

Population Transfer including Settler Implantation in Jerusalem:

A Crime against Humanity with Legal Responsibilities for States and Individuals
A Policy Brief* of the Civic Coalition for Palestinian Rights in Jerusalem (CCPRJ)



When is Population Transfer Unlawful?

The UN *Draft Declaration on Population Transfer and the Implantation of Settlers* (1997) sets out the norms of international customary and treaty law that must be respected when individuals, groups or entire populations are made to move:¹

- Population transfer is **unlawful** if it entails a **practice** or **policy** having the **purpose** or **effect** of moving persons into or out of an area, either within or across an international border, or within, into or out of an occupied territory, **without the free and informed consent** of the **transferred** population and any **receiving** population (emphasis added);
- Population transfer is **always unlawful** if it entails any of the following which are **absolutely prohibited**:
 - Forcible displacement that is not for the safety of the displaced and/or, in the context of armed conflict, for military necessity
 - Preventing the return of the displaced upon cessation of the conditions that made forcible displacement imperative
 - The settlement by an occupying power of its own civilian population in occupied territory
 - Deportation, displacement and/or the implantation of settlers with the purpose or effect of changing the demographic composition of an area with a minority/indigenous population
- *Population transfers or exchanges of population cannot be legalized by international agreement when they violate fundamental human rights or peremptory norms of international law.*

There is Unlawful Population Transfer in Jerusalem (1948 – present)

Following the first Arab-Israeli war in 1948, Jerusalem became divided into Israeli “West Jerusalem”, including the western urban neighborhoods and Palestinian villages (approximately 50 km²), and the Jordanian-controlled eastern Jerusalem, including the Old City (6 km²).

In June 1967, Israel occupied and annexed eastern Jerusalem which had been governed by Jordan together with the land of 28 Palestinian villages located in the adjacent West Bank, creating the “East Jerusalem” of today in approximately 70km² of occupied Palestinian territory. In addition, Israel has established “Greater Jerusalem”, i.e. four large clusters of Israeli settlements in the occupied West Bank extending from Ramallah in the North, to the Dead Sea in the East, and Hebron in the South.

- *Israel has removed indigenous Palestinians out of West Jerusalem (1948), and has moved Palestinians out of and within occupied East Jerusalem and “Greater Jerusalem” (since 1967), and settled Jewish Israelis in all areas by means of practices and policies which are absolutely prohibited under international law.*

Illustrative Evidence: routine Israeli policies and practices targeting Palestinians

