

## Feasibility Study of the Re-Attribution of Crime of Apartheid to Israel

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### Abstract

According to Article 7 of the Rome Statute, the crime of Apartheid refers to actions, policies, and courses of conduct with the purpose of maintaining an institutionalized regime of systematic racism and racial domination. Based on this definition, the word "Apartheid" will not only refer to the historical regime of South Africa (1948-1994) but is also recognized as a crime against humanity on par with torture and slavery. Due to certain similarities in legal systems and roots of establishment, Israel and the Apartheid Regime of South Africa have been considered to be analogous in various international documents sponsored by the United Nations until 1991.

This study aims to analyze the historical rationale behind this recognition and the reversal of course by the United Nations General Assembly, which was initiated with the revocation of A/RES/3379 resolution (the equation of Zionism with racism). Furthermore, in the light of recent developments on domestic and international levels, it seems several unaligned trends are gaining ground in this respect to reaffirm the previous attribution of the crime of Apartheid to Israel. Through using E-Library data and employing the descriptive-analytical method, the veracity of the said trends, their projection, and their perseverance will be further discussed in this paper.

**Keywords:** Apartheid; Zionism; Israel; International Criminal Court; Durban.

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### **Introduction**

In 1975, the UN General Assembly adopted Resolution 3379, solemnly recognizing Zionism as a form of racism and racial discrimination.<sup>1</sup> Through referring to the Mexico Declaration (1975), the resolution enumerated in its third preambulatory paragraph: "International co-operation and peace require the achievement of national liberation and independence, the elimination of colonialism and neo-colonialism, foreign occupation, Zionism, apartheid, and racial discrimination in all its forms as well as the recognition of the dignity of peoples and their right to self-determination."<sup>2</sup>

Using a comparative approach, the above-mentioned resolution, which was adopted more than 45 years ago, differs significantly from the documents of the General Assembly issued in the last three decades. According to the new literature, Zionism is no longer a racist ideology. Although Israel's actions in post-1967 occupied lands, including the violation of Palestinian's right to self-determination, rights to development, and access to basic healthcare facilities, are criticized and even condemned in various avenues. Nevertheless, the racist aspect of these violations is consistently absent from the General Assembly documents passed after 1991.

This change is courtesy of Israel's preconditions for committing to the negotiations which led to the Oslo Accords. The result was the repeal of General Assembly Resolution 3379 in December 1991. Currently, General Assembly resolutions regarding Israel are being adopted in the fourth committee of the General Assembly, which is responsible for special political affairs, decolonization, and guardianship. It is noteworthy that the documents of the aforementioned committee are also approved every year with minimal changes, and the clauses that seem to have a firm conviction have remained unchanged from previous decades. For example, the third operative paragraph of Resolution A/RES/75/96, which uses the term "deplore" to describe Israeli

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1. General Assembly, "A/RES/3379: Elimination of all forms of racial discrimination". Adopted by 30th session of General Assembly on November 10, 1975. Available at: [https://undocs.org/a/res/3379\(XXX\)](https://undocs.org/a/res/3379(XXX)). Page 1, (Last Retrieved: August 26th, 2021)

2. United Nations, "E/Conf.66/34: Declaration of Mexico on the Equality of Women and Their Contribution to Development and Peace". Adopted by the World Conference of the International Women's Year on July 12, 1975. Available at: <https://undocs.org/en/E/CONF.66/34>. Page 6 (Last Retrieved: August 26th, 2021)

violations of Palestinian rights, has been adopted annually since 1994.<sup>34</sup> In addition, paragraphs drafted in recent years are more likely to seem less convinced and are presented in the form of concern or ambivalent criticism.

Notwithstanding the consensual process in the General Assembly, many analysts, including two former Israeli ambassadors to South Africa, have cited reports from civil society organizations and NGOs in the occupied territories that some relatively new laws passed along with underlying approaches have crossed the threshold to recognize the regime as racist and Apartheid.<sup>5</sup>

Beyond the similar conjectures made by journalists and NGO reports that mostly sympathize with the cause of Palestinian people, only in the first half of 2021, two international bodies have recognized their competence to investigate human rights abuses in the Occupied Palestinian Territories. The International Criminal Court (ICC)<sup>6</sup> and the Committee on the Elimination of All Forms of Racial Discrimination (CERD)<sup>7</sup> have established their jurisdiction to hear complaints from the Palestinian Authorities. According to the statements made by these international organizations, the ICC investigation is expected to focus on the scope of war crimes committed by Israel. At the same time, the CERD inquiry will evaluate racist laws and practices by Israeli authorities, especially policies which cause "racial segregation".

