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CASE ANALYSIS

# Settlements or Colonies: Misleading Statistics in the Occupied Territory of the *de jure* State of Palestine

Basheer AlZoughbi | January 2013

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Territories traditionally regarded as colonies were described in Chapter XI (Articles 73 and 74) of the United Nations Charter as Non-Self-Governing Territories.<sup>1</sup> According to Article 73e, member States must transmit statistical and other information about the Non-Self-Governing Territories for which they are responsible to the Secretary-General of the UN. The fourth of the principles given in resolution 1541 (1960) which guide member States in determining whether or not an obligation exists to transmit the information called for under Article 73e, states that “*Prima facie* there is an obligation to transmit information in respect of a territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it”. However, the definition of “geographically separate” cannot be restricted to colonies located in overseas territories, as colonization can and does occur when a State colonizes a contiguous territory. In addition, the definition of a colony has traditionally included not only Non-Self-Governing Territories but other territories in colonial situations.

In United Nations resolution 2073 of 1965, Oman, which had never been placed in the category of Non-Self-Governing Territories, was considered to have the status of a colony.<sup>2</sup> Similarly, Algeria was never defined as a Non-Self-Governing Territory, but the General Assembly in its resolution 1573 of 1960 recognized the need to implement the right to self-determination “on the basis of respect for the unity and territorial integrity of Algeria,” it being understood that Algeria was a French colony.<sup>3</sup> The 1967 territory of the *de jure* state of Palestine is also not included within the category of Non-Self-Governing Territories but still constitutes a colonial situation.

As Andrés Rigo Sureda states, “within the context of colonialism, self-determination has become a peremptory norm of international law whereby a state’s title to a territory having a colonial status is void”.<sup>4</sup> The General Assembly has gradually developed an exercise of competence to decide whether or not the people of a territory have

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<sup>1</sup> Andrés Rigo Sureda, *The Evolution of the Right of Self-Determination: A Case Study of U.N. Practice* (Leiden: A.W Sijthoff, 1973), 102. Colonies have also often been understood to be located across “salt water” and the “salt water theory” of colonialism interprets colonies to be located only overseas; see *ibid.*, 105.

<sup>2</sup> See *ibid.*, 62- 64.

<sup>3</sup> *Ibid.*, 64.

<sup>4</sup> *Ibid.*, 353.

implemented self-determination or whether or not they should implement it.<sup>5</sup> In this respect, therefore, the General Assembly has been actively involved in deciding whether a territory is or is not a colony, and has been concerned with situations of racial discrimination, traditional colonialism, and the use of force.<sup>6</sup> In its *Legality of the Threat or Use of Nuclear Weapons* advisory opinion, the International Court of Justice pointed out that:

“General Assembly resolutions, even if they are not binding, may sometimes have normative value. They can, in certain circumstances, provide evidence important for establishing the existence of a rule or the emergence of an *opinio juris*. To establish whether this is true of a given General Assembly resolution, it is necessary to look at its content and the conditions of its adoption; it is also necessary to see whether an *opinio juris* exists as to its normative character. Or a series of resolutions may show the gradual evolution of the *opinio juris* required for the establishment of a new rule.”<sup>7</sup>

The General Assembly has affirmed that the 1967 territory of the *de jure* state of Palestine, which is under occupation, constitutes a colonial situation. For example, its resolution 3092 of 1973 “calls upon Israel to desist immediately from the annexation and colonization of the Arab territories occupied by it since 1967”. Furthermore, resolution 3525 (1975) “urges all States to refrain from any action which Israel will exploit in carrying out its policy of colonizing the occupied territories,” and resolution 34/44 (1979) “reaffirms the inalienable right of the peoples of Namibia and Zimbabwe, of the Palestinian people and of all peoples under colonial and alien domination to self-determination”. General Assembly resolution 1514 (XV) of 1960, entitled “Declaration on the Granting of Independence to Colonial Countries and Peoples,” is applicable to the 1967 Occupied Palestinian Territory and its people; and in the preamble to resolution 34/44, the General Assembly reaffirmed the importance of the implementation of resolution 1514.<sup>8</sup> The 1967 occupied territory of the *de jure* state of

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<sup>5</sup> Ibid., 65.

<sup>6</sup> Ibid., 238.

<sup>7</sup> International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion (1996), Paragraph 70, 226.

<sup>8</sup> The use of the expression “Occupied Palestinian Territory” in this paper is without prejudice to the legal fact that it is the *de jure* state of Palestine that is under colonial occupation.

