


PALESTINE AND THE MEANING OF DOMINATION IN SETTLER COLONIALISM AND APARTHEID¹


PALESTINA Y EL SIGNIFICADO DE LA DOMINACIÓN EN
EL COLONIALISMO DE ASENTAMIENTO Y EL APARTHEID

Recibido: 07/05/2021 – Aceptado: 15/07/2021

Rania Muhareb²

 <https://orcid.org/0000-0003-4362-8140>
r.muhareb1@nuigalway.ie

Pearce Clancy³

 <https://orcid.org/0000-0001-8842-7890>
p.clancy5@nuigalway.ie

- 1 The authors would like to express their appreciation and gratitude to Wesam Ahmad, Shane Darcy, Yara Hawari, John Reynolds, and Joseph Schechla for their helpful comments and thoughts on earlier drafts. Responsibility for any errors or omissions lies solely with the authors.
- 2 Rania Muhareb is an Irish Research Council and Hardiman PhD scholar at the Irish Centre for Human Rights in the National University of Ireland, Galway. She is a Policy Member of Al-Shabaka and was formerly a legal researcher and advocacy officer at Al-Haq.
- 3 Pearce Clancy is an Irish Research Council PhD scholar at the Irish Centre for Human Rights in the National University of Ireland, Galway, and was formerly a legal researcher at Al-Haq.

Abstract

Domination is inherent to both settler colonialism and apartheid. These two frameworks intertwine in the Palestinian context. Despite growing recognition and adoption of the apartheid framework in Palestine, Zionist settler colonialism, (which drives the ongoing displacement and dispossession of the Palestinian people) has not received the same attention. This study considers the meaning of domination in the context of the legal prohibitions of colonialism and apartheid. Taking into account the contributions of the field of settler colonial studies, the article situates domination within the framework of settler colonialism by considering the role of racialisation in settler colonial state formation. It then examines the law of apartheid, in particular its core element of domination. In doing so, this paper concerns itself with the situation in Palestine in order to demystify the meaning of domination as a matter of international law.

Keywords: Domination; Settler colonialism; Apartheid; Palestine; Zionism.

Resumen

La dominación es inherente tanto al colonialismo de asentamiento como al apartheid. Estos dos marcos se entrelazan en el contexto palestino. A pesar del creciente reconocimiento y adopción del régimen del apartheid en Palestina, el contexto más amplio del colonialismo de asentamientos sionistas, que impulsa el desplazamiento y desposesión en marcha de las tierras del pueblo palestino, no ha recibido la misma atención que el anterior. Este artículo considera el significado de dominación en el contexto de las prohibiciones legales sobre el colonialismo y el apartheid. En particular, basándose en las contribuciones en el campo de los estudios coloniales de asentamientos, el artículo sitúa la dominación en el marco del colonialismo de asentamiento, considerando el papel de la racialización en la formación del estado colonial de asentamientos. Después examina el marco legal del apartheid, en particular su elemento central de dominación. Al hacerlo, el artículo se ocupa de la situación en Palestina, para desmitificar el significado de dominación como una cuestión de derecho internacional.

Palabras clave: Dominación; Colonialismo de asentamiento, Apartheid, Palestina, Sionismo.

Summary

1. Introduction
2. Domination in Settler Colonialism
 - 2.1 The Colonial Underpinnings of Race
 - 2.2 The Prohibition of (Settler) Colonialism
 - 2.3 Articulating Domination in Settler Colonialism
3. Domination in the Law of Apartheid
 - 3.1 The Prohibition of Apartheid
 - 3.2 Defining Apartheid as an International Crime
4. Settler Colonialism and Apartheid: Intertwining in Palestine
5. Conclusion
6. Bibliography

1. Introduction

Recent years have seen growing recognition on Israel imposing apartheid over the Palestinian people⁴. The apartheid analysis is not new. It draws on decades of Palestinian scholarship⁵,

4 See, for example, Al-Haq *et al.* *Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel's Seventeenth to Nineteenth Periodic Reports*. Ramallah: 2019. (hereinafter Al-Haq *et al.* Report). <https://www.alhaq.org/cached_uploads/download/2019/11/12/joint-parallel-report-to-cerd-on-israel-s-17th-19th-periodic-reports-10-november-2019-final-1573563352.pdf>; Al-Haq. *United Nations: In response to Unprecedented Recognition of Israel's Apartheid Regime, States Must Take Concrete Steps to End this "unjust reality"*. Ramallah: 2020. <<https://www.alhaq.org/advocacy/17012.html>>; Al-Haq. *Global Response to Israeli apartheid: A call to the UNGA from Palestinian and international Civil Society Organizations*. Ramallah: 2020. <<https://www.alhaq.org/advocacy/17305.html>>.

5 See, for example, JAMJOUR, Hazem. "Not an analogy: Israel and the crime of apartheid". *The Electronic Intifada*. 2009. <<https://electronicintifada.net/content/not-analogy-israel-and-crime-apartheid/8164>>; ABDELNOUR, Samer. "Beyond South Africa: Understanding Israeli Apartheid". *Al-Shabaka*. 2013. <<https://al-shabaka.org/briefs/beyond-south-africa-understanding-israeli-apartheid/>>; HAWARI, Yara. "Apartheid from Within? The Palestinian Citizens of Israel". *Al-Shabaka*. 2017. <<https://al-shabaka.org/briefs/apartheid-within-palestinian-citizens-israel/>>; IRAQI, Amjad. "Palestinians are tired of proving Israeli apartheid exists". *+972 Magazine*. 2020. <<https://www.972mag.com/palestinians-annexation-apartheid-south-africa/>>.

activism⁶, and advocacy⁷, which have sought to better characterise the nature of the Israeli regime and its continued oppression of the Palestinian people. Early, foundational literature on Zionist settler colonialism by Palestinian scholars⁸ and diverse Jewish authors⁹ identified Zionist ideology and its racial exclusiveness as the driving force behind Palestinian displacement, dispossession, and domination, which continue seven decades into the ongoing *Nakba* (“catastrophe”)¹⁰ of 1948¹¹.

For decades, Palestinians have been systematically fragmented¹² throughout historic Palestine¹³ and in exile, denied their right of return to their homes,

6 BDS Movement. “What is BDS?” <<https://bdsmovement.net/what-is-bds>>.

7 See, for example, MAC ALLISTER, Karine. “Applicability of the Crime of Apartheid to Israel”. *al-Majdal*. 2008. p. 11; Al-Haq. *South African study finds that Israel is practicing colonialism and apartheid in the Occupied Palestinian Territory*. Ramallah: 2010. <<https://www.alhaq.org/advocacy/7207.html>>; ALQASIS, Amjad. “Zionist Apartheid: A Crime Against Humanity”. *al-Majdal*. 2013, vol. 53. p. 5. <https://www.badil.org/phocadownload/Badil_docs/publications/al-majdal-53.pdf>.

8 See, notably, SAYEGH, Fayez. *Zionist Colonialism in Palestine*. Lebanon: PLO Research Center, 1965.

9 On this, see a discussion of early anti-Zionist Jewish scholarship in SCHECHLA, Joseph. “The Consequences of Conflating Religion, Race, Nationality and Citizenship”. *Al-Majdal*. 2010, vol. 43, p. 10–16.

10 *Nakba* is “An Arabic term meaning “catastrophe”, referring to the mass displacement and dispossession of Palestinians between 1947 and 1949 due to colonization and ethnic cleansing by Zionist militias and Israel.” See AL-AZZA, Nidal. SHOMALI, Lubnah. (eds). *Survey of Palestinian Refugees and Internally Displaced Persons 2016–2018*. Bethlehem: BADIL, 2019, Volume IX. p. viii. <<https://www.badil.org/en/publication/press-releases/90-2019/5013-pr-en-231019-55.html>>.

11 See, for example, MUHAREB, Rania. “The Universal Declaration of Human Rights and the Ongoing Nakba: 70 Years of Exile, Rights Abuses, and Israeli Impunity”. Ramallah: Al-Haq, 2018. <<https://www.alhaq.org/advocacy/6124.html>>; MUHAREB, Rania. “The Nakba 70 Years On: Israel’s Failure to Erase Palestinian Collective Memory”. Ramallah: Al-Haq, 2018. <<https://www.alhaq.org/advocacy/6215.html>>.

12 FALK, Richard. TILLEY, Virginia. *Israeli Practices towards the Palestinian People and the Question of Apartheid Palestine and the Israeli Occupation* Beirut: UN ESCWA, 2017. E/ESCWA/ECRI/2017/1. p. 37–48. (hereinafter “ESCWA Report”). <https://www.middleeastmonitor.com/wp-content/uploads/downloads/201703_UN_ESCWA-israeli-practices-palestinian-people-apartheid-occupation-english.pdf>.

13 Historic Palestine refers to “the whole land of Palestine before the *Nakba*, when Palestine was still under the British Mandate... Mandatory Palestine is considered to be 1948 Palestine as well as the oPt [occupied Palestinian territory]”. See *supra* note 6.

lands, and properties¹⁴. Similarly, Palestinians are subjected to multiple legal regimes in the areas to which they have been confined. This process of spatial and legal segregation is further facilitated and maintained by the fragmented nature of international law itself and the way it has been used to address the dispersed Palestinian people and the situation in Palestine to date. For example, international humanitarian law has been applied in the Palestinian territory occupied by Israel since 1967 but has not been considered applicable within the Green Line¹⁵, even while Israel's domination of the indigenous Palestinian people transcends this artificial geographic boundary¹⁶.