All of this suggests that explicit condemnation of Israel's racist actions is an emerging albeit reversible trend. In the following sections, legal definitions of Apartheid in international documents are enumerated to determine the necessary conceptual framework for its recognition. After the historical

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3. General Assembly, "A/RES/75/96: Work of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories". Adopted by 75th session of General Assembly on December 18, 2020. Available at: <https://undocs.org/en/A/RES/75/96>. Page 3, (Last Retrieved: August 26th, 2021)
  4. General Assembly, "A/RES/48/41: Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories". Adopted by 48th session of General Assembly on February 28, 1994. Available at: <https://undocs.org/en/A/RES/48/41>. Page 2, (Last Retrieved: August 26th, 2021)
  5. Ilan Baruch and Alon Liel, "It's apartheid, say Israeli ambassadors to South Africa". GroundUp News Agency, 2021. Last Retrieved: August 26th, 2021. <https://www.groundup.org.za/article/israeli-ambassadors-compare-israel-south-africa/>.
  6. Fatou Bensouda, "ICC-01/18: Prosecution Response to the Observations of Amici Curiae, Legal Representatives of Victims, and States", 2020. Last Retrieved: August 26th, 2021. International Criminal Court Portal. [https://www.icc-cpi.int/CourtRecords/CR2020\\_01746.PDF](https://www.icc-cpi.int/CourtRecords/CR2020_01746.PDF).
  7. CERD [Committee on the Elimination of Racial Discrimination]. "CERD/C/103/R6: Decision on the admissibility of the inter-State communication submitted by the State of Palestine against Israel". Adopted by the Committee on May 20, 2021. Available at: [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/1\\_Global/CERD\\_C\\_103\\_R-6\\_9416\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/1_Global/CERD_C_103_R-6_9416_E.pdf). (Last Retrieved: August 26th, 2021)

precedents for attribution are mentioned, Israel's ongoing approaches and policies are elaborated to give a sense of its following trajectory. Finally, the criteria and legal procedures and the extent to which a regime can be called racist by relevant international organizations and bodies are debated as the authors seek to determine the feasibility of the re-attribution of the crime of Apartheid in the international forums.

### **Apartheid in International Documents**

The word *Apartheid* in Dutch and Afrikaans is composed of the root apart and the suffix "heid". This suffix, equivalent to "hood" in English, denotes state, condition, character, or nature similar to that found in brotherhood and childhood.<sup>8</sup> Culturally, the term is synonymous with discrimination, segregation, separation, bigotry, racism, and the like.<sup>9</sup> In political terms, it refers to a system in which "members of different races have different political and social rights and spend their lives, travel, leisure, and other affairs separately".<sup>10</sup> Historically, Apartheid refers to the policies and laws of the South African regime, such as the 1949 Prohibition of Interethnic Marriage Act, which between 1948 and 1991 formed the basis of a socio-political system based on racist ideology and racial segregation.

The most important reference to Apartheid in a human rights instrument is made under Article 3 of the Convention on the Elimination of All Forms of Racial Discrimination (1965), which explicitly obliges all state parties to confront, prevent and eradicate apartheid-based behavior and racial segregation in their national territory. Furthermore, it calls on States to explicitly condemn this segregation policy in the international arena.<sup>11</sup> Considering that the Convention, with its 182 members<sup>12</sup>, is one of the most referable international human rights instruments, the aforementioned obligations are also considered among preemptory norms. It is also worth

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8. Etymology of Apartheid, Etymology Online Portal, Last Retrieved: August 26th, 2021. <https://www.etymonline.com/word/apartheid>.

9. See thesaurus.com/browse/apartheid?s=t; dictionary.com/browse/apartheid

10. Alfred Sydney Hornby, *Oxford Learner's Dictionary Fifth Edition*, (London: Oxford University Press, 1995), 45.

11. General Assembly, "A/RES/2106 (XX): International Convention on the Elimination of All Forms of Racial Discrimination". Adopted by 20th session of General Assembly on December 21, 1965. Available at: [https://undocs.org/en/a/res/2106\(xx\)](https://undocs.org/en/a/res/2106(xx)). Page 02, (Last Retrieved: August 26th, 2021)

12. UN Treaties Portal, "Status of Ratification for International Convention on the Elimination of All Forms of Racial Discrimination". Last Retrieved: August 26th, 2021. [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-2&chapter=4](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4).

mentioning that Israel is also a signatory to the Convention and the committee overseeing the implementation of the said treaty – which is known as the Treaty Body of the Convention – is responsible for reviewing periodic reports from State Parties and issuing Guiding Principles on reporting procedures as well as General Comments on how States should fulfill their commitments with regard to the Convention.

According to the latest guideline issued by the committee, countries are not only required by law to enact legislations that prevent racial segregation and ethnic grouping in confined neighborhoods (Ghettoization) but also it is expected that by examining the trends, authorities prevent the creation of situations where ethnic and racial segregation occurs. Specifically, the policies related to housing construction and the provision of public education need to be adjusted with this in mind.<sup>13</sup>

Since the obligations under Article 3 of the Convention on the Elimination of All Forms of Racial Discrimination are contingent upon the sovereignty of the State, Israel, in its defense, has denied dominion over the Palestinian territories of the West Bank and uses the term "disputed territories" as an official stance in order to allude to the mentioned lands. Notwithstanding this argument, the International Court of Justice, in its 2004 advisory opinion, recognized the status of the West Bank as "occupied"<sup>14</sup>, in line with Security Council Resolution 242 (1967) and other documents of the General Assembly and the Human Rights Council, to suggest that the evidence is sufficient to recognize Israel's de-facto control over those territories.

