



London, 20 - 22 November 2010

## Findings of the London Session



**Corporate Complicity in Israel's  
violations of International Humanitarian  
& International Human Rights Law**

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## INTRODUCTION

The London session of the Tribunal was organised by:

The International Organising Committee (IOC): Ken Coates (†), Pierre Galand, Stéphane Hessel, Marcel-Francis Kahn, Robert Kissous, François Maspero, Paulette Pierson-Mathy, Bernard Ravenel, Brahim Senouci, Gianni Tognoni and its International Secretariat: Frank Barat and Virginie Vanhaeverbeke.

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The Algerian, Belgian, British, Catalan, Chilean, Danish, DCR, Dutch, French, German, Indian, Italian, Irish, Israeli/Palestinian, Luxembourg, Portuguese, Spanish, South African and Swiss support committees.

The International Organising Committee wishes to thank all the people, organisations and foundations that made the second session of the Russell Tribunal on Palestine possible.

Responsible publisher: Pierre Galand

The conclusions of the Jury following the London session of the Russell Tribunal on Palestine are set out below.

### Abbreviations

|       |  |
|-------|--|
| AP:   | Additional Protocol                          |
| ATCA: | Aliens Tort Claims Act                       |
| BDS:  | Boycott, Divestment and Sanctions            |
| CJEC: | Court of Justice of the European Communities |
| ECHR: | European Court of Human Rights               |
| EU:   | European Union                               |
| GC:   | Geneva Convention(s)                         |



|               |   |
|---------------|---|
| Guidelines:   | The OECD Guidelines for Multinational Enterprises   |
| ICC:          | International Criminal Court  |
| ICJ:          | International Court of Justice  |
| IDF:          | Israel Defence Forces   |
| IHL:          | International humanitarian law  |
| IHRL:         | International human rights law  |
| ILC:          | International Law Commission  |
| NCP:          | OECD National Contact Points specific to each country.  |
| OECD:         | Organisation of Economic Co-operation & Development   |
| PA:           | Palestinian Authority   |
| Res:          | Resolution  |
| RICO:         | Racketeer Influenced and Corrupt Organisations Act  |
| Rome Statute: | Rome Statute of the International Criminal Court, 17 July 1998  |
| RToP:         | Russell Tribunal on Palestine   |
| The Norms:    | The Norms on the Responsibilities of Transnational Corporations and other business Enterprises with regard to Human Rights 2002 |
| TVPA:         | Torture Victims Protection Act  |
| UNSC:         | UN Secretary General  |
| UNGA:         | United Nations General Assembly   |

**The Jury of the Russell Tribunal on Palestine (hereinafter “the RToP”) consists of the following individuals:**

- **Stéphane Hessel**, Ambassadeur de France, Honorary President of the RToP, one of the original drafters of the Universal Declaration of Human Rights, France.
- **Mairead Corrigan Maguire**, Nobel Peace Laureate 1976, Northern Ireland.
- **John Dugard**, Professor of International law, former UN Special Rapporteur on Human Rights in the Palestinian Territories, South Africa.
- **Lord Anthony Gifford QC**, UK barrister and Jamaican attorney-at-law.
- **Gisèle Halimi**, lawyer, former Ambassador to UNESCO, France.
- **Ronald Kasrils**, writer and activist, former Government Minister, South Africa.
- **Michael Mansfield QC**, UK barrister, President of the Haldane Society of Socialist Lawyers, United Kingdom.
- **José Antonio Martín Pallín**, emeritus judge, Chamber II, Supreme Court, Spain.

- **Cynthia McKinney**, former member of the US Congress and 2008 presidential candidate, Green Party, USA.
- **Alberto San Juan**, actor, Spain
- **Aminata Traoré**, author and former Minister of Culture of Mali
- **Alice Walker**, Poet and writer, USA.


Meeting in London from 20 to 22 November 2010 (Second Session), the jury of the RTOP was composed of the following members:

- **Stéphane Hessel**, Ambassadeur de France, Honorary President of the RTOP, one of the original drafters of the Universal Declaration of Human Rights, France
- **Mairead Corrigan Maguire**, Nobel Peace Laureate 1976, Northern Ireland
- **John Dugard**, Professor of International law, former UN Special Rapporteur on Human Rights in the Palestinian Territories, South Africa
- **Lord Anthony Gifford QC**, UK barrister and Jamaican attorney-at-law
- **Ronald Kasrils**, writer and activist, former Government Minister, South Africa
- **Michael Mansfield**, UK barrister, President of the Haldane Society of Socialist Lawyers, United Kingdom
- **José Antonio Martín Pallín**, emeritus judge, Chamber II, Supreme Court, Spain
- **Cynthia McKinney**, former member of the US Congress and 2008 presidential candidate, Green Party, USA

**It adopted these conclusions, covering the following points:**


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## I. ESTABLISHMENT OF THE TRIBUNAL


- 1.1. The Russell Tribunal on Palestine (RToP) is an international citizen-based Tribunal of conscience created in response to the demands of civil society. Noting the failure to implement the Advisory Opinion of 9 July 2004 of the International Court of Justice concerning the construction of a wall in the Occupied Palestinian Territory; noting the failure to implement resolution ES-10/15 confirming the International Court's Opinion, adopted by the United Nations General Assembly on 20 July 2004; noting the Gaza events in December 2008 – January 2009, committees have been created in different countries to promote and sustain a citizen's initiative in support of the rights of the Palestinian people.
  - 1.2. The RToP is imbued with the same spirit, and espouses the same rigorous rules as those inherited from the Tribunal on Vietnam (1966-1967), which was established by the eminent scholar and philosopher Bertrand Russell, and the second Russell Tribunal on Latin America (1974-1976), organized by the Lelio Basso International Foundation for the Rights and Liberation of Peoples.
  - 1.3. Supporters of the RToP include Nobel Prize laureates, a former United Nations Secretary-General, a former United Nations Under-Secretary-General, two former heads of state, other persons who held high political office and many representatives of civil society, writers, journalists, poets, actors, film directors, scientists, professors, lawyers and judges.
  - 1.4. Public international law constitutes the legal frame of reference of the Russell Tribunal on Palestine.
  - 1.5. The Tribunal proceedings will comprise a number of sessions. The Tribunal held its first session on 1, 2 and 3 March 2010 in Barcelona. It was hosted and supported by the Barcelona National Support Committee and the Office of the Mayor of Barcelona, under the honorary presidency of Stéphane Hessel, Ambassadeur de France. The findings of the Barcelona Session ('the Barcelona findings'), adopted on 3 March 2010, can be found here: <http://www.russelltribunalonpalestine.com/en/wp-content/uploads/2010/08/CONCLUSIONS-TRP-FINAL-EN-last.pdf>. The second session of the RToP was held in London on the 20<sup>th</sup>, 21<sup>st</sup> and 22<sup>nd</sup> November 2010.
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## **II. MANDATE OF THE RUSSELL TRIBUNAL ON PALESTINE**

- 2.1. The Tribunal takes it as an established fact that some aspects of Israel's behaviour have already been characterized as violations of international law by a number of international bodies, including the Security Council, the General Assembly and the International Court of Justice (see paragraph 19 of the Barcelona findings). The question submitted to the RToP by the International Organising Committee is whether the relations of certain corporations with Israel may be deemed to constitute assistance for such violations of international law and, if so, whether it follows that the relations themselves are illegal under international law and under the domestic law of states. If they are, what are the practical consequences of these findings and what action should be taken thereon?
- 2.2. At this session, the Tribunal will therefore focus on the following three questions:
1. Which Israeli violations of international law are corporations complicit in?
  2. What are the legal consequences of the activities of corporations that aid and abet Israeli violations?
  3. What are the remedies available and what are the obligations of states in relation to corporate complicity?
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### III. PROCEDURE