Unencumbered by these limitations, an apartheid analysis allows for the plight of the Palestinian people as a whole to be addressed more holistically. By recognising the racial animus of Zionist ideology in its continued domination of the Palestinian people, the apartheid analysis challenges a fragmentation that “has come to be accepted as normative”¹⁷. Despite growing recognition and adoption of the apartheid framework in Palestine, the broader context of Zionist settler colonialism has not enjoyed the same attention in legal and human rights

14 See, notably, ALBANESE, Francesca P. TAKKENBERG, *Lex. Palestinian Refugees in International Law*. 2nd edn. Oxford: OUP, 2020.

15 The Green Line refers to “The 1949 ceasefire line delineating the boundary between 1948 Palestine (what is today called Israel) and the West Bank, including east Jerusalem and Gaza Strip. The Green Line, also called the 1949 Armistice Line, is not an international border but is considered to be so for the purposes of distinguishing Palestinian IDPs [internally displaced persons] and refugees”. See *supra* note 6.

16 ABDULLA, Rinad. “Colonialism and Apartheid Against Fragmented Palestinians: Putting the Pieces Back Together”. *State Crime Journal*. 2016, vol. 5. p. 52.

17 ESCWA Report. p. 37.

discourse¹⁸. By conceiving of Israeli apartheid as devoid of racist ideology¹⁹, the analysis results in “liberal readings of Israeli apartheid”²⁰, which fail to address the root causes of Palestinian oppression in Israel’s *raison d’état*.

Domination is “inherent to both settler colonialism and apartheid”²¹, which intertwine in the Palestinian context²². As institutionalised racism is increasingly addressed worldwide, it is recognised that structural violence²³ is

- 18 SFARD, Michael. *The Israeli Occupation of the West Bank and the Crime of Apartheid: Legal Opinion*. Tel Aviv: Yesh Din, 2020. (hereinafter “Yesh Din Report”). <<https://s3-eu-west-1.amazonaws.com/files.yesh-din.org/Apartheid+2020/Apartheid+ENG.pdf>>; B’Tselem, *A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid*. Jerusalem: 2021. (hereinafter “B’Tselem Report”). <https://www.btselem.org/publications/fulltext/202101_this_is_apartheid>; Human Rights Watch, *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution*. New York: 2021. (hereinafter “HRW Report”). <<https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>>; see also TATOUR, Lana. “Why calling Israel an apartheid state is not enough”. *Middle East Eye*. 2021. <<https://www.middleeasteye.net/opinion/why-calling-israel-apartheid-state-not-enough>>.
- 19 SFARD, Michael. “Yes, It’s Israeli Apartheid. Even Without Annexation”. *Haaretz*, 2020. <<https://www.haaretz.com/israel-news/.premium-yes-it-s-israeli-apartheid-even-without-annexation-1.8984029>>; Yesh Din Report. p. 5.
- 20 ERAKAT, Noura. REYNOLDS, John. “We Charge Apartheid? Palestine and the International Criminal Court”. *TWAIL Review Reflections*, #33, 2021. <<https://twail.com/we-charge-apartheid-palestine-and-the-international-criminal-court/>>.
- 21 TILLEY, Virginia. (ed). *Beyond Occupation: Apartheid, Colonialism and International Law in the Occupied Palestinian Territories*. London: Pluto Press, 2012. p. xiv.
- 22 Human Rights Council. *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard*. Geneva: 2007. UN Doc A/HRC/4/17. p. 3; TILLEY, Virginia. (ed). *Occupation, colonialism, apartheid?: a re-assessment of Israel’s practices in the occupied Palestinian territories under international law*. Pretoria: Human Sciences Research Council, 2009. (hereinafter “HSRC Report”). <<http://www.hsrc.ac.za/en/research-data/view/4634>>; FALK, Richard. *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*. Geneva: Human Rights Council, 2014. A/HRC/25/67.
- 23 See, e.g., MILLS, David. *et al.* “Structural violence in the era of a new pandemic: the case of the Gaza Strip”. *The Lancet*, 2020. <<https://www.sciencedirect.com/science/article/pii/S0140673620307303#>>

rooted in historical, and often–ongoing, forms of colonial oppression²⁴. The meaning of domination in the context of the legal prohibitions of colonialism and apartheid draws, in particular, on the contributions of the field of settler colonial studies. This article begins by situating domination within the framework of settler colonialism and considers the role racialisation plays in settler colonial state formation. It then turns to the legal prohibition of apartheid, including its core element of domination, and examines the situation in Palestine, in an effort to demystify the meaning of domination as a matter of international law.

2. Domination in Settler Colonialism

Building on longstanding antecedents, in particular the work of indigenous scholars²⁵, settler colonial studies as a field of inquiry emerged in the 1990s and 2000s as a paradigm through which to examine the continued oppression of indigenous peoples in settler societies, which are “primarily characterised by a determination to erase colonised subjectivities”²⁶. During previous decades, scholars of indigenous studies had already tackled the impacts and mechanics of settler colonial invasion. In the case of Palestine, Palestinian scholars began addressing Zionist settler colonialism from at least the 1960s onwards²⁷.

Scholars of settler colonial studies have compellingly argued that settler

24 OHCHR. *Human Rights Council concludes urgent debate on current racially inspired human rights violations, systemic racism, police brutality and violence against peaceful protests*. Geneva: 2020. <<https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=25974&LangID=E>>; Al–Haq. *Urgent Debate on Racism*. Ramallah: 2020. <<https://www.alhaq.org/advocacy/17020.html>>.

25 See, for example, SNELGROVE, Corey. DHAMOON, Rita Kaur. CORNTASSEL, Jeff. “Unsettling settler colonialism: The discourse and politics of settlers, and solidarity with Indigenous nations”. *Decolonization: Indigeneity, Education & Society*. 2014, vol. 3, no. 2. p. 1–32.

26 VERACINI, Lorenzo. “Introduction: Settler colonialism as a distinct mode of domination”. In: CAVANAGH, Edward. VERACINI Lorenzo. (eds) *The Routledge Handbook of the History of Settler Colonialism*. Oxford: Routledge, 2017. p. 1, 2–3.

27 AMARA, Ahmad. HAWARI, Yara. “Using Indigeneity in the Struggle for Palestinian Liberation”. *Al–Shabaka*. 2019. <<https://al-shabaka.org/commentaries/using-indigeneity-in-the-struggle-for-palestinian-liberation/>>.

colonialism must be seen as distinct from other forms of colonialism, in that settler colonial states continuously seek the transfer, dispossession, and replacement of indigenous peoples²⁸. Explaining this distinction in his seminal work, *Settler Colonialism and the Transformation of Anthropology*, Patrick Wolfe asked:

“But what if the colonizers are not dependent on native labour? —indeed, what if the natives themselves have been reduced to a small minority whose survival can hardly be seen to furnish the colonizing society with more than a remission from ideological embarrassment?²⁹”.

Unlike “franchise” or “dependent” colonies, Wolfe argued:

“... settler colonies were not primarily established to extract surplus value from indigenous labour. Rather, they are premised on displacing indigenes from (or replacing them on) the land³⁰”.

In this sense, for Wolfe, the dominant feature of settler colonialism “is not exploitation but replacement³¹”.

Similarly, Lorenzo Veracini has argued that “A focus on land and a relative neglect of the labour of the colonised set settler colonialism as a mode of domination apart³²”. Discussing present-day settler colonialism, Veracini has articulated a specific mode of domination³³, “where a community of exogenous settlers... eliminate or displace indigenous populations and sovereignties, and constitute an autonomous political body³⁴”. With reference to the transfer of

28 COX, Alicia. “Settler Colonialism”. *Oxford Bibliographies*. 2017. <<https://www.oxfordbibliographies.com/view/document/obo-9780190221911/obo-9780190221911-0029.xml>>.

29 WOLFE, Patrick. *Settler colonialism and the Transformation of Anthropology*. London: Cassell. 1999. p. 1 (emphasis in the original).

30 *Idem*. (emphasis in the original).

31 *Ibidem*, 163.

32 VERACINI, Lorenzo. 2017. Op. Cit. p. 1–3.

33 VERACINI, Lorenzo. *The Settler Colonial Present*. London: Palgrave Macmillan. 2015. p. 1–2.

34 VERACINI, Lorenzo. “Settler Colonialism”. In: NESS, Immanuel. COPE, Zak. *The Palgrave Encyclopedia of*

the Palestinian people both within and outside of historic Palestine, Veracini has further argued:

“In the end, while the suppression of indigenous and exogenous alterities characterises both colonial and settler colonial formations, the former can be summarised as domination for the purpose of exploitation, the latter as domination for the purpose of transfer”³⁵.

Settler colonialism has also been described as “an ongoing system of power” that perpetuates the oppression of indigenous peoples, which in turn “normalizes the continuous settler occupation” and exploitation of indigenous lands and other natural resources³⁶. Tuck and Yang notably explain that:

“Settler colonialism is different from other forms of colonialism in that settlers come with the intention of making a new home on the land, a homemaking that insists on settler sovereignty over all things in their new domain”³⁷.

Critically, through Wolfe’s conceptualisation of settler colonialism as a “structure not an event”³⁸, we can begin to better understand what Wolfe has termed settler colonialism’s “logic of elimination”³⁹. For Wolfe, “elimination is an organizing principal of settler-colonial society”⁴⁰ and includes not only physical destruction of indigenous life, but further constitutes an ongoing institutionalised process of colonial erasure and replacement⁴¹.