The 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid defines *Apartheid* as measures similar to those adopted by the South African regime, such as racial segregation and discrimination based on race.<sup>15</sup> Accordingly, a wide range of human rights contraventions such as violation of the right to life, right to freedom of movement, right to

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13. CERD (Committee on the Elimination of Racial Discrimination), "CERD/C/2007/1: Concluding Observations of the Committee on the tenth to thirteenth periodic reports of Israel". Adopted by the Committee on June 13, 2007. Available at: <https://undocs.org/CERD/C/2007/1>. Page 06, (Last Retrieved: August 26th, 2021)

14. International Court of Justice, "JL: 131: Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory". Advisory opinion issued by the court on July 9, 2004. <https://www.icj-cij.org/public/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>. Page 35, (Last Retrieved: August 26th, 2021)

15. General Assembly. "A/RES/3068: International Convention on the Suppression and Punishment of the Crime of Apartheid". Adopted by 28th session of General Assembly on November 30, 1973. Available at: [https://undocs.org/en/A/RES/3068\(XXVIII\)](https://undocs.org/en/A/RES/3068(XXVIII)). (Last Retrieved: August 26th, 2021)

peaceful assembly and trade unions, or policies that lead to disenfranchisements, such as arbitrary detention, torture, or persecution, will be classified as apartheid policies in an umbrella term if those measures pursued on the basis of racial motives, such as maintaining the supremacy of one ethnic group over others. Even after the fall of the apartheid regime in 1994, 11 countries have joined the treaty. The latest accessions include Uruguay in 2012 and Palestine in 2014<sup>16</sup>, both of which are indicative of the ongoing fight against the crime of Apartheid and its new iterations.

As mentioned earlier, the Rome Statute (the treaty which established International Criminal Court) has enumerated in its Article 7 under the section of crime against humanity that Apartheid is inhumane 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.

From the above definitions, it can be stipulated that Apartheid: A) is not only a historical reference to the overthrown regime of South Africa (1948-1994), rather it is a crime enumerated in various international documents and may have modern iterations, B) the term refers to a country with a political, economic and social system that has a wide range of violations of the rights of one or several groups of people based on their race or ethnicity. As a crime against humanity, if proven, Apartheid can lead to procedures as well as debates by the international community to start collective action based on the doctrine of "responsibility to protect".

The 2009 report of the United Nations Secretary-General, entitled "Implementing the Responsibility to Protect", outlined a three-pillar strategy for advancing the agenda mandated by the heads of states and government to fulfill their responsibility. In the event of a crime against humanity or other cases that would trigger the responsibility of by the international community, the following conditions have to be met:

1. The state in question does not have the ability or will to prevent crimes against humanity.
2. For other countries, it is not possible to help and empower the state to prevent the crime in question.

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16. UN Treaties [United Nations Treaty Collection]. "Status of Ratification for International Convention on the Suppression and Punishment of the Crime of Apartheid". Last Retrieved: August 26th, 2021. [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-7&chapter=4&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-7&chapter=4&clang=en).

3. If the two aforementioned conditions are met, the response of the international community is expected to be effective and timely in order to protect the population.<sup>17</sup>

It is essential to note that the above report serves as a guide to action in the first place. Initially, the document recommends targeted and occasional economic sanctions and prescribes caution concerning military intervention unless the crime is so severe that further deliberations may cause tremendous and irreparable damage. However, the prospect that the crime of Apartheid takes place is regarded as less alarming compared to more gruesome atrocities such as genocide. Nevertheless, the relationship between the two is postulated in international documents such as the political declaration of the World Against Racism Conference in 2001.

Furthermore, it is noteworthy that the above report recommends different solutions based on the scope and severity of the crime. Concordantly, the report suggests targeted economic sanctions to counter the violations of the State. Additionally, military intervention is best to be avoided unless the ongoing crime is so severe that losing time means countless lives are at the risk of being harmed. Based on such criterion, the prospect of Apartheid is naturally less pressing than genocide which needs immediate attention. Nevertheless, the relationship between these two crimes, which lead to one another, has been enumerated in several international documents, such as the outcome declarations of a series of conferences known as "World Against Racism".

Paragraph 15 of the outcome document of the Third World Conference against Racial Discrimination, entitled "Durban Declaration and Programme of Action (2001)", cites Apartheid and genocide as examples of crimes against humanity and catastrophes that result from racism. Additionally, in paragraph 153 of the Declaration, the international community recommends that UN peacekeepers identify patterns of heinous human rights and humanitarian violations that lead to genocide and crimes against humanity and assess the risk of such catastrophes.<sup>18</sup> According to some researchers, Apartheid, which is associated with the segregation and isolation of targeted racial groups, is

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17. United Nations, "A/63/677: Report of the Secretary-General: Implementing the responsibility to protect". Distributed on January 12, 2009 during the 63rd Session of the General Assembly. Available at: <https://undocs.org/en/A/63/677>. 22-28 (Last Retrieved: August 26th, 2021)

18. United Nations. "A.CONF.189/12: Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban, 31 August-8 September 2001". United Nations Digital Library. Available at: <https://digitallibrary.un.org/record/456677?ln=en>. Page 60, (Last Retrieved: August 26th, 2021)

itself known as a precondition for facilitating the conditions for genocide.<sup>19</sup>

It should be noted that the 2001 Durban Conference was held on the tenth anniversary of the 1991 repeal of the Population Registration Act, also called the Apartheid legislation. The government of South Africa coordinated with the UN Commission on Human Rights to hold what would have been a global conference. Allegedly, the initial draft paragraph has alluded to the relationship between the ideology of Zionism and racism, which made the United States and Israel boycott the conference as a show of objection.<sup>20</sup> In the end, due to the intervention by European countries, the reference to Zionism was removed, and the peace process between the two governments was emphasized.

