.haaretz.com/news/diplomacy-defense/.premium-1.635144>, accessed 3 March 2015. It should be noted that the quote as printed in the article reads: "it was decided to *half* the transfer". This is a typo, and should read: "it was decided to *halt* the transfer", as is clear from the rest of the article, and the fact that all of the funds due for transfer were seized.

33 *Jerusalem Post*, **For 2nd month in a row, Jerusalem holds up tax transfer to PA**, 4 February 2015, <http://www.jpost.com/Arab-Israeli-Conflict/For-2nd-month-in-a-row-Jerusalem-holds-up-tax-transfer-to-PA-390016>, accessed 4 March 2015.

34 *Ma'an News*, **Israeli company disconnects Nablus, Jenin grids over debts**, 23 February 2015, <http://www.maannews.com/eng/ViewDetails.aspx?ID=759570>, accessed 4 March 2015. *Ma'an News*, **Israel cuts power to Nablus, Jenin for 2nd time this week**, 25 February 2015, <http://www.maannews.com/eng/ViewDetails.aspx?ID=759607>, accessed 4 March 2015.

35 Israel claimed that the decision to cut the electricity supply was an entirely independent decision of the State owned IEC, not coming from Israel's "political echelon", and as such that it had nothing to do with Israel's response to PA actions at the ICC or with the seizure of Palestinian tax revenue. However, the fact that the Israeli government has to authorise any such action, combined with the timing of the electricity cuts to coincide with the seizure of Palestinian revenue and the use of this issue to attempt to justify such seizure in the past, is notable. *Haaretz*, **Israeli government says not behind electric corp. decision to cut West Bank power**, 23 February 2015, <http://www.haaretz.com/news/diplomacy-defense/.premium-1.643910>, accessed 4 March 2015.

population to the IEC, which in turn resumed the electricity supply.[36] If the reason for Israel's seizure of the revenue were to pay down PA debts to Israeli companies, it would have transferred the funds to the companies immediately. In fact, the Israeli government held the entirety of the seized funds for eight weeks, only then transferring less than one third of the money seized to cover the alleged debts, while retaining the rest. This extended delay along with the retention of much of the tax revenue seized clearly indicates that Israel's appropriation of Palestinian taxes is unrelated to settling PA debts, but is about punishing the lawful diplomatic actions of the PA. Following this, the taxes paid by the occupied Palestinian population throughout February were seized.

Though Israel announced on Friday 27 March 2015 that it would release the seized funds at the beginning of April, it stated that it would keep a proportion of this cash to pay down alleged, though largely illegitimate, 'debts' to State owned Israeli service companies, including to the water company Mekorot and the Israel Electric Corporation (IEC).[37] Additionally, Israel is reported to be making the resumption of future transfers of the taxes paid by Palestinian people and businesses conditional on Palestine not pursuing charges at the ICC,[38] further violating Palestinian rights.

36 Haaretz, **Israel to use frozen Palestinian tax funds to offset PA electricity debt**, 26 February 2015, <http://www.haaretz.com/news/diplomacy-defense/.premium-1.644493>, accessed 4 March 2015.

37 Prime Minister's Office, **PM Netanyahu Accepts Recommendation to Transfer Tax Revenues to the Palestinian Authority**, 27 March 2015, <http://www.pmo.gov.il/English/MediaCenter/Spokesman/Pages/spoketax270315.aspx>, accessed 31 March 2015. Regarding the illegitimacy of Palestinian 'debts', see footnote n23 and *infra* footnotes 93, 94, 95 and associated text.

38 *Jerusalem Post*, **Exclusive: In exchange for freed tax funds, PA won't pursue Israel over settlements at ICC**, 29 March 2015, <http://www.jpost.com/Arab-Israeli-Conflict/In-exchange-for-freed-tax-funds-PA-wont-pursue-Israel-over-settlements-at-ICC-395505>, accessed 31 March 2015.

1.2 THE DETRIMENTAL EFFECT OF REVENUE SEIZURE ON THE PALESTINIAN PEOPLE

Clearance revenue accounts for 73.5 per cent of total PA revenue.[39] Through its prolonged belligerent occupation and associated human rights violations, Israel has forcibly stagnated the private economy in the OPT. Growth and development have been stymied by restrictions on freedom of movement, the expropriation of land for settlements and pillage of natural resources. As such, tax revenue is even more essential for the realisation of the rights and livelihoods of people in the OPT than elsewhere.[40] Israel's seizure of taxes paid by the occupied Palestinian population amounting to nearly three quarters of PA revenue has dire consequences for that population.

39 Even if external financing is incorporated, including borrowing from the banking sector and international aid, clearance revenue amounts to 56.9 per cent of total PA income. Palestinian Ministry of Finance (MoF), **Monthly Reports for 2014: Fiscal Operations - Revenues, Expenditures and Financing Sources, December Report**, <http://www.pmof.ps/en/41>, accessed 19 March 2015. The figures given are for the calendar year 2014, the period directly preceding Israel's seizure of clearance revenue commencing in January 2015. The percentages given have been calculated by Al-Haq on the basis of these figures, and are rounded to the nearest 0.1 per cent. In line with International Monetary Fund (IMF) standards, unless stated elsewhere, the figures for revenue are calculated on a cash basis and the figures for expenditure on a commitment basis. The reason for this is that, "normally, governments commit resources before they are actually disbursed on a cash basis. Some tax liabilities may also accrue for a considerable period before a taxpayer has to make a payment. This gives rise to the question as to whether the fiscal balance is to be assessed on a commitment basis--since these implicit transactions may affect activity in the economy--or only on the basis of cash transactions (and the cash balance). A cash-based measure of the fiscal balance has the advantage of emphasizing links with financial developments, particularly in the monetary accounts. In a number of countries, however, governments have resorted to not meeting their commitment obligations, either due to a lack of liquidity and/or to meet targets for cash-based deficit reduction. A cash-based deficit will then underestimate the extent of a government's pre-emption of real resources. Indeed, when the arrears are to enterprises, which, in turn, borrow from the banking system, a cash-based deficit concept will also underestimate the government's contribution to the growth of monetary aggregates and demand. […] Even when expenditure is measured on a commitments basis, revenue is normally calculated on the basis of actual receipts. The reason is that estimates of unpaid tax liability are usually much higher than the amount that will actually be collected." IMF, **Guidelines for Fiscal Adjustment, Pamphlet Series, No. 49**, 1995, <https://www.imf.org/external/pubs/ft/pam/pam49/pam4902.htm>, accessed 19 March 2015, at footnote 13 and associated text. Indeed, the direct impact of Israel's seizure of Palestinian tax payments is that the PA cannot meet its "commitment obligations".

40 Even in other States that are heavily reliant on the public sector, the private sector is not systematically stymied by an army of occupation. Therefore the public sector/private sector balance in such States is not as drastically tilted towards reliance on public expenditure to drive the entire economy as is the case in the OPT. Economies that are not considered to be at the free market end of the spectrum will still have more capability to absorb public sector shocks and to provide for their populations through the private economy.

Israel's Retaliatory Seizure of Tax
AL-HAQ

1.2.1 Systematically Stagnating the Private Economy in the OPT

Israel's seizure of the taxes paid by Palestinians has been ordered in the context of a policy of deliberate economic stagnation by the occupation authorities. Numerous independent international organisations have documented the detrimental impact of Israel's occupation on Palestinian economic development. The United Nations Conference on Trade and Development (UNCTAD) has stated that:

> "[T]he key obstacles facing the Palestinian economy are all related to occupation, and much less to PA economic policy whose scope is by definition limited. Occupation has eliminated marketing opportunities, shrunk the land and natural resources upon which productive units can be developed, and thwarted private sector investment by increasing the cost and risk to producers."[41]

The fragmentation of the OPT has had a devastating impact on private sector development. Israel has physically curtailed freedom of movement in the West Bank including by building an Annexation Wall around and through the territory, which it controls via checkpoints and watchtowers. Illegally built Israeli settlements intersperse the West Bank replete with an Israeli road network. Many of the roads are either inaccessible to Palestinians or Palestinians have only limited access.[42] In places, Palestinian villages have been physically cut off where the Annexation Wall has formed surrounding enclaves.[43] Similarly, the Gaza Strip is completely surrounded by wire fencing and watchtowers and Israel controls the movement of people and goods into and out of the Gaza Strip. Although the West Bank and the Gaza Strip are not geologically contiguous, Israel has imposed further administrative restrictions on trade between the West Bank and the Gaza Strip banning

41 United Nations Conference on Trade and Development (UNCTAD), **Report on UNCTAD assistance to the Palestinian people: Developments in the economy of the occupied Palestinian territory**, 13 Jul 2012, TD/B/59/2, para.29.

42 R. Shabi, **Israel's Apartheid Road**, *The Guardian*, <http://www.theguardian.com/commentisfree/2010/may/17/israel-palestine-highway-443-segregation>, accessed 10 March 2015.

43 Al-Haq, **Numan Village, a Case of Indirect Forcible Transfer**, 2006, <http://www.alhaq.org/10yrs/reports/legal-cases/617-numan-village-a-case-study-of-indirect-forcible-transfer>, accessed 10 March 2015.

the import of 'dual use items' for 'security purposes'.[44]

Multiple other factors contribute to the systematic stagnation of the occupied Palestinian economy. The World Bank has stated:

> "Although physical restrictions are the most visible, there are other, often unpredictable, measures and practices that have a profound economic impact on private sector firms. For example, the high level of uncertainty linked to the political environment makes Palestinian firms reluctant to make further investments or upgrade their product lines. Obtaining visas for foreign investors to enter the Palestinian territories is controlled by the GoI [Government of Israel], and investors report facing high levels of uncertainty in obtaining such permits which discourages them from exploring potential business opportunities. The list of "dual use" items that cannot be imported because the GoI views them as security threats, and the tight restrictions on access to resources such as water and the electromagnetic spectrum are other examples hindering the growth and development of the Palestinian private sector." [45]

44 The tax framework applied to the OPT mirrors this territorial fragmentation. The First Oslo Accord established that the Palestinian Council (later constituted as the PA) would have limited jurisdiction over the West Bank and the Gaza Strip, whereas "Jerusalem, settlements, military locations and Israelis" were to remain under full Israeli jurisdiction, their final status pending future negotiations. In this vein, the Oslo Accords reinforce the illegal situation whereby different legal systems, including the tax regime, are applied to different parts of Palestinian territory; the tax regime of the belligerent occupant's home State applies to the settlements and East Jerusalem, while the tax regime of the PA applies to the West Bank and Gaza Strip. This adds to the fragmentation of the territory in violation of Palestinian sovereignty and in breach of occupation law. Regarding those areas relegated to future negotiation, see 1993 *Declaration of Principles On Interim Self-Government Arrangements* (Oslo I), Annex IV, Agreed Minutes to the Declaration of Principles on Interim Self-Government Arrangements, Article IV. Regarding the standing of those provisions of the Oslo Accords that violate the law of belligerent occupation, see Section 5.1.

45 The World Bank, **Fiscal Crisis, Economic Prospects: The Imperative for Economic Cohesion in the Palestinian Territories**, 23 Sep 2012, para.21. With regard to freedom of movement, the passages states, "Movement into and out of the West Bank continues to be severely constrained by a multi-layered system of physical, institutional, and administrative restrictions that have fragmented the territory into small enclaves lacking most forms of economic cohesion." Regarding the pillage of Palestinian natural resources, see Al-Haq, **Pillage of the Dead Sea: Israel's Unlawful Exploitation of Natural Resources in The Occupied Palestinian Territory**, 2012. For further information on how the occupation infringes the economic rights of the Palestinian people, see Al-Haq, **Parallel Report To the Committee on Economic, Social and Cultural Rights on the Occasion of the Consideration of the Third Periodic Report of Israel**, 2011, particularly paras.24-45, <http://www2.ohchr.org/english/bodies/cescr/docs/ngos/Al-Haq_ISRAEL_CESCR47.pdf>, accessed 20 March 2013.

In 2011, the Palestinian Ministry of National Economy (MoNE) in cooperation with the Applied Research Institute – Jerusalem (ARIJ) estimated that the total cost of the restrictions imposed by the Israeli occupation on the Palestinian economy during the year 2010 was USD 6.897 billion, or 84.9% of GDP.[46]

1.2.2 The Consequence: Overdependence on a Public Sector Already in Crisis

Due to the systematic constriction of the private sector, dependence on the public sector is particularly acute. UNCTAD describes the PA as the "employer of last resort".[47] The PA dedicates 50.5 per cent of its expenditure[48] to paying the salaries of some 215,000 public sector employees.[49] Central Administration, Foreign Affairs and Cultural & Informational Services, which could potentially be considered 'non-essential' in the short term, amount to 9.9 per cent of annual expenditure.[50] This leaves fully 90.1 per cent of expenditure directed to essential services for the occupied Palestinian population, including 18.4 per cent of spending directed to education, and

46 Palestinian Ministry of National Economy (MONE) and Applied Research Institute – Jerusalem (ARIJ), **The Economic Costs of the Israeli Occupation for the Occupied Palestinian Territory**, September 2011, p.11, <http://www.un.org/depts/dpa/qpal/docs/2012Cairo/p2%20jad%20isaac%20e.pdf>, accessed 19 March 2013: "In other words, had the Palestinians not been subject to the Israeli occupation, their economy would have been almost double in size than it is today".

47 UNCTAD, n41, para.14.

48 MoF, n39.

49 In the fourth quarter of 2014, 22.9 per cent of the 936,200 people in employment in the OPT were employed in the public sector: 39.6 per cent in Gaza and 16.5 per cent in the West Bank. Palestinian Central Bureau of Statistics, **Labour Force Survey (October- December, 2014) Round (Q4/2014)**, February 2015, pp.6 & 12, <http://pcbs.gov.ps/portals/_pcbs/PressRelease/Press_En_LFSQ42012E.pdf> accessed 19 March 2015; it should be noted that despite the separate Hamas run administration in Gaza, the clearance revenue received by the PA, based in the West Bank, continues to pay the salaries of public employees and to partially pay for public services in Gaza.

50 MoF, n39. Figures for expenditure by PA organisation (equivalent of government department) are calculated as follows: "The categories of wages and salaries, social contributions, and interest payments are in commitment basis. The categories of use of goods and services and development expenditure are in cash basis. The other categories differ from commitment basis by the amount of transactions in-process in the system." While there is additional spending on these sectors from external sources, in 2012 PA expenditure amounted to 48.2 per cent of all spending on education and 34 per cent of all spending on health care – figures supplied by the Palestinian Liberation Organisation, Negotiations Affairs Department, in an email communication to Al-Haq dated 21 January 2013.

13.1 per cent to healthcare.[51]

The occupation's crippling of the private economy has meant that the PA is suffering a dire fiscal crisis even absent Israel's appropriation of Palestinian clearance revenue.[52] For the year January to December 2014, clearance revenue amounted to 73.5 per cent of PA revenue, but was enough to meet only 50.3 per cent of spending commitments, meaning that the PA ran a fiscal deficit of 46.3 per cent by revenue in a year in which no revenue was seized.[53] Regarding this deficit, UNCTAD states:

> "The PA's persistent fiscal weakness is mainly caused by a regime that exacts a fiscal toll through revenue leakage to Israel and lack of sovereignty to collect taxes and ensure the accuracy of tax-related information. This diminishes the tax base, lowers collection rates, and adds pressure to the PA's expenditure obligations in response to the recurrent humanitarian and economic crises [...]. Had such a loss [to Palestinian GDP due to occupation] not been incurred, the PA's books would be balanced, with significant resources available for development".[54]

Similarly, MoNE/ARIJ state that:

> "Given the total fiscal deficit in West Bank and Gaza of USD 1.358 billion in 2010 (IMF, 2011), the Palestinian economy would be able to run a healthy fiscal balance with a surplus of USD 438 million without the direct and indirect fiscal costs imposed by the occupation. It would not have to rely on donors' aid in order to keep the fiscal balance and would

51 n50.