Palestine thus has colonial status, because the Palestinian people have not exercised the right to self-determination, a right that it is their due to exercise. The "Declaration on the Granting of Independence to Colonial Countries and Peoples" declared that "immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations".

The question then arises, given that portions of the occupying power's civilian population have been transferred into the Occupied Palestinian Territory: should this population be considered settlers living in settlements or colonists living in colonies? The French term for the Israeli settlements is "*colonies Israéliennes*," or "Israeli colonies". Since 1967, the Israelis have been systematically establishing colonies, using the English euphemism "settlements" to designate them.<sup>9</sup> The expression "Israeli communities" has also been employed by the occupying power as a euphemism for its colonies which are intended exclusively for Jewish Israelis. Similarly, Israel named the area lost by Jordan (i.e., the West Bank) after the 1967 war as "Judea and Samaria," invoking the Old Testament names for that territory, whereas the same area is recognized by the international community and customary international law to be part of the Occupied Palestinian Territory. "Judea and Samaria" are thus Israel's coded language for the Occupied Palestinian Territory of the West Bank. Israel has systematically used such euphemisms in its official statements, foreign policy, diplomacy and military orders.

Australia's Defense Forces Manual, Canada's Law of Armed Conflict (LOAC) Manual and New Zealand's Military Manual emphasize the colonial nature of the transfer of an occupying power's civilian population into an occupied territory. The legal position in these manuals is accurately expressed as follows): "the occupying power is forbidden from moving parts of its own population into the occupied territory, with the intention of changing the nature of the population or annexing or colonizing the area."<sup>10</sup> The

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<sup>9</sup> See UN Security Council, "Letter Dated 2 March 1979 from the Acting Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People Addressed to the President of the Security Council" (S/13132 2), Annex II, "Israeli Designs to Control the West Bank," <http://unispal.un.org/UNISPAL.NSF/0/2BE0B5666D6B82F885256C6700602A3E>.

<sup>10</sup> See Australia, *Defence Force Manual* (1994), § 1217, Canada, LOAC Manual (1999), p. 16-3, § 17, New Zealand, *Military Manual* (1992), § 1319(1); quoted in Jean-Marie Henckaerts and Louise Doswald-Beck, eds., *Customary International Humanitarian Law: Volume II, Practice* (Cambridge: Cambridge University Press, 2005), 2957-2958.

commentary on the sixth paragraph of the Fourth Geneva Convention states that “it is intended to prevent a practice adopted during the Second World War by certain Powers, which transferred portions of their own population to occupied territory for political and racial reasons or in order, as they claimed, to colonize those territories”.<sup>11</sup> The practice was targeted by the International Military Tribunal for Germany in 1945 in the *Indictment in the Case of the Major War Criminals* where it was stated that “the defendants [...] introduced thousands of German colonists”.<sup>12</sup>

The aim of the transfer of Israeli Jewish civilians into the Occupied Palestinian Territory is colonial in nature, with the purpose and objective being primarily to change the demographic composition of the Occupied Palestinian Territory and prevent Palestinian statehood. The partial transfer of the occupying power’s civilian population into an occupied territory cannot be considered anything other than one of the manifestations of colonialism. The preamble of resolution 1514 (XV) makes it clear that “the peoples of the world ardently desire the end of colonialism in all its manifestations. [...] Peoples may, for their own ends, freely dispose of their natural wealth”. Exploitation and spoliation of natural and economic resources in violation of the laws and customs of war and the official and unofficial annexation of parts of the Occupied Palestinian Territory are also other forms and manifestations of colonialism.

The English translation of the words used by the Permanent Court of International Justice in its Advisory Opinion of 1923 offers an example of the interchangeability of terms.<sup>13</sup> The French title of the Advisory Opinion was “*Sujet de certaines questions touchant les colons d'origine Allemande, dans les territoires cédés par l'Allemagne à la Pologne*”; this was translated as “Certain Questions Relating to Settlers of German Origin in the Territory Ceded by Germany to Poland”. Yet, in the text of the Advisory Opinion, “*la Commission de Colonisation Allemande*” was translated as “the German Colonization Commission.” Furthermore, the words “*loi pour l'encouragement de la colonisation Allemande dans les provinces de la Prusse Occidentale et de la Posnanie*”

<sup>11</sup> Jean S. Pictet, ed., *The Geneva Conventions of 12 August 1949. Commentary IV: Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: International Committee of the Red Cross, 1958), 283.

<sup>12</sup> International Military Tribunal for Germany, Case of the Major War Criminal, Indictment, 20 November 1945, Count 3(j).