The inclusion of such a paragraph in the initial draft of the Durban Declaration was due to the fact that this conference was considered the third instance in a series of World Conferences against Racial Discrimination, which dates back to 1978 and 1983. As previously mentioned, according to pre-1990s General Assembly literature, international conferences explicitly criticized the strategic relationship between Israel and the then South African regime. For example, in paragraph 18 of the outcome document of the 1978 World Against Racism conference, the participating states expressed concern about the growing security relationship between Israel and South Africa, blaming Israel for the failure of international sanctions to suppress apartheid.<sup>21</sup> The clause was put to the vote at Sweden's request and was finally approved with the support of African and Middle Eastern countries, including the pre-revolution Iran. Detailed votes are shown in the footnote.<sup>22</sup>

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19. Winston Nagan and Vivile Rodin, "Racism, Genocide, and Mass Murder: Toward a Legal Theory about Group Deprivations", *National Black Law Journal* 17, no. 1 (2004): 133-221.

20. Dina Ezzat, "The Western world does not view Israeli actions against the Palestinians as a form of racism". *Al-Ahram Weekly Online*. 2001, Last Retrieved: August 26th, 2021. <https://web.archive.org/web/20120813192431/http://weekly.ahram.org.eg/2001/546/fr2.htm>.

21. United Nations, "A/CONF.92/40: Report of the World Conference to Combat Racism and Racial Discrimination, Geneva, 14-25 August 1978". United Nations Digital Library. Available at: <https://digitallibrary.un.org/record/2019?ln=en>. Page 17 (Last Retrieved: August 26th, 2021)

22. *In favor*: Afghanistan, Algeria, Angola, Bahrain, Bangladesh, Bulgaria, Burma, Burundi, Byelorussian SSR, China, Cuba, Cyprus, Czechoslovakia, Democratic People's Republic of Korea, Democratic Yemen, Egypt, Ethiopia, Gabon, German Democratic Republic, Ghana, Greece, Guyana, Hungary, India, Indonesia, Iran, Iraq, Jamaica, Kenya, Kuwait, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Madagascar, Malaysia, Malta, Mongolia, Morocco, Niger, Nigeria, Oman, Pakistan, Philippines, Poland, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Senegal, Somalia, Spain, Sri Lanka, Sudan, Syrian Arab Republic, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian SSR, Union of Soviet Socialist Republics, United Arab Emirates, United Republic of Cameroon, United Republic of Tanzania, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia.

*Against*: Austria, Finland, San Marino, Sweden, and Switzerland

*Abstaining*: Argentina, Bolivia, Brazil, Central African Empire, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Fiji, Haiti, Honduras, Ivory Coast, Japan, Malawi, Mexico, Nicaragua, Panama, Peru, Portugal, Uruguay, Venezuela.

In addition to the Apartheid and foreign occupation, the 2001 Durban Declaration addresses the issue of racial discrimination against Africans and people of African descent around the world, noting historical injustices such as "slave trade routes" and "colonialism" that created intergenerational inequality in different parts of the world, and its dire effects are still present today, especially in developing countries. That is why countries with a history of racism that made them benefit from colonialism have to put "reparations" on the agenda.

Due to the dissatisfaction of several western and European countries with the outcome of the 2001 World Conference against Racism, prior to the Durban Review Conference in 2009, Germany, Italy, Poland, the Netherlands, Canada, Australia, New Zealand, and others announced their withdrawal. Several European countries also participated with lower-ranking officials. Despite the participation of the Islamic Republic of Iran at the presidential level, propaganda outlets used a distorted translation of the statements of the then President Ahmadinejad to further the agenda of marginalizing the conference and its message. Excerpts from his speech from two years before the conference was mistranslated to falsely portray his positions as anti-Semitic and a vehement denier of the Holocaust.<sup>23</sup>

Consequently, by relying on the sheer force of its media conglomerates and active diplomacy, Israel succeeded in minimizing specific paragraphs in the outcome document of a conference it did not even attend. Among those paragraphs existed references to Apartheid which could have been problematic. That is why contrary to DDPA; Apartheid is mentioned only once in the 2009 Durban Outcome Document. Nevertheless, the Likud Party's victory in March 2009 and the subsequent implementation of policies and regulations assessed by many international standards to be racist has led to a gradual increase in criticism over the racist nature of some of these laws. During the 2010s, the incremental growth in the magnitude of these criticisms and reports of gross violations have provided the necessary grounds for international organizations to recognize their competence and hear pleas from Palestinians regarding the racist implications of the Israeli policies.

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23. BBC, "Full text of the speech Iranian President Mahmoud Ahmadinejad gave at the Durban Review Conference, a UN conference on racism, in Geneva, Switzerland, on Tuesday, 20th April 2009". Last Retrieved: August 26th, 2021. [http://news.bbc.co.uk/2/hi/middle\\_east/8010747.stm](http://news.bbc.co.uk/2/hi/middle_east/8010747.stm). (In his statement, President Ahamdinejad used the word "exploit" to describe what has been done with the memory of the Holocaust, which cannot be objectively interpreted as a position of denial. It was a criticism of the occupation of Palestinian lands and a violation of their right to self-determination. In this context, the statement alludes to Holocaust as a "historical pretext" that should not be exploited.)