Imperialism and Anti-Imperialism. 2nd edn. London: Palgrave Macmillan. 2016. p. 2412-2413.

35 VERACINI, Lorenzo. *Settler Colonialism: A Theoretical Overview*. London: Palgrave Macmillan. 2010. p. 34.

36 COX, Alicia. Op. Cit.

37 TUCK, Eve. YANG, K Wayne. “Decolonization is not a metaphor” *Decolonization: Indigeneity, Education & Society*. 2012, vol. 1, no. 1. p. 1-40, 5.

38 WOLFE, Patrick. “Settler Colonialism and the Elimination of the Native”. *Journal of Genocide Research*. 2006, vol. 8, no. 4. p. 387, 388.

39 *Idem*.

40 *Idem*.

41 See, e.g., WOLFE, Patrick. 1999. Op. Cit. p. 27-29.

2.1 The Colonial Underpinnings of Race

Race has never been defined in international law. The concept of race has evolved over time and finds its roots in the long–refuted⁴² theories of racial superiority developed to justify and legitimise European colonial rule⁴³. Carola Lingaas describes the construction of racial identity as a process of “othering” and the establishment of a social hierarchy that justifies the subjugation of a group perceived as inferior⁴⁴. As she put it, “the history of race went hand in hand with the history of colonialism, slavery, and eugenics”⁴⁵. She advocates for an evolutive, subjective interpretation of race in international criminal law, including in examining the crime of apartheid⁴⁶. This subjective approach, Souheir Edelbi, argues however must encompass not only perpetrators’ perceptions but also those of victims of racialised violence, as well as address the colonial context within which structural racism materialises⁴⁷. This understanding is supported by General Recommendation VIII of the UN Committee on the Elimination of Racial Discrimination (1990)⁴⁸.

This analysis complements the work of settler colonial scholars on the function of racialisation in settler colonial state formation. Wolfe, notably, has called race the “organizing grammar” of settler colonialism⁴⁹, which

42 See discussion in LINGAAS, Carola. *The Concept of Race in International Criminal Law*. Oxford: Routledge, 2020. p. 27–31.

43 LINGAAS, Carola. Op. Cit. p. 8–9, 37.

44 *Ibidem*. p. 1–6, 34, 37.

45 *Ibidem*. p. 232.

46 *Ibidem*. p. 186, 232.

47 EDELBI, Souheir. “Making Race Speakable in International Criminal Law: Review of Lingaas” The Concept of Race in International Criminal Law”. *TWAIL Review*. 2020. <<https://twailr.com/making-race-speakable-in-international-criminal-law-review-of-lingaas-the-concept-of-race-in-international-criminal-law-%E2%80%A8/>>; see in particular p. 6, wherein Edelbi notes that Lingaas lacks engagement with settler colonial studies and critical scholarship on race, which are necessary to understand the process of racialization.

48 CERD. *CERD General Recommendation VIII Concerning the Interpretation and Application of Article 1, Paragraphs 1 and 4 of the Convention Identification with a Particular Racial or Ethnic Group*. 1990.

49 WOLFE, Patrick. 2006. Op. Cit. p. 387.

is used as a way to justify the expropriation of indigenous peoples' lands and their dispossession⁵⁰. Colonised peoples, Wolfe argues, "continue to be racialised in specific ways that mark out and reproduce the unequal relationships into which Europeans have co-opted [them]"⁵¹. His 2016 book, *Traces of History: Elementary Structures of Race*, makes it clear why settler colonialism, in preserving its logic of elimination, finds the need to construct—and constantly re-construct—the concept of race⁵². He argues: "different racialising practices seek to maintain population-specific modes of colonial domination through time"⁵³.

2.2 The Prohibition of (Settler) Colonialism

International law establishes a prohibition against colonialism, distinguished from other forms of foreign domination, including military occupation, through claims of sovereignty that deprive indigenous peoples of their inalienable rights⁵⁴. The prohibitions on colonialism and foreign domination are in fact rooted in the collective right of peoples to self-determination⁵⁵, a principle that has evolved considerably since its early recognition in 1919 in the Covenant of the League of Nations. Article 22 of the Covenant established that the development of peoples under colonial and mandatory rule shall constitute "a sacred trust of civilisation"⁵⁶. It was only in 1971 that the International Court of Justice (ICJ) came to interpret this principle in its examination of South Africa's presence in Namibia (South West Africa at the time), concluding that legal "developments leave little doubt that the ultimate objective of the sacred trust was the self-determination and independence of the peoples concerned"⁵⁷. In

50 COX, Alicia. Op. Cit.

51 WOLFE, Patrick. *Traces of History: Elementary Structures of Race*. London: Verso, 2016. p. 9.

52 *Ibidem*. p. 216-217; VERACINI, Lorenzo. 2015. Op. Cit. p. 1-2.

53 WOLFE, Patrick. 2016. Op. Cit. p. 14.

54 HSRC Report. p. 44.

55 *Ibidem*. p. 42.

56 Covenant of the League of Nations, 28 April 1919, Article 22.

57 ICJ. *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*. Advisory Opinion (21 June 1971). para. 53.

doing so, the ICJ thus recognised the right to self-determination of all peoples under colonial and mandatory rule⁵⁸.

In this regard, the Court made explicit reference to the prohibition of colonialism, as enshrined in the Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted by the UN General Assembly on 14 December 1960⁵⁹. In reaffirming the right of all peoples to self-determination and the need to put an end to “colonialism and all practices of segregation and discrimination associated therewith”, the Declaration recognised that “The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights” and is contrary to the UN Charter⁶⁰. The Declaration is said to be constitutive of customary international law⁶¹. Notably, in its 2019 Advisory Opinion on the Chagos Archipelago, the ICJ alluded to the evolution in the law on self-determination, which it held has become one of the “basic principles of international law”, since the adoption of the UN Charter and 1960 Declaration⁶².

In stipulating that immediate steps needed to be taken to uphold the right to self-determination of colonised peoples, notably in territories that had “not yet attained independence”⁶³, the Declaration was equally applicable to territories under former League of Nations mandates, such as Palestine⁶⁴. Nabil Elaraby argued in 1968 that:

“The legal aspects of the 1947 partition resolution may today appear merely academic, outdated events of the past, fit for oblivion and without

58 *Ibidem*, para. 52.

59 UN General Assembly, Declaration on the Granting of Independence to Colonial Countries and Peoples, Resolution 1514 (XV) of 14 December 1960. UN Doc A/RES/1514(XV).

60 *Ibidem*., Preamble, Articles 1–2.

61 HSRC Report. p. 42.

62 ICJ. *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion (25 February 2019). paras. 142, 155.

63 UN General Assembly, Declaration on the Granting of Independence to Colonial Countries and Peoples, Resolution 1514 (XV) of 14 December 1960, UN Doc A/RES/1514(XV), Article 5.

64 HSRC Report. p. 43.

relevance to the future. The future, however, is determined by the accumulation of past events”.

He added that:

“The fate of the Palestinians was decided for them by the United Nations, to their detriment, without reference to the rule of law. No impartial observer could, in all fairness, deny that the United Nations was rushed into far-reaching actions affecting the lives of nearly two million Palestinians without having given careful and thorough examination to the legal implications involved”⁶⁵.

Despite the League of Nation’s recognition of Palestine’s provisional independence, the UN violated the right of the Palestinian people to self-determination when it recommended the partition of Palestine in 1947⁶⁶. It in effect recommended the establishment of a settler colonial state in Palestine.

John Reynolds identifies “Settler colonialism [as] the core ideological project from which the derivatives of forced population transfer and apartheid flow”⁶⁷. The Israeli settler colonial state has adopted population transfer as its *raison d’état*⁶⁸ despite its legal prohibition⁶⁹. Discussing the ideological roots of population transfer in Palestine, Joseph Schechla writes:

65 ELARABY, Nabil. “Some Legal Implications of the 1947 Partition Resolution and the 1949 Armistice Agreements”. *Law and Contemporary Problems*. 1968, vol. 33. p. 97.

66 G.A.O.R. UNSCOP Report to the General Assembly, Supplement no. 11, vol. 1, New York, 3 September 1947. UN Doc A/364. para. 176. <<https://unispal.un.org/DPA/DPR/unispal.nsf/0/07175DE9FA2DE563852568D3006E10F3>>.

67 REYNOLDS, John. “Anti-Colonial Legalities: Paradigms, Tactics & Strategy”. *The Palestine Yearbook of International Law*. 2015, vol. 18. p. 10.

68 SCHECHLA, Joseph. “Ideological Roots of Population Transfer”. *Third World Quarterly*. 1993, vol. 14, no. 2. p. 256.

69 *Ibidem*, p. 19; Article 6(b)–(c), Charter of the International Military Tribunal (8 August 1945); Article 49(6), Geneva Convention Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entry into force 21 October 1950) 75 UNTS 287.

“The primary function of the Zionist Movement—and, thus, the state and government of Israel—is to create an exclusively Jewish state in a land (historic Palestine), which had already been inhabited consistently by a nation of people known as the Palestinian Arabs... The fulfilment of this project, political Zionism, requires the elimination or replacement of the indigenous population as an inevitable accompaniment to the development of the state of Israel”⁷⁰.