<sup>13</sup> Permanent Court of International Justice, *Settlers of German Origin in Poland*, Advisory Opinion (1923), [http://www.worldcourts.com/pcij/eng/decisions/1923.09.10\\_german\\_settlers.htm](http://www.worldcourts.com/pcij/eng/decisions/1923.09.10_german_settlers.htm).

were translated as “law concerning the promotion of German settlements in the provinces of West Prussia and Posen”. However, the words “*nombre de colons*” were translated as “a number of colonists” and “*deux catégories de colons*” was translated as “two classes of settlers”. Likewise, in the International Court of Justice’s Advisory Opinion entitled *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2004), the terms “*colonies Israéliens*” and “*colons Israéliens*” were translated as “Israeli settlements” and “Israeli settlers”. One can observe the inconsistency in the translation of the terms “*colonisation*” and “*colons*”.

The Statutes of both the Permanent Court of International Justice and the International Court of Justice state that “the official languages of the Court shall be French and English.”<sup>14</sup> The use of the euphemisms “Israeli settlements” and “Israeli settlers” as English translations of the French terms is problematic because both legally and linguistically, the terms “colonies” and “colonists” best describe the extensive transfer of part of the occupying power’s civilian population into the Occupied Palestinian Territory, which is also under colonial rule. Using the term “colonial settlement” would indeed be preferable to using “settlement” by itself.<sup>15</sup>

Israeli colonial settlements are built-up areas comparable to cities, towns or villages depending upon population numbers which vary from one settlement to another. Israeli settlements are officially categorized into regional councils, local councils, and municipalities.<sup>16</sup> This categorization of Israeli settlements under Israeli internal law does not alter their status under international law. The settlements are generally characterized by the following features: they are found in Arab territory which was occupied by Israel in the 1967 Six-Day War, they have been designed for habitation by

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<sup>14</sup> See Article 39 in both Statute of the International Court of Justice, June 26, 1945 and Statute of the Permanent Court of International Justice of 16 December 1920, amended by the Protocol of September 14, 1929. The Permanent Court of International Justice is the predecessor of the International Court of Justice.

<sup>15</sup> The use of the terms “Israeli settlements” and “Israeli settlers” in this paper is without prejudice to a recognition of their true colonial nature under public international law or to the reality of the extensive transfer of Israeli civilians into the Occupied Palestinian Territory.

<sup>16</sup> For example, according to Israeli internal law, Ariel settlement has the status of a municipality while the status of Qedumim settlement is that of a local council, and Megillot belongs to a regional council which includes a group of settlements.

civilian nationals of the occupying power, and they are secured by the Israeli army of occupation. Moreover, their existence endangers international peace and security.

Many Israeli settlements are adjacent to Palestinian built-up areas and can be seen from most Palestinian cities, villages, towns and refugee camps in the West Bank. Some settlements are situated at the very heart of Palestinian cities and villages; examples are to be found in the old city areas of Hebron and Jerusalem. The Drobbles plan of 1981 lists existing types of settlements as communal settlements, urban settlements, moshavim, kibbutzim, industrial villages, regional centers, and industrial centers.<sup>17</sup> What distinguishes the Israeli settlements from the Palestinian cities and towns in the West Bank is that the former are inhabited by nationals of the occupying power while the latter are historical cities and villages inhabited by the native population, who are protected persons under the Fourth Geneva Convention.

Between 1967 and May 2010, 121 official Israeli settlements and approximately 100 outposts were established in the West Bank.<sup>18</sup> Furthermore, Israel created 12 settlements in the occupied section of Jerusalem; several enclaves of Israeli settlers were established through the assistance of the Israeli government in Arab neighborhoods of East Jerusalem, for example in the Muslim Quarter in the Old City, Silwan, Sheikh Jarrah, Mount of Olives, Ras al-Amud, Abu Dis, and Jabel Mukabber.<sup>19</sup> Different statistical sources give slightly varying numbers for Israeli settlements and settlers. Particular attention is required when examining lists or maps of Israeli settlements, especially to see if they contain the following, which they may or may not take into account: non-residential settlements, settlements in East Jerusalem (including those established in the Arab neighborhoods of East Jerusalem) and within the expanded boundaries of Jerusalem city, dual names of settlements (which may reflect old and new names and/or existing dual names), so-called "unauthorized settlement outposts," settlements in the Old City of Hebron, settlements established in the "no man's land" area, settlements merging with one another, and settlements only partially located in the Occupied Palestinian Territory.

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<sup>17</sup> Mattityahu Drobbles, *Settlement in Judea and Samaria: Strategy, Policy and Plans* (Jerusalem, 1980), <http://unispal.un.org/UNISPAL.NSF/0/3E5D731750EEB69E8525696600663AD0>.