52 The IMF has stated that "the Palestinian Authority is facing a major fiscal crisis that is raising social tensions and threatening its operations". IMF, **Moving Beyond Crisis Management in the West Bank and Gaza**, 28 February 2013, <http://blog-imfdirect.imf.org/2013/02/28/moving-beyond-crisis-management-in-the-west-bank-and-gaza/>, accessed 20 March 2013.

53 MoF, n39.

54 UNCTAD, n41, para.22.

> be able to substantially expand its fiscal expenditure to spur needed social and economic development".[55]

The fiscal crisis means that the PA is not able to cover all of its budgeted payments, even prior to any seizure of clearance revenue. This has resulted in delays in paying public-sector salaries in the OPT, which have in turn led to social tensions on the ground and public unrest.[56] In 2012, the World Bank stated that in order to bridge the gap in tax revenues, the PA may be "forced to finance the [fiscal] gap through accumulating additional arrears to the pension system and cutting some of its basic spending such as wages, which could have severe social impacts".[57] As UNCTAD points out, the PA's fiscal situation may result in "a full-blown socio-economic crisis".[58] Given the fact that the PA cannot afford to meet its obligations even prior to Israel seizing nearly three quarters of its revenue in any given month, such a seizure obviously exacerbates this problem to a huge degree.[59] This causes direct and highly detrimental effects on the standard of living of the Palestinian population,[60] as the PA is unable to pay wages or meet the costs

55 MoNE, n46, pp.33-34.

56 IMF, Moving Beyond Crisis Management, n52; for example, on 23 October 2012 (over one month before Israel's appropriation of clearance revenue) "Palestinian Authority employees, including public university staff and school teachers, suspended work […] over the late and incomplete payment of their salaries", *Ma'an News*, **Strikes paralyze West Bank**, 23 October 2012, <http://www.maannews.net/eng/ViewDetails.aspx?ID=531502>, accessed 20 March 2013.

57 World Bank, Fiscal Crisis, n45, para.15.

58 UNCTAD, n41, Executive Summary, p.1.

59 Though this is especially the case if the revenue is seized permanently, this is true even if the revenue is transferred after a delay.

60 The Palestine Economic Policy Research Institute (MAS) has stated, in reference to Israel's appropriation of clearance revenue in 2006-2007, that: "When clearance transfers were cut off, tax collection declined significantly and local banks reduced their facilities and cut back loans to the government (for fear of sanctions and prosecution abroad). This decrease in revenues forced the government to either stop paying or drastically reduce employee salaries (public employees received about 40% of their salaries on average). In addition, non-wage public expenditure declined significantly." MAS, **Fiscal Crisis of the Palestinian National Authority**, 20 July 2011, p.11.

of essential services.[61]

Case Study 1: Punishing a Teacher, his Family and his Pupils

I am an English language teacher at [a] Secondary Boys School in the [...] *Jenin* governorate [...]. I am married and support a family of nine members, including my wife and children. I am the sole provider for my family. I rely on [my teaching] salary [...]. Like approximately 4,600 school teachers throughout the *Jenin* governorate, I am suffering from disrupted salary payment. I have not received all my financial entitlements for three months: November and December 2012 and January 2013. I received one salary in instalments at two long intervals. [...] Since taking out a housing loan my life has been extremely difficult. It then turned into a hell after salaries were almost completely cut off. As you see, I stay at my home with my family and cannot provide for their minimum basic needs. For three months I have not been able to buy fruit and meat for my family. [...] I can hardly afford the price of electricity, water and flour. Every day, I feel so embarrassed when my children ask for some money or some fruit. [...] This has negatively impacted my mental condition. I always feel nervous and tense, adversely affecting my relationship with my family and my social life. When the crisis started I was forced to borrow from different shops in order to provide for my family. Until this day, I continue to borrow, building up debts day by day. [...] Disrupted salary payment has deprived me of sharing happy occasions with my relatives. Recently, my niece was married, but I could not attend the wedding party because I could not offer any money or a suitable present to her. In addition to an inferior social status, this has made me feel so incapable of my own responsibilities. Some vegetables and grains, such as common mallow and lentils, have become our daily food. At this time, dozens of teachers do not have any money to buy food supplies for their families. All this has negatively affected teachers' capacity to teach classes to students, which in turn will reflect on their educational attainment.

Extract from Al-Haq Affidavit No. 8363/2013. Given by Mohammed Feisal Said Yihya, resident of *Al Araqa* village, *Jenin* governorate, and teacher at the *Izz ad Din al Qassam* Secondary Boys School in *Ya'bad, Jenin* governorate, on 28 January 2013.

61 For example, "Health workers […] launched strike action throughout February [2013] to protests [sic] dire work conditions and the PA's failure to pay worker salaries." These dire conditions included "serious shortages in qualified staff", and other matters included the reimbursement of "workers' transport costs". During the strike, health workers took action by "decreasing their numbers and treating only emergency cases." *Ma'an News*, **Health workers to go on strike, union says**, Published 17 February 2013 (updated) 18 February 2013, <http://www.maannews.net/eng/ViewDetails.aspx?ID=565930>, accessed 20 March 2013; *Ma'an News*, **Health workers to go on strike Monday, official says**, Published 02 February 2013 (updated) 04 February 2013, <http://www.maannews.net/eng/ViewDetails.aspx?ID=561468>, accessed 20 March 2013; *Ma'an News*, **Minister: Health workers to end strike**, Published 27 February 2013 (updated) 01 March 2013, <http://www.maannews.net/eng/ViewDetails.aspx?ID=569713>, accessed 20 March 2013. In 2015, delayed and reduced payments have caused severe hardship for public employees, and led to strike action at public institutions, for instance at schools in the northern West Bank on 2 March 2015. *Ma'an News*, **Palestinian workers left broke as Israel freezes funds**, updated 11 February 2015, <http://www.maannews.com/eng/ViewDetails.aspx?ID=755697>, accessed 23 March 2015; *Alternativenews.org*, **West Bank strike to protest Israeli freeze on PA taxes**, 02 March 2015, <http://www.alternativenews.org/english/index.php/news/544-west-bank-strike-to-protest-israeli-freeze-on-pa-taxes>, accessed 23 March 2015. On 17 March 2015, the PA introduced an emergency budget, further slashing public sector salaries and other payments. *Haaretz*, **PA sets emergency budget due to Israel withholding tax revenue, lack of donor aid**, 18 March 2015, <http://www.haaretz.com/news/diplomacy-defense/.premium-1.647420>, accessed 23 March 2015.

1.2.3 No Public Spending to Drive Private Growth, No Private Growth to Fund Public Spending: A Downward Spiral

Public spending is a key source of economic growth in the OPT. Therefore, the PA's fiscal shortfall is itself a major contributing factor to the crippling of the private Palestinian economy.[62] Moreover, this has been greatly exacerbated by Israel's appropriation of Palestinian clearance revenue. Palestinian firms reliant on public contracts are unable to trade.[63] In addition, Palestinians reliant on public salaries or benefits are unable to meet the costs of their basic needs, including transport, clothing and educational fees.[64] This, in turn, leads to lost income for the private sector workers who supply the

62 According to the World Bank: "The slowdown in growth in the West Bank during the first three quarters of 2012 reflects [*inter alia*] the withdrawal of fiscal stimulus […] and uncertainty created by the PA's fiscal stress […]. The public administration and defence sector, a key contributor to West Bank growth in 2011, shrank by 1 percent in the first three quarters of 2012 as a consequence of continued fiscal retrenchment", World Bank, Fiscal Challenges, n23, para.2; See also UNCTAD, n41, para.4.

63 For example, the World Bank states that: "Construction slowed by 9 percent in Q1 2012, mainly due to the increasing amount of PA arrears to local contractors", World Bank, Fiscal Crisis, n45. Para.4. Note that this is even before Israel's appropriation of Palestinian clearance revenue.

64 Regarding transport see Al-Haq, Affidavit No. 8361/2013, 30 January 2013; regarding both transport and educational fees see Al-Haq, Affidavit No. 8360/2013, 31 January 2013.

labour, goods and services to meet these needs, thereby affecting their suppliers, and so on up the supply chain. This creates a severe drag on the private economy, and means that private sector workers are also unable to afford essential goods and services. In this vein, UNCTAD has documented the debilitating impact of the seizure of clearance revenue, stating that:

> "[…] **this measure destabilizes** the PA's fiscal position and **the Palestinian economy, because public spending is a key source of economic growth [**...]. Withholding revenue undermines the PA's ability to meet its contractual obligations to the private sector and to pay wages on time. It also undermines the prospects of investment, by fostering a climate of uncertainty and increasing risk for private suppliers and creditors [emphasis added]."[65]

This damage to the private economy further reduces the tax revenue received by the PA, further harming its fiscal position, further reducing public stimulus and so further damaging the private economy. Israel's seizure of clearance revenue thereby systematically forces the occupied Palestinian population into a downward cycle of economic hardship.

Case Study 2: Crippling a Private Sector Enterprise

I own a menswear shop in the *An Nimer* Commercial Centre on the *Yihya Ayyash* Street in the centre of *Jenin* city. Like many owners of commercial shops on the *Jenin* city market, I have suffered from a deteriorating economic situation since early November 2012. This is because salaries of government employees have not been paid. Employees and their families can no longer buy clothes as usual because they do not have money to buy them. In my shop, I personally rely on customers who are employed by the government as well as their children. These used to generate around 70% of my commercial shop's income. However, this percentage has declined a lot. Because they lack the purchasing power, employees and their family members cannot go to clothing shops and buy the clothes they need. In light of this difficult economic situation, I have had to sell goods on credit. Until such time as their salaries are paid regularly I sell clothes to government employees but I do not receive payment. This has caused me a financial deficit. I purchase clothes in cash, but sell them without receiving payment, causing a harsh economic situation for me [...]. Turnover has declined remarkably. As you see, goods are piled up in the shop [...]. My situation is similar to many owners of commercial shops in Jenin. Everybody suffers from a notable commercial recession.

Extract from Al-Haq Affidavit No. 8357/2013. Given by Ja'far Rashed Ahmed Nawahdhah, owner of a clothing shop, and a resident of *Al Yamun* town, *Jenin* governorate, on 9 February 2013.

This has seriously detrimental socio-economic effects. These include restrictions on the provision of essential public services such as health and education, and restrictions on the means to earn the income necessary to purchase essential goods and services, including food, clothing and educational services.

1.2.4 Israel's 2014 offensive against the Gaza Strip: Sabotaging the recovery

Despite its so-called 'Disengagement' from the Gaza Strip, under the Oslo II framework Israel administers the collection and clearance of VAT and customs paid by Palestinians on products destined for the Gaza Strip, in the same way as it does for the rest of the OPT. The PA then transfers a proportion of these funds to the authorities in the Gaza Strip for the maintenance of the 'civil life' of the occupied population of that territory.[66]

The seizure of Palestinian tax payments therefore affects not only the occupied population in the West Bank, but also the occupied population in the Gaza Strip. This population is still trying to rebuild the territory after the devastating hostilities levelled under Israel's 2014 summer offensive, so-

65 UNCTAD, n41, para.20.

66 n49.

called Operation Protective Edge.[67] In this vein, the United Nations Under-Secretary-General for Political Affairs condemned the seizure, stating:

> "Paralyzing the Palestinian Authority from conducting essential Government business - including functions related to health services and law and order – is in no one's interest. Israel's action is a violation of its obligations under the Paris Protocol of the Oslo Accords and we, again, call for an immediate reversal of this decision."[68]

According to Laurence, the Chief Executive for Medical Aid for Palestinians and former head of the WHO in Palestine, the withholding of PA monies is directly hindering the provision of health services in the Gaza Strip.[69] In early March 2015, the shortage of funds resulted in Gaza's sole electricity plant ceasing electricity production for long periods. This would increase power outages in the Strip from 12 hours to 18 hours per day.[70]

67 For a legal analysis of the devastating effects of this offensive, see, Al-Haq, **Divide and Conquer: A Legal Analysis of Israel's 2014 Military Offensive Against the Gaza Strip**, 2015.

68 United Nations News Centre, **UN Political Chief Warns of 'increasingly toxic' Gaza; calls for new talks, international support**, 8 March 2015. Regarding Israeli violations of the Paris Protocol and the Oslo Accords, see Section 5.2.

69 T Laurence, **Apparently No-one Cares About Gaza**, *Al Jazeera*, 26 February 2015.

70 *Daily Mail*, **Gaza power plant shuts down over Palestinian tax dispute**, 5 March 2015, <http://www.dailymail.co.uk/wires/afp/article-2981366/Gaza-power-plant-shuts-Palestinian-tax-dispute.html>, accessed 23 March 2015.

2 ISRAEL'S ACTIONS: VIOLATIONS OF INTERNATIONAL LAW

2.1 INTERNATIONAL HUMANITARIAN LAW

2.1.1 Applicable Law

As the Occupying Power of the West Bank, including East Jerusalem, and the Gaza Strip, Israel is bound by the law of belligerent occupation. The provisions of occupation law are set out primarily in the Hague Regulations annexed to the Hague Convention IV Respecting the Laws and Customs of Wars on Land 1907 (Hague Regulations), reflective of customary international law in its entirety,[71] and in the Fourth Geneva Convention of 1949 (GCIV), largely reflective of customary international law. Despite its ratification of GCIV in 1951, Israel contests the applicability of this convention to the OPT. The Israeli Government has declared that it will only abide by some 'humanitarian provisions' enshrined therein, without specifying which provisions it regards as having humanitarian character.[72] However, multiple UN Security Council and General Assembly resolutions, as well as the International Court of Justice (ICJ), have affirmed the *de jure* applicability of the Fourth Geneva Convention to the OPT and state that Israel must abide by its terms.[73] In addition, the provisions of customary international law, in particular, those derived from the 1977 First Additional

71 International Court of Justice, ***Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion***, I.C.J. Reports 1996, p.226, at p.257; ***Prosecutor v. Tadic***, ICTY (Appeals Chamber), Judgment of 15 July 1999, para.290.

72 For a recent judgment see HCJ 2690/09, ***Yesh Din et al. v Commander of the IDF Forces in the West Bank et al.***, (Judgment, 23 March 2010), paragraph 6. With respect to Israel's recognition of the customary character of the Hague Regulations see ***Attorney General of Israel v Eichmann*** (1962) 36 ILR 277, 293 and HCJ 302/72, ***Sheik Suleiman Hussein Odeh Abu Hilu et al. v Government of Israel et. al.***, 27(2) PD 169.

73 UNSC Res 237 (14 June 1967) UN Doc S/RES/237; UNSC Res 271 (15 September 1969) UN Doc S/RES/271 and UNSC Res 446 (22 March 1979) UN Doc S/RES/446. See also UNGA Res 56/60 (10 December 2001) UN Doc A/RES/56/60 and UNGA Res 58/97 (17 December 2003) UN Doc A/RES/58/97. ***Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories, Advisory Opinion***, I.C.J. Reports 2004, paras.90-101 (hereafter: Advisory Opinion on the Wall).

Protocol to the Geneva Conventions of 1949,[74] apply to the situation of occupation in the OPT.[75]

2.1.2 Legal Framework

Article 43 Hague Regulations, supplemented by Article 64 GCIV, provides the general framework for the responsibilities of the Occupying Power in governing occupied territory. Article 43 Hague Regulations states:

> "The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."[76]

Firstly, Article 43 states that, "the authority of the legitimate power [has] in fact passed into the hands of the occupant". The use of the phrases "legitimate power" and "in fact" signify that though the *fact* of authority has passed into the hands of the occupying power, legitimacy, meaning

74 *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts* (Protocol I), 8 June 1977.

75 For a comprehensive summary of the provisions of customary IHL, see the updated version of the Study on customary international humanitarian law conducted by the International Committee of the Red Cross (ICRC) and originally published by Cambridge University Press, available at <https://www.icrc.org/customary-ihl/eng/docs/home>.