- 3.1. The Organising Committee submitted the three aforementioned questions to experts who had been selected on the basis of their familiarity with the facts of the situation. With a view to respecting the adversarial principle, the questions were also submitted to the corporations referred to by the witnesses. These corporations were also invited to appear before the tribunal or have a written statement submitted into evidence. The experts/witnesses submitted written reports to the Tribunal.
- 3.2. The following corporations responded to the tribunal (see Annex B):
- **Olivier Orsini**, General Secretary of Veolia Environment, letter dated 8 November 2010.
  - **Hans Alders**, Chairman of the board of Stichting Pensioenfonds Zorg en Welzijn (PFZW), letter dated 12 November 2010.
  - **Ilkka UUSITALO**, head of Unit of the EU directorate Middle East, Southern Mediterranean Near East, letter dated 12 November 2010 and written on behalf of the president of the European Commission Barroso.
  - **Michael Clarke**, Public Affairs Director of G4S plc, electronic mail dated 18 November 2010.
- 3.3. While the Tribunal takes note of these letters, it regrets that other corporations have proved reticent in presenting their arguments concerning the issues that are addressed at this second session, and that the Tribunal was unable to benefit from the assistance that their arguments and supporting evidence might have provided.
- 3.4. The written stage of proceedings was followed by an oral stage during which members of the Tribunal heard statements by 28 experts and witnesses introduced by the Organising Committee. The experts and witnesses were (in alphabetical order of appearance):
- **Rae Abileah**, National Organiser, Code Pink Women for Peace, USA.
  - **Fayez Al Taneeb**, Coordinator of the Palestinian Farmers' Union and Stop the Wall, Palestine. (The presentation was received by way of a video recording because Mr Al Taneeb was unable to obtain a visa).
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- **Merav Amir**, Research Coordinator, Who Profits from the Occupation, Israel.
  - **Dalit Baum**, Project Coordinator, Who Profits from the Occupation, Israel.
  - **William Bourdon**, lawyer practising in Paris, President of Sherpa Association, France.
  - **Genevieve Coudrais**, retired lawyer and member of Association France Palestine Solidarity, France.
  - **Terry Crawford Browne**, retired banker, adviser to South African Council of Churches, South Africa.
  - **John Dorman**, architect, human rights campaigner and a member of the Campaign for Nuclear Disarmament and Amnesty International, Ireland.
  - **Mario Franssen**, Coordinator of the Belgian Solidarity Movement INTAL and spokesperson of the Dexia Campaign, Belgium.
  - **Yasmine Gado**, lawyer specialising in corporate law and human rights issues, USA.
  - **Ben Hayes**, security policy expert for the civil liberties organisation Statewatch.
  - **Richard Hermer QC**, UK barrister practising in human rights, public international law, actions against the police and personal injury, UK.
  - **Shir Hever**, economist at the Alternative Information Center, Israel.
  - **John Hilary**, Executive Director of War on Want, UK.
  - **Jamal Juma'a**, Coordinator of the organisation Stop the Wall, Palestine (whose evidence was provided by Mr Hever because Mr Juma'a was unable to obtain a visa to travel to the UK).
  - **Salma Karmi**, UK barrister and lawyer at Al Haq, Palestine.
  - **Nancy Kricorian**, Campaign Manager, Code Pink Women for Peace, USA.
  - **Maria LaHood**, Senior Staff Attorney, Center for Constitutional Rights in New York, USA.
  - **Hugh Lanning**, Deputy General Secretary of Public and Commercial Services Union and Chair of the Palestine Solidarity Campaign, UK.
  - **Saskia Müller**, independent researcher on the involvement of Dutch pensions funds in the Israeli occupation, Netherlands.
  - **Wael Natheef**, General Secretary of the Jericho branch of the Palestinian General Federation of Trade Unions, Palestine.
  - **Adri Nieuwhof**, independent consultant and human rights advocate, Netherlands.
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- **Chris Osmond**, campaigner against EDO, researcher for Corporate Watch and defendant in the EDO de-commissioners trial.
- **Hocine Ouazraf**, political scientist specialising in international law, Belgium.
- **Christophe Perrin**, member of the French social organization CIMADE and the Coalition Against Agrexco, France.
- **Josh Ruebner**, National Advocacy, Campaign to End the Israeli Occupation, USA.
- **Paul Troop**, UK barrister practising in human rights and civil liberties, covering both domestic and international work, UK.
- **Phon Van Den Biesen**, lawyer specialising in civil litigation issues on war and peace and international and European law, Netherlands.

NB: One further witness, **Ghaleb Mashni**, a Palestinian engineer and resident of Shuf'at, was unable to give evidence because he was unable to obtain a visa to travel to the UK.

- 3.5. The procedure followed by the Tribunal is neither that of the International Court of Justice, nor that of a domestic or international criminal court, but is based on the methodology applicable by any judicial body in terms of the independence and impartiality of its members.



#### IV. ADMISSIBILITY

- 4.1 When considering the relations of corporations with Israel, the Tribunal will refer to its previous findings of violations of international law by Israel (at the Barcelona session). Israel's absence from the present proceedings, here and in Barcelona, is not an impediment to the admissibility of witness evidence and expert reports on the violations. In passing judgment on violations of international law allegedly committed by a state that is not represented before the Tribunal, the Tribunal is not breaching the rule of mutual agreement among the parties that is applicable before international judicial bodies responsible for the settlement of disputes between states (see the *Monetary Gold* and *East Timor* cases, *ICJ Reports*, 1954 and 1995). The work of this body is not comparable to that involved in a dispute referred, for instance, to the International Court of Justice: the facts presented as violations of international law committed by Israel in the Occupied Palestinian Territories have been characterized as such by the United Nations General Assembly and the Security Council, and also by a number of reports such as those of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories and the report of the United Nations Fact-Finding Mission on the Gaza Conflict, known as the Goldstone Report. At this stage, therefore, the Tribunal will merely recall the legal facts that have been broadly accepted by the international community.

## V. THE MERITS

5.1 In these conclusions the Tribunal has used, depending on the context, the terms Palestine, occupied Palestinian territories, Palestinian territory, Occupied Palestinian Territory and Palestinian people without prejudice to the judgment that will be rendered at the final session.

5.2 The conclusions of the Tribunal address the following matters:

- Violations of international law committed by Israel (simply recalling those reached in Barcelona) (5.3)
- The relations of certain corporations with Israel and the legal implications of the unlawful relations of certain corporations with Israel (5.4)


### 5.3 Violations of international law committed by Israel

5.3.1 At the Barcelona session (1–3 March 2010), the RToP listed types of Israeli conduct that violated international law (Barcelona conclusions, § 19); the RToP will not repeat all of them, but it recalls the following in particular:

1. Constructing a Wall in the West Bank on Palestinian territory that it occupies, Israel denies the Palestinians access to their own land, violates their property rights and seriously restricts the freedom of movement of the Palestinian population, thereby violating article 12 of the International Covenant on Civil and Political Rights to which Israel has been a party since 3 October 1991; the illegality of the construction of the Wall was confirmed by the International Court of Justice in its Advisory Opinion of 9 July 2004, which was endorsed by the UN General Assembly in its resolution ES-10/15;
2. Systematically building settlements in Jerusalem and the West Bank, Israel breaches the rules of international humanitarian law governing occupation, in particular article 49 of the Fourth Geneva Convention of 12 August 1949, by which Israel has been bound since 6 July 1951. This point was noted by the International Court of Justice in the above-mentioned Advisory Opinion;
3. Maintaining a blockade on the Gaza Strip in breach of the provisions of the Fourth Geneva Convention of 12 August 1949 (art. 33), which prohibits collective punishment;

4. Inflicting extensive and serious damage, especially on persons and civilian property, and by using prohibited methods of combat during operation “Cast Lead” in Gaza (December 2008 – January 2009).