<sup>18</sup> Eyal Hareuveni, "By Hook and by Crook: Israel's Settlement Policy in the West Bank," (Jerusalem: BTselem, 2010), 9; [http://www.btselem.org/download/201007\\_by\\_hook\\_and\\_by\\_crook\\_eng.pdf](http://www.btselem.org/download/201007_by_hook_and_by_crook_eng.pdf).

<sup>19</sup> Ibid.

Israeli industrial zones, commercial centers, campuses, parks, quarries, rock crushing facilities and similar installations located in the Occupied Palestinian Territory also constitute colonial settlements, albeit non-residential ones, because the purpose of creating them is to promote commuting among settlers. Shaar Binyamin, Shima, Barkan, Mishor Adumim and Kedumim (Baron) are Israeli industrial areas in the Occupied Palestinian Territory while Atraktziya Water Park is an epitome of Israeli urban park design. Israeli quarries and rock crushing facilities operating in the Occupied Palestinian Territory, for example Nahal Raba, Meitarim, and Salit Adumim, are also non-residential colonial settlements.

Dual names of settlements may either reflect a change in the settlement's status—for example, Nahal's status changed from military to civilian—or a change in its structure, such as merging with another settlement.<sup>20</sup> The Geva Binyamin settlement is also known as the Adam settlement, the Menorah settlement is also called Kfar Haoranim, the Halamish settlement's duplicate name is Neve Tzuf, and the Metzadot Yehuda settlement's second name is Beit Yatir.

When attempting to give a full list of settlements, one must count those established in East Jerusalem as well as the expanded areas of the West Bank which Israel unilaterally declared to be a part of wider Jerusalem and annexed on a *de facto* basis. Pisgat Zeev, Givat Shapira (the French Hill), East Talpiot, Har Homa (Jabal Abu Ghuneim) and Gilo settlements are situated in East Jerusalem and/or wider Jerusalem occupied and annexed since 1967. Other Israeli settlements within Arab neighborhoods which were part of Arab East Jerusalem even during Jordanian rule include Maale Hazeiti and Maale David in Ras Al-Amud, Beit Orot in At-Tur (Mount of Olives), Nof Zion in Jabel Mukaber, Beit Yehonatan in Silwan and Shimon HaTzadik in Sheikh Jarrah.

"Settlement outposts" (which are legally different under Israeli law from other settlements) in the rest of the Occupied Palestinian Territory—for example, Mitzpe Yair, Mevot Jericho, Maaleh Shlomo, and Maoz Zvi—also constitute colonies. The *Summary of the Opinion Concerning Unauthorized Outposts* of 2005, more widely known as the Sasson Report after its author Talia Sasson, states that there were 105 unauthorized

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<sup>20</sup> See UN, Division for Palestinian Rights, *Israeli Settlements in Gaza and the West Bank (Including Jerusalem): Their Nature and Purpose*, Part II (1984), <http://unispal.un.org/UNISPAL.NSF/0/B658E2F2D24BC43885256C780054B750>. Nahal is a Hebrew acronym which literally means Soldier-Pioneer Youth.

outposts, but mentions that this number “probably does not reflect the true number of outposts in the area”.<sup>21</sup> Settlement outposts come into being as a result of Israeli settlers’ own initiatives, while not excluding the involvement of the settlement regional councils and/or Israeli public bodies and/or state organs. These outposts usually but not exclusively take the form of movable caravans. The Sasson Report mentions that “The typical way of establishing unauthorized outposts is conveying caravans, placing them on the ground and connecting them to networks. A caravan is ‘a house on wheels’. Its mobility enables establishing a settlement overnight”.<sup>22</sup> Israel has reacted in several ways to the settlement outposts after their establishment: evacuating and/or dismantling them, that is, making them vacant by force or by consent of the settlers; tolerating them temporarily or permanently; and recognizing them formally, or in other words acknowledging them as official settlements on an *ex post facto* basis.

In the Old City of Hebron, four Israeli residential settlements have been established: Beit Hadassah, Admot Yishai (Tel Rumedia Settlement), Beit Romano, and Avraham Avinu. In the no man’s land area, Israel has established the Shilat, Lapid, Kefar Ruth, and Maccabim settlements. The Neve Shalom settlement, also located in the no man’s land, dates from the early 1970s and is inhabited by Israeli Jewish and Arab nationals. The fact of this coexistence does not exempt the occupying power from its responsibility to abstain from transferring its civilian population into an occupied territory. In a B’Tselem report published in 2002, Shilat, Lapid, Kefar Ruth and Maccabim are not considered to be established in an occupied territory.<sup>23</sup> However, any Israeli settlement established in a territory that was occupied by Israel in 1967 is indeed located in an occupied territory. David Newman states that “prior to the Six-Day war, there had been a number of micro-territories which had constituted ‘no-man’s lands’ between the Israeli and Jordanian front lines [...]. These ‘neutral’ micro-territories were incorporated into Israel in the aftermath of 1967”.<sup>24</sup> Neither Jordan nor Israel had sovereignty over the *no man’s land*, but Israel occupied it in 1967.