76 Article 64 GCIV states that:
"The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention.
Subject to the latter consideration and to the necessity for ensuring the effective administration of justice, the tribunals of the occupied territory shall continue to function in respect of all offences covered by the said laws. The Occupying Power may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them."
Regarding the reference to "penal laws", the Commentary to Article 64 GCIV states that: "The idea of the continuity of the legal system applies to the whole of the law (civil law and penal law) in the occupied territory. The reason for the Diplomatic Conference making express reference only to respect for penal law was that it had not been sufficiently observed during past conflicts; there is no reason to infer *a contrario* that the occupation authorities are not also bound to respect the civil law of the country, or even its constitution." Pictet, *infra* n84, p.335. See also von Glahn, n82, p.347.

legitimate title or sovereignty, remains vested in the ousted power.[77] In the context of Israel's occupation of the OPT, the PLO is recognised as the sole legitimate representative of the Palestinian people.[78] Therefore, the reference in Article 43 Hague Regulations to the "legitimate power" should be understood as referring to the PLO.

Secondly, Article 43 Hague Regulations requires that the occupant "take all the measures in his power to restore, and ensure, as far as possible, public order and safety". Notably, the English phrase "public order and safety" is a mistranslation of the original, and authentic, French language text "*l'ordre et la vie publics*", meaning "public order and civil life".[79] Clearly

77 Regarding the "fact" rather than the "right" of government by the occupant, see Eyal Benvenisti, **The International Law of Occupation**, 2nd Edn, OUP, Oxford, 2012, p.4, footnote 18 and associated text. Regarding sovereignty not changing hands and thus remaining vested in the ousted power, see pp.1-5. See also Dinstein, n8, para.113; Antonio Cassese, **Power and Duties of an Occupant in Relation to Land and Natural Resources**, in Emma Playfair (Ed), **International Law and the Administration of Occupied Territories: Two Decades of Israeli Occupation of the West Bank and Gaza Strip**, Clarendon Press, OUP, Oxford, 1992, p.420. The International Court of Justice has stated, with regard to acts carried out by an occupying power, that "Physical control of a territory, and not sovereignty or legitimacy of title, is the basis of State liability […]", ***Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion***, I.C.J. Reports 1971, p.16, para.118.

78 UNGA Res 3210 (XXIV), of 14 October 1974, recognised the PLO as "the representative of the Palestinian people". On 28 October 1974, the Seventh Arab League Summit Conference, in its Resolution on Palestine, second operative paragraph, recognised the PLO as "the sole legitimate representative of the Palestinian people". By concluding the first Oslo Accord, n44, with the PLO, Israel effectively recognised the PLO as the representative of the Palestinian people on 13 September 1993, though the terminology of this document avoided clearly stating so, the preamble referring instead to: "the P.L.O. team (in the Jordanian-Palestinian delegation to the Middle East Peace Conference) (the "Palestinian Delegation"), representing the Palestinian people". Recognition of the PLO's status was given in clearer terms in the second Oslo Accord, of 28 September 1995, n9, which was concluded between Israel and "the Palestine Liberation Organization (hereinafter "the PLO"), the representative of the Palestinian people".

79 E.g. Benvenisti, n77, p.77; Marco Sassoli, **Legislation and Maintenance of Public Order and Civil Life by Occupying Powers**, *European Journal of International Law* (2005), Vol. 16 No. 4, pp.661–694, at pp.663-664. An analysis of the *traveaux preparatoirs* of the Brussels Declaration of 1874, where this language was fist employed, shows that "public order" may be understood as meaning the "security or general safety" of the occupied population, while "public [or civil] life" may be understood as meaning the "social functions and ordinary transactions which constitute daily life." Benvenisti, n77, p.77; Dinstein, n8, para.208. The corresponding parts of Art 64 GCIV are as follows:
"The penal laws [see n76] of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute […] an obstacle to the application of the present Convention.
Subject to the latter consideration and to the necessity for ensuring the effective administration of justice, the tribunals of the occupied territory shall continue to function in respect of all offences covered by the said laws. The Occupying Power may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the present Convention, [or] to maintain the orderly government of the territory […]".

implicit in the obligation to restore and ensure public order and civil life is the stricture that any change made on this basis must be strictly for the benefit of the occupied population[80] – the occupant can make no change for its own benefit, advantage or profit.[81]

Thirdly, the belligerent occupant must "respect […], unless absolutely prevented, the laws in force in the country." As a general rule, the Occupying Power may not alter the legal or administrative framework of the occupied territory. Nevertheless, the phrase "unless absolutely prevented" allows for certain rigidly circumscribed exceptions to this rule. In addition to the implementation of changes for the benefit of the civil life of the occupied population, noted above, the occupant may make changes on the basis of its own military necessity.[82] However, the concept of military necessity is limited to the security needs of the occupant (including the security of its administration in the occupied territory) and does not extend to the broader war effort.[83] Further, changes made on the basis of military necessity must take into account the needs of the occupied population,[84] and must not violate any other provision of IHL, as military necessity is already accounted for in these provisions.[85]

Article 43 Hague Regulations stipulates that the occupant may only alter the legal or administrative framework of occupied territory for one of two purposes: i) on the basis of the military necessity of the occupant, that being limited to its direct security concerns relating to the occupation and not extending to funding or propagating its overall war effort, and taking the needs of the occupied population into account; or ii) for the benefit of the occupied population where the *status quo* arrangements are either not sufficient to ensure the civil life of that population, or are not sufficient to ensure its safety and security.[86] Under no circumstances may the occupant make any change, beyond the strict limits of security, for its own benefit.[87]

2.1.3 The Property Regime under International Humanitarian Law

Provisions governing the belligerent occupant's use of property in occupied territory are outlined in Articles 46 to 56 of the Hague Regulations. These provisions must be interpreted in the light of the general obligations on the occupant regarding the administration of the territory, as set out in Article 43 Hague Regulations and Article 64 GCIV. The law governing the collection and distribution of taxes by the Occupying Power is set out in Article 48 of the Hague Regulations, which provides:

80 Dinstein, n8, paras.208-217 & 268-269.

81 Under no circumstances may Israel or its population profit from the occupation. ***United States of America v A. Krupp et al.***, US Military Tribunal at Nuremberg (Judgment, 31 July 1948), in *Trials of War Criminals before the Nuremberg Military Tribunals*, Vol. IX, 1342-1343. See also Cassese, in Playfair, n77, pp.420-421.

82 Gerhard von Glahn, **Taxation under Belligerent Occupation**, in Playfair, n77, pp.347-348; Cassese, in Playfair, n77, p.420.

83 Article 64 GCIV sets the parameters of this right, stating in part, that:
"The penal laws [see n76] of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security […].
The Occupying Power may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power […] to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them."
See also, Dinstein, n8, paras.260-261; von Glahn, n82, pp.348-349.

84 The commentary to Article 64 GCIV states that: "It will be seen that the powers which the Occupying Power is recognized to have are very extensive and complex, but these varied measures must not under any circumstances serve as a means of oppressing the population. The legislative and penal jurisdiction exercised by the occupation authorities, as holder of public power, is therefore hedged about with numerous safeguards set forth in the following Articles." Jean S. Pictet, **Commentary on the Geneva Conventions of 12 August 1949. Volume IV**, p.337. Cassese states that military necessity "should never result in total disregard for the interests and needs of the population." Cassese, in Playfair, n77, p.420.

85 IHL is a balance between the often-competing requirements of military necessity and humanity, *infra* n86. Therefore, the requirements of military necessity, as balanced with humanitarian concern, are incorporated into each provision of IHL. On this basis, military necessity cannot be invoked to justify the violation of any provision of IHL – it is already accounted for in such provisions. ICRC, Dormann *et al* (Eds), **Elements of War Crimes Under the Rome Statute of the International Criminal Court: Sources and Commentary**, CUP, Cambridge, 2003, p.250, footnote 2 and associated text; von Glahn, n82, p.349.

86 These two legitimate purposes align with the twin threads of IHL in general: military necessity and humanitarian concerns. Dinstein, n8, para.268. Rogers states that "[t]he law of war is really an attempt to balance the conflicting principles of military necessity and humanity." A.P.V. Rogers, **Law on the Battlefield**, 3rd Edn, Manchester University Press, Manchester, 2012, Kindle Edition, Chapter 1: General Principles, introductory text to chapter, location 488. See also Cassese, in Playfair, n77, pp.420-421.

87 These limitations apply equally to the economic arrangements and activity of the occupied territory. See Resolution of London International Law Conference (12 July 1943), and ***United States of America v Goering et al.***,US Military Tribunal at Nuremberg (Judgment, 1 October 1946), in *Trials of War Criminals before the Nuremberg Military Tribunals*, Vol. I, pp.238-239.

> "If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound."

In the context of Israel's occupation of the OPT, as noted in Section 2.1.2, the PLO is universally recognised as the sole legitimate representative of the Palestinian people, giving the PLO standing as the "legitimate authority" referred to in Article 43 Hague Regulations.[88] The PLO, by agreement with Israel, has established the PA – as a "Self-Government Authority"[89] – to exercise the functions of government over the people and territory of the OPT (at least those functions of government possible in the context of the Oslo framework and occupation by Israel).[90] Therefore, the expression "legitimate Government" in Article 48 Hague Regulations should be understood as meaning the PA, under the auspices of the PLO. As such, Israel, which, as agreed under the Paris Protocol,[91] collects those taxes that the PA levies on the Palestinian people and economy, is lawfully bound under Article 48 Hague Regulations to use this revenue to defray the expenses of the administration of the occupied territory to the same extent that the PA has been so doing.

Defraying the Expenses of the Administration: Payment of PA 'Debts'

Israel claims, or at least heavily implies, that it seizes Palestinian tax revenue to pay existing PA 'debts' owed to State owned Israeli companies

88 n78.

89 Oslo I, n44, Article 1. See also: State of Palestine, Permanent Observer Mission to the United Nations, **PNA Introduction**, <http://www.un.int/wcm/content/site/palestine/pid/12010>, accessed 5 February 2015.

90 For information on the Oslo Framework, see Section 1, opening paragraph, and Section 5.

91 The economic protocol annexed to the Oslo Accords, n9.

for electricity and water services.[92] However, the legitimacy of these debts is highly questionable. For instance, some of the 'debts' owed to the Israel Electric Corporation emanate from areas not under PA administration.[93] The PA cannot legitimately be held accountable for such debt. With regard to alleged debts to the water company,[94] Israel has unlawfully appropriated Palestinian water resources. Hence, Mekorot, the Israeli water company, is selling water at a profit to the Palestinians and the PA to which it has no legal title, and which is already Palestinian property.[95] Any 'debt' incurred in this manner has no legitimacy. Nevertheless, in implying it is seizing Palestinian revenue to defray these 'debts', Israel is effectively trying to claim that it *is* defraying the expenses of the administration of the occupied territory to the same extent that the legitimate authority is so bound – it is using the funds to cover expenses already incurred by the occupied authority.

An example of this is the events that played out when, nearly eight weeks after Israel began seizing Palestinian tax revenue in early 2015, the State owned Israel Electric Corporation cut off the supply of electricity to two Palestinian cities for two short periods. Following this, Israel transferred some of the funds it had seized to the IEC, and the electricity cuts were ended.[96] Israel contends that cutting the electricity supply was a purely private decision of the State owned company, related solely to retrieving debts from the PA, and was completely independent of any response of

92 Israel does not make this claim in a direct or straightforward manner. Though this is the essence of Israel's statements and actions, it uses complex and convoluted means to link its seizure of Palestinian revenue to non-payment of PA 'debts'. For example, in 2012/13, Israel initially said that it was taking the revenue to repay *itself* for money that it had previously lent the PA to pay 'debts' to the service companies that were outstanding at that earlier point. Then, in fact, it transferred one month's money directly to one of the companies to cover current 'debt', and released the rest back to the PA after a delay, not actually keeping any of the money for the 'debt' to itself that it originally said that it was taking the money to settle. See Section 1.1. In 2015, though Israel did not overtly claim that this was the reason for seizing Palestinian tax payments, by mid-March it had transferred some, though not all, of the seized funds to "Israeli hospitals, the water company, Mekorot, and Israel Electric Corp." *Haaretz*, **PA finance minister: We can no longer hold the pieces together**, 13 March 2015, <http://www.haaretz.com/news/diplomacy-defense/.premium-1.646764>, accessed 23 March 2015.

For details of the attempt to link the acts of seizure to PA 'debts' in 2015, see below and Section 1.1.

93 n23.

94 Notes 21 & 92.

95 See Al-Haq, **Water for One People Only**, n23.

96 See Section 1.2.

the Israeli government to the diplomatic actions of the PA, including the seizure of tax revenue.[97] By transferring some of the seized funds to the State owned IEC, Israel is trying to imply that it is using Palestinian taxes to ensure the civil life of the OPT, in compliance with Articles 43 and 48 Hague Regulations. The implication is that Israel is preserving the electricity supply to the OPT, which would otherwise be shut off by this allegedly 'independent' State owned company.[98] However, the facts of the case, including the overt statements of Israeli officials that Israel uses revenue seizure as a punitive measure, as well as other Israeli actions past and present,[99] make it clear that any such claim is merely a transparent façade. Israel's real motivation for the appropriation of Palestinian tax revenue is punishment for the diplomatic actions of Palestinian representatives.[100]

As Greenspan elucidates, taxes collected by the occupant "must be applied solely to the costs of administering the territory and the maintenance of the occupying army."[101] Seizing taxes paid by the occupied population to punish that population for the actions of its representatives, and for the benefit of enriching Israeli financial interests,[102] clearly breaches Article

97 n35.

98 At the very least, the Israeli government has to authorise any such action. See n35.

99 For example, the timing of the electricity cuts to coincide with the tax seizure (when the alleged debt situation has existed for years), the fact that only a third of the seized funds have been used to pay down this 'debt', and that for the first eight weeks none of the seized revenue was transferred to the company, it being held in its entirety by the Government of Israel, as well as the use of this attempted justification for manifestly punitive tax seizure in the past, the multiple statements of Israeli officials avowing that the seizure of Palestinian revenue is retributive, the pattern of tax appropriation over time, and other concurrent punitive actions of the Israeli State. See Section 1.2.

100 Regarding punitive intent, Section 2.1.4.

101 Greenspan M, **The Modern Law of Land Warfare**, University of California Press, Berkley and Los Angeles, 1959, p.228.

102 Under no circumstances may Israel or its population profit from the occupation, n81.

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48 of the Hague Regulations.[103] As noted by the Nuremberg Tribunal, an "elaborate pretence of payment merely disguise[s] the fact [of unlawful seizure of property]".[104] The UN Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, reflective of customary international law, affirms that, "every State has the duty to fulfil in good faith its obligations under the generally recognized principles and rules of international law."[105] Israel's seizure of Palestinian tax revenue in order to punish lawful Palestinian acts, while wilfully trying to pass this off as the performance of its obligation to "defray the expenses of the administration of the occupied territory to the same extent as the legitimate [Authority is] so bound", clearly amounts to acting in bad faith with regard to the implementation of Articles 43 and 48 Hague Regulations. Israel is therefore further in violation of the duty to fulfil international legal obligations in good faith.

In addition, the Article 48 obligation to use the collected tax revenue to

103 Nor may Israel's actions be justified as the legitimate levying of private "money contributions" under Article 49 Hague Regulations, or as the legitimate taking possession of moveable public property in the form of "cash, funds, and realizable securities" under Article 53 Hague Regulations. With regard to Article 49, the term "money contributions" refers only to funds levied from the population "in addition to the taxes mentioned in [Article 48]", a prescription that clearly excludes those funds appropriated by Israel. With regard to Article 53, the tax revenues collected by the occupant under Article 48 Hague Regulations do not amount to moveable public property subject to seizure under Article 53, but are regulated entirely separately under the provisions of Article 48 itself. See, e.g., Greenspan, n101, p.90, at footnote 60. Though it is not stated in Article 48, it is generally held that any surplus revenues collected, and not required to defray the expenses of administration as under the *status quo ante bellum*, may be used for the maintenance of the army of occupation. Greenspan, n101, p.228; Von Glahn, n82, p.350; **The Joint Service Manual of the Law of Armed Conflict**, Joint Service Publication 383, 2004 Edition [UK Military Manual 2004], para.11.31, p.285. However, given that the PA is running a budget deficit of 46.3 per cent by revenue per annum, the idea that any, let alone all, of the funds seized by Israel might amount to surplus revenue is entirely unrealistic. Even if any revenue were seized on this basis, the punishment of the Palestinian population would clearly amount to a prohibited use of such funds.