Seventeen years ago, the ICJ concluded in its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* that Israeli settlements have been constructed in breach of Article 49(6) of the Fourth Geneva Convention prohibiting forcible transfer and that the Wall leads to the displacement and dispossession of the Palestinian people, thereby infringing upon their collective right to self-determination⁷¹.

2.3 Articulating Domination in Settler Colonialism

Examining the situation in Tibet, Carole McGranahan has described settler colonialism as “Imperial territorial acquisition followed by ongoing dispossession and oppression through colonial administration and settlement”⁷². She cites Glen Sean Coulthard, who sheds further light on what domination means in settler colonial contexts:

“A settler-colonial relationship is one characterized by a particular form of *domination*; that is, it is a relationship where power—in this case, interrelated discursive and nondiscursive facets of economic, gendered, racial, and state power—has been structured into a relatively secure or sedimented set of hierarchical social relations that continue to facilitate

⁷⁰ *Ibidem*, p. 256.

⁷¹ ICJ. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion (9 July 2004). paras. 120–124.

⁷² MCGRANAHAN, Carole. “Chinese Settler Colonialism: Empire and Life in the Tibetan Borderlands”. In: GROS, Stéphane (ed). *Frontier Tibet: Patterns of Change in the Sino-Tibetan Borderlands*. Amsterdam: AUP, 2019. p. 518.

the *dispossession* of Indigenous peoples of their lands and self-determining authority”⁷³.

This focus on dispossession is consistent with Wolfe’s structural analysis on settler colonialism, which recognises that “the primary motive for elimination is not race (or religion, ethnicity, grade of civilization, etc.) but access to territory”, with territoriality constituting “settler colonialism’s specific, irreducible element”⁷⁴. Once we accept that race is a product and tool of colonialism, and in particular settler colonialism, where “the colonizer comes to stay”⁷⁵, then it becomes difficult to imagine how apartheid, the most egregious form of racial discrimination⁷⁶, can arise outside of this context. This suggests that institutionalised and structural racism cannot be examined in isolation from the “settler colonial present”⁷⁷ that continues to define the domination of indigenous peoples and other racialised groups in settler colonial societies.

Based on the above analysis on the concept of domination in settler colonial studies, we can establish domination to mean several things, including: a hierarchical relationship of power that privileges settlers over indigenous peoples, enshrined in the very structure of settler colonial states and the continued manifestation of settler colonial relationships; a process of ongoing “elimination” or colonial erasure of indigenous peoples, including through their displacement, dispossession, and replacement on the land, through population transfer; and ultimately, the denial of the right of indigenous peoples to self-determination and permanent sovereignty over their natural wealth and resources.

73 *Ibidem*, citing COULTHARD, Glen Sean. *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*. Minnesota: UMP, 2014. p. 6-7 (emphasis in the original).

74 WOLFE, Patrick. 2006. Op. Cit. p. 388.

75 *Ibidem*. See also TUCK, Eve. YANG, K Wayne. 2012. Op. Cit. p. 5.

76 DUGARD, John. REYNOLDS, John. “Apartheid, International Law, and the Occupied Palestinian Territory”. *European Journal of International Law*. 2013, vol. 24, no. 3. p. 880; LINGAAS, Carola. 2020. Op. Cit. p. 151.

77 VERACINI, Lorenzo. 2015. Op. Cit. 1-2.

3. Domination in the Law of Apartheid

In 1955, Johannes Gerhardus Strijdom, the Prime Minister of apartheid South Africa, made the inextricability of domination to the maintenance of apartheid abundantly clear, stating: “I am being as blunt as I can. I am making no excuses. Either the White man dominates or the Black man takes over... The only way the Europeans can maintain supremacy is by domination...”⁷⁸. Having developed a working understanding of domination for the purposes of settler colonialism, the second part of this article turns to the law of apartheid, which recognises domination as a core element of the crime against humanity of apartheid.

3.1 The Prohibition of Apartheid

Apartheid—meaning “apartness” in Afrikaans—emerged as a South African state policy in the 1940s and was largely codified in the Population Registration Act No. 30 of 1950, whereby the population were to be segregated based on their categorisation as “white”; “Bantu”, referring to black South Africans; or “coloured”, referring to persons of mixed descent⁷⁹. The choice of the term “apartheid” was a calculated one, designed to portray apartheid not as a policy of institutionalised racial discrimination, but of “good neighbourliness”⁸⁰. There could therefore be no misunderstanding as to the extent of international objection to South Africa’s conduct when the newly–signed International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in 1965 condemned in Article 3 policies and practices of racial segregation and apartheid, requiring states parties “to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction”⁸¹.

78 ICJ. *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Separate Opinion Of Vice-President Ammon, 21 June 1971, p. 8.

79 LINGAAS, Carola. 2020. Op. Cit. p. 145; DUGARD, John. REYNOLDS, John. 2013. Op. Cit. p. 873.

80 LINGAAS, Carola. “The Crime against Humanity of Apartheid in a Post–Apartheid World”. *Oslo Law Review*. 2015, vol. 2. p. 88.

81 International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December

In doing so, the drafters of the Convention drew an undeniable link between South African apartheid and the general prohibition of racial discrimination aspired to in the 1945 UN Charter⁸² and 1948 Universal Declaration on Human Rights⁸³, and ultimately made real with the entry into force of ICERD in 1969, and with the introduction of subsequent human rights instruments⁸⁴. This link was propounded in the ICJ's 1971 Advisory Opinion on South Africa's policies and practices in its administration of Namibia, wherein the Court identified the enforcement of "distinctions, exclusions, restrictions and limitations exclusively on grounds of race, colour, descent or national or ethnic origin" to be a "flagrant violation of the purposes and principles of the [UN] Charter"⁸⁵. Throughout the 1970s, South Africa's conduct both internally and in modern-day Namibia drew increasing international attention and condemnation, including through the introduction of the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid (hereinafter "Apartheid Convention")⁸⁶, the imposition of a mandatory arms embargo by the UN Security Council in 1977⁸⁷, and the listing of apartheid as a grave breach under Additional Protocol I to the 1949 Geneva Conventions⁸⁸. Already in the 1960s, the UN General Assembly adopted a series of resolutions, which condemned

1965, entry into force 4 January 1969) 660 UNTS 195.

82 Charter of the United Nations (adopted 24 October 1945) 1 UNTS XVI, Article 55(c).

83 Universal Declaration of Human Rights (adopted 10 December 1948) UN Doc A/RES/217(III), Article 2.

84 See, *inter alia*, International Covenant on Civil and Political Rights (adopted 16 December 1966, entry into force 23 March 1976) 999 UNTS 171, Article 26; International Covenant on Economic, Social and Cultural Rights (16 December 1966, entry into force 3 January 1976) 993 UNTS 3, Article 2(2).

85 Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), Advisory Opinion (21 June 1971), para. 131.

86 International Convention on the Suppression and Punishment of the Crime of Apartheid (adopted 30 November 1973, entry into force 18 July 1976) UN Doc A/RES/3068(XXVIII) (hereinafter the "Apartheid Convention").

87 UN Security Council, Resolution 418 (1977) UN Doc S/RES/418.

88 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977, entry into force 7 December 1978) 1125 UNTS 3, Article 85(3)(c).

apartheid in increasingly stronger terms, ultimately recognising apartheid as a crime against humanity⁸⁹. It was only in 1976, however, following the violently suppressed Soweto uprising in South Africa, that the UN Security Council adopted Resolution 392 (1976), reaffirming that “apartheid is a crime against the conscience and dignity of mankind”⁹⁰. The recognition of apartheid as a crime against humanity was codified in treaty law with the adoption of the Apartheid Convention⁹¹ and reiterated in the 1998 Rome Statute⁹². Lingaas makes a compelling argument for viewing the crime of apartheid as part of customary international law; noting the high rate of accession to ICERD, Additional Protocol I, the Apartheid Convention, and the Rome Statute, the lack of specific objection to their provisions on the crime of apartheid, and the context of the broader prohibition of racial discrimination and apartheid in general international law and human rights instruments, Lingaas concludes that the crime of apartheid “can therefore be asserted to have reached the level of customary status”⁹³.

The Apartheid Convention was accordingly relied upon in 2018 by the Pre–Trial Chamber I of the International Criminal Court (ICC) concerned

89 UN General Assembly Resolution 2074 (XX), 17 December 1965, UN Doc A/RES/2074 (XX); UN General Assembly Resolution 2202A (XXI), 16 December 1966, UN Doc A/RES/2202A (XXI); see also EDEN, Paul. “The Role of the Rome Statute in the Criminalization of Apartheid”. *Journal of International Criminal Justice*. 2014, vol. 12. p. 174.

90 UN Security Council, Resolution 392 (1976) UN Doc S/RES/392 (1976) 3; BARNARD, Adriaan. “Slegs Suid Afrikaners –South Africans Only– A Review and Evaluation of the International Crime of Apartheid”. *New Zealand Journal of Public and International Law*. 2009, vol. 7. p. 338; EDEN, Paul. Op. Cit. p. 180; SLYE, Ronald C. “Apartheid as a Crime against Humanity: A Submission to the South African Truth and Reconciliation Commission”. *Michigan Journal of International Law*. 1998, vol. 20. p. 268.

91 Apartheid Convention, Article I.

92 Rome Statute of the International Criminal Court (adopted 17 July 1998, entry into force 2 July 2002) 2187 UNTS 3, Article 7(1)(j) (hereinafter the “Rome Statute”).