5.3.2 The RToP notes that certain categories of violations of international law committed by Israel concern, more specifically, corporations, without prejudice to the links between the corporations concerned and Israel’s other violations of international law. Violations of international law by Israel in which corporations are particularly closely involved are:

- the systematic establishment of settlements in Jerusalem and the West Bank as referred to at 19.6 of the Barcelona findings; the settlements not only breach the rules of IHL governing the occupation, particularly Art. 49 of the 4<sup>th</sup> GC of 12 August 1949 by which Israel has been bound since 6 July 1951 (this point has been recognised by the Security Council (S/RES/446, 452, 465) and by the ICJ in its Advisory Opinion of 9 July 2004 on the *Construction of a Wall in the Occupied Palestinian Territory* (§ 120), an Opinion endorsed by the UNGA in its resolution ES-10/15), but they also constitute a war crime pursuant to AP 1 (Art. 85, § 4 (a)) to the 1949 GCs and the Statute of the ICC (Art. 8, § 2 (b) (viii)); although Israel is not bound by these instruments, the provisions just cited reflect the current state of customary international law; moreover, the ILC included this crime in the draft Code of Crimes against the Peace and Security of Mankind adopted in 1996 (Art. 20 (c) (i));
  - the systematic policy of discrimination pursued by Israel in the occupied territories which results in acts of apartheid vis-à-vis the Palestinian population (as to which see para 19.3 and 19.4 of the Barcelona findings; apartheid is defined as a crime by the UN Convention of 30 November 1973, the 1st AP (Art. 85, § 4 (c)) and the ICC Statute (Art. 7, § 1 (j)); although these instruments are not binding on Israel, they arguably reflect the current state of customary international law in this regard;
  - the violations of IHL committed by Israel during the “Cast Lead” operation in Gaza (December 2008 – January 2009) (hereinafter the “Gaza incursion”), as to which see para. 19.10 of the Barcelona findings. The RToP particularly notes the destruction of civilian property “without military necessity”, which constitutes a war crime (Goldstone Report, 15 September 2009, UN doc. A/HRC/12/48, Eng.:
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see. i.a., §§ 388, 703 *et seq.*, 928, 957, etc.); The report also mentioned that possible crimes against humanity were committed during “Operation Cast Lead”.

- the construction of a wall in the occupied Palestinian territories (a violation of, in particular, arts. 46 and 52 of the 1907 Hague Regulations, Art. 53 of the 4th GC of 1949, Art. 12 of the International Covenant on Civil and Political Rights, and ICJ, *Wall, loc. cit.*, §§ 114-137) and 19.6 of the Barcelona findings.

5.3.3 The RToP will not examine the behaviour of the corporations involved in the aforementioned *apartheid* practices because that issue will be addressed at the third session of the RToP to be held in South Africa in 2011.

#### **5.4 The relations of certain corporations with Israel**

5.4.1 The RToP has been informed of acts attributable to corporations that have been characterised as support for or contributions to violations of international law committed by Israel. These acts may be divided into three categories:

- supply of military equipment, material and vehicles to Israel that were used during the Gaza incursion, supply of security equipment used at checkpoints on routes leading to the construction of the Wall and the supply of security equipment to the Israeli settlements in the occupied territories (5.4.A);
- various kinds of assistance provided to the Israeli settlements in the occupied territories (5.4.B);
- forms of assistance for the construction of the wall in the occupied territories (5.4.C);

5.4.2 The Tribunal considered the above acts in relation to four legal frameworks: (1) international law; (2) UK law; (3) French law and (4) the law of the United States. It also considered the ways in which international law has been applied and interpreted within these domestic legal systems. A summary of the presentations made to the Jury appears at Annex C.

5.4.3 The RToP however concludes that certain corporate complicity with Israeli violations of international law falls within the scope of civil and criminal law of states. This can be achieved in one of three ways:



1. Domestic law makes it either a crime or a civil offence to violate international law, regardless of whether that wrong is derived from state responsibility or individual criminal responsibility – for example, with the French criminal legal system and the Alien Tort Claims Act (both are discussed in Annex C).
2. International law is often<sup>1</sup> part of or incorporated in domestic legal systems that make corporations criminally or civilly liable for violation of that (incorporated) law.
3. Conduct that violates international law may also violate a rule of domestic law – for example, the torture of individuals is prohibited by international law and is a crime in UK domestic law as a non-fatal criminal offence and a tort of trespass.

5.4.4 In their study of national legal systems, Ramanastroy and Thompson<sup>2</sup> found that 15 of the 16 countries they surveyed responded that it would be possible to bring a civil claim against a corporation for a violation of international human rights law if the wrong is characterised as a civil wrong, tort or delict.<sup>3</sup> Argentina, Australia, India, Japan and the UK are “examples of countries where civil litigation has been used as a means to provide redress to victims that have alleged business entities were directly involved with or aided and abetted human rights violations.” The report explains that “it is a question of legal culture” as to whether a particular country allows for civil litigation to be used for dealing with violations of international human rights law.<sup>4</sup>

5.4.5 Although customary international law and international treaties are silent on whether corporations have direct legal obligations under international law, corporations can infringe on the rights recognized in international human rights and humanitarian law instruments. Furthermore, the initiatives of the international community, voluntary codes of conduct, and in some cases, domestic legal systems,<sup>5</sup> use these standards to hold corporations to account for their conduct. Thus, corporations do have real and

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<sup>1</sup> International Law is already embedded in many systems of law, as is the case for monist continental law systems (contrarily to dualist systems inspired by common law.)

<sup>2</sup> Ramanastroy and Thompson *Commerce, Crime and Conflict: Legal Remedies for Private Sector Liability for Grave Breaches of International Law* (Fafo, 2006).

<sup>3</sup> *Ibid.* [22] and [31]

<sup>4</sup> *Ibid.* 24

<sup>5</sup> In many cases, domestic legal systems do not hold corporations to account for violations of international law, but they do hold corporations to account for violating domestic law that covers the same or a similar area of conduct: e.g. “torture” as “trespass” under the law of tort.



substantive obligations that may be enforced through international initiatives and/or domestic legal systems.<sup>6</sup>

#### **5.4A Delivery of military materials and equipment to Israel that were used during the Gaza incursion**

5.4A.1 The Tribunal heard evidence that the Israeli security and war industry have a symbiotic relationship with those of other states, including many EU and Western States who mutually benefit and profit from procuring and selling arms to Israel and leading Israeli corporations.<sup>7</sup> Israel consistently devotes large resources to military expenditure (7-9% of its GDP), but it also benefits from very significant military and economic aid from the United States (since 1949)<sup>8</sup> and from the EU.<sup>9</sup>

5.4A.2 Israeli corporations are world leaders (with significant turnovers) in developing weapons technology, which is used during military operations against Palestinian and Lebanese civilians, such as the unmanned aerial vehicles (UAVs) developed by Elbit Systems.<sup>10</sup> A significant number of foreign states, including EU and western states, procure Israeli weapons technology, such as the UAVs (for instance Australia, France, Canada, UK, Sweden and USA). Recent evidence suggests that drone attacks may involve high civilian deaths in military operations. For instance, a 2009 report published by the Brookings Institution, suggested that it was difficult to confirm civilian deaths in drone attacks, but that reports suggest that for every one military target killed it results in approximately 10 civilian deaths.<sup>11</sup>

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<sup>6</sup> See annex A for further elements of discussion on the liability of corporations under international law

<sup>7</sup> Evidence of John Hilary (Executive Director, War on Want).

<sup>8</sup> Evidence of Josh Ruebner (National Advocacy Director, US Campaign to End the Israeli Occupation) which states that Israel is the largest recipient of US foreign aid. Under a current Memorandum of Understanding between the states the US is to provide \$30 million in additional military aid between 2009 – 2018.

<sup>9</sup> See evidence of John Hilary (Executive Director, War on Want).

<sup>10</sup> According to a report by War on Want Elbit's own promotional material boasts that its Skylark UAVs were used to great effect in the Israeli military in its 2006 war against Lebanon.

<sup>11</sup> <http://news.dawn.com.wps/wcm/connect/dawn-connect-library/dawn/news/world/13+drones+kill+10+civillians+for+one+militant-za-09>

5.4A.3 The EU and other Western States also supply Israel with weaponry for its own military use,<sup>12</sup> with the US benefitting most from a military relationship with Israel. Corporate profiting from the occupation has not gone unnoticed by the wider international community, where several organisations have either divested or withdrawn investments from certain weapons or arms corporations and other corporations which have provided vehicles or military equipment which have been used by Israel, for example, in the Gaza incursion and the systematic establishment of settlements.<sup>13</sup>

5.4A.4 The war and security sector exhibits a very complex web of corporate complicity with different corporations from different countries supplying military parts/components used in airplanes or other forms of military vehicles. This is particularly true of the Elbit corporate empire. However, at the same time, disentangling the web reveals a picture of how these seemingly different disparate corporations from different countries are in some manner connected and serve the corporate interest of Elbit. For instance, Elbit is a multi-branch company with many subsidiaries. The British Army has awarded Elbit Systems and its partner company, Thales UK, a contract worth over US \$1 billion for the development of ‘The Watchkeeper’, the next generation of UAVs. The British company, UAV Engines Limited, a wholly owned Elbit subsidiary, will produce the plane’s engines. U-Tacs, another British subsidiary of Elbit, operates the Watchkeeper Programme.<sup>14</sup>

5.4A.5 Corporations in the security industry may also be complicit in the wider context of Israel’s continued illegal occupation of the OPT by providing security equipment and services: (a) to prisons located in Israel, where Palestinian prisoners from the occupied Palestinian territory are held in flagrant violation of international law;<sup>15</sup> (b) in the construction of checkpoints incorporated within the illegal Wall.