104 Goering, n87, p.70.

105 A/RES/25/2625, 24 October 1970. Additionally, the ICJ has stated, "one of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith […]. Just as the very rule of *pacta sunt servanda* in the law of treaties is based on good faith, so also is the binding character of [other] international obligation[s]." *Nuclear Tests (New Zealand v. France), Judgment*, I.C.J. Reports 1974, p.457, at para.49. Shaw states that, "perhaps the most important general principle, underpinning many international legal rules, is that of good faith." Malcolm N Shaw, **International Law**, 6th Edn, CUP, Cambridge, 2008, Kindle Edition, Location 7721, Chapter 3: Sources, sub-section: General Principles of Law.

defray the expenses of administration to the same extent as the legitimate authority is an expression of the general prescription in Article 43 Hague Regulations that the occupant must restore and ensure public order and civil life in the occupied territory.[106] Assuming *arguendo* the PA did owe 'debts' to Israeli electricity and water companies, the PA has other obligations of expenditure across the Palestinian economy – obligations that, as a result of the stifling of the Palestinian economy by the fact of occupation, it has not been able to meet, even prior to having 73.5 per cent of its revenue seized month on month. All of this expenditure is fundamental to the maintenance of Palestinian 'civil life', including the funding of healthcare and education in the OPT.[107] The sudden diversion of 73.5 per cent of Palestinian revenue away from expenditure absolutely crucial to ensuring Palestinian 'civil life', for the benefit of Israeli financial interests, would clearly violate the obligations laid down in Article 43 and Article 48 Hague Regulations. This is further reinforced by the strict prescription that the expenses placed on the occupied territory "should not be greater than the economy of the [territory] can reasonably be expected to bear".[108]

Further, Article 23(g) Hague Regulations, applicable in all phases of armed conflict, including belligerent occupation, provides that:

> "it is especially forbidden [to] seize the enemy's property, unless such […] seizure be imperatively demanded by the necessities of war".

Israel's appropriation of Palestinian property in violation of Article 48 Hague Regulations, in conjunction with Article 43 Hague Regulations and the customary obligation to act in good faith, in order to punish lawful diplomatic actions and to serve Israeli financial interests is clearly not "imperatively demanded by the necessities of war". Therefore, Israel's

106 Von Glahn makes clear that the reason for the collection of taxes by the occupant is to cover the costs of administering the occupied territory and maintaining the civil life of the population: "A belligerent could, of course, suspend the collection of the 'national' taxes, should such revenues not be needed to cover administrative costs or the 'civil life' expenditures for the population." Von Glahn, n82, p.352.

107 See Section 1.2.

108 Goering, n87, pp.238-239.

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repeated acts in this regard amount to unlawful seizures of property.[109]

The unlawful seizure of enemy property is incorporated into the Rome Statute as a war crime at Article 8(2)(b)(xiii). Therefore, when the Rome Statute comes into effect for the State of Palestine on 1 April 2015, the ICC will have jurisdiction to investigate and prosecute those individuals responsible for Israel's seizure of Palestinian tax revenue.[110] Further, States may investigate and prosecute such individuals under the principle of universal jurisdiction.[111]

2.1.4 Collective Punishment

Collective punishment is prohibited under Article 50 of the Hague Regulations and Article 33 of the Fourth Geneva Convention. Article 33 GCIV, provides:

> "No protected person may be punished for an offence he or she has not personally committed. Collective penalties […] are prohibited." [112]

109 The permanent appropriation of Palestinian property (as for instance happened to the Palestinian tax revenue collected by Israel for December 2012) in violation of the rules of international humanitarian law clearly amounts to an unlawful seizure. However, in analysing the definition of the offence of unlawful seizure of property under Article 23(g) Hague Regulations, the ICRC noted that the prosecution in the *Kovacevic* case at the ICTY included the "withholding" of property in those acts amounting to unlawful *appropriation* of property. The Court did not dispute this (for more see *infra* n158). That the ICRC considered this in relation to seizure implyies that permanence of appropriation is not required. ICRC Rome Statute Commentary, n85, pp.261-262. Further, the American Heritage Dictionary defines the word 'seize' as follows: "To grasp suddenly and forcibly; take or grab: *seize a sword*." The temporary forcible grabbing of an item clearly suffices. With regard to seizure by authorities, the dictionary proffers the following: "To take quick and forcible possession of; confiscate: *The police seized a cache of illegal drugs*." Again, the term 'confiscate' implies no requirement of permanent duration. **American Heritage Dictionary of the English Language**, 5th Edn, 2011, Houghton Mifflin Harcourt Publishing Company.

110 See Section 3.2.2.

111 Regarding universal jurisdiction, see Section 3.2.1, and n170.

112 Article 50 Hague Regulations states that: "No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible." It should be noted that this article "could be interpreted as not expressly ruling out the idea that the community might bear at least a passive responsibility [for acts carried out by others]. Thus, a great step forward has been taken [in Article 33 GCIV]. Responsibility is personal and it will no longer be possible to inflict penalties on persons who have themselves not committed the acts complained of." Pictet, n84, p.225.

The commentary to Article 33 GCIV clearly establishes that collective punishment does not refer to punishments inflicted under penal law but refers instead to "penalties of any kind inflicted on persons or entire groups of persons, in defiance of the most elementary principles of humanity, for acts that these persons have not committed."[113] With regard to the act or omission being punished, the Special Court for Sierra Leone (SCSL), in the *CDF Appeals Judgment*, employed the term "perceived transgression", explaining that "the crime of collective punishments occurs in response to […] acts or omissions […], whether real or perceived."[114] This may be understood as encompassing any alleged act or omission that the punishing State or agent perceives as transgressing standards with which it wishes to ensure compliance, whether or not the act or omission actually transgresses

113 Pictet, n84, p.225.

114 CDF Appeals Judgment, ***Prosecutor v. Fofana and Kondewa***, SCSL-04-14-A, Special Court for Sierra Leone (SCSL), Judgment, Appeals Chamber, 28 May 2008, para.223. The SCSL is the only international court or tribunal to have directly ruled on allegations of, and hence the elements constituting, collective punishment. The Court prosecuted the crime of collective punishment, as perpetrated by individuals, under international criminal law (ICL). However, this crime is based on the underlying IHL violation, and as such these cases may be examined in order to throw light on the equivalent violation of IHL, incurring the responsibility of the State. It should be noted that the SCSL made some serious errors in defining and applying the elements of collective punishment, notably in defining, at para.224, the essence of the crime as being about punishing large groups of individuals when some or none of these individuals have had the accusations against them sufficiently proven. This is incorrect. The essence of the crime of collective punishment lies in the punishing of individual or multiple persons for perceived transgressions that the punishing agent knows or believes were carried out by persons other than the individuals being punished, as is demonstrated in this paper.

any legitimate standard or legal norm.[115]

There is no requirement that the perceived transgression being punished have a direct link, or nexus, with the armed conflict.[116] For example, in one instance considered by the SCSL, the perpetrator stated that, "the civilians had given their children to the *juntas* in marriage and thus they were all "spies and collaborators"."[117] The Court accepted that this was part of the perceived transgression being collectively punished. The act of marriage is a purely personal matter, having nothing to do with armed conflict. As such, it is demonstrated that no link is required between the perceived transgression being punished and the armed conflict itself. Thus, where

115 Darcy disputes this aspect of collective punishment as set out by the SCSL. He states that in order for a measure implemented by a punishing State or individual to amount to collective punishment, there is a "requirement that punishment arises only after the **actual** commission of an act [emphasis added]", contesting the Court's contention that the act or omission being punished "may either have been 'real or perceived.'" He further states that the act being punished must be of "a certain seriousness, that the deeds may have had to have been criminal in nature, although such acts need not necessarily have been violations of the laws or customs of war, and 'any breach of the occupant's proclamations or martial law [will suffice]'. [O]therwise such a measure would comprise simply attacks on civilians." Shane Darcy, **Prosecuting the War Crime of Collective Punishment: Is It Time to Amend the Rome Statute?**, *J Int Criminal Justice* (2010) 8 (1): 29-51, at pp.44 & 41-42 respectively. Darcy is correct to note an error in the elements of collective punishment as prescribed by the SCSL, writing, at p.46, that "[c]ollective punishment involves penalties imposed on persons who are not responsible for previous acts, not persons for whom responsibility has not been proven." He is mistaken, however, in arguing that the Court's error is based on a failure to understand that the distinction between collective punishment and attacks on civilians is about the seriousness of the act or omission being punished. See n114. Darcy bases his mistaken position on an analysis of the *traveaux preparatoires* of the Hague Regulations of 1899, quoting, at p.32, the framers as stating that the collective punishment "of the mass of the population ought only to be applied as a consequence of reprehensible or hostile acts committed by it as a whole or at least permitted by it to be committed." He argues, at pp.40-46 (see particularly pp.41-42), that because punishment of the population for "reprehensible or hostile acts" was permitted at the time of the 1899 Regulations, but that the prohibition of collective punishment was extended to cover punishment for such acts under the Geneva Conventions of 1949 (see n112), that therefore collective punishment must be understood as encompassing only punishment for such acts. This is a failure of logic. The framers are saying that in 1899 collective punishment for "reprehensible or hostile acts" was permitted (provided the other conditions were met), but that collective punishment for acts of a lower order of seriousness was prohibited. When the prohibition of collective punishment is extended in 1949 to become an absolute prohibition, and as such to include the prohibition of collective punishment for "reprehensible or hostile acts", collective punishment of the less serious acts, which was already prohibited, does not somehow cease to be prohibited collective punishment. Rather, collective punishment for *both* the less serious *and* the more serious acts is now prohibited.

116 As opposed to the act of punishment itself.

117 CDF Trial Judgment, ***Prosecutor v. Fofana and Kondewa***, SCSL-04-14-T, Special Court for Sierra Leone (SCSL), Judgment, Trial Chamber, 02 August 2007, para.765 (vii).

the perceived transgression being punished has no nexus or direct link to the conflict, but the act of punishment does, this will suffice for collective punishment.

Pertile notes that collective punishment contains an objective element, "fulfilled when a measure has unfavourable effects and is 'collective'".[118] In addition, the violation of collective punishment requires the intention to "punish collectively."[119] It is clear from the text of Article 33 GCIV, as well as its commentary, that the defining characteristic of collective punishment is that "persons or entire groups of persons [are punished] for acts that these persons have not committed".[120] Therefore, the intention to punish collectively must be interpreted as meaning the intention to punish persons for the perceived transgressions of others.[121] With respect to the *mens rea* element of 'intention' for violations of IHL,[122] the perpetrating State need not act with the specific *purpose* of causing the prohibited consequence of its actions. In the case of collective punishment, therefore, it is not necessary that the State's direct purpose was that the unfavourable effects of its action impact persons not responsible for the perceived transgression being punished. It is enough that the State

118 Marco Pertile, **"Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory": A Missed Opportunity for International Humanitarian Law?**, *The Italian Yearbook of International Law*, Volume 14, 2004, Martinus Nijhoff Publishers, 2005, Leiden, p.121, at pp.147-148. Regarding this objective, or factual, element, the conduct required from the punishing State or entity is the implementation of measures having unfavourable effects; the consequence of this conduct, premised on the failure to distinguish between responsible and non-responsible affected persons, is that non-responsible persons suffer these unfavourable effects. This is in fact relevant for determining the required content of the mental element of intent – see below. For information on the conduct, consequences and circumstances pertaining to the factual element of a violation, see Gerhard Werle, **Principles of International Law, 4. The Structure of Crimes Under International Law**, in Antonio Cassese (Ed), **Oxford Companion to International Criminal Justice**, OUP, Oxford, 2009, pp.55-57.

119 CDF Appeals Judgment, n114, para.224.

120 Pictet, n84, p.225. In greater depth: "The [prohibition of collective punishment] embodies in international law one of the general principles of domestic law, i.e. that penal liability is personal in character. [This violation pertains to] penalties of any kind inflicted on persons or entire groups of persons […] for acts that these persons have not committed. […] Responsibility is personal and [as such it is prohibited] to inflict penalties on persons who have themselves not committed the acts complained of."

121 Pertile states that, "[e]ven if the punitive intention represents only one of the reasons that brought the [punishing State or agent] to adopt the act, the act must be considered unlawful", Pertile, n118, p.148.

122 And for the respective war crimes.

means to engage in the conduct that causes this prohibited consequence, in this case meaning to carry out a measure that has unfavourable effects, and is aware that this prohibited consequence will occur in the ordinary course of events.[123] Therefore, with regard to Israel's seizure of Palestinian financial resources, it is not necessary to prove that Israel's direct purpose was to punish the whole occupied population – Israel's acting with the purpose of punishing only those persons responsible for the perceived transgression (taking lawful diplomatic actions) will suffice, as long as it is aware that other non-responsible persons will also suffer the unfavourable effects of its punitive acts.

It should be noted that while Israel claims that the diplomatic actions of the PA, at least in the 2012/13 case, are transgressions of Palestinian obligations arising from the Oslo Accords, and that it therefore has a right to seize Palestinian funds as a lawful countermeasure, this is a false analysis. As peaceful and lawful actions, Palestinian representatives have every right to pursue such aims.[124] The actions of the PA merely transgress desired behaviour with which Israel wishes to arbitrarily force Palestinian representatives to comply. Further, and possibly contradictorily, Israel, sometimes implicitly and sometimes explicitly, claims that the appropriation of this revenue is implemented on the basis of PA debts to State owned Israeli companies providing essential services to Palestinians, which would be cut off without payment, thereby implying that it takes such actions for the benefit of the occupied Palestinian people. The reality is, however, that explicit statements of Israeli officials, as well as numerous

123 Article 30(2) Rome Statute. Though collective punishment is not included as a war crime in the Rome Statute, given that the Statute is a highly authoritative codification of war crimes under international criminal law, it may be examined for guidance as to the interpretation of war crimes in general, as well as of the corresponding underlying violations of IHL. Regarding the relationship between violations of IHL and war crimes under international criminal law, see n114. For discussion of intention for war crimes beyond the context of the Rome State, see Antonio Vallini, **Intent**, in Cassese, Oxford Companion, n118, pp.376 – 378. Specifically, at p.376: "The *mens rea* [mental element] is particularly serious when a person knows that he has no possibility and no hope of avoiding the crime; in this case *mens rea* may be compared to intent. Furthermore, such a person is wholly involved in fulfilling the consequences of the crime […] because he knows that those consequences are a necessary 'price' to pay for attaining his aims. This decision increases the probability that the subject's choice will actually produce the criminal consequences; the dangerousness of that choice is thus equivalent to that related to intent."

124 See Section 5.2.

other actions of the State of Israel, demonstrate that Israel's actions were and are being taken with the intention of punishing diplomatic acts of the PA.[125] Israel's appropriation of Palestinian tax revenue has had a severe negative impact on the whole occupied Palestinian population, including with regard to health, education, housing, work, social benefits and standard of living. Given that Israel is the Occupying Power in the OPT and has imposed this sanction on numerous occasions in the past, it is clearly aware of the devastating results for the occupied Palestinian population. Therefore, it is certain that Israel knows that persons beyond those particular PA officials responsible for the diplomatic actions being punished will directly suffer the unfavourable effects of the punitive measures. This amounts to an intention to punish protected persons for the perceived transgressions of others. As such, Israel's seizure of Palestinian property in the form of the taxes paid by the Palestinian population amounts to the collective punishment of that population.

Whereas the crime of collective punishment is not included in the Rome Statute, the UN Secretary General has stated that collective punishment amounts to a crime under customary international law,[126] as has the SCSL.[127] Darcy substantiates this with further analysis of state practice and *opinio juris*.[128] Israel's punitive appropriation of Palestinian tax revenue, and the associated negative impact on the population at large, satisfies the elements required to establish the war crime of collective punishment. States may prosecute individuals liable for this crime under the principle of universal jurisdiction.[129]

125 See Section 1.1 and Section 2.1.3.

126 Report of the Secretary-General on the establishment of a Special Court for Sierra Leone, UN Doc. S/2000/915, 14 October 2000, para.12.