Israeli Practices and Policies	Effects
Unlawful transfer of Palestinians	

<p>1. Indiscriminate and deliberate attacks on Palestinian civilian population and infrastructure during armed conflict</p>	<p>50,000-60,000 Palestinians forcibly displaced from West Jerusalem (1948)² At least 30,000 Palestinians forcibly displaced from occupied East Jerusalem (1967)³</p>
<p>2. Preventing return of forcibly displaced Palestinians</p>	<p>At least 90,000 refugees (1948 and 1967) and their descendants from Jerusalem are forced to remain in exile until today</p>
<p>3. Revocation of residency permits of Palestinians of occupied East Jerusalem</p>	<p>Jerusalem ID revoked from at least 14,500 East Jerusalem Palestinians⁴</p>
<p>4. Permanent appropriation of Palestinian land and property for settler implantation through confiscation and forced evictions based on discriminatory laws, as well as discriminatory urban planning and zoning.</p>	<p>West Jerusalem: 10,000 homes and land of the size of 65% of the area of the West Jerusalem confiscated from 1948 displaced Palestinians.⁵ Occupied East Jerusalem: at least 1/3 of Palestinian land confiscated; private Palestinian development confined to 13% of the city</p>
<p>5. Arbitrary restrictions on family unification for Palestinians in occupied East Jerusalem; since 2003, residency prohibited for spouses and children holding West Bank or Gaza ID</p>	<p>Divided Palestinian families; family members on temporary permits and without access to social services in Jerusalem</p>
<p>6. No public housing policy for Palestinians in occupied East Jerusalem; demolition of homes built privately without permit</p>	<p>Severe housing crisis for Palestinians: 641 home demolitions (2004 -2016)displacing 2,358 Palestinians and/or depriving them of homes for their children⁶</p>
<p>7. Closure orders against Palestinian cultural and political institutions in occupied East Jerusalem; Censorship of Palestinian school books, imposition of Israeli curriculum on schools</p>	<p>More than 30 Palestinian institutions closed (resulting in forced relocation to PA administered areas/Ramallah);⁷ Children deprived of their right to learn about their Palestinian heritage and identity</p>
<p>8. Military closure of occupied East Jerusalem for West Bank and Gaza Palestinians (checkpoints, permits, Wall)</p>	<p>Severely restricted Palestinian access to the city; Palestinian economy in occupied East Jerusalem severely undermined</p>
<p>9. Construction of the Wall in occupied East Jerusalem in a manner that cuts off certain Palestinian neighborhoods from the city center; halt of law enforcement and public services; plans to exclude these neighborhoods from the Israeli controlled municipal area</p>	<p>Tens of thousands of Palestinians have difficulties accessing the city center, living behind the Wall in unsafe and unhealthy conditions while the future status of their neighborhoods as part of Jerusalem is insecure</p>
<p>10. Creation of a coercive environment in occupied East Jerusalem that forces many Palestinians to move. This coercive environment is an environment of severe deprivation of fundamental human rights. It is the cumulative result of the large number of unlawful Israeli practices and policies, such as those listed as 4-9, which are applied in combination and over a long period of time against the occupied Palestinian population in East Jerusalem.</p>	<p><i>Of all Palestinians living in East Jerusalem by 2012, 1/4 (60-70,000 persons) were forced to move at least once within (26%) and out of (74%) the city since 1967. By 2012, those who had left relocated back into the city, mainly for fear of revocation of their Jerusalem residency permits in connection with the construction of the Wall.⁸ Currently approximately 70,000 Palestinians with Jerusalem ID are not in occupied East Jerusalem.⁹ Having been forced to leave the city; they are at risk of revocation of their Jerusalem residency permit. Massive forced movement of Palestinians into the East Jerusalem neighborhoods behind the Wall into slum-like conditions because it is the only area where they can find affordable housing and unite with family members denied Jerusalem residency, while (at least for now) protecting their own Jerusalem resident</i></p>

	<i>status.</i>
Unlawful implantation of Jewish Israeli settlers	
11. Use/development by the state of Israel of all appropriated Palestinian land and property in West Jerusalem for the settlement of its Jewish population	In 1947, West Jerusalem's population was approximately 40% Palestinian. ¹⁰ <i>Today, West Jerusalem's population is almost 100% Jewish Israeli.</i>
12. Use /development by the state of 87% of the area of occupied East Jerusalem, most of it Palestinian property, for its Jewish population (settlements, roads, service- business and tourism infrastructure)	<i>In occupied East Jerusalem today, Jewish Israeli settlers are 45% of the population, up from 0% in 1967.¹¹</i>
13. State-sponsored transfer of some 220,000 Jewish Israeli settlers into occupied East Jerusalem	

➤ *Israel has carried out the above prohibited practices and policies in a deliberate and planned manner and with the declared purpose of altering the demographic composition of the population in Jerusalem and asserting Jewish Israeli domination.*

Indicators of Purpose, Plan, Intent:

- As pointed out repeatedly by the UN Committee on the Elimination of Racial Discrimination, Israeli domestic law provides legal sanction to racial discrimination, and for the creation of a coercive environment against Palestinians and internationally prohibited practices and policies of population transfer.¹² Since 1948, Israel legislators have crafted and adopted laws which:
 - Claim Israeli sovereignty in all of pre-1948 British Mandate Palestine, including the 1967 Occupied Palestinian Territory (OPT);
 - Strip Palestinian refugees of their citizenship of (British Mandate) Palestine, making them stateless with no right to return;
 - Define Israel as the state of “Jewish people;”
 - Create “a three-tiered system of laws affording different civil status, rights and legal protection for Jewish Israeli citizens, Palestinian citizens of Israel and Palestinian residents of East Jerusalem.”¹³ a superior civil status (Jewish nationality) for Jewish citizens; inferior citizenship for Palestinian citizens, and the precarious status of “resident aliens” for the Palestinian population of occupied East Jerusalem; and,
 - Regulate the systematic and irreversible confiscation of Palestinian land and property, and the transfer of ownership to the Israeli state and Zionist organizations.¹⁴

In West Jerusalem, for example, Israel has prevented all return of 1948 Palestinian refugees in accordance with its Citizenship Law (1952), while their land, homes and businesses have been appropriated mainly under the Absentees' Property Law (1950).