### **Racist Laws and Regulations in Israel**

As mentioned earlier, the comparison between Apartheid and Israel has been going on since the early years of their conception, which is coincidentally in the post-WWII 1940s. Both political systems are based on the dominance of one ruling class, most of whom are descended from immigrants, and both gained independence on the auspices of Colonial British. This issue was even emphasized by Hendrik Verwoerd, the apartheid architect and then Prime Minister of South Africa, in 1961.<sup>24</sup> Historically, this comparison has been used as a warning in political talks within various factions of Israel. Former Prime Minister Yitzhak Rabin, for example, said in a 1976 interview about a permanent presence in Gaza that "I don't think it's possible to contain over the long term, if we don't want to get to apartheid, a million and a half [more] Arabs inside a Jewish State."<sup>25</sup>

Even from a linguistic point of view, the comparison has been reinforced by researchers. Israel's official policy of separating the Palestinians from the Israeli population is called "Hafrada", which, like the word apartheid, is equivalent to apartness.<sup>26</sup> This policy, along with measures such as the erection of barriers and walls, has led many international observers, such as Nobel laureate Desmond Tutu, who won the Nobel Peace Prize for his struggle against Apartheid, to describe the system of oppression enforced on Palestinians as "much like what happened to us black people in South Africa."<sup>27</sup>

For example, the regulations regarding the necessity of having a specific permit in the West Bank are among the directives strictly enforced by the military. Given that such a license is not required for Jews in the first place<sup>28</sup>, these regulations are a clear example of racial discrimination. It has to be noted that this class of restrictions is a growing trend, one which may have exceeded the example of the Apartheid system by now. For example, Arab-Israeli

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24. Molly Boigan, "A timeline of the term 'apartheid' in relation to Israel", *Forward Weekly*, 2021, Last Retrieved: August 26th, 2021. <https://forward.com/news/468379/timeline-term-apartheid-israel/>.

25. Times of Israel. "Shaked vows to bring downed Palestinian family unification law to another vote". 2021. Last Retrieved: August 26th, 2021. <https://www.timesofisrael.com/shaked-vows-to-bring-downed-palestinian-family-unification-law-to-another-vote/>.

26. Ephraim Nimni, "National-Cultural Autonomy as an Alternative to Minority Territorial Nationalism", *Cultural Autonomy in Contemporary Europe* (New York: Routledge Publications, 2008), 09-29.

27. Leila Farsakh, "Israel: an apartheid state?" *Le Monde Diplomatique*. 2003. Last Retrieved: August 26th, 2021. <https://mondediplo.com/2003/11/04apartheid>.

28. OCHA (United Nations Office for the Coordination of Humanitarian Affairs). "OCHA report: Restrictions on the movement of people and goods – West Bank". November 2005, Available at: <https://www.un.org/unispal/document/auto-insert-203620/>. (Last Retrieved: August 26th, 2021)

citizens have reported having difficulty transporting their Palestinian passengers, and in practice, this extends to public transportation such as buses.<sup>29</sup> According to a directive from the Israeli Ministry of Roads, 67 kilometers of West Bank roads are currently accessible only to Israeli citizens, and the only option for Palestinians to travel is to walk on these roads.<sup>30</sup>

In addition to the transit restrictions between communities that facilitate the creeping process of seizing the West Bank, Israel has attempted to secede and separate the Palestinian territories, which can be viewed as the echo of the similar policy adopted by South African to separate portions of Bantustan territory.<sup>31</sup> The disintegration of the West Bank to form what is effectively an archipelago since transit requires an official permit to cross Israeli-designated crossings has weakened the possibility of the Palestinians' right to self-determination and sustain what is dubbed by analysts as a "colonial enterprise"<sup>32</sup>, which irreversibly makes any possibility of a peaceful solution less likely. In the following, two maps of Bantustan and the West Bank are shown, indicating a systematic attempt by Israel and Apartheid to isolate and fragmentize the targeted population.



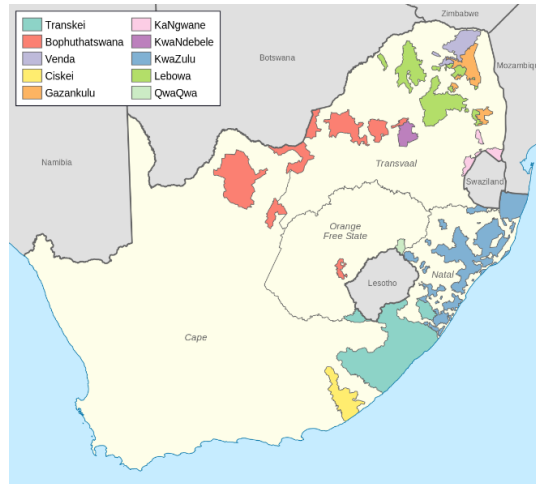
**Figure No.1:** Green portions of the west bank are populated by Palestinians while blue parts are controlled and settled by Israel.

29. Revital Hovel and Chaim Levinson, "Attorney General Orders Ya'alon: Explain Why Palestinians Banned From Israeli-run Buses in West Bank". Haaretz Daily. 2014. Last Retrieved: August 26th, 2021. <https://www.haaretz.com/ya-alon-told-to-explain-why-palestinians-banned-from-buses-1.5320723>.