127 E.g. CDF Trial Judgment, n117, para.178.

128 Darcy, n115, pp.34-39.

129 See Section 3.2.1. As with regard to the war crime of unlawful seizure of enemy property, the exercise of this right would be a significant step towards fulfilling those obligations incumbent on all States to ensure compliance with IHL and to take steps to end serious violations of *jus cogens* norms, including the violation of the right to self-determination, which Israel's act of collectively punishing the Palestinian population by unlawfully appropriating their tax revenue comprises. See Section 4.

Israel's Retaliatory Seizure of Tax
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2.2 INTERNATIONAL HUMAN RIGHTS LAW

International human rights law (IHRL) is a body of law that protects all human beings and operates at all times, including during armed conflict. The operation of IHRL is not restricted to the territory of the responsible State, but extends to territory over which that State has jurisdiction by virtue of its effective control, including for example, occupied territory.[130] Much of IHRL is contained in two international covenants: the International Covenant on Civil and Political Rights (ICCPR); and the International Covenant on Economic, Social and Cultural Rights (ICESCR).[131]

2.2.1 The Collective Right to Self-Determination

The right to self-determination constitutes an essential principle of international law, since its realisation is an indispensable condition for the effective guarantee and observance of all other individual human rights.[132] The Charter of the United Nations identifies respect for the principle of equal rights and self-determination of peoples as necessary conditions for peaceful and friendly relations among nations.[133] The right to self-determination is widely recognised as a peremptory norm of international

130 Nuclear Weapons Advisory Opinion, n71, para.25; Advisory Opinion on the Wall, n73, paras.102 – 114; UN Committee on Economic, Social and Cultural Rights, Concluding Observations, Israel, 31 August 2001, E/C.12/1/Add.69, paras.11 – 12; Noam Lubell, **Human Rights Obligations in Military Occupation**, *International Review of the Red Cross*, Volume 94, Number 885, Spring 2012, p.317, at pp.318 – 324; Sylvain Vite´, **The Interrelation of the Law of Occupation and Economic, Social and Cultural Rights: the Examples of Food, Health and Property**, *International Review of the Red Cross*, Volume 90, Number 871, September 2008, p.629, at p.630.

131 1966 *International Covenant on Civil and Political Rights* (ICCPR); 1966 *International Covenant on Economic, Social and Cultural Rights* (ICESCR). Operating alongside these two overarching human rights covenants, there are seven other core international human rights treaties, each focussing on a specific area of concern, including torture, enforced disappearance, racial discrimination and discrimination against women. These treaties are "indivisible, interrelated and interdependent", and as such must be considered as establishing a single corpus of human rights protections. For these treaties (and their related optional protocols), see the UN Office of the High Commissioner for Human Rights, **The Core International Human Rights Instruments and their Monitoring Bodies**, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>, accessed 08 Feb 2015.

132 UNCHR, *General Comment 12: The Right to Self-Determination of Peoples (Art. 1)*, 13 March 1984.

133 Articles 1(2) and 55 of the United Nations Charter.

law,[134] entailing obligations on all States.[135] Under international law, people subject to foreign occupation, colonial domination, or a racist regime have the right to self-determination.[136] The right of the Palestinian population to self-determination has been recognised by the UN General Assembly,[137] the UN Security Council,[138] and the ICJ.[139]

The principle of self-determination is given concrete expression as a collective human right in Article 1 common to the ICCPR and ICESCR. Whereas economic self-determination has often been seen merely as "an appendage to political self-determination for all practical purposes",[140] Craven has posited that the inclusion of the right to self-determination in the covenants "may be rationalized […] as a necessary recognition of the context in which the realization of rights within the Covenant is to take place. In that vein, article I of the ICESCR, despite being textually identical to article I of the ICCPR, could be construed as recognising a right to economic, rather than political, self-determination".[141] Accordingly, Castellino persuasively argues, "the right of self-determination is not restricted to a political or civil right but propounded as the gateway to economic, social and cultural rights".[142]

134 *Armed Activities on the Territory of the Congo* (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006, p.6, Separate Opinion of Judge ad hoc Dugard, para 10; Antonio Cassese, **Self-Determination of Peoples: A Legal Reappraisal**, CUP, Cambridge, 1995, p.320; Shaw, n105, print edition, p.808.

135 See Section 4.

136 See, for example, UNGA Resolutions A/RES/36/103, A/RES/40/158, A/RES/42/159 and A/RES/46/87.

137 UNGA Res 58 (22 December 2003) UN Doc A/RES/58/163.

138 UNSC Res 242 (22 November 1967) UN Doc SC/RES242.

139 Advisory Opinion on the Wall, n73, paras.115-122.

140 Farmer A**, Towards a Meaningful Rebirth of Economic Self-Determination: Human Rights Realization in Resource-Rich Countries**, *New York University Journal of International Law and Politics*, 2006, Vol 39, No 2, pp.417-474, 421.

141 Craven M, **The International Covenant on Economic, Social and Cultural Rights: A perspective on its Development**, 1995, Oxford University Press, Oxford, pp.24-25.

142 Castellino J, **International Law and Self-Determination: The Interplay of the Politics of Territorial Possession with Formulations of Post-Colonial 'National' Identity**, 2000, Martinus Nijhoff Publishers, The Hague, p.31.

Common Article 1 states:

> "All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. **In no case may a people be deprived of its own means of subsistence.**"[143] [emphasis added]

Subsistence is defined as a "means of supporting life; a living or livelihood."[144] Clearly, Israel's unlawful appropriation of Palestinian tax revenue deprives a large part of the Palestinian people of its means of support, or means of making a living or livelihood. In addition, the funds comprise Palestinian property, raised from the taxes, dues and tolls paid by Palestinian individuals and organisations, and are merely to be temporarily administered by Israel. Therefore, the Palestinian people, as a collective entity, is being "deprived of its own means of subsistence", in contravention of the right to self-determination. Israel's act of depriving the Palestinian people of its means of subsistence amounts to a serious violation of the collective right to economic self-determination, and further results in the violation of individual economic, social and cultural rights.

2.2.2 Seizure of Tax Revenues giving rise to violations of Economic, Social and Cultural Rights

By seizing and appropriating tax revenues, Israel has violated the economic, social and cultural rights of the occupied population. The ICESCR provides, *inter alia*, for a right to education, health, food, housing, work (including just and favourable conditions of work), social security and a decent standard of living.[145] Israel's appropriation of nearly three quarters of Palestinian public revenue negatively impacts on the realisation of these rights, especially given the unusually high dependency of the Palestinian

143 Article 1(2) ICESCR & ICCPR.

144 **Random House Kernerman Webster's College Dictionary**, © 2010 K Dictionaries Ltd. Copyright 2005, 1997, 1991 by Random House, Inc, <http://www.thefreedictionary.com/subsistence>, accessed 22 March 2013.

145 ICESCR, Articles 6, 7, 9, 11, 12 & 13.

economy on public expenditure resulting from the occupation's crippling effect on the private economy.[146]

The absolute minimum obligation IHRL places on any State party with authority over a given territory is that it must *respect* the rights contained in the treaty – it must take no action that actively undermines access to these rights.[147] While this may sometimes require the repeal of existing legislation and its replacement with new legislation to regulate the actions of the authorities,[148] in the instant case Israel's obligation to respect the rights contained in the ICESCR simply requires that it take no steps that undermine *pre-existing* access to these rights. As such, there is an obligation to maintain the *status quo* rights access of the population, thereby reinforcing the obligations under Article 43 of the Hague Regulations.[149] Article 4 ICESCR provides:

> "the State may subject such rights [as are contained in the Convention] only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare".

The limitations being placed on the economic, social and cultural rights of the occupied Palestinian population are not determined by law (in fact they are unlawful), are not compatible with the nature of these rights, and are manifestly not carried out for the general welfare. Given that there is no legitimate purpose for Israel's appropriation of Palestinian funds, which causes severe limitations on existing access to the human rights of the population, Israel's actions clearly amount to a serious violation of each

146 See Section 1.2.

147 State parties have an obligation to: *respect* individual's rights by not directly interfering with them; to *protect* individuals from having their rights interfered with by third parties; and to *fulfil* rights by taking positive steps bring about their achievement. See e.g. Committee on Economic, Social and Cultural Rights (CESCR), *General Comment 14, The right to the highest attainable standard of health (article 12)*, Twenty-second session, Geneva, 25 April-12 May 2000, E/C.12/2000/4, paras.34-37.

148 For instance legislation prohibiting torture or ill treatment, legislation prohibiting discrimination by public institutions, etc.

149 Lubell, n129, p.327.

these rights, including the rights to education, health, food, housing, work (including just and favourable conditions of work), social security and a decent standard of living.

2.3 STATE RESPONSIBILITY FOR VIOLATIONS OF IHL AND IHRL

Those bodies of law examined so far in Section 2, IHL and IHRL, impose obligations directly on the State, whereby the State, in this case Israel, is held responsible for any violation of these obligations.[150] While other States should take violations of these obligations into account in their international relations with violating States, and indeed are themselves under certain obligations to try to mitigate these violations (see Section 4), an important means of achieving accountability for the victims of violations is through a judicial process establishing the guilt of the violating party. With regard to State violations of IHL and IHRL, the International Court of Justice (ICJ) has jurisdiction to hear cases alleging such violations brought by States,[151] and the international human rights treaty bodies, including the UN Committee on Economic, Social and Cultural Rights, may hear such allegations in quasi-judicial proceedings brought by individuals or groups of individuals.[152] However, in both instances, the consent of the party against whom the allegations are made is required in order for any hearing to proceed.[153] Israel has provided no such consent, and is highly unlikely to do so in the foreseeable future. Therefore, an alternative means of achieving accountability is to be sought – individual accountability under international criminal law (ICL).

150 See the International Law Commission Draft Articles on Responsibility of States for Internationally Wrongful Acts (ILC Draft Articles), reflective of customary international law.

151 1945 Statute of the International Court of Justice (ICJ Statute), Articles 34-38.

152 2008 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESR Optional Protocol), Article 2.

153 Regarding the ICJ, consent may be given on a case-by-case basis, or by general acceptance of the jurisdiction of the Court. ICJ Statute, Article 36. Regarding the UN Committee on Economic, Social and Cultural Rights, consent is given when a State becomes a party to the ICESCR Optional Protocol. ICESCR Optional Protocol, Article 1. It should be noted that the, at the request of a subsidiary UN body, the ICJ can give an advisory opinion on a given question without the consent of the State or States forming the basis of this question. This was the case with the ICJ's Advisory Opinion on the Wall, n73. However, though the substance of the case rests on binding international law, the judgement itself is advisory only and as such does not have binding force upon any State. ICJ Statute, Articles 65-68.

3 INDIVIDUAL ACCOUNTABILITY FOR WAR CRIMES UNDER INTERNATIONAL LAW

Numerous serious violations of IHL amount to war crimes under international criminal law, allowing the individuals responsible to be held criminally accountable. The broadest chance of successfully prosecuting those individuals responsible for Israel's unlawful appropriation of Palestinian tax revenue, and its associated collective punishment of the Palestinian people, is by establishing that the actions of those individuals amount to a specific form of war crime: a grave breach of the Geneva Conventions. This is because all States are under an obligation to investigate and prosecute any persons alleged to have committed or ordered grave breaches and who are present on their territory, or to extradite them to a State (or international court or tribunal) where this will happen. Additionally, the International Criminal Court may investigate and prosecute grave breaches of the Geneva Conventions.

3.1 TAX REVENUES IN THE OPT: THE GRAVE BREACH OF EXTENSIVE UNLAWFUL APPROPRIATION OF PROPERTY

The four Geneva Conventions of 1949, and their additional protocols of 1977, explicitly provide that certain violations of those conventions are of sufficient gravity to incur individual criminal responsibility. Such violations are defined as 'grave breaches' of these conventions. Article 147 of the Fourth Geneva Convention states:

> "the following acts, if committed against persons or property protected by the present Convention [shall amount to a grave breach]: […]extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly."

Additionally, grave breaches are incorporated into the Rome Statute at

Article 8(2)(a),[154] and as such may be investigated and prosecuted by the ICC. The Elements of Crimes, appended to the Rome Statute,[155] breaks this crime into the following elements:

1. The perpetrator destroyed or appropriated certain property.
2. The destruction or appropriation was not justified by military necessity.
3. The destruction or appropriation was extensive and carried out wantonly.
4. Such property was protected under one or more of the Geneva Conventions of 1949.
5. The perpetrator was aware of the factual circumstances that established that protected status.
6. The conduct took place in the context of and was associated with an international armed conflict.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Israel's failure to transfer Palestinian tax revenue violates the Article 48 Hague Regulations duty to use the taxes it collects from the occupied population 'to defray the costs of administration' of the OPT, as well as its obligation under Article 43 Hague regulations to 'ensure the civil life' of the occupied population. As such, Israel has clearly appropriated 'certain property' – the occupied population has the sovereign right to its national resources, including the taxes it pays to maintain the civil life of the occupied territory. Further, military necessity cannot be invoked to justify a violation of the provisions of Article 48 Hague Regulations.

With regard to element 3, and the prescription that the appropriation must be "extensive", the commentary to the Fourth Geneva Convention states that "an isolated incident would not be enough". However, a footnote to this statement reads: "It might be concluded from a strict interpretation

154 The grave breach of unlawful extensive appropriation of property is incorporated at Article 8(2)(a)(iv) Rome Statute.

155 Article 9 Rome Statute.

of this provision that the bombing of a single civilian hospital would not constitute a grave breach, but this would be an inadmissible inference to draw if the act were intentional."[156] The ICTY confirmed this interpretation of the term, stating in the *Blaskic* case that "[t]he notion of 'extensive' is evaluated according to the facts of the case – a single act, such as the destruction of a hospital, may suffice to characterise an offence under this count."[157] Whereas the example of bombing a hospital relates to destruction rather than appropriation of property, the term "extensive" applies equally to each form of the offence. It is clear, therefore, that the term "extensive" may refer to even a single incident of appropriation of property if this is of sufficient gravity. Even if one were to regard Israel's punitive appropriation of Palestinian tax revenue as one single incident (which would not be accurate),[158] the fact that this appropriation was of a magnitude to severely impact the economy of the entire Occupied Territory, and its effects were widespread enough to amount to the collective punishment of the entire occupied population, having a severe negative impact on that population, clearly demonstrates that the appropriation was extensive.

With regard, again, to element 3, and the prescription that the appropriation be "carried out wantonly", this is the mental element of the crime, and

156 Pictet, n84, p.601.

157 *The Prosecutor v. Tihomir Blaskic*, ICTY, Judgment, IT-95-14-T, para.157.

158 In fact, Israel has done this repeatedly. Even if one were to consider each of these episodes in isolation, in 2013, by way of example, three months of Palestinian tax payments were appropriated on three separate occasions (one month's permanently so, and two for an extended period). Further, this occurred in the wider context of Israel's implementation of additional crippling restrictions on the Palestinian economy. See Sections 1.1.2 and 1.2.1. Regarding the withholding of revenue for a period before transferring it to its rightful owner, the ICRC has stated that the definition of unlawful appropriation includes the "withholding" of property. ICRC Rome Statute Commentary, n85, p.83. The Prosecution in the *Kovacevic* case at the ICTY also contended that the definition of unlawful appropriation includes "withholding". The Court did not dispute this. ICTY, Prosecutor's Pre-trial Brief, *The Prosecutor v. Milan Kovacevic*, IT-97-24-PT, p.16, cited in, ICRC Rome Statute Commentary, n85, p.85.

includes both intent and recklessness.[159] It is quite difficult to conceive of a situation in which a perpetrator appropriates property without intending to do so. In order to understand how this *mens rea* element is to be applied, therefore, it is necessary to consider Element 4, which states that the appropriated property must have been "protected under one or more of the Geneva Conventions of 1949." On this basis, the prescription of wantonness in Element 3 should be understood as requiring that the appropriation of *protected* property was carried out intentionally or recklessly. This would cover a situation where the perpetrator appropriated property, but was reckless with regard to whether the property had protected status or not. This is relevant for the interpretation of Element 5, discussed below.