- The *de facto* annexation of occupied East Jerusalem: in 1967 Israel extended its domestic legal system of racial discrimination and population transfer into the occupied Palestinian city, giving effect to its claim of sovereignty there through the Basic Law “United Jerusalem, Capital of Israel” (1980).
- The official Israeli doctrine of “demographic balance”, i.e., a ratio of approximately 30% Palestinians vs.70% Jewish Israelis in (West and occupied East) Jerusalem. This ratio is deemed a requirement for ensuring the “Jewish character” of the city and has guided public policy at least since 1973 (Gafni Committee).¹⁵
- Israel’s Jerusalem 2000 Outline (“Master”) Plan, which translates the doctrine of “demographic balance” into urban planning policies, assuming a maximum ratio of 40% Palestinians and 60% Jewish Israelis by 2020 and alerting of the need to make “far-reaching changes in our approach to the key variables influencing the balance of immigration.”¹⁶

- Numerous public statements by Israeli officials, for example:

"I am seeing to the Jewish majority... the majority in Jerusalem. That is why we are here, to see to that."
(Teddy Kollek, Mayor of Jerusalem, 1982)¹⁷

"Most of the planning and development of Jerusalem following the city's unification was intended to achieve political goals, primarily to ensure a Jewish majority in the city."
(Uri Ben-Asher, former Jerusalem District Planner in the Israeli Interior Ministry, 1995)¹⁸

"Maintaining our sovereignty over Jerusalem and boosting its Jewish majority have been our chief aims"
(Ehud Barak, Prime Minister of Israel, 2000)¹⁹

Note on "Consent" or "Voluntary Movement" of Palestinians

It has been clarified that free and informed consent means that people have a genuine choice to remain or leave.²⁰ Israel's unlawful policies and practices create a situation of coercion where genuine consent to forcible transfer cannot be given. Therefore, consent of affected Palestinians – even if given – does not make their forcible removal lawful.

Moreover, it has also been clarified that the absence of overt physical force does not mean necessarily that people move voluntarily. It is recognized that the creation of a coercive environment can be a practice or policy of (indirect) forcible population transfer. For example, "In the case of a prolonged military occupation, an occupant may create economic and social conditions, the cumulative effect of which is to induce or coerce the population under occupation to leave."²¹

This interpretation of coercive environment and consent has been codified in the Rome Statute of the ICC under war crimes and crimes against humanity.

What are the Legal Offenses?

1. The Crime against Humanity of Forcible Population Transfer

The crime against humanity under customary law was first codified by the International Law Commission (ILC) in the Draft Code of Crimes against the Peace and Security of Mankind (1996) as "arbitrary deportation or forcible transfer of population". The ILC Draft Code guided the modern definition of the crime in the Rome Statute of the International Criminal Court (ICC).

Elements of the crime against humanity

- a. *Deportation or forcible transfer of population*, meaning forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;²²

Force: is not restricted to physical force, but includes threat of force or coercion and taking advantage of a coercive environment.²³

Lawful presence: international law is the yardstick for national law in this regard.²⁴ Indigenous populations, such as Palestinians, are always lawfully present in their place of habitual residence.

Without grounds permitted: meaning on grounds other than the safety of the affected population or military necessity (in armed conflicts).

- b. *Committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack, and pursuant to or in furtherance of a State or organizational policy.*²⁵

Attack: is not limited to the use of armed force but encompasses any mistreatment of the civilian population.²⁶ An attack may be "imposing a system of apartheid ... or exerting pressure on the population to act in a particular manner".²⁷

Widespread: meaning large scale, i.e., directed against a multiplicity of victims.²⁸

Systematic: meaning “pursuant to a preconceived plan or policy”,²⁹ or the “repeated, unchanging and continuous nature of the violence committed”.³⁰

Civilian population: usually defined broadly as “all persons except those who have the duty to maintain public order and have the legitimate means to exercise force”.³¹

Pursuant to or in furtherance of a State or organizational policy: requires that the State or organization actively promote or encourage such attack.³²

With knowledge of the attack: for individuals to be liable for the crime, the person has to be aware of the attack. S/he need not have knowledge of the details of the attack.³³ Overall knowledge can be inferred from the facts, and willful blindness is not a defense.³⁴

Israel's Forcible Population Transfer: a War Crime or a Crime against Humanity?