30. AFSC [American Friends Service Committee] Report, 2020. Last Retrieved: August 26th, 2021. "Restricted Movement in the Occupied Palestinian Territory". <https://www.afsc.org/resource/restricted-movement-occupied-palestinian-territory>.

31. Leila Farsakh, "Apartheid, Israel and Palestinian Statehood". *Israel and South Africa: Many Faces of Apartheid*, (London: Zed Books, 2015), 84-98.

32. Henry Siegman, "Imposing Middle East Peace". The Nation. 2010, Last Retrieved: August 26th, 2021. <https://www.thenation.com/article/archive/imposing-middle-east-peace/>.



**Figure No.2:** Fragmented Colored Sections are populated by non-white ethnicities in the Apartheid era.

The scope of racist regulations in Israel also extends to the most intimate aspects of citizens' lives. For example, the Israeli Citizenship Act, passed in 2003, abolished citizenship through marriage. Given that about 20 percent of Israeli citizens are of Arab descent and may interact with other residents of the West Bank, the passage of this law has overshadowed the lives of hundreds of thousands of citizens who have difficulty choosing a residential place or visiting relatives.<sup>33</sup> The aforementioned law has been an effective measure in pursuing segregation policies since 2003. It was effective until July 6<sup>th</sup>, 2021, and conveniently was not extended anymore. It should be noted that that the current government led by Naftali Bennett sought to extend this law while opposition to its extension surprisingly came from the right-wing Likud party as a mere show of defiance. Since Likud is a staunch supporter of such measures, the law is expected to be re-enacted in the absence of outside pressure from international observers.<sup>34</sup>

According to observations made by the committee on the Elimination of All Forms of Racial Discrimination, the Israeli judiciary has a double standard in dealing with criminal cases. In comparable cases, if the accused is of Palestinian descent, the length of detention is noticeably longer, and judicial

33. Donald Macintyre, "Racist' marriage law upheld by Israel". The Independent. 2011, Last Retrieved: August 26th, 2021. <https://www.independent.co.uk/news/world/middle-east/racist-marriage-law-upheld-by-israel-478291.html>.

34. Times of Israel, 2021.

rulings tend to be more severe.<sup>35</sup> On the other hand, Israelis who commit serious crimes against the Palestinians will, in many cases where strong evidence of wrongdoing exists, do not face indictments.<sup>36</sup>

In 2009, the World Bank reported that more than 80 percent of drinking water in the West Bank is diverted to illegal Israeli settlements regardless of the fact that Israeli settlements (in 2009) accounted for only 15% of the West Bank population. This stark inequality in access to water has left the Palestinian population in a severe water and sanitation crisis.<sup>37</sup> It should be noted that according to Article 24 of the Convention on the Rights of the Child and Article 11 of the International Covenant on Economic, Social and Cultural Rights, the right to access safe drinking water is reaffirmed<sup>37,38</sup>, which, like other human rights, must be provided without any discrimination on the basis of race or ethnicity.

Recalling the breadth and scope that the systematic violations of Palestinian rights are taking place is beyond the limits of this paper. Nevertheless, reports compiled to show the governmental efforts to construe an Apartheid entity are published by different NGOs and activists who have monitored the trends for decades. For more information on the subject, the authors recommend the report of Human Rights Watch entitled "Crossing the Threshold"<sup>39</sup> and the paper compiled by B'tselem entitled "The Regime of Jewish Supremacy from the Jordan River to the Mediterranean Sea", both of which are comprehensively written, include eye-witness reports and frequently cite relevant domestic regulations of Israel as well as its international obligations.<sup>40</sup>

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36. Amnesty International, "Lethal force and accountability for unlawful killings by Israeli forces in Israel and the Occupied Palestinian Territories". 2016, Last Retrieved: August 26th, 2021, <https://www.amnesty.org/en/documents/mde15/4812/2016/en/>.

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38. General Assembly, "A/RES/44/25: Convention on the Rights of the Child". Adopted by 44th session of General Assembly on November 20, 1989. Available at: <https://undocs.org/en/A/RES/44/25>. 04-05, (Last Retrieved: August 26th, 2021)

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## **The Reaction of International Bodies to Racism in Israel**

As previously mentioned, Israel's actions to systematically undermine the rights of its citizens of Arab descent as well as Palestinians in Gaza and the West bank have been all but subtle. Notwithstanding the considerable efforts of lobbyists, in the last decade, we have seen many UN experts, as well as its subsidiary bodies, voice the support and conviction to protect the right of the Palestinians.

For example, after the passage of the "Basic Law: Israel as the Nation-State of the Jewish People", which in its first article states that self-determination is "unique" to the Jewish people<sup>41</sup>, the Committee on the Convention on Racial Discrimination issued a resolution (decision) calling on Israel to abide by its international obligations and "implement appropriate measures to combat the proliferation of racist acts and manifestations of racist hate speech that particularly target Palestinians in the territories under the State party's effective control."<sup>42</sup> As previously noted, in 2021, the committee recognized its competence to hear Palestinian Authorities' case against Israel in response to their correspondence.