93 LINGAAS, Carola. (2015). Op. Cit. p. 107; DUGARD, John. REYNOLDS, John. Op. Cit. p. 883: “The movement of the international crime of apartheid towards customary status...”; DU PLESSIS, Max. “International criminal law: The crime of apartheid revisited”. *South African Journal of Criminal Justice*. 2011, vol. 24. p. 421–422; JACKSON, Miles. “Expert Opinion on the Interplay between the Legal Regime Applicable to Belligerent Occupation and the Prohibition of Apartheid under International Law”. 2021. para. 13.

with the Situation in Bangladesh/Myanmar in identifying the prohibition of being “arbitrarily deprived of the right to enter one’s own country”⁹⁴. As only Bangladesh is party to the Convention, the Chamber appears to have proceeded on the basis that the content of the Apartheid Convention constitutes international custom, at least insofar as it identifies a right of return. The use of Article 7(1)(k) of the Rome Statute, providing the Court with jurisdiction over “other inhumane acts”, defined as those “considered as serious violations of international customary law and basic rights pertaining to human beings, drawn from the norms of international human rights law”⁹⁵, and the framing of an inhuman act within the meaning of the Apartheid Convention as such a norm corroborates this analysis.

Finally, it is necessary to note the view that the prohibition of apartheid constitutes a *jus cogens* norm. While *jus cogens* remains a contested concept within international legal discourse, the International Law Commission (ILC) in its 2001 Draft Articles on State Responsibility identified apartheid as among the primary candidates for such a status⁹⁶. Returning to this question in 2019 as part of a comprehensive study on *jus cogens*, Dire Tladi, Special Rapporteur to the ILC, submitted that the inclusion of racial discrimination as an example of the “most cited norms of *jus cogens* was justified”⁹⁷.

This is corroborated by the ICJ’s recognition of the general prohibition of racial discrimination as a *jus cogens* norm, which moreover gives rise to obligations *erga omnes*⁹⁸. John Dugard and John Reynolds, in their seminal piece on

94 ICC. *Decision on the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute”* (6 September 2018) ICC–RoC46(3)–01/18–37, para. 77.

95 ICC. *Decision on the confirmation of charges* (30 September 2008) ICC–01/04–01/07–717. para. 448; see also KEARNEY, Michael G. “The Denial of the Right of Return as a Rome Statute Right”. *Journal of International Criminal Justice*. 2020, vol. 18, no. 4. p. 985.

96 UN. *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries* (2001), commentary to Article 40. para. 3.

97 UN. *Fourth report on peremptory norms of general international law (jus cogens) by Dire Tladi, Special Rapporteur*. New York: International Law Commission, 2019, UN Doc A/CN.4/727. para. 91–101.

98 ICJ. *Case Concerning the Barcelona Traction, Light and Power Company (Belgium v. Spain)*, Final Judgment (5 February 1970). para. 34.

apartheid in the occupied Palestinian territory, induce from this general norm the presence of a more specific norm, arguing that “it follows that the prohibition of a particularly severe form of racial discrimination—apartheid—must amount to a preemptory norm”⁹⁹.

3.2 Defining Apartheid as an International Crime

The Apartheid Convention made several significant innovations to the international law on apartheid. First, it allowed for individual perpetrators to be prosecuted for their contribution towards the maintenance or establishment of an apartheid regime, including through universal jurisdiction—that said, however, to date no one has ever been prosecuted for this crime.

Second, although motivated by the practice in South Africa and Namibia, the Convention recognised the potential for apartheid to arise outside this context. This is evidenced by the fact that Article II of the Convention identifies that the crime of apartheid “shall include similar policies and practices of racial segregation and discrimination as practiced in southern Africa”, recognising in the first instance that apartheid as it existed in South Africa was not the sole form such a regime may take, but may include similar such policies and practices. Moreover, in the second instance, it recognised that even that particular regime extended beyond the territorial confines of South Africa to elsewhere in southern Africa, in particular modern-day Namibia¹⁰⁰. This broader applicability is evidenced by its inclusion in the 1998 Rome Statute, introduced four years after the official end of the apartheid regime in South Africa.

The Apartheid Convention provided a legal definition as to what constitutes apartheid: “inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them”¹⁰¹.

99 DUGARD, John. REYNOLDS, John. Op. Cit. p. 883.

100 On the evolution of the crime of apartheid, see BARNARD, Adriaan. Op. Cit.; EDEN, Paul. Op. Cit.; DU PLESSISS, Max. Op. Cit.; ZAHAR, Alexander. “Apartheid as an International Crime”. In: CASSESE, Antonio. (ed). *The Oxford Companion to International Criminal Justice*. Oxford: OUP, 2009. p. 245–246; and SLYE, Ronald C. Op. Cit.

101 Apartheid Convention, Article II.

The crime assumed a similar but separate definition within the framework of the ICC, wherein it was defined as:

“... inhuman acts... committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime”¹⁰².

Two primary distinctions between these definitions are immediately clear. First, the meaning of inhuman acts set out in Article II of the Apartheid Convention is different to inhumane acts under the Rome Statute. While the former may be of use in interpreting the latter¹⁰³, this in effect means that the ICC has a narrower jurisdictional reach over the crime of apartheid than criminal accountability mechanisms pursuing perpetrators under the Apartheid Convention. As Lingaas notes, this gap may be bridged somewhat through recourse to the open-ended provision of Article 7(1)(k) of the Rome Statute which, as noted above, allows for “other inhumane acts” amounting to customary law to be prosecuted¹⁰⁴.

Second, in an expert opinion commissioned by the Diakonia International Humanitarian Law Centre in Jerusalem, Miles Jackson avers that the necessary mental elements may differ between the Apartheid Convention and the Rome Statute. In short, reference to establishing or maintaining an apartheid regime is made in relation to the *mens rea* of the crime in the Apartheid Convention, suggesting that the regime does not need to have been brought into existence at the time of the inhuman act to nonetheless constitute the commission of the crime of apartheid. Conversely, the Rome Statute requires the conduct in question to have taken place in the context of an apartheid regime, suggesting that the regime must already be in place¹⁰⁵.

The element of domination in the abovementioned definitions of the crime

102 Rome Statute, Article 7(2)(h).

103 JACKSON, Miles. Op. Cit. para. 23.

104 LINGAAS, Carola. 2015. Op. Cit. p. 92.

105 *Ibidem*, para. 24-25.

of apartheid has not been defined in international legal instruments. The literature generally refers to domination within the meaning of the crime of apartheid but forgoes a precise definition, apart from identifying domination as a severe form of control¹⁰⁶. Given this gap in the understanding of domination for the purposes of applying the crime of apartheid, domination as analysed in settler colonial studies is particularly instructive in the Palestinian context.

4. Settler Colonialism and Apartheid: Intertwining in Palestine

Apartheid, as a product and tool of colonialism, does not happen by accident¹⁰⁷. Nor does it emerge fully formed based on the policies of one single government¹⁰⁸. In the case of Palestine, the establishment of apartheid went hand in hand with Israeli settler colonial state formation. As such, it would be inconsistent to suggest that the situation in Palestine has only now become one of apartheid, that a certain threshold has been crossed, or bar met¹⁰⁹. Similarly, it would be short-sighted to read Israeli apartheid as only having materialised in recent years due to the policies and practices of successive right-wing Israeli governments, which have pushed for further *de jure* annexation of the occupied Palestinian territory and introduced the Basic Law: Israel – The Nation State of the Jewish People 5778–2018 into the state’s constitutional fabric¹¹⁰.

Tellingly, Zionist parastatal institutions, including the Jewish National Fund (JNF), enjoy quasi-governmental status under the World Zionist Organisation–Jewish Agency (Status) Law 5713–1952, which establishes Jewish settlement as

106 *Ibidem*. para. 18; TRIFFTERER, Otto, *AMBOS, Kai. Rome Statute of the International Criminal Court: A Commentary*. 3rd ed. Munich: C.H. Beck, Hart, Nomos, 2016. p. 284. This is consistent with the Oxford English Dictionary entry for “dominate” as a transitive verb, meaning: “To bear rule over, control, sway; to have a commanding influence on...”.

107 SAYEGH, Fayez. Op. Cit. p. 21.

108 See, for example, BARNARD, Adriaan. Op. Cit. p. 362.

109 See, for example, HRW Report; B’Tselem Report.

110 Basic Law: Israel – The Nation State of the Jewish People, 5778–2018. <<https://main.knesset.gov.il/EN/activity/Documents/BasicLawsPDF/BasicLawNationState.pdf>>; Adalah, *Israel’s Jewish Nation–State Law*. Haifa: 2020. <<https://www.adalah.org/en/content/view/9569>>.

“the central task of the State of Israel and the Zionist Movement”¹¹¹. This law was described by Israeli Prime Minister Ben Gurion as “one of the foremost basic laws”, and was considered to complete the Law of Return 5710-1950, which grants any Jewish person the exclusive right to settle the land¹¹². Together, these two pieces of legislation are complementary “in determining the Zionist character of the State of Israel”¹¹³. Similarly, under its Memorandum of Association, the JNF is chartered to purchase land on both sides of the Green Line for the exclusive purpose of settling “persons of Jewish religion, race or descendancy” on the land¹¹⁴. Israeli legislation and the discriminatory charters of Zionist institutions are rooted in a constructed concept of “Jewish nationality”, which distinct from citizenship works to exclusively privilege Jewish persons over all others, in particular the indigenous Palestinian people¹¹⁵.