With regard to the substantive understanding of Element 4 itself, this provision requires that the appropriated property be protected under the Geneva Conventions. Article 33 GCIV prohibits "reprisals against protected persons and their property", as well as pillage. The Commentary to this Article confirms that it "guarantees all types of property, whether they belong to private persons or to communities or the State".[160] Further, element 2 prohibits appropriation of property "not justified by military

159 It should be noted that this interpretation is not universally accepted. For instance, Byron states that, "it seems likely that 'wantonly' is an expression of *mens rea*", but with regard to whether this encompasses recklessness, "there is insufficient evidence to accept this as the definitive answer." However, an examination of the history of the prohibition of 'wanton' destruction, and later appropriation, confirms that this is the case. A letter written by Doctor Francis Lieber, the framer of the 1863 *Lieber Code* – the first document codifying the prohibition of wanton destruction, in which he uses the terms 'wanton' and 'reckless' interchangeably, makes clear that this meaning was intended by its use. From there, the prohibition of wanton destruction was incorporated first into Article 18 of the 1919 *List of War Crimes* in the aftermath of the First World War, and then into Article 6 of the *Nuremberg Charter* in the aftermath of the Second World War. It is from here that wanton destruction was incorporated as a grave breach into the *First, Second and Fourth Geneva Conventions of 1949*, and it is at this stage that 'appropriation' was added to the offence. The inclusion of recklessness in the *mens rea* of the grave breach of wanton destruction or appropriation is confirmed by the Commentary to Article 147 GCIV, which states that the threshold for 'extensiveness' may be lower "if the act were intentional", clearly indicating that the violation encompasses a lower order of *mens rea* than intent. Sources, respectively: Christine Byron, **War Crimes and Crimes Against Humanity in the Rome Statute of the International Criminal Court**, Manchester University Press, Manchester, 2009, Kindle Edition, Chapter 2, War Crimes (I): Grave Breaches – Article 8 (2) (a) (iv), at location 1087; Dr. Lieber's letter is reproduced in, George B. Davis, **Doctor Francis Lieber's Instructions for the Government of Armies in the Field**, *The American Journal of International Law*, Vol. 1, No. 1 (Jan. – Apr., 1907), pp.13-25, at pp.20-21; regarding the addition of 'appropriation' to the grave breach, see, **Final Record of the Diplomatic Conference of Geneva of 1949**, Vol. II, Section B, Federal Political Department, Berne, pp.88-89; Pictet, n156.

160 Pictet, n84, p.227.

necessity". No act prohibited by IHL can be justified by recourse to military necessity.[161] This principle encompasses acts prohibited by all IHL, whatever the source, including customary international humanitarian law. Therefore, given the customary nature of the Hague Regulations, in order to determine what acts of appropriation may or may not be justified by military necessity it is necessary to examine the property protections embedded in those Regulations, including the tax regime set out in Article 48 Hague Regulations.[162] This further reinforces the protections afforded to Palestinian tax payments under GCIV.

Element 5 mandates that the perpetrator must have been "aware of the factual circumstances that established [the] protected status" of the appropriated property. Given the inclusion of the mental element

161 n86.

162 Clearly, if an action violates Israel's obligations under customary international humanitarian law, the act cannot be "justified by military necessity". With regard to the necessity to examine the provisions of the Hague Regulations when applying the protections of GCIV, Article 154 GCIV provides that the Fourth Geneva Convention "shall be supplementary to Sections II and III of the [Hague] Regulations". The Article further states, however, that this shall be the case "in the relations between the Powers who are bound by the Hague [Regulations]." Given that Israel is not a State party to, and hence is not directly bound by, the Hague Regulations, but is bound rather by the parallel customary legal norms, this could be interpreted as ruling out the complementary nature of the Hague Regulations and GCIV with regard to Israel's actions. However, the Commentary to Article 154 GCIV clarifies that:
"the Hague Regulations are considered to have given written expression to international custom and no State would be justified today in claiming that the Regulations are not binding on it because it is not party to them. […] There is no need, therefore, in particular cases, to wonder whether the Hague Regulations and the Fourth Geneva Convention are both applicable. If the Geneva Convention is applicable, the Hague Regulations are also applicable ' *a fortiori* ' in respect of all matters concerning civilian persons in time of war not contained in the 1949 Convention."
Regarding the grave breach under examination, the prohibition of appropriation "not justified by military necessity" makes this supplementary nature explicit, even regarding those States that are not party to the Hague Regulations. In examining those Hague provisions that have not been altered or replaced by GCIV, and hence that must continue to be applied alongside the protections of GCIV, the Commentary explicitly includes the Article 23(g) Hague Regulations prohibition of "seiz[ing] the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war." The Commentary notes "the inordinately wide use which has been made of the pretext of 'the necessities of war' to justify destruction and seizure", going on to state that this "provision of the Hague Regulations […] remains valid for all seizures of enemy property […]." Further, the Commentary explicitly includes the tax regime set out in Article 48 Hague Regulations as a provision continuing to function on the basis of the supplementary relationship between the two treaties. Pictet, n84, pp.614-618. In this vein, the ICTY had recourse to the Hague Regulations when defining the term 'occupation' in relation to the grave breach of extensive destruction of property under Article 147 GCIV, despite the fact that the Regulations were not directly applicable to the Occupying Power or the occupied State concerned. *Prosecutor v. Kordic*, ICTY, Trial Judgment, IT-95-14/2-T, 26 February 2001, para.338.

of wantonness in Element 3, which encompasses recklessness, Element 5 should be understood as requiring that the perpetrator either knew with certainty that the factual circumstances establishing the property's protected status existed, or knew that there was a significant likelihood that these factual circumstances existed.[163] Those Israeli officials responsible for the appropriation of Palestinian funds were fully aware of the circumstances establishing their protected status, and fully intended to appropriate them. This can be clearly inferred from the fact that they collected taxes from the occupied population and then openly refused to transfer them to their rightful owner. The statements of these officials, as reported in Section 1.1, corroborate this.

Given that the reason that Israel is able to appropriate Palestinian tax revenue is that it is the Occupying Power in the OPT, this action clearly has a nexus to an international armed conflict. The responsible Israeli officials are certainly aware of the facts that establish Israel's occupation of the OPT. All elements of the grave breach of unlawful extensive appropriation of property are satisfied. As such, individual criminal responsibility attaches to those Israeli officials responsible for appropriating Palestinian tax revenue.

3.2 PROSECUTING INDIVIDUALS FOR WAR CRIMES COMMITTED IN THE OPT

3.2.1 Domestic Courts and Universal Jurisdiction

There are various potential avenues for trying individuals for crimes under international law, including war crimes. Firstly, individuals may be tried for such crimes in domestic courts. This may be on the basis of: i) territorial jurisdiction – the alleged crime was committed on the territory of the prosecuting State; ii) active personality jurisdiction – the alleged perpetrator is a national of the prosecuting State; iii) passive personality jurisdiction – the victim of the alleged crime is a national of the prosecuting State; iv) protective jurisdiction – the alleged perpetrator has committed crimes against specific national interests of the prosecuting State; or, most

163 The Oxford Dictionary of Law defines 'recklessness' as: "being aware of the risk of a particular consequence arising from one's actions but deciding nonetheless to continue with one's actions and take the risk where it is unreasonable to do so". **Oxford Dictionary of Law**, 7th Edn, OUP, Oxford, 2009, p.455.

relevant to the situation under investigation, v) on the basis of universal jurisdiction.[164] Under customary international law, certain crimes deemed to be so serious as to be of concern to the international community as a whole achieve the status of crimes under international law. Under the principle of universal jurisdiction, such crimes, including war crimes, may be prosecuted by any State. No link, whether of territory, nationality, or national interest, between the crime and the prosecuting State is required.[165]

Regarding grave breaches of the Fourth Geneva Convention, Article 146 GCIV provides:

> "The High Contracting Parties [must] enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention […].
>
> Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case."

As such, States have an obligation to investigate and prosecute grave breaches on the basis of universal jurisdiction, and if not, they are obligated

164 Amnesty International, **Vanuatu: End Impunity Through Universal Jurisdiction**, *No Safe Haven Series*, No.8, December 2012, Index: ASA 44/001/2012, pp.14-15.

165 Amnesty International, End Impunity, n164, p.2. Additionally, many States provide in their domestic legal codes for universal jurisdiction over ordinary crimes. Amnesty International, **Universal Jurisdiction: A Preliminary Survey of Legislation Around the World – 2012 Update**, September 2012, Index: IOR 53/019/2012, pp.1-2.

to arrest and extradite suspects to another State for prosecution.[166] Given that the Geneva Conventions of 1949 have received universal ratification, this obligation pertains to all States. Additionally, the ICTY has held that the prohibition of grave breaches of the Geneva Conventions amounts to a *jus cogens* norm.[167] Such norms impose additional obligations upon third States, including the obligation to take action to bring such breaches to an end.[168]

3.2.2 Ad Hoc Tribunals and the International Criminal Court

Alternatively, persons suspected of crimes under international law, including war crimes, may be tried by a competent international court or tribunal, or in a hybrid variant of such that incorporates both domestic and international elements. There have in the past been various *ad-hoc* tribunals and courts established to adjudicate crimes alleged to have occurred in specific situations.[169] It is unlikely, however, given the political constraints, that any special court or tribunal will be established for Palestine in the near future.

However, crimes of genocide, crimes against humanity, war crimes and the crime of aggression may be prosecuted in the International Criminal

166 Transferring suspects to a competent international criminal tribunal or court will satisfy this obligation. Amnesty International, End Impunity, n164, p.3. The ICJ has confirmed this obligation with regard to the equivalent provisions in the International Convention Against Torture, stating that, "The obligations of a State party to conduct a preliminary inquiry into the facts and to submit the case to its competent authorities for prosecution are triggered by the presence of the alleged offender in its territory, regardless of the nationality of the offender or the victims, or of the place where the alleged offences occurred. […] The obligation for the State to criminalize torture and to establish its jurisdiction over it finds its equivalent in the provisions of many international conventions for the combating of international crimes. […] Extradition is an option offered to the State by the Convention, whereas prosecution is an international obligation under the Convention, the violation of which is a wrongful act engaging the responsibility of the State." *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012, p.422, at paras.68, 75 & 95.

167 *Prosecutor v Kupreskic et al.*, ICTY, Judgement, Trial Chamber, ICTY-95-16-T, 14 January 2000, para.520.

168 See Section 4.

169 E.g. The International Criminal Tribunal for the Former Yugoslavia (ICTY), The International Criminal Tribunal for Rwanda (ICTR), and the hybrid Special Court for Sierra Leone (SCSL).

Court (ICC).[170] The Court has jurisdiction to prosecute these crimes when committed by a national of a State party, or when committed on the territory of a State party.[171] In early January 2015, Palestine deposited instruments of ratification to the Rome Statute with the UN Secretary General, as well as a declaration under Article 12(3) Rome Statute accepting jurisdiction over crimes committed in the OPT since 13 June 2014 (indeed, it was as collective punishment for this lawful and peaceful diplomatic action that Israel instigated its current unlawful appropriation of Palestinian tax funds). These instruments have been accepted, and the State of Palestine will become a State party to the Rome Statute of the International Criminal Court on 1 April 2015.[172] At this point, the ICC will have jurisdiction to investigate and try war crimes committed on Palestinian territory.[173] Grave breaches of the Geneva Conventions are incorporated into the Rome Statute at Article 8(2)(a), giving the ICC jurisdiction to prosecute these crimes.

170 Rome Statute, Article 5. Regarding universal jurisdiction over the acts prohibited in the Rome Statute, the Statute contains no express obligation to extradite or prosecute. However, States parties recognise that they have an obligation to prosecute the crimes enumerated in that Statute under the principle of "complementarity". Rome Statute, Articles 1 & 17 (1). The 2010 Kampala Review Conference of the Rome Statute, comprised of the States parties, issued, on 8 June, Resolution RC/Res.1 on Complementarity, "*Reaffirming further* that […] effective prosecution must be ensured by taking measures at the national level", and stating that the Conference "*Recognizes* the **primary responsibility of States to investigate and prosecute** the most serious crimes of international concern", "*Emphasizes* the principle of complementarity […] and *stresses* the obligations of States Parties flowing from the Rome Statute", and "*Notes* the importance of States Parties taking effective domestic measures to implement the Rome Statute" [bolded emphasis added]. See also, Amnesty International, End Impunity, n164, p.24. The exercise of this right would be a significant step towards fulfilling those obligations incumbent on all States to ensure compliance with IHL and to take steps to end serious violations of *jus cogens* norms, including the violation of the right to self-determination, which Israel's act of unlawfully seizing the financial assets of the Palestinian population comprises. See Section 4.

171 Rome Statute, Article 12(2).

172 See Section 1.1.3.

173 Regarding territorial jurisdiction, the Permanent Court of International Justice stated, in the Steamship Lotus Case, that, "offences, the authors of which at the moment of commission are in the territory of another State, are nevertheless to be regarded as having been committed in the national territory, if one of the constituent elements of the offence, and more especially its effects, have taken place there." Publications of the Permanent Court of International Justice, Series A.-No. 10, September 7th, 1927, *The Case of the S.S. Lotus*, at p.23. In the instant case, even though the authors of these offences may have been in Israel at the time of commission, the effects have taken place in the OPT, bringing the crimes within its territorial jurisdiction. Though the ICC does not have the ability to enter any State and arrest those suspected of international crimes, if an arrest warrant or request is issued, other States parties to the Rome Statute will be under an obligation to arrest the subject of the warrant or request if she or he is present on its territory, and to hand the individual over to the Court. Rome Statute, Articles 59, 89 & 92.

4 OBLIGATIONS OF THIRD STATES

Common Article 1 to the Geneva Conventions places all High Contracting Parties under an obligation to "ensure respect for the present Convention in all circumstances." The Commentary to the Geneva Conventions clarifies that this means:

> "in the event of a Power failing to fulfil its obligations, the other Contracting Parties (neutral, allied or enemy) may, and should, endeavour to bring it back to an attitude of respect for the Convention. The proper working of the system of protection provided by the Convention demands in fact that the Contracting Parties should not be content merely to apply its provisions themselves, but should do everything in their power to ensure that the humanitarian principles underlying the Conventions are applied universally.
>
> […]
>
> The Contracting Parties are no longer merely required to take the necessary legislative action to prevent or repress violations. They are under an obligation to seek out and prosecute the guilty parties, and cannot evade their responsibility".[174]

Given the universal application of the conventions, all States are therefore under an obligation "to do everything in their power" to ensure that Israel ceases its violations of IHL, and that those responsible for grave breaches are brought to justice.

Additionally, Israel's collective punishment of the Palestinian people through the unlawful appropriation of 73.5 per cent of Palestinian public revenue constitutes a serious violation of the peremptory right to self-

174 Pictet, n84, p.16, and p.17 footnote 2.

determination of the Palestinian people.[175] Article 41 of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts, reflective of customary international law, provides that in case of a serious breach of an obligation under a peremptory norm of general international law, all States are under an obligation not to recognise a situation as lawful, not to render aid or assistance in maintaining the illegal situation, and to actively cooperate in order to bring the situation to an end.[176]

175 See Section 2.2.1. Further, the ICTY has stated that the prohibition of grave breaches of the Geneva Conventions amounts to a peremptory norm of international law, n167.

176 *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries*, International Law Commission, United Nations, 2001, Article 41. The ICJ, in both the *Namibia* and *Wall* cases, has confirmed these third State obligations. *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)* (Advisory Opinion) ICJ Rep 1971, para.126; Advisory Opinion on the Wall, n73, para.161.

Israel's Retaliatory Seizure of Tax

5 OSLO AND THE PARIS PROTOCOL

In 2012, Israel justified its appropriation of Palestinian clearance revenue by claiming that Palestinian action at the UN violated the Oslo Accords.[177] Before any analysis of recent actions can be made in terms of the Oslo Accords, some general comments on the standing of the Oslo process under international law are necessary.