Deportation or forcible transfer of civilians has been treated as a war crime *and* as a crime against humanity under customary law since the Nuremburg Tribunal (1945).

War crimes are grave violations of IHL and, as such, limited to situations of armed conflict and occupation such as in the OPT. War crimes under of the Fourth Geneva Convention (1949) and the Rome Statute of the ICC include any transfer by an occupying power of its own civilian population into occupied territory, and deportation and forcible transfer of individuals or groups of the occupied population – unless temporary and necessary for their safety during military operations. In the OPT, Israel's unlawful population transfer in connection with its illegal Wall and settlements has been characterized as a serious violation of IHL (Fourth Geneva Convention, Article 49) by the International Court of Justice (ICJ) advisory opinion (2004),³⁵ and as a *prima facie* war crime that falls under the jurisdiction of the ICC by a fact finding mission of the UN Human Rights Council (2013).³⁶

*Crimes against humanity may occur anytime and anywhere. Their characteristic is the context of the **widespread and systematic attack** in which the crime is committed. As illustrated by the case of Jerusalem, Israel has forcibly transferred Palestinians since 1948, and not only in/from the OPT. It has done so as part of a widespread and systematic attack against the indigenous Palestinian people, creating the coercive environment that has forced many to leave. In light of available legal findings (see point 2 below), this attack is best characterized as persecution of Palestinians and/or imposition of a system of apartheid, which are also crimes against humanity. **Israel's forcible population transfer is, therefore, both, a crime against humanity and – in the OPT – also a war crime.***³⁷

2. A Serious Breach of Peremptory Norms of Customary International Law

Peremptory norms are norms of customary international law that are accepted as binding by the international community as a whole and from which no derogation is permitted because of the importance of these norms for the international order:

- The prohibition on aggression, which is essential for international peace and security
- The right to self-determination of peoples, and the related prohibitions on the acquisition of territory by force and colonialism
- The prohibitions on slavery, torture, genocide, racial discrimination, apartheid and other crimes against humanity, which are essential for safeguarding the human being.³⁸

Serious breaches of peremptory norms are defined as the gross or systematic failure by the responsible state to fulfil its obligations under these norms.³⁹

- *The State of Israel, with its illegal settlements, Wall, forcible transfer of population and annexation in the OPT, has already been held responsible for such serious violations by the ICJ advisory opinion (2004), i.e., violation of the **prohibition on acquisition of territory by force and the right to self-determination of the Palestinian people.***⁴⁰ Other UN and independent findings, moreover, indicate that Israel, with its policies and practices that systematically deprive Palestinians of fundamental human rights, is also responsible for violation of the **prohibitions on colonialism, racial discrimination and apartheid.**⁴¹
- *With the crime of forcible population transfer, Israel is responsible in addition for serious violation of the **prohibition on crimes against humanity under of customary international law.***

Issues of Accountability

War crimes and crimes against humanity have slightly different legal consequences in terms of accountability:

The crime of forcible population transfer,

As war crime, it entails:

- The duty of states parties to the Fourth Geneva Convention to ensure Israel's respect of the provisions of the Convention, including the prohibition on forcible population transfer.

As a war crime and a crime against humanity, it entails:

- Individual criminal responsibility under both, customary international law and international treaty law (Rome Statute of the ICC). In this regard, all states have a duty to ensure that individuals responsible for the crime are brought to justice.

As a crime against humanity, it also:

- Constitutes a continuing violation and crime, with responsibility extending from when it first began.⁴²
- Entails special legal responsibilities for all states (third-state responsibility) under customary international law in addition to states' obligations under treaties, because of the serious breach of peremptory norms involved.

Note: war crimes may also result in third state responsibility when binding norms of IHL are severely violated.

State Responsibility

Israel, the offending state

Israel is not a signatory to the Rome Statute of the ICC. Israel is, however, accountable to its legal obligations under customary international law, including those codified in the ILC Articles on the Responsibility of States in connection with Internationally Wrongful Acts (2001):⁴³

- To cease the wrongful act, meaning the immediate halt of all practices and policies of forcible population transfer (such as the illustrative examples 1 – 13 listed in the above chart) and the annulment of the associated system of laws and administrative measures;
- To offer appropriate assurances and guarantees of non-repetition;
- To make full reparation, including restitution, compensation and satisfaction, for injury caused.