The combination of these developments has led Michael Link, the UN Special Rapporteur on the Occupied Palestinian Territories, to describe official procedures of Israel as an "Apartheid-like, two-tier legal system" in his report to the Human Rights Council.<sup>43</sup> He cited Articles 2 and 26 of the Covenant on Civil and Political Rights to conclude that Israel is infringing the right of the indigenous population to equality, as well as the right to be free from racial and ethnic discrimination and Apartheid. During his interactive dialogue session on July 9th, 2021, he described the continuation of Israeli construction in the occupied territories as a "war crime".<sup>44</sup>

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41. Raoul Wootliff, "Full text of MK Avi Dichter's 2017 'Jewish State' bill". Times of Israel. Last Retrieved: August 26th, 2021. <https://www.timesofisrael.com/full-text-of-mk-avi-dichters-2017-jewish-state-bill/>.

42. CERD (Committee on the Elimination of Racial Discrimination), "CERD/STA/ISR/8680: Prevention of Racial Discrimination, Including Early Warning and Urgent Action Procedures". Adopted by the Committee on May 10, 2018. Available at: [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/ISR/INT\\_CERD\\_STA\\_ISR\\_8680\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/ISR/INT_CERD_STA_ISR_8680_E.pdf). Page 02, (Last Retrieved: August 26th, 2021)

43. Human Rights Council, "A/HRC/47/57: Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967". Distributed by the Human Rights Council on July 8, 2021. Available at: [https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session47/Documents/A\\_HRC\\_47\\_57\\_AdvanceUneditedVersion.docx](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session47/Documents/A_HRC_47_57_AdvanceUneditedVersion.docx). Page 11, (Last Retrieved: August 26th, 2021).

44. Michael Lynk, OHCHR Portal (Office of the High Commissioner for Human Rights). "Israeli Settlements Amount to a War Crime, Special Rapporteur Tells Human Rights Council". Press Conference on July 8, 2021 by Special Rapporteur on the situation of human rights in the Palestinian territories occupied by Israel since 1967. Last Retrieved: August 26th, 2021. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27295&LangID=E>.

It should be noted that the violation of Palestinian rights occurs not only in contravention of international human rights law but also through imposing armed conflicts; the world is witnessing gross violations of humanitarian law by Israel. A recent example occurred in the May 2021 conflict when more than 200 Palestinian civilians, including 69 children, were killed by Israeli missiles. In response, the Human Rights Council convened an urgent meeting in June 2021 to address the Israeli attack on Gaza and adopted the Resolution HRC/S-30/1.

According to the first operative paragraph of the document, an independent commission of inquiry to "investigate violations of international human rights and humanitarian law in the occupied territories, the eastern part of Jerusalem and Israel." In addition to investigating the above-mentioned tragedies, the commission is tasked with identifying root causes of recurrent tensions, instability, and protraction of conflict, including systematic discrimination and repression based on national, ethnic, racial, or religious identity.<sup>45</sup> The report is expected to be distributed in the Fiftieth Session of the Human Rights Council (June 2022) and the Seventy-seventh General Assembly (September 2022). The commission, chaired by Navi Pillay<sup>46</sup>, former High Commissioner for Human Rights, is tasked to review lead-up events and verify field reports.

In February 2021, the International Criminal Court has recognized its jurisdiction to review cases in the Occupied Palestinian Territories, including Gaza, the West Bank, and East Jerusalem.<sup>47</sup> The investigation will cover crimes within the jurisdiction of the court that is alleged to have been committed concerning the communications of Palestine since June 13th, 2014, the date to which reference is made in the letter to the court. Observers cite that the report of the Fact-Finding Commission on the 2014 Israel-Gaza conflict will be a primary source of investigation. However, it is likely to go beyond

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45. Human Rights Council, "A/HRC/RES/S-30/1: Ensuring respect for international human rights law and international humanitarian law in the Occupied Palestinian Territory, including East Jerusalem, and in Israel". Adopted by the Human Rights Council on May 27, 2021. Available at: <https://undocs.org/A/HRC/RES/S-30/1>. Page 2, (Last Retrieved: August 26th, 2021)

46. Nazahat Shameem Khan, OHCHR Portal (Office of the High Commissioner for Human Rights). "President of Human Rights Council appoints Members of Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel". Announcement on July 22, 2021 by President of Human Rights Council. Last Retrieved: August 26th, 2021. <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=27331&LangID=E>.

47. ICC (International Criminal Court), "ICC Pre-Trial Chamber I issues its decision on the Prosecutor's request related to territorial jurisdiction over Palestine". 2021. Last Retrieved: August 26th, 2021. <https://www.icc-cpi.int/Pages/item.aspx?name=pr1566>.

the scope of 2014, especially now that the Human Rights Council Commission of inquiry's mandate will overlap with the areas the court is willing to inspect. Based on the content of the source material, the possibility exists that the report will go beyond war crimes and cover areas of systematic repression such as widespread racial discrimination.

### **Conclusion**

Looking at the list of events and topics that were briefly mentioned and discussed in this paper, along with the fact that nearly all of those occurrences have roughly taken place in the last two years, one can surmise that the pace of change is in a way that the emerging trends seem to be both fluid and reversible. Through studying the usage of the word "Apartheid", first as a political system, then as a crime attributable to others such as Israel, we suddenly get to 1991 when the onset of several decades-long silence of the international community in this regard shows us how malleable these developments can be.

In recent years, Israel has shown that it possesses neither maneuverability nor enough flexibility to shoulder away from its Oslo commitments. On the other hand, the regime seems to lack the minimum political will to at least try and fulfill some of its obligations. The current stratagem can be extrapolated to be A) strengthening and supporting allied institutions, parties, and cronies at the international level and B) escalating tensions and securitizing the region to justify its violations as proportionate responses.