Palestinian scholars have questioned whether the apartheid characterisation is comprehensive enough to encompass the totality of the Palestinian experience, taking into consideration the broader context of Zionist settler colonialism¹¹⁶. That being said, the apartheid analysis does not displace existing legal or political frameworks, including (settler) colonialism and occupation, which have been used for decades to analyse the plight of the Palestinian people¹¹⁷. Crucially, existing

111 World Zionist Organisation-Jewish Agency (Status) Law 5713-1951. <https://knesset.gov.il/review/data/eng/law/kns2_wzo_eng.pdf>.

112 Law of Return 5710-1950. <<https://www.mfa.gov.il/mfa/mfa-archive/1950-1959/pages/law%20of%20return%205710-1950.aspx>>.

113 State of Israel, *Government Year-Book 57* (1953-1954), cited in MALLISON, W. Thomas. MALLISON, Sally V. *The Palestine Problem in International Law and World Order*. Essex: Longman Group Limited, 1986. p. 112.

114 SCHECHLA, Joseph. 2010. Op. Cit. p. 11.

115 MALLISON, W. Thomas. MALLISON, Sally V. 1986. Op. Cit. p. 106-116. See also Al-Haq et al Report. paras. 39-41.

116 SAYEGH, Faye. Op. Cit.; ABDULLA, Rinad. “Colonialism and Apartheid Against Fragmented Palestinians: Putting the Pieces Back Together”. *State Crime Journal*. 2016, vol. 5. p. 51; TATOUR, Lana. “Why calling Israel an apartheid state is not enough”. *Middle East Eye*. 2021. <<https://www.middleeasteye.net/opinion/why-calling-israel-apartheid-state-not-enough>>.

117 See, for example, SAYEGH, Faye. Op. Cit.; DAVIS, Uri. *Israel: An apartheid State*. London and New Jersey: Zed Books, 1987; QUIGLEY, John. “Apartheid Outside Africa: The Case of Israel”. *Indiana International*

literature has considered the three frameworks of colonialism, apartheid, and occupation as concurrently applicable to the situation in Palestine¹¹⁸.

Building on this criticism articulated by Palestinian scholars, such as Lana Tatour and Yara Hawari¹¹⁹, it is important to incorporate discussions on settler colonialism into the discourse on apartheid as mutually reinforcing frameworks. By looking at both settler colonialism and apartheid, we are reminded of the purpose of racialisation and its underlying logic. Looking at apartheid alone, in the absence of the broader settler colonial state structure which informs and sustains it, instead leads to solutions based on liberal conceptions of equality that may at best achieve the aesthetics of civil rights, without addressing the substantive and institutionalised dispossession and domination inherent in the settler colonial and apartheid system¹²⁰. This ultimately leads to the false assumption that solutions may be found within the current system, for example by extending Israeli voting rights¹²¹ to Palestinians under occupation¹²². This, in turn, disregards the need

and Comparative Law Review. 1991, vol. 2. p. 221; TILLEY, Virginia. (ed). 2012. Op. Cit.; PAPPÉ, Ilan. (ed). *Israel and South Africa: The Many Faces of Apartheid*. London: Zed Books, 2015; HAWARI, Yara. PLONSKI, Sharri. WEIZMAN, Elian. "Settlers and citizens: a critical view of Israeli Society". *Settler Colonial Studies*. 2019, vol. 9, no. 1. p. 1–5.

118 Human Rights Council. *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard*. Geneva: 2007. UN Doc A/HRC/4/17. p. 3; HSRC Report.

119 TATOUR, Lana. "Why calling Israel an apartheid state is not enough". *Middle East Eye*. 2021. <<https://www.middleeasteye.net/opinion/why-calling-israel-apartheid-state-not-enough>>; Rethinking Palestine Podcast. "Limitations and Possibilities of the Apartheid Framework with Lana Tatour". (31 January 2021). <<https://podcasts.apple.com/us/podcast/limitations-possibilities-apartheid-framework-lana/id1537774938?i=1000507182508>>; HAWARI, Yara (2019). Op. Cit.

120 SAITO, Natsu Taylor. *Settler Colonialism, Race, and the Law*. New York: NYUP, 2020. p. 9–12, 16.

121 On Israeli citizenship for Palestinians "as an institution of domination and an instrument of race making", see TATOUR, Lana. "Citizenship as Domination: Settler Colonialism and the Making of Palestinian Citizenship in Israel". (SSRN, posted on 6 March 2020). <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3533490>. See also SAITO, Natsu Taylor. *Settler Colonialism, Race, and the Law*. New York: NYUP, 2020.

122 See, for example, MANN, Itamar. BERDA, Yael. "Voting as a Vehicle for Self-Determination in Palestine and Israel". *Texas Law Review*. 2022, vol. 100. (SSRN, posted on 22 March 2021). <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3796079>. For an analysis on the ineffectiveness of Palestinian citizens"

for structural reconfiguration based on the realisation of the Palestinian people's inalienable rights to return and self-determination, in light of Israel's *raison d'état* of population transfer¹²³ and apartheid¹²⁴. In this sense, the UN General Assembly has stressed "the legitimacy of the struggle of peoples for independence, territorial integrity, national unity and liberation from colonial domination, apartheid and foreign occupation by all available means, including armed struggle", with specific reference to the "peoples of Africa and the Palestinian people"¹²⁵.

Domination, therefore, should be viewed as a structure targeting the Palestinian people as a whole¹²⁶. Following the eliminatory logic conceptualised in settler colonial studies, Zionist domination can be identified as inclusive of, *inter alia*, territorial conquest, control over Palestinian land and other natural resources, population transfer, national erasure, fragmentation, and denial of the right of return. These colonial policies, which maintain domination over Palestinians wherever they reside, are facilitated by the legal architecture of Israeli apartheid¹²⁷. As Fayeze Sayegh argued in 1965, the ultimate goal of the Zionist settler colonial movement in Palestine is one of "racial elimination" of the indigenous Palestinian people, which ultimately translates into apartheid over the "remnants of the Palestinian Arab people who have stubbornly stayed behind in their homeland in spite of all efforts to dispossess and evict them, and in defiance of the Zionist dictum of racial exclusiveness"¹²⁸.

Similar to Sayegh's analysis, Wolfe has described Israel's settler colonial

political representation in the Israeli parliament and their inability to challenge the apartheid regime, see QUIGLEY, John. Op. Cit. p. 239-243.

123 SCHECHLA, Joseph. Op. Cit. p. 256.

124 Al-Haq *et al* Report. para. 1, 7, 13, 48.

125 UN General Assembly Resolution 45/130 (14 December 1990) UN Doc A/RES/45/130, paras. 2, 4.

126 This is facilitated by the fact that Israeli legislation, such as the Law of Return (1950) establishes one single legal order of colonial domination over Palestinians throughout historic Palestine. See JABAREEN, Hassan. "How the Law of Return Creates One Legal Order in Palestine". *Theoretical Inquiries in Law*. 2020, vol. 21, no. 2. p. 459-490.

127 POWER, Susan. "The Legal Architecture of Apartheid". *AARDI*, 2021. <<https://aardi.org/2021/04/02/the-legal-architecture-of-apartheid-by-dr-susan-powers-al-haq/>>.

128 SAYEGH, Fayeze. Op. Cit. p. 27.

project as one of “deracination” and fragmentation of Palestinians, arguing that “a relationship premised on the evacuation of Native people’s territory requires that the peoples who originally occupied it should never be allowed back”¹²⁹. This explains the Zionist rationale behind the categorical denial of the right of return of Palestinian refugees, displaced persons, and exiles since the beginning of the *Nak̄ba*. Granting the right of return to Palestinians would not only constitute an “ideological embarrassment”¹³⁰ for the Zionist movement, but further threaten to overthrow the fragmentation and domination imposed on the Palestinian people. Denying the right of return, as identified by Richard Falk and Virginia Tilley, ensures that Palestinians can never achieve the demographic weight that would allow them to challenge their domination; in short it “ensures that Palestinians will never be able to change the system”¹³¹. As such, Israeli apartheid must also be seen as imposed extraterritorially over Palestinian refugees and exiles abroad.

The intertwining of settler colonialism and apartheid in the Palestinian context reveals a clear and inextricable link between the two frameworks. Examining both in tandem provides a means to achieve a lucid understanding of the purpose of domination and the function of racialisation in Zionist settler colonialism. This allows for a more holistic understanding of the root causes behind the ongoing displacement, dispossession, and domination of the Palestinian people. Therefore, neither framework is sufficient in isolation; Israel is at once a settler colonial and apartheid state.

5. Conclusion

The law of apartheid omits a definition of its core element of domination, which is inherent in both apartheid and settler colonialism. As such, approaching the situation in Palestine through the lens of apartheid necessitates an appreciation of the wider context of settler colonialism and its intertwining with apartheid. The working understanding of domination, as articulated by

129 WOLFE, Patrick. 2016. Op. Cit. p. 8–10, 210.

130 WOLFE, Patrick. 1999. Op. Cit. p. 1 (emphasis in the original).

131 FALK, Richard and Tilley, Virginia. Op. Cit. p. 48.

scholars of settler colonial studies, provides a basis to overcome the obscurity in the concept of domination as a matter of international law.