Restitution, meaning to return the situation as it was before the crime began, is the primary form of reparation. It is considered especially important when IHL, human rights and peremptory norms of customary international law are severely violated.⁴⁴ Among others, this means for Israel to dismantle all unlawful settlements and to facilitate the return of all forcibly displaced Palestinians, including descendants, and of the property seized from them. These legal norms underlie UN General Assembly Resolution 194 (1948) calling for the return of the Palestinian refugees; they have since been affirmed and elaborated in a series of more recent UN instruments.⁴⁵

All other states (third-state responsibility)

As confirmed by the ICJ advisory opinion on the illegal Wall (2004), Israel's serious breaches of peremptory norms result in special responsibilities for the entire international community under customary law as codified in the ILC Articles.⁴⁶ Accordingly, all states are accountable to the following legal obligations:⁴⁷

- To cooperate to bring to an end the serious Israeli breaches by lawful means. Although international law does not proscribe how exactly this is to be done, it is understood that states are to adopt appropriate measures in order to ensure that Israel ends forcible population transfer and makes full reparation. These measures may include sanctions such as, for example, the suspension of trade and cooperation agreements with Israel, the denial of entry visa to responsible Israeli officials or the freezing of funds and assets of the Israeli state, entities and individuals responsible for the serious breach.⁴⁸ Sanctions are frequently but not necessarily supported by binding or non-binding UN resolutions, such as the UN General Assembly resolutions calling for a military embargo, economic and other sanctions against Israel in the 1980s.⁴⁹

- To not recognize as lawful the situation created by these breaches, nor provide aid or assistance in maintaining that situation. The latter is broader than aid and assistance in the actual commission of the breach. States are to abstain from, or terminate, any contribution to the maintenance of the situation created by the breach. Moreover, states cannot evade this obligation by arguing that they were not aware of the situation. Proof of knowledge is not required because states are expected to be aware of any serious breach of a peremptory norm.⁵⁰ In practical terms, this obligation means that all states have a legal duty to halt all military, economic, financial, academic and cultural cooperation with official Israeli institutions that provides material support for the maintenance of the status quo created by Israel's crime of forcible population transfer. This includes, for example, the legal duty of states to ban trade that benefits the maintenance and expansion of the illegal Israeli settlements and of Israeli control and exploitation of unlawfully appropriated Palestinian property, land and natural resources.

Responsibilities in the conduct of Business

The UN Guiding Principles on Business and Human Rights lay out the obligations of states and private businesses in accordance with existing international law.

Corporations are to ensure that their business activities are in conformity with international humanitarian and human rights law and do not have an adverse impact on human rights.

States are to take appropriate measures to ensure that business enterprises under their jurisdiction, including those owned or controlled by them, respect the above in the conduct of their business operations.

- In practice, this means that corporations are to terminate their business interests in activities associated with Israel's crime against humanity of forcible population transfer, while states are to ensure that businesses do so. In the same vein, a UN fact finding (2013) has confirmed that terminating business interests in the illegal Israeli settlements in the OPT, including East Jerusalem, is a necessary step for avoiding adverse impacts of business on the human rights of the Palestinian people.⁵¹ In order to facilitate implementation of this step, the Human Rights Council decided in 2016 to establish a UN database of companies that continue to provide equipment, supplies, services, financial revenues or any other material support for the maintenance and expansion of the illegal Israeli settlements.⁵²
- Businesses involved in the Israeli crime against humanity are legally liable via their CEOs.

Individual Responsibility

Individuals involved in war crimes and crimes against humanity are legally liable and subject to prosecution and punishment by national courts of third states (under universal jurisdiction) or the ICC.

The State of Palestine only (and not Israel) has ratified the Rome Statute. Palestine has accepted jurisdiction of the ICC for international crimes occurring in its territory – i.e., the OPT including East Jerusalem – since 13 June 2014.

- As the preliminary investigation by the ICC is still ongoing, the question is not only whether the Court will eventually open formal investigation. Equally important, in particular in light to the limited area and period of jurisdiction, is the question whether the ICC will decide to investigate possible crimes against humanity committed in connection with the illegal Israeli settlements and forcible displacement of Palestinians, or insist on the more limited framework of war crimes. **Only an ICC investigation that applies the legal framework of the crime against humanity can contribute to justice for the Palestinian people** because this framework alone will reveal the continuous character of Israel's forcible population transfer, the context of the widespread and systematic Israeli attack against Palestinians and the full scope of criminal responsibility.