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<sup>12</sup> See evidence of John Hilary (Executive Director, War on Want) and Ben Hayes (security policy expert, Statewatch)

<sup>13</sup> For example, the Church of England withdrew its investment from Caterpillar in December 2008; the Norwegian government’s pension fund announced its divestment from Elbit Systems in September 2009 as a result of the company’s involvement in the construction of the Wall. See the evidence of John Hilary (Executive Director, War on Want).

<sup>14</sup> See evidence of John Hilary (Executive Director, War on Want), and evidence of Shir Hever (Economist, Alternative Information Center, Israel).

<sup>15</sup> Article 76 of the Fourth Geneva Convention: “[p]rotected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein.”

(a) Complicity of Specific Corporations in Israeli Violations

5.4A.6. The Tribunal received written and oral evidence of the involvement of corporations in potentially illegal activities, which may incur liability under international and national laws and/or are in violation of the Norms and other international agreements or voluntary principles (see Annex C, section B):



(b) British Corporations

5.4A.7 The British firm, Brimar, manufactures the display components used in the Israeli air force's AH-64 apache helicopters. The UK Government has conceded that components licensed for export from Britain were "almost certainly" used by the Israeli armed forces in Gaza during Operation Cast Lead.<sup>16</sup>

5.4A.8 G4S, a multinational British/Danish corporation, with a global presence owns 90% of G4S Israel. G4S Israel has assisted Israel in the illegal activities by:

1. Supplying luggage, scanning equipment and full body scanners to several military checkpoints in the West Bank, including the Qalandia, Bethlehem and Irtah checkpoints, all of which have been built as part of the Separation Wall whose route was declared illegal by the ICJ in its Advisory Opinion of 9 July 2004.
2. Supplying equipment to the Erez checkpoint, which serves as part of the Israeli closure policy over the Gaza Strip.
3. Supplying security services to businesses, such as supermarkets, in the illegal settlements in the West Bank and in the settlement neighbourhoods of East Jerusalem.
4. Providing a perimeter defence system for the walls of Ofer Prison, specifically dedicated for Palestinian political prisoners) and installation of a central command room in the facility, from which the entire facility can be monitored. The Ofer Prison is located in the 'Seam Zone' of the West Bank. Access to this area is very restricted to Palestinians (especially from the West Bank), who have to depend on obtaining a special access permit from G4S. The practical implications of these restrictions on movement is that Palestinians from the West Bank have very limited access to visit detainees or attend the military court hearings that are held.
5. Providing the entire security system for the Ketziot Prison and a central command room in the Megido Prison. These are facilities to hold 'high security prisoners', i.e. Palestinian political prisoners from the OPT, who are illegally held in Israel.<sup>17</sup>

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<sup>16</sup> See evidence of John Hilary (Executive Director, War on Want).

<sup>17</sup> See the paper prepared by Merav Amir and Dr Dalit Baum on the involvement of G4S in the Israeli Occupation of Palestine (in particular footnote 3).

## (c) The US Construction Company Caterpillar

5.4A.9. Caterpillar has supplied the Israeli army with militarized D9 bulldozers, which have been used extensively in Palestinian house demolitions resulting in injuries and deaths and the forced displacement of more than 50,000 Palestinians.<sup>18</sup> They have also been used in the construction of the Wall and for urban warfare during the Gaza incursion. The Tribunal heard details of the extent of destruction caused by the Israeli army using Caterpillar D9 bulldozer.<sup>19</sup>

In the US, all arms transfer and military aid, which includes Caterpillar's D9 bulldozers, are subject to laws that are intended to prevent weapons from being misused to commit human rights abuses.<sup>20</sup> The Arms Export Control Act (AECA) stipulates (P.L.8-829) that foreign countries either purchasing US weapons or receiving them as military aid, must use them for "internal security" and "legitimate self-defense" (P.L.97-195). The Foreign Assistance Act (P.L. 97-195), which regulates all US military and economic aid programs, provides that "No assistance may be provided... to the government of any country which engages in a consistent pattern of gross violations of internationally recognized human rights". It also prohibits military aid to "any unit of the security forces of a foreign country if the Secretary of State has credible evidence that such unit has committed gross violations of human rights". Yet, in apparent violation of America's own laws, the US Defense Security Cooperation Agency (DCSA)<sup>21</sup> (an agency within the US Department of Defense) decided to certificate that the military procurement of Caterpillar bulldozers was consistent with the AECA and the applicable Foreign Military Financing Programme (FMF).

(d) Elbit Systems

5.4A.10 Elbit Systems, a leading Israeli multinational in the defense and war industry, was founded in 1967 (i.e. at the point of Israel's occupation) and its business model is

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<sup>18</sup> See evidence of Maria LaHood, senior staff attorney, Center for Constitutional Rights.

<sup>19</sup> *Ibid.*, p. 1.

<sup>20</sup> *Ibid.*, p.2

<sup>21</sup> Evidence of Josh Ruebner.

built on very close relations with the Israeli military.<sup>22</sup> Such close ties with the Israeli military help the company with combat experience and developing an intimate knowledge of the needs of the military. Once Elbit develops a weapon or military system, it is first used by the Israeli army as part of its military operations. Since the military equipment and/or products developed by Elbit are used in actual warfare, the company is able to actively market its products as having performed well in active combat rather than simulated trials, giving it a clear edge over its rivals. Accordingly, once the Israeli army places an order for a military product, it is much easier to market the same product to other armies around the world, as the implication is that the product has been ‘tried and tested’ in real combat conditions. Therefore, it is in Elbit’s commercial interest to encourage the continuation of the armed conflict between Israel and Palestine, to ensure its new products are tested in combat.

5.4A.11 Despite Elbit’s relationship with the Israeli military, western states continue to do business with Elbit, purchasing its products and awarding military and defense contracts to it and/or its numerous subsidiaries around the world. Some examples of this are set out below:

- i) Elbit’s Hermes 450 UAVs were widely employed in Gaza during Operation Cast Lead.<sup>23</sup> Countries all over the world, including Australia, Canada, Croatia, France, Sweden, the UK and USA, have procured UAVs developed by Elbit.
- ii) Despite the above, the British Army has awarded Elbit Systems and its partner company Thales UK a contract worth over US \$1 billion for the development of the Watchkeeper programme, the next generation of UAVs. The British company UAV Engines Limited, a wholly owned Elbit subsidiary, will produce the plane’s engines. Another Elbit subsidiary, U-Tacs (a British company) operates the Watchkeeper Program.

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<sup>22</sup> See the evidence of Shir Hever, p.4. Elbit has developed very close ties with certain military units in the army and the corporation recruits military personnel even before they are released from the service. Most of the information presented by Shir Hever was, on his evidence, obtained from Elbit’s own publicity materials.

<sup>23</sup> See evidence of John Hilary, p.1



## 5.4B Various kinds of assistance provided to the Israeli settlements in the occupied territories

5.4B.1 According to the information submitted to the RToP,<sup>24</sup> a number of corporations provide a range of services that assist in the construction and maintenance of illegal Israeli settlements in the OPT. According to evidence heard by the Tribunal, 1400 Israeli corporations are very active in settlements, and there are three large industrial zones, with approximately twelve large Israeli corporations whose activities require particular attention. The database of ‘Who Profits from the Occupation’ includes documentation that reveals 400 corporations, Israeli and non-Israeli, supporting the illegal settlements.<sup>25</sup> The RToP heard evidence that the information on that database is not from secondary sources, and that despite threats of challenge to *Who Profits* in relation to the publication of some data, no legal challenge has been brought against that organisation. The Tribunal received oral and written evidence, *inter alia*, about the corporations set out below.