It seems that even the combined approaches have not been enough for many of Israel's western allies, who, in various ways, warn about the continuation of the current trend. One recent warning was publicly issued by the French Foreign Minister Jean-Yves Le Drian, who announced in May 2021 that the "risk of apartheid is high if Israel continued to act according to a Single-State logic".<sup>48</sup> Expectedly, similar positions have been conveyed by other allies, presumably through more private channels.

Regardless of the positions made by government officials and international institutions, some academics and jurists seem to disagree on the extent of territorial sovereignty and what can be construed as "effective control". Based on these conjectures, Israel and some of these lawyers posit that the government is partially responsible or does not even have any obligation

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48. Guardian News Organization. "France sees 'risk of apartheid' in Israel Paris, France". 2021. Last Retrieved: August 26th, 2021. <https://guardian.ng/news/france-sees-risk-of-apartheid-in-israel-paris-france/>.

regarding the events that transpire in the West Bank. It is important to note that such opinions are in the minority, especially within the international jurists. Given the de facto control of Israel over the occupied territories, the General Assembly and Security Council of the United Nations, as well as the International Court of Justice and International Criminal Court, have found that the necessary criteria for accountability of Israel have been met. Consequently, these international bodies have voiced their concern and, in the case of ICC, have recognized their jurisdiction to investigate alleged war crimes committed by Israel.

From the point of view of customary rules in international criminal law, the very entry of international institutions can be expected to generate further contributions to creating new concepts or more accurate definitions of international crimes and crimes against humanity. Given that the Israeli flavor of Apartheid, despite some similarities, such as racial segregation and disintegration of territory, has also included other measures such as employing an incremental approach to occupation, the ban on new construction by targeted population, creeping accession of territory through building settlements and monopolization of the right to self-determination to a particular group, all pursued in a larger scheme of mass replacement, are all instances that can be identified in similar situations. One can expect that these well-definable measures may also become a model for future assessments of possible crimes.

For example, if in a hypothetical scenario during the events of 2020 Nagorno-Karabakh conflict, the Armenian population did not flee over the course of the war and in the coming years, the world was witness to a campaign of gradual replacement of the resident ethnicity with the citizens of the victorious country through systematic coercion, which included racial discrimination, the disintegration of territories and creeping building of settlements, such a scenario, which is itself a repetition of a historic crime of the twentieth century, can be "labeled as Zionism". Many international humanitarian law experts cite article 49 of the Fourth Geneva Convention, which prohibits deportation, forced transfer, and mass displacement of citizens by the occupying forces. However, the same article is mired with too many under-defined and easily circumvented exceptions, such as security reasons or military considerations, that invocation is futile in any tribunal. In most cases, it is practically non-referable. Due to the lack of precise definitions and referable obligations under International humanitarian law,

until a time that concrete legal measures are drafted and signed by all to protect vulnerable civilians who find themselves in occupied territories in the future, the employment of appropriate labels can be pursued as an effective alternative to the cementation of relevant customary laws. It is noteworthy that the process of labeling was also a similar trend that succeeded in the case of Apartheid.

In any case, the appointment of the former High Commissioner for Human Rights, Ms. Pillay, as the head of the commission of inquiry, is a promising development. Given her background as a former judge of the Supreme Court of post-Apartheid South Africa, her expertise can prove instrumental in identifying patterns of systematic discrimination against Palestinians and citizens with Arab ancestry. The international community has shamefully neglected abject discrimination in the occupied territories over the past 30 years. Based on the precedent, further neglect will only embolden the practices that have plighted the Palestinians until now.

The Islamic Republic of Iran, after years of taking nonconcrete and non-codified verbal positions in the international sphere, finally sent her official proposal to the Security Council regarding the best way to safeguard Palestinian's right to self-determination.<sup>49</sup> In the letter, Iran stipulated that only through a comprehensive and inclusive referendum can the Palestinians' right to self-determination be realized. As a referable document of the Security Council, the proposal may be considered as part of a broader agreement if the political will is facilitated in the future by international institutions or a group of like-minded governments.

All things considered, however, one cannot deny the importance of the Israeli leadership's perception regarding the nature of the country they are steering. Now that veterans like Shimon Peres and Ariel Sharon are not in the political arena anymore, none of the prominent leaders belong to the first generation, who were actual occupiers. Instead, the present clique has inherited a military-oriented entity long known to be based on Apartheid in the international arena. However, as a part of a political bargain in 1991, the declarations and allusions changed to show a gesture of goodwill while the response on the Israeli part was consistent defiance. If Israel adopts a less

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49. Security Council, "S/2019/862: Letter dated 1 November 2019 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General", Available at: <https://undocs.org/en/S/2019/862>. (Last Retrieved: August 26th, 2021)

rigid approach, one can hope that at least some of the atrocious precedents of the past decades can be partly rectified. On the other hand, if the notion that "Apartheid Hafradaesque racism is an existential component of Israel", have indeed permeated through the top brass, one can only expect that such mindset will set leaders on the path of continuing the previous stratagem augmented by new coalitions with the emerging powers of the East, to make them beyond accountability. Irreversibly, this course of action will trigger more decisive, compounded developments which in time, will make them beyond much more.

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