- ¹ *Draft Declaration on Population Transfer and the Implantation of Settlers*, presented as Annex II in “Human Rights and Population Transfer: Final Report of the Special Rapporteur, Mr. Al-Khasawneh”, UN Doc. E/CN.4/Sub.2/1997/23 (27 June 1997).
- ² Salim Tamari (ed.), *Jerusalem 1948. The Arab Neighbourhoods and their Fate in the War*, Institute of Jerusalem Studies and Badil (2002), p. 2011, 213, 216-217 (incl. many official British and UN sources).
- ³ *Eviction, Restitution and Protection of Palestinian Rights in Jerusalem*, Badil (1999).
- ⁴ <http://www.hamoked.org/Document.aspx?dID=Updates1717>
- ⁵ *Supra*, Salim Tamari (ed.), *Jerusalem 1948*.
- ⁶ B'tselem statistics updated on 20 October 2016: http://www.btselem.org/planning_and_building/east_jerusalem_statistics.
- ⁷ CCPRI.
- ⁸ Un-published survey commissioned in 2012 by OCHA (published with permission of OCHA-oPt). See also: *Displaced by the Wall*, Badil and IDMC/Norwegian Refugee Council, 2006.
- ⁹ 317,844 Palestinians held Israeli residency permits in Jerusalem (Israeli Ministry of Interior, 2012) but only 246,000 of them were actually living in East Jerusalem (Palestinian Central Bureau of Statistics, census updated for mid-2013).
- ¹⁰ *Supra*. Salim Tamari (ed.), *Jerusalem 1948*, p. 38 and 211.
- ¹¹ Official Palestinian and Israeli population statistics.
- ¹² CERD, Concluding Observations ISRAEL, CERD/C/ISR/CO/14-16 (9 March 2012) and CERD/C/ISR/CO/13 (14 June 2007).
- ¹³ Human Rights Committee, Concluding Observations ISRAEL, CCPR/C/ISR/CO/4 (21 November 2014), para. 7.
- ¹⁴ This system of Israeli laws includes, among many others: Area of Jurisdiction and Powers Ordinance, No. 29 of 5708-1948; Law and Administration Ordinance of 27 June 1967, Section 11 B; Israeli Citizenship Law (1952); Law of Return (1950); Basic Law: The Knesset (1958), Amendment 9 (1985); Absentees' Property Law (1950); Development Authority (Transfer of Property) Law (1950); Land Acquisition for Public Purposes Ordinance (1943, incorporated British Mandate law); Basic Law: Israel Lands (1960); World Zionist Organization-Jewish Agency "Status" Law (1952); Keren Kayemet Le-Israel Law (1953); Covenant with Zionist Executive (1954). See, Adalah: <http://adalah.org/eng/Israeli-Discriminatory-Law-Database>
- ¹⁵ B'tselem, *A Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem* (1995), p. 30-38, 45-48, at: www.btselem.org/download/199505_policy_of_discrimination_eng.doc
- ¹⁶ Efrat Cohen-Bar, *Trapped By Planning: Israeli Policy, Planning, and Development in the Palestinian Neighborhoods of East Jerusalem*, Bimkom (2014), p. 21.
- ¹⁷ *Supra*. B'Tselem, p.30, citing Minutes of Jerusalem Municipal Council meeting, 24 January 1982.
- ¹⁸ *Supra*, B'Tselem, p. 79.
- ¹⁹ Ehud Barak, “Address by Prime Minister Ehud Barak on the Fifth Anniversary of the Assassination of Yitzhak Rabin” (8 November 2000), at: <http://mfa.gov.il/MFA/PressRoom/2000/Pages/Address%20by%20PM%20Barak%20on%20the%20Fifth%20Anniversary%20of%20th.aspx>
- ²⁰ ICTY, Prosecutor v. Blagojević, 2005. Case IT-02-60, Trial Judgement, para 596.
- ²¹ Awn Sh. Al-Khasawneh, “The Human Rights Dimensions of Population Transfer, including the Implantation of Settlers: Progress Report”, UN Doc E/CN.4/Sub.2/1994/18, 30 June 1994, para 29.
- ²² (Rome Statute, Article 7.1(d), 7.2(d)).
- ²³ ICC, Elements of Crimes (2011), Crime against Humanity of Deportation or Forcible transfer of Population 7(1)(d), p.6. footnote 12.