5.1 GENERAL COMMENTS REGARDING THE OSLO FRAMEWORK, INCLUDING THE PARIS PROTOCOL

5.1.1 Agreements between Occupying Power and Occupied Authorities

There is some controversy as to whether agreements in the nature of the Oslo Accords may be considered as binding under international law at all. Under public international law, a treaty may only be validly concluded by and between subjects of international law, classically States or inter-governmental organisations, but not by objects of international law.[178] Non-State organisations, such as the PLO, would traditionally be included in the latter category.[179] Even if agreements of this nature are capable of being treaties binding in international law, they will only be valid to the extent that they do not violate existing protections under IHL. Accordingly,

177 *Infra* n196. In 2015, though unnamed "senior Israeli officials" have made reference to "unilateral" Palestinian actions (see, e.g., n33), Israel does not appear to have openly attempted to justify its action by reference to the Oslo Accords. This is likely because the act it is punishing, Palestine's joining of the ICC, cannot be made to fit even Israel's spurious justification for past incidents of tax appropriation. See Section 5.2, below.

178 Regarding subjects and objects of international law, see Shaw, n105, Kindle Edition, Location 6491, at footnote 8 and associated text..

179 Singer J, ***The Middle East Quarterly***, Spring 2002, Volume IX: Number 2, review of: Watson J, ***The Oslo Accords: International Law and the Israeli-Palestinian Peace Agreements***, Oxford, New York: Oxford University Press, 2000, < http://www.meforum.org/1459/the-oslo-accords>, accessed 04 March 2013; it should be noted that Watson concludes that the accords are binding agreements between subjects of international law. Conversely, Aust argues that these agreements are not legally binding. Anthony Aust, **Modern Treaty Law and Practice**, 3rd Edn, CUP, Cambridge, 2013, p.58.

the Oslo Accords may not derogate from any protection afforded to the occupied Palestinian population under the law of belligerent occupation.[180]

This principle is set out in Article 47 GCIV, which provides:

> "Protected persons who are in occupied territory shall not be deprived [...] of the benefits of the present Convention [...] by any agreement concluded between the authorities of the occupied territories and the Occupying Power".

This provision should be read in conjunction with Articles 7 and 8 of the Convention.[181] As noted in Section 3.1, the property seized by Israel is protected under Article 33 GCIV, and further, Article 147 GCIV incorporates the property protections enshrined in the Hague Regulations, including the tax regime provided for in Article 48 of those Regulations.[182] These protections therefore form part of "the benefits of the present Convention". The rationale behind Articles 7, 8 and 47 GCIV is that an imbalance in power between the two parties arises as a natural consequence of a situation of belligerent occupation. This limits the ability of the authorities of the occupied territory to act freely, without coercion by the Occupying Power, and in the interests of the occupied population. Consequently, any expression of consent to be bound by an agreement that hampers the protections of the occupied population is to be without any legal effect.[183]

The grounds on which a treaty may be invalidated, either in whole or in part, are set out in the 1969 Vienna Convention on the Law of Treaties.[184] Though derogation from the protections of the law of belligerent occupation is not included as such a ground, it is only logical that it would not be given that

180 For a full analysis of the inderogability of the protections afforded to the occupied population under IHL, see: Al Haq, ***Exploring the Illegality of Land Swap Agreements under Occupation*** (2011), p.11-13.

181 Article 7 GCIV states: "No special agreement shall adversely affect the situation of protected persons, as defined by the present Convention, nor restrict the rights which it confers upon them"; Article 8 GCIV states: "Protected persons may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention […]."

182 See footnotes 160, 161, 162 and associated text.

183 C Bell, ***Peace Agreements and Human Rights***, OUP, Oxford, 2000, 185.

184 1969 *Vienna Convention on the Law of Treaties* (Vienna Convention), Articles 42-64.

the Vienna Convention governs treaties between sovereign States,[185] and not between "the authorities of the occupied territories and the Occupying Power", as governed by Article 47 of the Fourth Geneva Convention. Therefore, even if an agreement between an occupying State and a non-State organisation representing the occupied population is capable of being a legally binding treaty, the inclusion of provisions derogating from the protections of the law of belligerent occupation must be added to the grounds for invalidating this kind of treaty. It is not clear whether it should be added to those grounds that must necessarily void the whole offending treaty,[186] or if it ought to be added to those grounds that may invalidate only the offending provisions, leaving the rest of the treaty intact.[187]

Given this framework, any changes made to the governance of the OPT, even by agreement with the PLO, must conform to the restrictions contained in Article 43 of the Hague Regulations – any change must be made for the security of the Occupying Power or for the benefit of the occupied population (including by ensuring compliance with the other provisions of IHL). Israel and the PLO have no authority to conclude any agreement that does not meet this standard – such an agreement, including any offending provision of the Oslo Accords, is void.

5.1.2 The tax provisions of the Paris Protocol and violations of IHL

Various provisions of the Oslo Accords violate the protections of IHL. For example, the Paris Protocol, which prescribes the economic regime for the OPT, entrenches pre-existing tax arrangements that were introduced by Israel in violation of the obligations of the Hague Regulations. In 1976, the Israeli military government introduced a Value Added Tax (VAT) in the OPT,

185 Vienna Convention, Article 1.

186 Vienna Convention, Article 51: "The expression of a State's consent to be bound by a treaty which has been procured by the coercion of its representative through acts or threats directed against him shall be without any legal effect"; Article 52: "A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations"; Article 53: "A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law […]." Note Article 44(5): "In cases falling under articles 51, 52 and 53, no separation of the provisions of the treaty is permitted."

187 Arts 46-50 Vienna Convention; see also Art 44(3) for the conditions which must be satisfied to allow for the separability of the offending provision.

which had not previously existed, in blatant violation the Article 48 Hague Regulations obligation to collect taxes from the occupied population "in accordance with the rules of assessment and incidence in force". This was pegged to the rate of the equivalent tax that had just been introduced in Israel, and was justified as being "an equalizing device, so as to augment the free flow of goods and services between [the OPT] and Israel".[188] As such, it was alleged to be of benefit to both territories, and therefore compliant with the Article 43 Hague Regulations obligation to ensure the civil life of the occupied Population. Numerous authors have demonstrated that this form of "economic annexation"[189] was in fact implemented to benefit the Israeli economy at the expense of the Palestinian economy. Tax equalisation, along with other measures introduced by Israel, protected Israeli businesses from being undercut by Palestinian competitors and ensured the dependence of the occupied Palestinian population on Israeli products, thus ensuring the free flow of goods for sale from Israel into the OPT, and the free flow of money from the OPT into Israel.[190]

The Paris Protocol, while 'allowing' the PA to set the rate of VAT in the OPT,

188 Dinstein, n8, para.299. A series of other measures fixing the operation of the economy of the OPT to that of Israel, though including various explicit provisions to the benefit of Israel, followed, allegedly for the same purpose. Benvenisiti, n77, pp.224-228.

189 Benvenisti, n77, p.242.

190 "From the human rights aspect, there is always concern regarding the occupier's inability to be true to the needs of the population, which is, to it, an enemy population. […]the occupier's actions, which are allegedly for the benefit of the population, are always suspect. The Israeli economy was the greatest beneficiary of the economic unification between Israel and the Territories. It gained a large supply of cheap labor alongside a large population of captive consumers. Residents of the Territories purchased Israeli products with the money they earned doing difficult manual labor in the Israeli market. The open bridge policy allowed residents of the Territories to immigrate to the Gulf countries. The money sent by those working in the Gulf to their families in the Territories also partly flowed to the Israeli economy through purchases of Israeli products. Israeli imposed restrictions which prevented the development of a substantive industry in the Territories increased the dependency of their residents on Israeli products. The equalizing of indirect taxation was carried out primarily in order to prevent a situation whereby the economic union with the Territories would have negative side effects for the Israeli economy: a significant price gap between Israeli products and services (which are subject to VAT) and their counterparts from the Territories might have created a reverse situation, where the Palestinians would have taken over Israeli markets instead of Israel taking over Palestinian markets." Yossi Wolfson, **Economic Exploitation of Occupied Territories: HCJ 69/81 Abu 'Aita v. The Regional Commander of Judea and Samaria (judgment rendered April 5, 1983)**, Hamoked: Center for the Defense of the Individual, 2013, <http://www.hamoked.org/Document.aspx?dID=Documents1051>, accessed 4 March 2015. See also Benvenisti, n77, pp.241-244.

provides that this cannot be set at a lower rate than that in Israel. Israel, however, can set a lower rate than that in the OPT.[191] This entrenches the impact of pre-Oslo tax equalisation, implemented to ensure that Palestinian businesses could not undercut Israeli businesses, only now Israel can set a VAT rate that undercuts Palestinian businesses.[192] The Paris Protocol entrenches the implementation of a new form of tax, in violation of Article 48 Hague Regulations, and alters the legal and administrative framework of the OPT in a manner that clearly does not comply with Article 43 Hague Regulations: the Value Added Tax cannot be justified as being either, a) for the security of Israel, or, b) for the benefit of the occupied Palestinian population. The only benefit is to the economy of Israel.[193]

In addition to violations incorporated into the overarching framework of economic relations set out in the Paris Protocol, the practical means by which Israel collects and transfers the taxes paid by Palestinians violates the protections of IHL. This procedure systematises a process of 'leakage', whereby a significant portion of Palestinian tax revenue is diverted away from the PA and into the Israeli treasury.[194] From there it is spent for the benefit of the Israeli, rather than the occupied, population, in clear violation of the Article 48 Hague Regulations obligation to use the taxes collected to

191 Article 3(5)(a) Paris Protocol, n9, states that: "the Israeli rates of customs, purchase tax, levies, excises and other charges […] shall serve as the minimum basis for the Palestinian Authority." See also, Palestine Liberation Organization, Negotiations Affairs Department, **Paris Protocol – Summary**, <http://www.nad-plo.org/etemplate.php?id=48>, accessed 28 Feb 2013.

192 The provisions of the Paris Protocol governing the relative tax rates across the two territories demonstrate even further that the equalising of these tax rates never had anything to do with ensuring the civil life of the occupied population.

193 Amal Ahmad demonstrates that "[t]he Protocol, far from fostering Israeli-Palestinian peace and partnership as the rhetoric claimed, actually codified the asymmetric relationship between the Israeli military occupation and the occupied Palestinian population". For more on this, and how the Protocol is integral to Israel pursuing it's strategic interests, in violation of the provisions of IHL, see Amal Ahmad, **How Israel gets to cut off Palestine's revenue**, *The Hill*, 3 Feb 2015, <http://thehill.com/blogs/congress-blog/foreign-policy/231493-how-israel-gets-to-cut-off-palestines-revenue>, accessed 4 March 2015; Amal Ahmad, **The Customs Union & Israel's No-State Solution**, *Al-Shabaka: The Palestinian Policy Network*, November 2014, <http://al-shabaka.org/sites/default/files/Ahmad_PolicyBrief_En_Nov_2014.pdf>, accessed 4 March 2015.

194 See, e.g., UNCTAD, "Palestinian resource leakage is rooted in the trade relations between the Occupied Palestinian Territory and Israel enshrined in the Paris Protocol, which deprives the Palestinian Authority of policy independence, border control and the ability to collect accurate data on external trade". UNCTAD, n41, para.48 (i). For a detailed explanation, see paras.36-48.

"defray the expenses of the administration of the occupied territory". The UN Conference on Trade and Development estimated that, as of 2013, fiscal leakage amounted to over USD 300 million per annum.[195]

The tax measures propagated in the Paris Protocol violate numerous provisions of IHL, including Articles 43 and 48 Hague Regulations. As such, and despite being concluded by agreement with the occupied authorities, these measures have no legal validity. Notwithstanding, Israel's seizure of Palestinian tax payments violates the provisions of the Paris Protocol.

5.2 VIOLATIONS OF THE PARIS PROTOCOL ARISING FROM ISRAEL'S APPROPRIATION OF PALESTINIAN TAX PAYMENTS

In 2012/13, Israel attempted to justify its allegedly financially motivated, but manifestly punitive, appropriation of the taxes paid by the occupied Palestinian population within the Oslo framework by claiming that the Palestinian call for a vote on Non-member Observer State Status at the UN General Assembly "constitutes a gross violation of the agreements that have been signed with the State of Israel".[196] This was in reference to Article XXXI (7) of Oslo II, which provides:

> "Neither side shall initiate or take any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations".[197]

Article 60(1) of the Vienna Convention stipulates that, "a material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for […] suspending its operation in whole or in part."

195 UNCTAD, n41, para.43.

196 Prime Minister's Office, **PM Netanyahu's comments at the Cabinet meeting concerning the UN decision**, 02 December 2012, <http://www.pmo.gov.il/English/MediaCenter/Spokesman/Pages/spokestartUN021212.aspx>, accessed 31 March 2015; see also Prime Minister's Office, **PM's Office Response to the UN General Assembly decision and to Abu Mazen's Speech**, 29 November 2012, <http://www.pmo.gov.il/English/MediaCenter/Spokesman/Pages/spokeUN291112.aspx>, accessed 31 March 2015.

197 n9. See also *CNN*, **Palestinian United Nations bid explained**, 30 November 2012, at sub-heading *What is Israel's position on the statehood bid?*, <http://edition.cnn.com/2012/11/28/world/meast/un-palestinian-bid>, accessed 31 March 2015.

This may appear to permit Israel, in response to a material breach of Oslo II by the PLO, to suspend the provisions of the Paris Protocol, annexed to Oslo II, regarding the collection and clearance of Palestinian tax payments. However, Article 60(5) of the Vienna Convention states:

> "Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties".

The language of the suspended Paris Protocol provisions regarding the collection and clearance of Palestinian tax payments does not explicitly state that these articles relate to the protection of the human person. However, these provisions set out the means by which Israel, as the Occupying Power, is to fulfil its humanitarian obligations to "defray the expenses of the administration of the occupied territory" and thereby ensure the 'civil life' of the OPT, under Articles 48 and 43 Hague Regulations respectively. As such, these provisions directly relate "to the protection of the human person" and are of a "humanitarian character". Further, the suspension of these provisions, and the ensuing seizure of Palestinian tax payments, amounts to the violation of multiple provisions of other treaties having humanitarian character and "relating to the protection of the human person", including the violation of the prohibition of collective punishment and the grave breach of extensive appropriation of property, in clear contradistinction to the object and purpose of Article 60(5) Vienna Convention.

Therefore, to suspend the Paris Protocol provisions relating to the clearance of Palestinian tax payments, even in case of a substantive breach by the PLO, amounts to a blatant violation of the said Paris Protocol provisions taken in conjunction with Article 60(5) of the Vienna Convention and the various IHL treaty provisions that have been violated. These include Articles 43, 48 and 23(g) Hague Regulations, regulating property relations under occupation and prohibiting unlawful seizure of property, Articles 50 Hague Regulations and 33 GCIV, prohibiting collective punishment, and Article 147 GCIV, creating the grave breach of unlawful extensive appropriation of protected property.

Further, the Palestinian action taken at the United Nations in 2012 did not amount to a breach of Oslo II, specifically Article XXXI (7). This article prohibits "any [unilateral] step that will change the status of the West Bank and the Gaza Strip".[198] The question of statehood is a factual matter, not dependent upon recognition. Recognition of an entity as a State by third States, or by international organisations such as the UN, is merely a matter of those States or organisations declaring that they acknowledge the pre-existing legal fact (as they understand it) that an entity is a State.[199] The legal fact of Statehood is quite independent of the act of recognition. The Palestinian attempt to achieve recognition as a State at the UN General Assembly in no way affects "the status of the West Bank and the Gaza Strip",[200] and therefore in no way breaches Article XXXI (7) of Oslo II. Not only would Israel's suspension of these provisions in response to a material breach of Oslo II be unlawful, but the material breach on the basis of which Israel claims to be taking this action did not happen.[201] This only emphasises

198 n197.

199 Crawford J, **The Creation of States in International Law**, 2nd Edn, OUP, Oxford, 2006, 17-28; Quigley J, **The Statehood of Palestine: International Law in the Middle East Conflict**, CUP, New York, 2010, 219-252.