### (a) Israeli corporations

- **AFIGROUP** (Africa Israel Investments) (Tel Aviv, Israel): constructs buildings in the settlements, either directly or through its subsidiaries.
- **AVGOL** (evidence of Dr Dalit Baum) manufactures nonwoven fabrics, which are mostly used in sanitary pads and diapers. Avgol has factories in the US, Russia and China and one factory in the Barkan Industrial Zone, which is on occupied land in the West Bank. According to the Coalition of Women for Peace, its main clients are Procter & Gamble and Covidien. Both companies have confirmed their use of material from this plant.
- **AHAVA** – Dead Sea Laboratories Ltd (Holon, Israel): manufactures and exports cosmetic products produced with Dead Sea mud obtained from Mitzpe

<sup>24</sup> Available online at: <http://www.russelltribunalonpalestine.com/en/wp-content/uploads/2010/11/RToP-London-Session-Presentations.pdf>.

<sup>25</sup> Available at: <http://www.whoprofits.org/>. See also Hoder Investment Research, “Companies Supporting the Israeli Occupation of Palestinian Land” (October 2009), available at: <http://www.interfaithpeaceinitiative.com/profitting.pdf>.

Shalem, a settlement established in the West Bank in 1977.<sup>26</sup>

- **Wineries**, for example, **Tishbi Estate Winery**: A winery and owner of vineyards. The company has vineyards in Gush Etzion in the occupied West Bank. The company also holds shares of Gush Etzion Wineries, which is in the West Bank settlement of Efrata.<sup>27</sup> All five main wineries use grapes from Golan Heights, but they rename some of the areas of the source of the grapes in order to hide their origin.
- **Soda-Club** – evidence of Genevieve Coudrais regarding the construction of a company in the illegal settlement of Mishor Adumim; and also the vivid evidence of Dr Dalit Baum, who pointed to the recent listing of the company on NASDAQ.<sup>28</sup>
- **Alon Group** (Israel): Alon Group is a holding company that has several companies involved in the occupation. Alon Group owns Dor Alon, a petrol company, which has a monopoly over the supply of petroleum to the Gaza strip. Dor Alon also has several gas stations and convenience stores in different Israeli settlements in the West Bank. Alon Group owns Blue Square, a retail chain that has branches and offices in multiple settlements throughout the West Bank.<sup>29</sup>
- **Leumi**<sup>30</sup> and **Hapoalim**<sup>31</sup> banks (Tel Aviv) have branches in some settlements and grant mortgages to settlers to purchase property in the settlements.<sup>32</sup> In

<sup>26</sup> Evidence of Salma Karmi of Al Haq as to Ahava's alleged acts of pillage and secondary participation in transfer of population and evidence of Nancy Kricorian and Rae Abileh, as to how Ahava's activities assist two illegal settlements:

<http://www.jewishagency.org/JewishAgency/English/Aliyah/Absorption+Options/Municipal+and+Community+Absorption/mitzpe+Shalem.htm>.

<sup>27</sup> <http://www.whoprofits.org/Company%20Info.php?id=689>

<sup>28</sup> See also <http://en.wikipedia.org/wiki/Sodastream/>. In 1998 Soda Stream was bought by Soda-Club, an Israeli company founded in 1991 by Peter Wiseburgh, who from 1978 to 1991 had been Israel's exclusive distributor for Soda Stream creating the world's largest home carbonation systems supplier; in 2010 the European Court of Justice ruled that its products manufactured in the occupied Palestinian territories were not subject to the preferential import duty treatment as goods manufactured within Israel, as to which see the 'Brita judgment' (Case C-386/08), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:100:0004:0005:EN:PDF>

<sup>29</sup> <http://www.whoprofits.org/Company%20Info.php?id=452>

<sup>30</sup> <http://www.whoprofits.org/Company%20Info.php?id=499>

<sup>31</sup> <http://www.whoprofits.org/Company%20Info.php?id=570>

<sup>32</sup> See also: [http://www.info-palestine.net/article.php3?id\\_article=7541](http://www.info-palestine.net/article.php3?id_article=7541).

October 2010, *Who profits?* published a comprehensive report about the involvement of Israeli banks in the financing of the occupation.<sup>33</sup>

- **Carmel Agrexco** (Tel Aviv) is an exporter of agricultural produce (including oranges, olives, and avocados), some of which originates from the illegal settlements in the West Bank.<sup>34</sup> Indeed, in evidence heard at Uxbridge Magistrates Court in January 2006, the manager of Agrexco UK, Amos Orr, stated that 70% of settlement produce was exported from Israel by his company. There is conflicting evidence as to how much of Agrexco's overall exports includes settlement produce, ranging from 0.4% to 5%.<sup>35</sup>

(b) Foreign corporations:

- **Shamrock Holdings of California** (Burbank, CA, USA) has acquired 18.5% of Ahava's shares (the investment fund of the Roy E. Disney family).<sup>36</sup>
- **Alstom** (S.A., Levallois-Perret, France) is manufacturing 48 light-rail vehicles for the new tramline that passes through districts of East Jerusalem, which has been annexed by Israel, and will link West Jerusalem to the Israeli settlements.<sup>37</sup>
- **Veolia Transport** (S.A., Nanterre, France): involved in the construction of the Jerusalem tramline, which Veolia is due to operate.<sup>38</sup> Veolia also operates bus services to illegal Israeli settlements.
- **Dexia** (Brussels, Belgium) finances Israeli settlements in the West Bank via its subsidiary Dexia Israel Public Finance Ltd.<sup>39</sup>

<sup>33</sup> <http://www.whoprofits.org/articlefiles/WhoProfits-IsraeliBanks2010.pdf>

<sup>34</sup> Evidence of Christophe Perrin, *Coalition against Agrexco*; see also: [http://en.wikipedia.org/wiki/Carmel\\_Agrexco/](http://en.wikipedia.org/wiki/Carmel_Agrexco/).

<sup>35</sup> *Ibid.*

<sup>36</sup> Evidence of Nancy Kricorian and Rae Abileah, *Involvement of Ahava in Israel/Palestine*.

<sup>37</sup> Evidence of Adri Nieuwhof, *Veolia Environment SA*; see also: [http://fr.wikipedia.org/wiki/Tramway\\_de\\_J%C3%A9rusalem/](http://fr.wikipedia.org/wiki/Tramway_de_J%C3%A9rusalem/)

<sup>38</sup> See the evidence of Adri Nieuwhof, *Veolia Environment SA*; see also: [http://wapedia.mobi/fr/Tramway\\_de\\_J%C3%A9rusalem#Critiques/](http://wapedia.mobi/fr/Tramway_de_J%C3%A9rusalem#Critiques/).

<sup>39</sup> Evidence of Mario Franssen as regards OSM and the record of financing a range of settlement activities. See also: <http://www.whoprofits.org/Company%20Info.php?id=854>

- **Caterpillar** (referred to above), based in the US, supplies specifically modified military D9 bulldozers to Israel, which are used in: (i) the demolition of Palestinian homes and olive groves; (ii) the construction of settlements and the Wall; and (iii) in urban warfare in the Gaza incursion; in all cases causing civilian deaths and injuries, and extensive property damage not justified by military necessity.<sup>40</sup>
- **AIG** (American International Group, New York, USA) finances mortgages for the purchase of property in the occupied territories through its Israeli subsidiary Ezer Mortgage Insurance (EMI).<sup>41</sup>
- **Cement Roadstone Holdings** (Irish company) holds 25% of the shares of Mashav Initiating and Development. Mashav is a holding company that is the sole owner of Neshet Israel Cement Enterprises, which is Israel's sole cement producer, supplying 75-90% of all cement in Israel and occupied Palestine. This cement is used for the construction of the separation Wall, checkpoints, West Bank settlements and other Israeli construction projects in the occupied territories.<sup>42</sup>
- **Pensioenfonds Zorg en Welzijn** (PFZW) is the second biggest pension fund in the Netherlands. PFZW had investments in 27<sup>43</sup> corporations that either contribute to Israeli violations of international law or profit from the Israeli occupation.<sup>44</sup>
- **G4S**, a multinational British/Danish corporation, owns 91% of G4S Israel (Hashmira), an Israeli security company. It supplies scanning equipment and full body scanners to several military checkpoints in the West Bank, all of

<sup>40</sup> See evidence above and see also: <http://www.interfaithpeaceinitiative.com/profitting.pdf>

<sup>41</sup> See: <http://www.interfaithpeaceinitiative.com/profitting.pdf>. EMI works with all the major mortgage banks and major Bank Realtors/estate agents in the Israeli market. Many of these banks and realtors sell property in the illegal settlements of the West Bank. At least two banks that work with EMI have branches in the settlements.