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<sup>21</sup> Talia Sasson, *Summary of the Opinion Concerning Unauthorized Outposts*, March 2005, <http://unispal.un.org/UNISPAL.NSF/0/956AA60F2A7BD6A185256FC0006305F4>.

<sup>22</sup> Ibid.

<sup>23</sup> Yehezkel Lein, *Land Grab: Israel’s Settlement Policy in the West Bank* (Jerusalem: B’Tselem, 2002), 12.

<sup>24</sup> David Newman, *Boundaries in Flux: The Green Line Boundary between Israel and the West Bank. Past, Present and Future* (Durham: University of Durham Press, 1995), 16.

[This is] a strip of land running to the outskirts of Jerusalem and known as “no-man’s land” because, until 1967, it was not under the control of either Jordan or Israel. Following Israel’s occupation of the West Bank, Israel annexed this strip and subsequently built four communities on it, three of them—Shilat, Lapid, and Kfar Ruth—in territorial contiguity with the Modiin Illit bloc.<sup>25</sup>

Hence, the Shilat, Lapid, Kfar Ruth, Maccabim, and Neve Shalom settlements, notwithstanding the fact that they are located in the former no man’s land, constitute colonial settlements in the Occupied Palestinian Territory under customary international law. Moreover, the Fourth Geneva Convention is applicable in the former no man’s land area. It should be noted that Security Council Resolution 476 of June 30, 1980 “reaffirms the overriding necessity to end the prolonged occupation of Arab territories occupied by Israel since 1967, including Jerusalem”; while paragraph 1 of Security Council Resolution 592 of December 8, 1986 “reaffirms that the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, is applicable to the Palestinian and other Arab territories occupied by Israel since 1967, including Jerusalem”. The 1978 Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories records that “the settlement of Kfar Ruth was inaugurated on 11 December 1977 [...] Kfar Ruth was a moshav (a semi-cooperative settlement) established in the former no man’s land between Israel and Jordan”.<sup>26</sup>

Some Israeli settlements in the Occupied Palestinian Territory have merged and unified with others. For example, the Givon and Har Shmuel settlements merged with the Givat Zeev settlement while the Ofarim settlement was united with the Beit Arye settlement. It must also be considered that Israel has expanded existing towns located in Israel into the Occupied Palestinian Territory and has expanded settlements in the Occupied Palestinian Territory into Israel. By doing so, Israel aims to create a *fait accompli* on the ground which is intended to subvert the boundaries between the Occupied Palestinian Territory and Israel. For example, the building units within the Shani settlement which

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<sup>25</sup> Yehezkel Lein and Alon Cohen-Lifshitz, *Under the Guise of Security: Routing the Separation Barrier to Enable the Expansion of Israeli Settlements in the West Bank* (Jerusalem: Bimkom and B’Tselem, 2005), 53.

<sup>26</sup> UN, “Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories” (A/33/356), 13 November 1978, <http://unispal.un.org/UNISPAL.NSF/0/1751DB3DFEC8CA06052565AE006EEBEC>.

are located beyond the 1949 armistice lines constitute a colonial settlement because they are located in the Occupied Palestinian Territory. Shaalvim is an Israeli town that was expanded into the no man's land area and hence its buildings located in the Occupied Palestinian Territory are those of a colonial settlement. A number of building units of the Shilat settlement were expanded into Israel.

In light of the above considerations, lists or maps—whether from Palestinian, Israeli or other sources—that record the number of Israeli settlements and/or settlers, may not be completely accurate due to the intentional or unintentional omission of one or more of these details. Thus, any given list or map of Israeli settlements and/or settlers in the Occupied Palestinian Territory is liable to be inherently incomplete. The *de jure* state of Palestine is not only under military occupation but also under a state of colonialism, and this is evidenced by the non-exercise of the Palestinian people of their right to self-determination. The occupying power's practices of, *inter alia*, transferring its civilian population into an occupied territory, annexation of land, exploitation and spoliation of that territory's natural and economic resources, and imposing a coercive monetary union upon an occupied territory also constitute colonial behavior.

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