- ²⁴ K. Kittichaisaree, *International Criminal Law*, Oxford University Press (2001), p.109.
- ²⁵ Rome Statute, Article 7.1, 7.2 (a).
- ²⁶ ICTY, *Kunarac*, Appeal Judgement (12 June 2002), para 86.
- ²⁷ International Criminal Tribunal for Rwanda (ICTR), *Akayesu*, Trial Judgement (2 September 1998), para 581.
- ²⁸ Commentary to Article 18, ILC Draft Code of Crimes against Peace and Security of Mankind, p. 47, para 4.
- ²⁹ *Supra*. Commentary to Article 18, p. 47, para 3.
- ³⁰ ICTY, *Jelisić*, Trial Judgement (14 December 1999), para 53.
- ³¹ ICTR, *Kayishema and Ruzindana*, Trial Judgement (21 May 1999), para 513.
- ³² ICC, Elements of Crimes (2011), Introduction to Crimes against Humanity, para 3.
- ³³ ICTY, *Kunarac*, Trial Judgement, para 434; *Krnjelac*, Trial Judgement, para 59; *Kunarac*, Appeal Judgement, para 102.
- ³⁴ ICTY, *Tadić*, Trial Judgement, para 657; *Blagojević and Jokić*, Appeal Judgement, para 102.
- ³⁵ ICJ *Advisory Opinion on the Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory* (9 July 2004), para. 119 – 122, 133, 134.
- ³⁶ *Independent Fact Finding Mission on the Israeli Settlements in the OPT*, A/HRC/22/63 (7 February 2013), para. 104.
- ³⁷ Rome Statute of the International Criminal Court, Rome, 1998, art. 7(1)(h) and 7(1)(j).
- ³⁸ 1969 *Vienna Convention on Treaties*, Article 53. ILC *Draft Articles on the Responsibilities of States in connection with Internationally Wrongful Acts*, annexed to UN General Assembly Resolution A/RES/56/83 (12 December 2001) Article 40, comment 8 and footnote 651.
- ³⁹ *Supra*, ILC *Articles on State Responsibility*, Article 40, comment 8. Examples of such serious breaches are provided in ILC Article 41, comments 7 and 8. These include, among others, the Portuguese colonial rule, denial of self-determination in Rhodesia, Namibia and East Timor, apartheid in South Africa, the Iraqi invasion of Kuwait, and the situation created by the former Republic of Yugoslavia through population transfer in Bosnia and Kosovo.
- ⁴⁰ *Supra*, ICJ *Advisory Opinion (2004)*, para. 117, 122.
- ⁴¹ For example, Fact Finding Mission/Israeli Settlements (*supra*), para 103, 107; CERD (2012; 2007) *supra*; reports of the UN Special Rapporteurs on Human Rights in the OPT John Dugard, A/HRC/4/17 (29 Jan 2007), and Richard Falk, A/HRC/16/72 (10 January 2011) and A/HRC/25/67 (13 January 2014).
- ⁴² *Supra*, ILC Article 14 explaining the meaning and responsibility resulting from a *continuing* breach. See also, Cherif Bassiouni, “International Crimes: “Jus Cogens” and Obligations Erga Omnes”, in *Law and Contemporary Problems*, Vol. 59, No. 4.
- ⁴³ *Supra*. ILC Articles 29 – 35.
- ⁴⁴ *Supra*, ILC Article 35, comment 6.
- ⁴⁵ See, for example, *Principles on Housing and Property Restitution for Refugees and Displaced Person*, UN Sub-Commission on Human Rights, E/CN.4/Sub.2/2005/17 (28 June 2005); *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, UN General Assembly Resolution 60/147 (16 December 2005).
- ⁴⁶ *Supra*, ICJ *Advisory Opinion (2004)*, para 155, 163.
- ⁴⁷ *Supra*, ILC Article 41
- ⁴⁸ *Supra*, ILC Article 41, comment 2, 3; Article 54, comment 1, 3, 4, 6 and 7.
- ⁴⁹ See for example, UN General Assembly Resolutions ES-9/1 (5 February 1982) and 38/180 (19 December 1983).
- ⁵⁰ *Supra*, ILC Article 41, comment 5, 11.
- ⁵¹ HRC Fact Finding Mission on the Israeli Settlements (2013), para. 117.
- ⁵² Human Rights Council Resolution A/HRC/L.39 of 22 March 2016.