<sup>42</sup> Evidence of John Dorman, *The Actions of Cement Roadstone Holdings (CRH) in Israel/Palestine*, and <http://www.whoprofits.org/Company%20Info.php?id=614>

<sup>43</sup> In the letter PFZW sent to the RtoP (see Annex B), it is stated that “due to a recent change in one of the benchmarks that is tracked for the pension fund’s listed equity investments, PFZW is no longer invested in any of the Israeli companies mentioned {in the letter sent by the RToP to PFZW}”.

<sup>44</sup> Evidence of Saskia Müller, *PFZW - The Case of a Pension Fund Complicit in International Law Violations by the Government of Israel*.

which have been built as part of the Separation Wall, whose route was declared illegal by the ICJ in its Advisory Opinion of 9 July 2004. G4S Israel also provides security systems to the Ktziot, Megido and Ofer Prisons for Palestinian political prisoners, illegally located in Israel and in the West Bank, and to the Israeli police headquarters in the West Bank.<sup>45</sup>

- **Society for Worldwide Interbank Financial Telecommunication (SWIFT)**, domiciled in Belgium, links 8700 financial institutions in 209 countries. Without SWIFT, Israel's access to the international financial system would be very severely circumscribed. Without payment for import or exports and given its exceptionally heavy dependence upon trade, the Israeli economy would rapidly collapse. At least seven Israeli banks are known to use SWIFT. SWIFT falls under the control of the Belgium Central Bank.<sup>46</sup>

5.4B.2 These corporations are intimately involved with settlements, either by engaging in economic relations with them (as to which see (a) below); or by supplying them with the means to violate Palestinian human rights (as to which see (b) below). Indeed, without this, settlements would not exist as urban communities connected to the outside world.

(c) Economic relations of corporations with the illegal Israeli settlements

5.4B.3 The establishment of Israeli settlements in the occupied territories constitutes a war crime. AP 1 characterises “the transfer by the occupying Power of parts of its own civilian population into the territory it occupies” as a “war crime” (Art. 85, § 4 (a); see also ICC Statute, Art. 8, § 2 (b) (viii); draft Code of Crimes against the Peace and Security of Mankind, Art. 20 (c) (i)). This characterisation is not altered by Israel's non-ratification of AP1 and the Rome Statute of the ICC, but affects the possibility of individual criminal liability being applied against Israeli nationals for those specific offences. However, as settlements almost always involve the extensive appropriation of property not justified by military necessity, criminalised in article 147 of the 4<sup>th</sup> GC, which Israel has ratified, the primary acts

<sup>45</sup> <http://www.whoprofits.org/Company%20Info.php?id=596>. See part 4 of the joint evidence of Dr Baum and Merav Amir regarding the provision of security services to businesses in settlements.

<sup>46</sup> Oral evidence of Terry Crawford Browne (this evidence was received too late to be included in the online document).

of Israelis in building and living in illegal settlements can lead to their individual criminal liability and such liability can be attached to all those who aid and abet Israelis in building and living in those settlements.

- 5.4B.4 In view of the criminal nature of the Israeli settlements and/or the criminal offences committed to enable settlements to be built and maintained, the economic relations that some corporations entertain with the settlements may be viewed as participation in their maintenance. Depending on the form that the relations assume, and depending on the domestic criminal law of a given jurisdiction, participation in a crime, including the criminal liability in some jurisdictions may be characterised as complicity, handing and/or receiving stolen goods, or laundering.

(d) Complicity

- 5.4B.5 A corporation's relations with a settlement are a type of conduct that "abets or [...] assists" (ICC Statute, Art. 25, § 3 (c) *supra* § 22) the settlement's continued existence. The fact that such participation occurs after the act initiating the crime does not preclude its designation as "complicity" since the settlements constitutes a *continuing* offence. In 1979 the Security Council:

"Determine[d] that the policies and practices of Israel in establishing settlements in the Palestinian and other Arab territories occupied since 1967 ha[d] no legal validity"<sup>47</sup>

and it:

"Call[ed] once more on Israel, as the occupying Power, to abide scrupulously by the [4th GC of 1949], to rescind its previous measures and to desist from taking any action which would result in changing the legal status and geographical nature of the Arab territories occupied since 1967 [...], and, in particular, not to transfer parts of its own civilian population into the occupied Arab territories"<sup>48</sup>.

<sup>47</sup> SC/Res. 446 of 22 March 1979, § 1.

<sup>48</sup> *Ibid.*, § 3.



- 5.4B.6 Given the permanent nature of the settlements and Israel's obstinate refusal to implement the resolutions of the Security Council, the crime of maintaining the settlements is certainly equivalent to a continuing offence.
- 5.4B.7 The criterion of "prior agreement", which is generally required for intentional assistance *ex post facto* to constitute complicity,<sup>49</sup> is met where a contribution is made even after the act initiating the crime. As the offence is continuing, any assistance provided for the crime is concomitant with its execution.
- 5.4B.8 The location of the Israeli settlements is not in doubt and corporations therefore cannot be unaware that their activities are assisting in Israel's crime.
- 5.4B.9 This applies to activities such as the construction of buildings (AFIGROUP), the manufacture, sale and export of cosmetics (AHAVA – Dead Sea Laboratories Ltd. and Shamrock Holdings of California), the running of service stations and businesses (Alon Group), bank funding of the settlements (Dexia), granting of bank loans for the purchase of settlement property (Leumi and Hapoalim banks), and the construction and running of a tramline in East Jerusalem (Alstom and Veolia Transport).
- 5.4B.10 There is a precedent for the conclusion that such activities may constitute complicity in the crimes in question, namely the UNGA characterisation of the activities of foreign interests in South Africa in the late 1960s, activities that were then deemed to encourage apartheid. The UNGA, in § 5 of its resolution 2307 (XXII) of 13 December 1967:

“*Condemns* the actions of those States, particularly the main trading partners of South Africa, and the activities of those foreign financial and other interests, all of which through their political, economic and military collaboration with the Government of South Africa and contrary to relevant

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<sup>49</sup> French Court of Cassation, Criminal Chamber, 23 July 1927, *S.*, 1929, 1, 73 ; resolution of the Seventh International Congress on Criminal Law, Athens, 1958, *Rev. Intern. Dr. comp.*, 1957, p. 400; see also the commentary to Article 2, § 3 (d) of the ILC draft Code of Crimes against the Peace and Security of Mankind, *ILC Report*, 1996, p. 41.

General Assembly and Security Council resolutions are encouraging that Government to persist in its racial policies”.<sup>50</sup>

5.4B.11 If the activities of “financial and other interests” in South Africa were deemed to encourage that state’s racial policies, which were deemed to constitute a “crime against humanity”,<sup>51</sup> the activities of similar interests in the Israeli settlements may also, *mutatis mutandis*, be considered to encourage the maintenance of the settlements and therefore to amount to complicity in the war crime that they constitute.

5.4B.12 In conclusion, as the economic activities undertaken by corporations in the Israeli settlements contribute to the perpetuation of the settlements, they constitute complicity in a war crime.

(e) Handing and/or receiving stolen goods

5.4B.13 Under English law it is a criminal offence to knowingly receive or handle stolen goods, although this does not apply to land.<sup>52</sup> Very similar offences, which are defined in the domestic criminal codes of most civil law states<sup>53</sup> as the possession or holding of something that one knows was obtained by means of a felony or misdemeanour committed by a third party, may be applied to the holding of settlement property acquired from Israelis who purport to hold legitimate title. The application of these criminal offences is based on the illegality of the settlements.