Settler colonial studies conceptualise domination as involving a hierarchical structure of power privileging settlers over indigenous peoples; a logic of elimination, which drives the displacement, dispossession, and replacement of indigenous peoples through population transfer; and the denial of indigenous self–determination and sovereignty. Such policies and practices of domination have long been recognised as present in historic Palestine. Given that Israeli apartheid has been established and continues to be maintained within the structure of Zionist settler colonialism, it follows that the meaning of domination should be established with reference to this context.

Discussing the situation in Palestine, Tilley has observed that:

“... colonialism is not ended by a withdrawal that still denies the people the full expression of their right to self–determination, nor is apartheid ended by moving a border. Both are truly ended only when the doctrine of domination that drives them is finally identified, opposed and ended”¹³².

By looking at both apartheid and settler colonialism imposed over the Palestinian people “as a unified whole”¹³³, we can finally begin the process of addressing the root causes of Palestinian oppression.

6. Bibliography

Treaties

Charter of the International Military Tribunal (8 August 1945).

Charter of the United Nations (adopted 24 October 1945) 1 UNTS XVI.

Covenant of the League of Nations, 28 April 1919.

Geneva Convention Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entry into force 21 October 1950) 75 UNTS 287.

132 TILLEY, Virginia (ed). 2012 Op. Cit., p. xvii.

133 JAMJOUM, Hazem. “Not an analogy: Israel and the crime of apartheid”. *The Electronic Intifada*. 2009. <<https://electronicintifada.net/content/not-analogy-israel-and-crime-apartheid/8164>>.

- International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entry into force 4 January 1969) 660 UNTS 195.
- International Convention on the Suppression and Punishment of the Crime of Apartheid (adopted 30 November 1973, entry into force 18 July 1976) UN Doc A/RES/3068(XXVIII).
- International Covenant on Civil and Political Rights (adopted 16 December 1966, entry into force 23 March 1976) 999 UNTS 171.
- International Covenant on Economic, Social and Cultural Rights (16 December 1966, entry into force 3 January 1976) 993 UNTS 3.
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977, entry into force 7 December 1978) 1125 UNTS 3.
- Rome Statute of the International Criminal Court (adopted 17 July 1998, entry into force 2 July 2002) 2187 UNTS 3.

Case Law

- ICC, *Decision on the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute”* (6 September 2018) ICC–RoC46(3)–01/18–37.
- ICC, *Decision on the confirmation of charges* (30 September 2008) ICC–01/04–01/07–717.
- ICJ, *Case Concerning the Barcelona Traction, Light and Power Company (Belgium v. Spain)*, Final Judgement (5 February 1970).
- ICJ, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion (21 June 1971).
- Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Separate Opinion of Vice-President Ammoun, 21 June 1971.
- ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion (9 July 2004).
- ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion (25 February 2019).

Domestic Laws

- Basic Law: Israel – The Nation State of the Jewish People, 5778–2018. <<https://main.knesset.gov.il/EN/activity/Documents/BasicLawsPDF/BasicLawNationState.pdf>>.

Law of Return, 5710–1950. <https://www.mfa.gov.il/mfa/mfa-archive/1950-1959/pages/law_of_return_5710-1950.aspx>.

World Zionist Organisation–Jewish Agency (Status) Law, 5713–1951. <https://knesset.gov.il/review/data/eng/law/kns2_wzo_eng.pdf>.

UN Resolutions

UN General Assembly Resolution 45/130 (14 December 1990) UN Doc A/RES/45/130.

UN General Assembly Resolution 2074 (XX), 17 December 1965, UN Doc A/RES/2074 (XX).

UN General Assembly Resolution 2202A (XXI), 16 December 1966, UN Doc A/RES/2202A (XXI).

UN General Assembly, Universal Declaration of Human Rights (adopted 10 December 1948) UN Doc A/RES/217(III).

UN Security Council, Resolution 392 (1976) UN Doc S/RES/392 (1976).

UN Security Council, Resolution 418 (1977) UN Doc S/RES/418.

UN Documents

CERD. *CERD General Recommendation VIII Concerning the Interpretation and Application of Article 1, Paragraphs 1 and 4 of the Convention Identification with a Particular Racial or Ethnic Group*. 1990.

FALK, Richard. *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*. Geneva: Human Rights Council, 2014. A/HRC/25/67.

FALK, Richard. TILLEY, Virginia. *Israeli Practices towards the Palestinian People and the Question of Apartheid Palestine and the Israeli Occupation* Beirut: UN ESCWA, 2017. E/ESCWA/ECRI/2017/1. <https://www.middleeastmonitor.com/wp-content/uploads/downloads/201703_UN_ESCWA-israeli-practices-palestinian-people-apartheid-occupation-english.pdf>.

Human Rights Council. *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard*. Geneva: 2007. UN Doc A/HRC/4/17.

International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001).

International Law Commission, *Fourth report on peremptory norms of general international law (jus cogens) by Dire Tladi, Special Rapporteur*. New York: International Law Commission, 2019, UN Doc A/CN.4/727.

UN General Assembly, Declaration on the Granting of Independence to Colonial Countries and Peoples, Resolution 1514 (XV) of 14 December 1960. UN Doc A/RES/1514(XV).

UNSCOP Report to the General Assembly, Supplement no. 11, vol. 1, New York, 3 September

1947. UN Doc A/364. <<https://unispal.un.org/DPA/DPR/unispal.nsf/0/07175DE9FA2DE563852568D3006E10F3>>.

Books and Book Chapters

- ALBANESE, Francesca P. TAKKENBERG, Lex. *Palestinian Refugees in International Law*. 2nd edn. Oxford: OUP, 2020.
- COULTHARD, Glen Sean. *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*. Minnesota: UMP, 2014.
- DAVIS, Uri. *Israel: An apartheid State*. London and New Jersey: Zed Books, 1987.
- LINGAAS, Carola. *The Concept of Race in International Criminal Law*. Oxford: Routledge, 2020.
- MALLISON, W. Thomas. MALLISON, Sally V. *The Palestine Problem in International Law and World Order*. Essex: Longman Group Limited, 1986.
- MCGRANAHAN, Carole. "Chinese Settler Colonialism: Empire and Life in the Tibetan Borderlands". In: GROS, Stéphane (ed). *Frontier Tibet: Patterns of Change in the Sino-Tibetan Borderlands*. Amsterdam: AUP, 2019. p. 517.
- PAPPÉ, Ilan. (ed). *Israel and South Africa: The Many Faces of Apartheid*. London: Zed Books, 2015.
- SAITO, Natsu Taylor. *Settler Colonialism, Race, and the Law*. New York: NYUP, 2020.
- SAYEGH, Fayez. *Zionist Colonialism in Palestine*. Lebanon: PLO Research Center, 1965.
- TILLEY, Virginia. (ed). *Beyond Occupation: Apartheid, Colonialism and International Law in the Occupied Palestinian Territories*. London: Pluto Press, 2012.
- TRIFFTERER, Otto, AMBOS, Kai. *Rome Statute of the International Criminal Court: A Commentary*. 3rd ed. Munich: C.H. Beck, Hart, Nomos, 2016.
- VERACINI, Lorenzo. "Introduction: Settler colonialism as a distinct mode of domination". In: VANAGH, Edward. VERACINI Lorenzo. (eds) *The Routledge Handbook of the History of Settler Colonialism*. Oxford: Routledge, 2017.
- VERACINI, Lorenzo. "Settler Colonialism". In: NESS, Immanuel. COPE, Zak. *The Palgrave Encyclopedia of Imperialism and Anti-Imperialism*. 2nd edn. London: Palgrave Macmillan. 2016. p. 2412–2413.
- VERACINI, Lorenzo. *Settler Colonialism: A Theoretical Overview*. London: Palgrave Macmillan. 2010.
- VERACINI, Lorenzo. *The Settler Colonial Present*. London: Palgrave Macmillan. 2015.
- WOLFE, Patrick. *Settler colonialism and the Transformation of Anthropology*. London: Cassell. 1999.
- WOLFE, Patrick. *Traces of History: Elementary Structures of Race*. London: Verso, 2016.
- ZAHAR, Alexander. "Apartheid as an International Crime". In: CASSESE, Antonio. (ed). *The Oxford Companion to International Criminal Justice*. Oxford: OUP, 2009. p. 245–246.

