Following UN settlement report, the path forward for Palestinian leadership is clear — take Israel to the International Criminal Court

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On 14 September 1967, three months after the Israeli conquest of the West Bank, East Jerusalem, Gaza, the Egyptian Sinai and the Syrian Golan Heights, the legal counsel for the Israeli Foreign Ministry, Theodor Meron, wrote a legal opinion for his Minister, Abba Eban. Meron, a Holocaust survivor who later become a law professor at New York University and would complete his illustrious career as president of the U.N. war crimes tribunal for the former Yugoslavia, advised Eban that the 4th Geneva Convention of 1949 prohibited the establishment of civilian settlements in occupied territories. Israel, as a signatory to the Geneva Conventions, was obliged to comply. The prohibition in international law, Meron wrote, was:

“categorical and is not conditioned on the motives or purposes of the transfer, and is aimed at preventing colonization of conquered territory by citizens of the conquering state.”

[The legal opinion, in the original Hebrew, can be found [here](http://southjerusalem.com/%20settlement-and-occupation-historical-documents/) with an explanatory commentary in English by Gershom Gorenberg]

Eban and the rest of the Israeli cabinet chose to ignore Meron’s clear warning, and it was kept secret for many years in the Israeli Foreign Ministry files. Indeed, Eban spent much of the summer and autumn of 1967 prevaricating at the United Nations over Israeli’s not-so-hidden intentions regarding the conquered territories. Even as he was offering some vague pledges to the United States about Israel’s willingness to return the lands to their Arab neighbours, the Israeli cabinet voted to annex East Jerusalem and a significant chunk of the West Bank, and began planning the first settlements under the guise of military encampments. When Dean Rusk, the American Secretary of State, reminded Eban later in 1967 about Israel’s pledge that it had no territorial ambitions, Eban shrugged his shoulders and said: “We’ve changed our minds.” “Israel’s keeping territory,” Rusk presciently warned his American senior foreign policy staff as they debated what position the United States should take, “would create a revanchism for the rest of the twentieth century.”

The report on the Israeli settlements released earlier this week by the United Nations Human Rights Council confirms, in considerable detail, Rusk’s prediction. Since 1967, the report states,

Israeli governments have openly led and directly participated in the planning, construction, development, consolidation and/or encouragement of settlements by including explicit provisions in the fundamental policy instrument

There are now approximately 250 settlements in East Jerusalem and the West Bank, home to approximately 520,000 settlers. (Israel has another 20,000 settlers in the Syrian Golan Heights, which is not mentioned in the report).

The report details the devastating social and economic consequences of Israeli’s settlement project for the Palestinians. Settler violence against the Palestinians is endemic, routine and yet rarely investigated or punished by the Israeli military. Land confiscation is significant, with over a million dunums (a dunum is a quarter of an acre) seized by Israel since 1967 for the settlements through a myriad of legal stratagems, with the Palestinian Bedouins being particularly vulnerable. Water – a strategic resource in the arid Levant – is controlled by Israel, giving it “predominance in the allocation of West Bank water resources, of which it withdraws 90 per cent.” The expansion of the settlements and their related infrastructure squeezes Palestinian agriculture by removing access to land and water, and impeding the transportation of goods to markets. Likewise, the intense security system of roadblocks and walls designed to protect the half a million settlers is strangling Palestinian commerce, as businesses face immense problems accessing raw goods and shipping their finished products to customers.

All of Israel’s settlement activities have been in plain violation of international law. The UN report lays out, in accessible language, the elements of international humanitarian law (the law of war and the protection of civilians during conflict), international criminal law and international human rights law that are breached by the Israeli settlement project. Beyond the clear violations of the 4th Geneva Convention, the report rightly notes that the settlement project also violates the Palestinians’ right to self-determination as well as their right to equality and non-discrimination, both cornerstones of our international legal system.

In the muted language typical of many UN documents, the settlements report hints at the underlying reasons why modern international law has created a strict prohibition against settler implantation projects. The report points out that the Israeli settlements represent “a creeping annexation” that will block “the establishment of a contiguous and viable Palestinian state”. An astute historian reading between the lines of the report would immediately visualize the direct link to many earlier settler-implantation projects, such as the British settlement of Scottish and English Protestants into Catholic Ireland; the French in Algeria; the Dutch and the British in South Africa; the British in Kenya; the Soviet Union’s infusion of Russians into the Baltic republics; and the export of Moroccan settlers into the Western Sahara.

What all of these projects share is the common goal of the colonial power to solidify its political control, augment its economic penetration, and ultimately bolster its legal claim to possession of the subjugated lands, all through the tool of demographic transformation. The transferred settlers are almost always willing citizens or subjects of the dominant power, motivated by government inducements, enhanced economic prospects, special legal and political privileges in the subjugated lands, and, on occasion, nationalist, religious or civilizing missions. The consent of the indigenous population is invariably unsought, because it would never be offered. The consequences of these settlement projects are usually multifold, calamitous and long-term: indigenous civilian misery, environmental degradation, separate and unequal social and legal structures, segregated labour markets, and chronic political instability.

The most important take-away of the UN report is its call for the international community to enforce its own body of international laws to confront the Israeli settlement project. In particular, the report points to the 1998 Rome Statute of the International Criminal Court, which designates settlement activity as a “war crime”. As the report notes:

The Rome Statute establishes the International Criminal Court’s jurisdiction over the deportation or transfer, directly or indirectly, by the occupying Power of parts of its own population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory. Ratification of the Statute by Palestine may lead to accountability for gross violations of human rights law and serious violations of international humanitarian law justice for victims.

More than anything else the Palestinian leadership could do, seeking membership in the International Criminal Court and preparing to bring a complaint against Israel for its settlements has the potential for dramatically altering the political landscape in the Israeli-Palestinian conflict. A victory at the International Criminal Court would isolate Israel, require the West to acknowledge the force of its own laws, re-establish the importance of universal values and, most hopefully, begin to re-set some of the dysfunctional asymmetry of power between Israel and the Palestinians.

Regarding the decision of the United Nations Human Rights Council to commission a report on the Israeli settlements, the United States has played its traditional role as Israel’s diplomatic flack catcher. The [*New York Times*](http://www.nytimes.com/2013/02/01/world%20/middleeast/un-panel-says-israeli-settlement-policy-violates-law.html?_r=0) on Thursday quoted the U.S. as stating it had opposed the mission on the grounds that “it does not advance the cause of peace and will distract the parties from efforts to resolve the issues that divide them.” In his memoirs, written in 1992, Dean Rusk recalled his reaction to Abba Eban’s 1967 comment that Israel had changed its mind about returning the conquered lands: “With that remark, a contentious and even bitter point with the Americans, he turned the United States into a twenty year liar.”