5.4B.14 Individuals who handle or receive agricultural produce from the settlements (oranges, olives, avocados, etc., harvested by Agrexco) or the acquisition of

<sup>50</sup> See, along the same lines, 2396 (XXIII), 2 December 1968, § 5; 2506 B (XXIV), 21 Nov. 1969, §§ 5 and 8; 2671 F (XXV), 8 Dec. 1970, § 5; etc; for prior references, see. A/Res. 2054 A (XX), 15 Dec. 1965, §§ 1 and 7; 2202 A (XXI), 16 Dec. 1966, §§ 1, 3, 5 (b); 2307 (XXII), 13 Dec. 1967, §§ 1 and 5.

<sup>51</sup> A/Res. 2202 A (XXI), 16 Dec. 1966, § 1; 2307 (XXII), 13 Dec. 1967, § 1; 2396 (XXIII), 2 Dec. 1968, § 1; etc.

<sup>52</sup> Ss. 22(1) and 34(2)(b) of the Theft Act 1968, available at: <http://www.statutelaw.gov.uk/content.aspx?activeTextDocId=1204238>.

<sup>53</sup> E.g. Belgian Criminal Code, Article 505, section 1, § 1; new French Criminal Code., Article 321-1. For these and other criminal codes, see: <http://www.legislationline.org/documents/section/criminal-codes/>

goods manufactured in the settlements may be liable under these offences. Relevant in this context is not only the illegality of the settlements, but the unjustified appropriation, by military means, of the natural resources of the occupied territory (violation of Art. 55 of the Hague Regulations and characterisation as a crime by the 4th GC, Art. 147, the ICC Statute, Art. 8, § 2(b) (xiii) and the ILC draft Code of Crimes against the Peace and Security of Mankind, Art. 20 (a) (iv)).

#### (f) Laundering

5.4B.15 Money laundering is the practice of engaging in financial transactions to conceal or disguise the identity, source, and/or destination of illegally gained money by which the proceeds of crime are transferred or converted into assets that appear to have a legitimate origin.<sup>54</sup> The mere possession or the depositing in a bank account of funds obtained by means of a criminal offence constitutes laundering<sup>55</sup> unless the law of the state concerned does not criminalise the possession of property or assets obtained by the perpetrator of the main offence;<sup>56</sup> under some legislation, two offences are not committed if property is both stolen and laundered.

5.4B.16 Further, banking institutions (Leumi, Hapoalim, Dexia banks) that knowingly receive funds originating from economic activity relating to settlements are liable under these offences.

#### (g) Supplying the settlements with goods used to violate Palestinian rights

5.4B.17 Deliveries of certain types of equipment such as the Caterpillar D9 bulldozers used to demolish houses or to damage land belonging to Palestinians, and to construct Israeli buildings, constitute complicity in war crimes involving not only the creation and maintenance of settlements but also the destruction or arbitrary and

<sup>54</sup> See, *inter alia*, the Council of Europe Conventions signed in Strasbourg on 8 November 1990 and in Warsaw on 16 May 2005.

<sup>55</sup> Conventions signed in Strasbourg, Article 6, § 1(c), and Warsaw, Article 9, § 1(c).

<sup>56</sup> “Property” includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to, or interest in such property: <http://conventions.coe.int/treaty/en/treaties/html/141.htm>.

large-scale appropriation of property without military justification (see Nuremberg IMT Statute, Art. 6, b; 4<sup>th</sup> Geneva Convention, Art. 147).

5.4B.18 As to the criminal and civil liability of these corporations and corporate actors, see the conclusion below.



## 5.4C Forms of assistance for the construction of the wall in the occupied territories

### (a) Factual Background

- 5.4C.1 In June 2002, Israel began the construction of a separation barrier encompassing most Israeli settlement areas in the West Bank, including East Jerusalem. The barrier is known simply as ‘the Wall’, and although varying in height and width, its dimensions are approximately eight-metres in height and 60 to 100 metres wide. It is made out of concrete with trenches and barbed wire and has various secondary features such as electric fences, sensors, trace paths to register footprints and fortified guard towers.<sup>57</sup>
- 5.4C.2 The Wall does not follow the Green Line (*i.e.* armistice line of 1949) and has subsequently left almost half a million Palestinians on the western side of the divide, ‘cutting historical, social, cultural and economic ties with the rest of the Palestinians in the West Bank.’<sup>58</sup> The Israeli argument that the Wall is entirely about security is undermined by the fact that it intrudes into Palestinian territory; if the Wall were just about security, it would have been constructed on or close to the 1949 ceasefire lines. Instead, its intrusion into the occupied Palestinian territory (sometimes by several kilometres) results in *de facto* annexation of that land.
- 5.4C.3 On 8 December 2003, the UN General Assembly passed a resolution that requested the ICJ to provide an advisory opinion on the Wall.<sup>59</sup> On 9 July 2004, the ICJ published its advisory opinion, finding it to be contrary to international law (by fourteen votes to one<sup>60</sup>): ‘The Court considers that the construction of the wall and its associated regime create a *fait accompli*’ on the ground that it could well

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<sup>57</sup> United Nations Commission on Human Rights, Sixtieth Session, E/CN.4/2004/6, 8 September 2003 at para. 7.

<sup>58</sup> Human Rights Council, Twelfth Session, Human Rights in Palestine and Other Occupied Arab Territories, Report of the United Nations Fact-Finding Mission on the Gaza Conflict, A/HRC/12/48 (25 September 2009) at p. 48. Information provided by the Israeli NGO, B’Tselem and can be found at: [http://www.btselem.org/English/Separation\\_Barrier/Statistics.asp](http://www.btselem.org/English/Separation_Barrier/Statistics.asp).

<sup>59</sup> GA Res ES-10/13, 27 October 2003.

<sup>60</sup> Even Judge Buergenthal, who did not vote for the conclusion, did not dissent but instead issued a Declaration, in which he said that his negative votes in the *dispositif*, ‘should not be seen as reflecting my view that the construction of the wall by Israel on the Occupied Palestinian Territory does not arise serious questions as a matter of international law. I believe it does, and there is much in the Opinion with which I agree’: Declaration of Judge Buergenthal.

become permanent, in which case, and notwithstanding the formal characterisation of the wall by Israel, it would be tantamount to *de facto* annexation'.<sup>61</sup>

5.4C.4 Nine days before the ICJ Opinion, Israel's Supreme Court, acting as a High Court of Justice, delivered a decision responding to a petition concerning the Wall. In the *Beit Sourik*<sup>62</sup> case, three Israeli judges ruled that the wall could be constructed in the occupied territories and that it was not contrary to the laws of belligerent occupation.<sup>63</sup> In *Mara'abe v. The Prime Minister of Israel*, which was delivered after the ICJ's advisory opinion, the HCJ still held that the Wall was not contrary to international law.<sup>64</sup> In both cases the Court failed to address the question of whether the Fourth Geneva Convention was applicable to the occupied territories. The RTOP does not agree with this interpretation, given the fact that the main argument for the Wall was that it was as security feature for settlement in the West Bank and Jerusalem. These settlements are rendered not only illegal pursuant to Article 49(6) of the Fourth Geneva Convention but also criminal (*supra* para 5.4B.3).

#### (b) Legality of the Wall

5.4C.5 Construction of the Wall and its associated regime are illegal because:

- It *de facto* annexes 16% of the West Bank to Israel, contrary to international law.<sup>65</sup> It prevents the Palestinians from being able to exercise their right of self-determination.
- It assists in the construction of settlements by providing an enclosure to these settlements. Indeed, Israel has stated that the reason for constructing the Wall is to provide security for its

<sup>61</sup> International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2004) 43 *International Legal Materials* 1009-56, para. [121].

<sup>62</sup> HCJ 2056/04 *Beit Sourik Village Council v. The Government of Israel* (2004) translated in (2004) 43 *International Legal Materials* 1099-128.

<sup>63</sup> *Beit Sourik, Ibid.*, at para. 32.

<sup>64</sup> HCJ 7957/04 (2005), translated in (2006) 45 *International Legal Materials*, 202-45.