Journal Articles

- ABDULLA, Rinad. "Colonialism and Apartheid Against Fragmented Palestinians: Putting the Pieces Back Together". *State Crime Journal*. 2016, vol. 5. p. 51.
- ALQASIS, Amjad. "Zionist Apartheid: A Crime Against Humanity". *al-Majdal*. 2013, vol. 53. p. 5. <https://www.badil.org/phocadownload/Badil_docs/publications/al-majdal-53.pdf>.
- BARNARD, Adriaan. "Slegs Suid Afrikaners –South Africans Only– A Review and Evaluation of the International Crime of Apartheid". *New Zealand Journal of Public and International Law*. 2009, vol. 7. p. 317.
- DU PLESSIS, Max. "International criminal law: The crime of apartheid revisited". *South African Journal of Criminal Justice*. 2011, vol. 24. p. 417.
- DUGARD, John. REYNOLDS, John. "Apartheid, International Law, and the Occupied Palestinian Territory". *European Journal of International Law*. 2013, vol. 24, no. 3. p. 867.
- EDEN, Paul. "The Role of the Rome Statute in the Criminalization of Apartheid". *Journal of International Criminal Justice*. 2014, vol. 12. p. 171.
- ELARABY, Nabil. "Some Legal Implications of the 1947 Partition Resolution and the 1949 Armistice Agreements". *Law and Contemporary Problems*. 1968, vol. 33. p. 97.
- HAWARI, Yara. PLONSKI, Sharri. WEIZMAN, Elan. "Settlers and citizens: a critical view of Israeli Society". *Settler Colonial Studies*. 2019, vol. 9, no. 1. p. 1-5.
- JABAREEN, Hassan. "How the Law of Return Creates One Legal Order in Palestine". *Theoretical Inquiries in Law*. 2020, vol. 21, no. 2. p. 459-490.
- KEARNEY, Michael G. "The Denial of the Right of Return as a Rome Statute Right". *Journal of International Criminal Justice*. 2020, vol. 18, no. 4. p. 985.
- LINGAAS, Carola. "The Crime against Humanity of Apartheid in a Post-Apartheid World". *Oslo Law Review*. 2015, vol. 2. p. 86.
- MAC ALLISTER, Karine. "Applicability of the Crime of Apartheid to Israel". *al-Majdal*. 2008. p. 11.
- MANN, Itamar. BERDA, Yael. "Voting as a Vehicle for Self-Determination in Palestine and Israel". *Texas Law Review*. 2022, vol. 100. (SSRN, posted on 22 March 2021). <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3796079>.
- MILLS, David. *et al.* "Structural violence in the era of a new pandemic: the case of the Gaza Strip". *The Lancet*, 2020. <<https://www.sciencedirect.com/science/article/pii/S0140673620307303#!>>.
- QUIGLEY, John. "Apartheid Outside Africa: The Case of Israel". *Indiana International and Comparative Law Review*. 1991, vol. 2. p. 221.
- REYNOLDS, John. "Anti-Colonial Legalities: Paradigms, Tactics & Strategy". *The Palestine Yearbook of International Law*. 2015, vol. 18. p. 8.

- SCHECHLA, Joseph. "Ideological Roots of Population Transfer". *Third World Quarterly*. 1993, vol. 14, no. 2. p. 239.
- SCHECHLA, Joseph. "The Consequences of Conflating Religion, Race, Nationality and Citizenship". *Al-Majdal*. 2010, vol. 43, p. 10.
- SLYE, Ronald C. "Apartheid as a Crime against Humanity: A Submission to the South African Truth and Reconciliation Commission". *Michigan Journal of International Law*. 1998, vol. 20. p. 267.
- SNELGROVE, Corey. DHAMMOON, Rita Kaur. CORNTASSEL, Jeff. "Unsettling settler colonialism: The discourse and politics of settlers, and solidarity with Indigenous nations". *Decolonization: Indigeneity, Education & Society*. 2014, vol. 3, no. 2. p. 1.
- TATOUR, Lana. "Citizenship as Domination: Settler Colonialism and the Making of Palestinian Citizenship in Israel". (SSRN, posted on 6 March 2020). <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3533490>.
- TUCK. Eve. YANG, K Wayne. "Decolonization is not a metaphor" *Decolonization: Indigeneity, Education & Society*. 2012, vol. 1, no. 1. p. 1.
- WOLFE, Patrick. "Settler Colonialism and the Elimination of the Native". *Journal of Genocide Research*. 2006, vol. 8, no. 4. p. 387.

Reports

- AL-AZZA, Nidal. SHOMALI, Lubnah. (eds). *Survey of Palestinian Refugees and Internally Displaced Persons 2016–2018*. Bethlehem: BADIL, 2019, Volume IX. p. viii. <<https://www.badil.org/en/publication/press-releases/90-2019/5013-pr-en-231019-55.html>>.
- Al-Haq et al. *Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel's Seventeenth to Nineteenth Periodic Reports*. Ramallah: 2019. <https://www.alhaq.org/cached_uploads/download/2019/11/12/joint-parallel-report-to-cerd-on-israel-s-17th-19th-periodic-reports-10-november-2019-final-1573563352.pdf>.
- Human Rights Watch, *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution*. New York: 2021. <<https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>>.
- JACKSON, Miles. "Expert Opinion on the Interplay between the Legal Regime Applicable to Belligerent Occupation and the Prohibition of Apartheid under International Law". 2021.
- SFARD, Michael. *The Israeli Occupation of the West Bank and the Crime of Apartheid: Legal Opinion*. Tel Aviv: Yesh Din, 2020. <<https://s3-eu-west-1.amazonaws.com/files.yesh-din.org/Apartheid+2020/Apartheid+ENG.pdf>>; B'Tselem, *A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid*. Jerusalem: 2021. <<https://www.btselem.org/>>

publications/fulltext/202101_this_is_apartheid>.

TILLEY, Virginia. (ed). *Occupation, colonialism, apartheid?: a re-assessment of Israel's practices in the occupied Palestinian territories under international law*. Pretoria: Human Sciences Research Council, 2009. <<http://www.hsrc.ac.za/en/research-data/view/4634>>.

Online Sources

ABDELNOUR, Samer. "Beyond South Africa: Understanding Israeli Apartheid". *Al-Shabaka*. 2013. <<https://al-shabaka.org/briefs/beyond-south-africa-understanding-israeli-apartheid/>>.

Adalah, *Israel's Jewish Nation-State Law*. Haifa: 2020. <<https://www.adalah.org/en/content/view/9569>>.

Al-Haq. *Global Response to Israeli apartheid: A call to the UNGA from Palestinian and international Civil Society Organizations*. Ramallah: 2020. <<https://www.alhaq.org/advocacy/17305.html>>.

Al-Haq. *South African study finds that Israel is practicing colonialism and apartheid in the Occupied Palestinian Territory*. Ramallah: 2010. <<https://www.alhaq.org/advocacy/7207.html>>.

Al-Haq. *United Nations: In response to Unprecedented Recognition of Israel's Apartheid Regime, States Must Take Concrete Steps to End this "unjust reality"*. Ramallah: 2020. <<https://www.alhaq.org/advocacy/17012.html>>.

Al-Haq. *Urgent Debate on Racism*. Ramallah: 2020. <<https://www.alhaq.org/advocacy/17020.html>>.

AMARA, Ahmad. HAWARI, Yara. "Using Indigeneity in the Struggle for Palestinian Liberation". *Al-Shabaka*. 2019. <<https://al-shabaka.org/commentaries/using-indigeneity-in-the-struggle-for-palestinian-liberation/>>.

BDS Movement. "What is BDS?" <<https://bdsmovement.net/what-is-bds>>.

COX, Alicia. "Settler Colonialism". *Oxford Bibliographies*. 2017. <<https://www.oxfordbibliographies.com/view/document/obo-9780190221911/obo-9780190221911-0029.xml>>.

EDELBI, Souheir. "Making Race Speakable in International Criminal Law: Review of Lingaas The Concept of Race in International Criminal Law". *TWAIL Review*. 2020. <<https://twail.com/making-race-speakable-in-international-criminal-law-review-of-lingaas-the-concept-of-race-in-international-criminal-law-%E2%80%A8/>>.

ERAKAT, Noura. REYNOLDS, John. "We Charge Apartheid? Palestine and the International Criminal Court". *TWAIL Review Reflections*, #33, 2021. <<https://twail.com/we-charge-apartheid-palestine-and-the-international-criminal-court/>>.

HAWARI, Yara. "Apartheid from Within? The Palestinian Citizens of Israel". *Al-Shabaka*. 2017. <<https://al-shabaka.org/briefs/apartheid-within-palestinian-citizens-israel/>>.

IRAQI, Amjad. "Palestinians are tired of proving Israeli apartheid exists". *+972 Magazine*. 2020.

- <<https://www.972mag.com/palestinians-annexation-apartheid-south-africa/>>.
- JAMJOUM, Hazem. "Not an analogy: Israel and the crime of apartheid". *The Electronic Intifada*. 2009. <<https://electronicintifada.net/content/not-analogy-israel-and-crime-apartheid/8164>>.
- MUHAREB, Rania. "The Nakba 70 Years On: Israel's Failure to Erase Palestinian Collective Memory". Ramallah: Al-Haq, 2018. <<https://www.alhaq.org/advocacy/6215.html>>.
- MUHAREB, Rania. "The Universal Declaration of Human Rights and the Ongoing Nakba: 70 Years of Exile, Rights Abuses, and Israeli Impunity". Ramallah: Al-Haq, 2018. <<https://www.alhaq.org/advocacy/6124.html>>.
- OHCHR. *Human Rights Council concludes urgent debate on current racially inspired human rights violations, systemic racism, police brutality and violence against peaceful protests*. Geneva: 2020. <<https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=25974&LangID=E>>.
- POWER, Susan. "The Legal Architecture of Apartheid". *AARDI*, 2021. <<https://aardi.org/2021/04/02/the-legal-architecture-of-apartheid-by-dr-susan-powers-al-haq/>>.
- Rethinking Palestine Podcast. "Limitations and Possibilities of the Apartheid Framework with Lana Tatour". (31 January 2021). <<https://podcasts.apple.com/us/podcast/limitations-possibilities-apartheid-framework-lana/id1537774938?i=1000507182508>>.
- SFARD, Michael. "Yes, It's Israeli Apartheid. Even Without Annexation". *Haaretz*, 2020. <<https://www.haaretz.com/israel-news/.premium-yes-it-s-israeli-apartheid-even-without-annexation-1.8984029>>.
- TATOUR, Lana. "Why calling Israel an apartheid state is not enough". *Middle East Eye*. 2021. <<https://www.middleeasteye.net/opinion/why-calling-israel-apartheid-state-not-enough>>.