200 Indeed, Palestine has considered itself a State since 1988: "The Palestine National Council hereby declares, in the Name of God and on behalf of the Palestinian Arab people, the establishment of the State of Palestine in the land of Palestine with its capital at Jerusalem." Declaration of Independence, 15 November 1988, UN Doc A/43/827, 18 November 1998, Annex III. The purpose of Palestine's initiatives at the UNGA, therefore, was not to achieve Statehood as such, but to strengthen Palestine's position in the international legal order, achieving recognition of its rights and obligations under international law, and enhancing its ability to exercise such rights by accessing international mechanisms. For further analysis of recognition, Statehood, and Palestinian initiatives at the UN, see Al Haq, **Al Haq's Questions and Answers: Palestine's UN Initiatives and the Representation of the Palestinian People's Rights**, 2011, 5-6.

201 Notably, multiple Israeli actions do breach this provision. For example, Israel is continuously expanding settlements and the construction of the Annexation Wall inside the Green Line in an overt attempt to create "facts on the ground" to ensure future Israeli ownership of the land. Israeli officials have repeatedly justified the building of such 'facts on the ground' inside occupied Palestinian territory on the basis that 'everybody knows' that these areas will be Israeli. For example, in December 2012, Israeli Prime-minister Benjamin Netanyahu stated, in an interview with German newspaper Die Welt, that, "We're building in the areas that will remain in a final peace settlement of Israel […]. And everybody knows that they will remain part of Israel." Such actions and statements clearly amount to attempts to unilaterally "change the status of the West Bank and the Gaza Strip [prior to] the outcome of the permanent status negotiations", thereby constituting a 'material breach' of Art XXXI(7) Oslo II. Regarding the creation of 'facts on the ground', see Al Haq, **The Annexation Wall and its Associated Regime**, 2nd Edn, 2012, p.29. For Netanyahu's statements and analysis of the 'everybody knows fallacy', see, respectively, See *Die Welt*, **The Palestinians want a State without peace**, 05 December 2012, available at <http://www.welt.de/politik/ausland/article111836124/The-Palestinians-want-a-state-without-peace.html>, accessed 23 March 2015; *Foreign Policy Magazine*, **Jerusalem, settlements, and the "everybody knows" fallacy**, 19 March 2010, available at <http://foreignpolicy.com/2010/03/19/jerusalem-settlements-and-the-everybody-knows-fallacy/?wp_login_redirect=0>, accessed 23 March 2015.

further Israel's violation of its obligation under the Paris Protocol to transfer the taxes it collects from the occupied Palestinian population to the PA for expenditure to ensure the civil life of the OPT, in accordance with Articles 43 and 48 Hague Regulations.

It is to be noted that, in the 2015 instance of Israel's appropriation of Palestinian funds, though unnamed "senior Israeli officials" have made reference to "unilateral" Palestinian actions,[202] Israel does not appear to have openly attempted to justify its action by reference to the Oslo Accords. This may well be because Israel realises that the act being punished in this instance – Palestine's becoming a State party to the ICC – cannot be convincingly portrayed as a "step that will change the status of the West Bank and the Gaza Strip". Palestine has already been accepted as a State by the UN General Assembly and as a State party to multiple international treaties. This latest move by the PLO/PA is simply about trying to achieve justice for Palestinians for international crimes committed by Israeli officials and agents.

While there are serious violations of IHL enshrined in the Oslo Accords, including the Paris Protocol, and the status of these agreements under international law is a matter of on-going debate, Israel's unlawful appropriation of Palestinian funds amounts to a clear breach of the provisions of the Paris Protocol.

202 E.g. n33.

CONCLUSION AND RECOMMENDATIONS

The Palestinian economy is severely constrained by Israel's occupation of the OPT. This arises from a systematic accumulation of different restrictions on Palestinian economic activity, including Israel's seizure and prevention of access to agricultural land and natural resources, and movement restrictions affecting labour flexibility and trade. Israel's constraints on the private sector have forced the Palestinian population into an acute dependence on the public sector, which provides for 22.9 per cent of employment in the OPT. Even prior to Israel's appropriation of Palestinian tax payments, the PA was suffering a dire fiscal crisis and was unable to meet all of its financial obligations. Israel's punitive and unlawful seizure of nearly three quarters of PA revenue month after month, in violation of its obligations under IHL, hugely exacerbates this financial crisis. Further, though the provisions of the Paris Protocol, which set the tax arrangements for the OPT, violate the law of belligerent occupation and as such have no legal validity, Israel's seizure of Palestinian tax payments constitutes a material breach of these provisions. As well as leading to the restricted availability of many essential public services, including education and health care, many Palestinians reliant on public salaries, contracts and benefits are unable to meet the costs of their basic needs, including food and transportation. This leads to lost business for the private sector workers who supply the goods and services to meet these needs, in turn affecting their suppliers, and so on up the supply chain. This causes a severe drag on the private economy, and means that private sector workers are also unable to afford essential goods and services. This in turn further reduces the revenue received by the PA, which further reduces the public stimulus of the private economy. Thus, Israel's seizure of Palestinian funds forces the OPT into a downward spiral of economic hardship. Israel's unlawful and extensive appropriation of the taxes paid by ordinary Palestinians, a grave breach of the fourth Geneva Convention prosecutable at the ICC, further constitutes the collective punishment of the occupied Palestinian population, a war crime under customary international law.

Israel's Retaliatory Seizure of Tax
AL-HAQ

RECOMMENDATIONS

Israel must:

1. Immediately transfer all the tax payments it has unlawfully seized from Palestinian tax payers to the PA in order ensure the civil life of the occupied Palestinian population;
2. Immediately resume all future transfers of the taxes paid by the occupied Palestinian population according to their regular schedule;
3. Abide by its obligations under Articles 43 and 48 of the Hague Regulations and cease all appropriation of Palestinian tax payments, now and in the future;
4. Abide by its obligations under Article 33 of the fourth Geneva Convention and never subject the occupied Palestinian people to collective punishments, including for the peaceful and lawful diplomatic actions of their representatives, whether by seizure of tax payments or by other means;
5. Allow the PA, under the auspices of the PLO, to set the tax arrangements it deems best for the occupied Palestinian people.[203] This must include the right to introduce or terminate any form of tax it sees fit, and to set the rate of any such tax. Israel's domestic tax arrangement cannot be employed either to determine what taxes are in place or at what rate they are set. No decision on taxation of the occupied Palestinian population may be made on the basis of what will benefit the Israeli economy;
6. Accord the PA the responsibility for collecting and administering all Palestinian taxes in order to ensure that the funds are used for the lawful purpose of defraying the expense of the administration of the OPT, and are not unlawfully diverted for the benefit of the Israeli economy;
7. Acknowledge that any alleged 'debt' incurred by the PA or the

203 Given the illegality of the tax regime provided in the Paris Protocol, Israel, as the Occupying Power, is under an international legal obligation to ensure an alternative means of administering Palestinian tax revenue that meets its responsibilities under international law, including as mandated in Articles 43 and 48 Hague Regulations.

occupied Palestinian population for the purchase from Israeli companies of resources that are already Palestinian property has no legitimacy. Any such outstanding 'debt' must be written off, and all moneys received in payment for such resources in the past must be immediately returned to the occupied Palestinian population. Further, payment must be made for any such resources that have been unlawfully appropriated for Israeli use; and accordingly,

8. Immediately cease the unlawful and extensive appropriation of Palestinian resources, including the water supply, and allow the occupied Palestinian population full access to these resources;

9. Immediately remove all measures restricting the choice of energy supplier in the OPT to State owned Israeli companies, unlawfully entrenched for the benefit of Israeli financial interests. This must include permitting the occupied Palestinian population to develop its own energy resources and allowing access to international energy markets;

10. Comply with its duties as Occupying Power under international humanitarian law and international human rights law in their entirety.

Third States, including the High Contracting Parties to the Geneva Conventions, in order to comply with their obligations under Article 1 of the Fourth Geneva Convention and Article 41 of the ILC Draft Articles on State Responsibility, must:

11. Take all diplomatic and legal action possible to ensure that Israel complies with its obligations under the law of belligerent occupation and ceases its systematic violation of peremptory norms of international law, including the right to self-determination of the Palestinian people, including by pressuring Israel to comply with those recommendations outlined above;

12. Cease all business relationships with economic actors involved or suspected of being involved in violations of international law,

including international criminal law, in the OPT.[204] By conducting business with economic actors engaged in acts that violate the Palestinian right to self-determination, States are in violation of their obligation not to recognise the situation as lawful, not to render aid or assistance in maintaining the illegal situation, and to actively cooperate in order to bring the situation to an end;

13. Take appropriate measures to ensure that business enterprises domiciled in their territory or under their jurisdiction do not participate in violations of international law, including those relating to the unlawful seizure of Palestinian financial or natural resources;

14. Comply with their obligations under Articles 146 and 147 of the Fourth Geneva Convention to search for and prosecute those responsible for grave breaches of the Fourth Geneva Convention, including the unlawful extensive appropriation of protected property.

The Palestinian Authority must:

15. Consider potential avenues for legal redress for violations committed against the occupied Palestinian people. As well as pursuing individual criminal accountability at the ICC, the PA should consider accepting the jurisdiction of the International Court of Justice on either a temporary or permanent basis. Israel has not accepted the compulsory jurisdiction of the ICJ. However, the State of Palestine could potentially bring a contentious case and obtain a legally binding decision against any State that has accepted the jurisdiction of the Court and is complicit in Israeli violations of international law, including the unlawful extensive appropriation of Palestinian resources and the right to self-determination of the Palestinian people.

The Prosecutor of the International Criminal Court must:

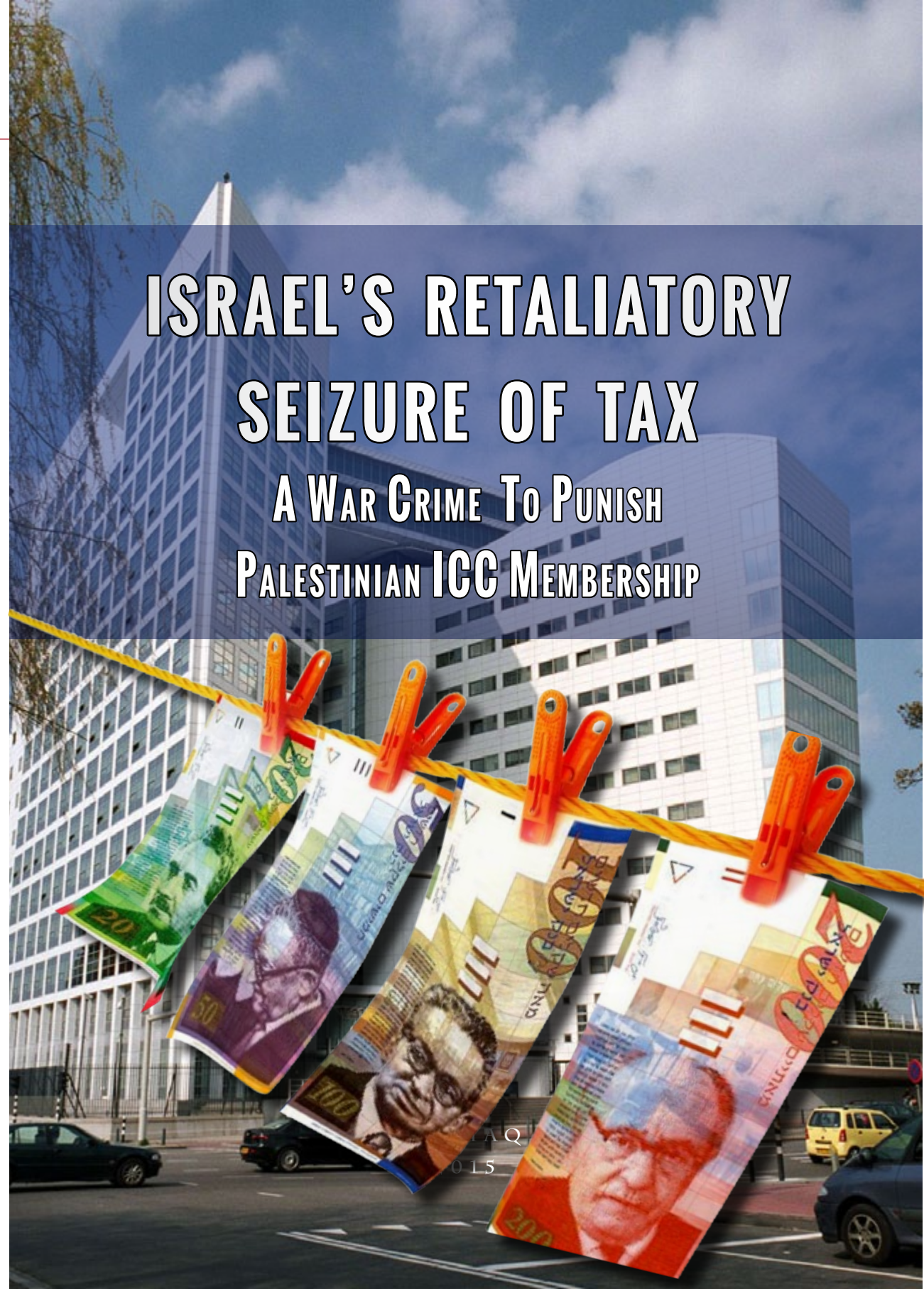
16. Take account of Israel's grave breach of unlawful and extensive appropriation of Palestinian property and may wish to consider

204 Any profits predicated on violations of international criminal law amount to the proceeds of criminal enterprise.

including it in any investigation of crimes prohibited under the Rome Statute that have been committed in the OPT.

All parties to any future negotiations between the representatives of the Palestinian people and Israel, including third States, must:

17. Ensure that any agreements concluded do not deprive the Palestinian people of their protections under international law, including the law of belligerent occupation. Any agreements not meeting this criterion will have no legal validity, and the provisions of international humanitarian law will prevail.



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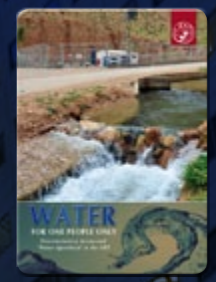

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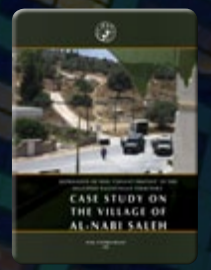

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AL-Haq's Website: **www.alhaq.org**

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AL-HAQ

About AL-HAQ

Al-Haq is an independent Palestinian non-governmental human rights organisation based in Ramallah, West Bank. Established in 1979 to protect and promote human rights and the rule of law in the Occupied Palestinian Territory (OPT), the organisation has special consultative status with the UN Economic and Social Council.

Al-Haq documents violations of the individual and collective rights of Palestinians in the OPT, regardless of the identity of the perpetrator, and seeks to end such breaches by way of advocacy before national and international mechanisms and by holding the violators accountable. The organisation conducts research; prepares reports, studies and interventions on the breaches of international human rights and humanitarian law in the OPT; and undertakes advocacy before local, regional and international bodies. Al-Haq also cooperates with Palestinian civil society organisations and governmental institutions in order to ensure that international human rights standards are reflected in Palestinian law and policies. The organisation has a specialised international law library for the use of its staff and the local community.

Al-Haq is also committed to facilitating the transfer and exchange of knowledge and experience in IHL and human rights on the local, regional and international levels through its Al-Haq Center for Applied International Law. The Center conducts training courses, workshops, seminars and conferences on international humanitarian law and human rights for students, lawyers, journalists and NGO staff. The Center also hosts regional and international researchers to conduct field research and analysis of aspects of human rights and IHL as they apply in the OPT. The Center focuses on building sustainable, professional relationships with local, regional and international institutions associated with international humanitarian law and human rights law in order to exchange experiences and develop mutual capacity.

Al-Haq is the West Bank affiliate of the International Commission of Jurists - Geneva, and is a member of the Euro-Mediterranean Human Rights Network (EMHRN), the World Organisation Against Torture (OMCT), the International Federation for Human Rights (FIDH), Habitat International Coalition (HIC), and the Palestinian NGO Network (PNGO).

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