<sup>65</sup> See, for example, UN SC Resolution 252 of 1968, which reaffirmed that the 'acquisition of territory by military conquest is inadmissible' and noted that 'all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status.' The Goldstone Report noted that, 'No member of the United Nations, apart from Israel, recognizes the annexation of East Jerusalem': Human Rights Council, Twelfth Session, Human Rights in Palestine and Other Occupied Arab Territories, Report of the United Nations Fact-Finding Mission on the Gaza Conflict, A/HRC/12/48 (25 September 2009) at p. 46.

settlements: to secure and reinforce what the Security Council has referred to as having “no legal validity”.<sup>66</sup>

- The construction of the Wall involved confiscation of agricultural land and destruction of private property.
- It impedes the liberty of movement of the inhabitants of the West Bank as guaranteed by the International Covenant on Civil and Political Rights.
- It impedes the exercise of the right to work, to health, to education and to an adequate standard of living as set out in the International Covenant on Economic, Social and Cultural Rights and in the Convention on the Rights of the Child (*supra* para 5.3.2).
- It cuts off access to primary water sources.
- In conjunction with the construction of settlements, it alters the demographic composition of the occupied Palestinian territory, which is contrary to the Fourth Geneva Convention and relevant Security Council resolutions.
- It can be characterized as an act of *apartheid* in that it cuts off and separates Palestinians from Israelis.

5.4C.6 The International Court of Justice called upon Israel to:<sup>67</sup>

- α. Respect the Palestinian right to self-determination.
- β. Put an end to its violations of international law, in particular violations of international humanitarian and human rights law, flowing from the construction of the Wall.
- γ. Dismantle sections of the Wall built on occupied Palestinian territory.
- δ. Repeal or render ineffective all legislative and regulatory acts adopted with a view to constructing the Wall.
- ε. Make reparation for all damage suffered by all natural *or legal* persons affected by the Wall’s construction.

<sup>66</sup> UNSC Resolution 446 (22 March 1979): the Security Council, “Determines that the policy and practices of Israel in establishing settlements in the Palestinian and other Arab territories occupied since 1967 have no legal validity and constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East”.

<sup>67</sup> International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2004) 43 *International Legal Materials* 1009-56, paras. [161] and [163].



5.4C.7 The Court also called upon *all* States, as part of their international obligations *erga omnes*, to adhere to the following negative and positive duties:<sup>68</sup>

- a) Not to recognise the illegal situation created by the construction of the wall.
- b) Not to render aid or assistance in maintaining the situation created by the construction of the wall, including any impediment on the right of the Palestinian people to self-determination.
- c) To bring to an end, through lawful means, the illegal situation brought about by the construction of the wall [what exactly the Court means by the ‘illegal situation’ is not clear, but it must include the denial of the Palestinian people the right to self-determination, their continued occupation and violations of international law including, but not limited to, violations of international human rights and humanitarian law].
- d) To ensure Israel’s compliance with international humanitarian law.

(c) Corporate Assistance in Israel’s Violation of International Law as a Result of Building the Wall

5.4C.8 The Tribunal heard evidence that Israeli and foreign corporations provide assistance for the construction and maintenance of the illegal Wall. Examples 1-6 were presented in written and oral evidence before the Tribunal.

1. Caterpillar supplies D9 bulldozers to Israel, which are used *inter alia* to prepare the ground for the building of the Wall in the occupied territory.<sup>69</sup>
2. G4S Israel supplies luggage scanning equipment and full body scanners to several military checkpoints in the West Bank, many of which were built as part of the Wall.<sup>70</sup>

<sup>68</sup> International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2004) 43 *International Legal Materials* 1009-56, paras. [157]-[159].

<sup>69</sup> Evidence of LaHood, *Caterpillar Involvement in the Occupied Palestinian Territories* and Evidence of Ruebner, *U.S. Governmental Complicity in Supplying Israel with Caterpillar Bulldozers*.

<sup>70</sup> Evidence of Amir and Baum, *The Involvement of G4S in the Occupation*

3. Elbit is one of Israel's largest private military technology firms and is responsible for sections of the illegal Wall.<sup>71</sup> The Norwegian government's pension fund announced its divestment from Elbit Systems in September 2009 as a result of the company's involvement in the construction of the Wall.<sup>72</sup> This decision was followed by other Swedish and Dutch pension funds.<sup>73</sup> In May 2010, Denmark's Danske Bank divested from the firm<sup>74</sup> (although the basis of this decision was the view that Elbit was on the brink of dropping in market value as a result of the continued divestment of many investors; i.e. the Bank did not explicitly object to the immoral and/or potentially illegal conduct of the corporation; but rather, it made a business decision motivated by profit).<sup>75</sup>
  
4. Riwal Holding Group, based in the Netherlands (Dordrecht), leased cranes used to construct parts of the Wall.<sup>76</sup> In October 2010, the Dutch police raided the offices of Riwal as part of their investigation into violations of international law. The investigation file is now in the hands of the Dutch prosecutor who will decide whether to prosecute corporate executives for violations of international law.<sup>77</sup>
  
5. Cement Roadstone Holdings (CRH) purchased 25% of the Israeli Company Mashav Initiative and Development Ltd. Clal Industries and Investments Ltd. own the remaining 75%. Mashav wholly owns Nesher Israel Cement Enterprises Ltd, which is Israel's sole cement producer, supplying 75-90% of all cement sold in Israel and occupied Palestine. This cement is used *inter alia* for the construction of the illegal separation wall.<sup>78</sup>

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<sup>71</sup> Hayes, *European Union R&D Subsidies for Israeli Security Actors*

<sup>72</sup> Hillary, *Corporate Complicity in Violations of IHL and Human Rights Law - The Israeli Arms Trade and the Apparatus of Repression* and the Evidence of Hever, *Elbit Systems*.

<sup>73</sup> Evidence of Hever, *Elbit Systems*.

<sup>74</sup> Hillary, *Corporate Complicity in Violations of IHL and Human Rights Law - The Israeli Arms Trade and the Apparatus of Repression* and the Evidence of Hever, *Elbit Systems*.

<sup>75</sup> Evidence of Hever, *Elbit Systems*.

<sup>76</sup> Evidence of Dorman, *The Actions of Cement Roadstone Holdings in Israel/Palestine* and Evidence of Muller, *PFZW - The case of a Pension Fund Complicit in International Law Violations by the Government of Israel*.

<sup>77</sup> *Ibid.*

<sup>78</sup> Evidence of Dorman, *The Actions of Cement Holdings in Israel/Palestine*.

- a. The Tribunal heard testimony regarding the positions of two corporate executives of CRH:
    - i. **Máirtín MacAodha** – Corporate Manager of CRH.
    - ii. **John Madden** – Cement Operations Manager/Europe Materials divisions of CRH.
  - b. Both executives are also on the board of Nesher Israel Cement Enterprises Ltd.
6. Clal Industries and Investments Ltd. (Tel Aviv, Israel), an investment company that holds 75% of the shares in Nesher.<sup>79</sup>
  7. Shamrock Holdings of California (Burbank, CA, USA) has invested in the ORAD Group, an Israeli company specialising in defence and security services, which has provided Israel with electronic surveillance equipment for the Wall.<sup>80</sup>
  8. Ashlad Ltd. (Tel Aviv, Israel), a subsidiary of the Ashtrom Group, an Israeli construction company, which manufactures, among other things, concrete slabs for the construction of the Wall.<sup>81</sup>
  9. IDB Holding Corporation Ltd., an Israeli holding company<sup>82</sup> that holds 61% of the shares in the aforementioned CLAL Company.<sup>83</sup>
  10. Magal Security Systems (Yehud, Israel), an Israeli company that specialises in electronic surveillance and detection systems that have been supplied to Israel for the construction of the Wall.<sup>84</sup>

5.4C.9 The actions of these corporations materially assist Israel in its construction and maintenance of the Wall. As explained above, (i) the Israeli construction and

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<sup>79</sup> Evidence of Dorman, *The Actions of Cement Holdings in Israel/Palestine*.

<sup>80</sup> <http://www.interfaithpeaceinitiative.com/profitng.pdf> and [http://www.orad.cc/index.php?pid=37&menu=126&div=0&item\\_id=0](http://www.orad.cc/index.php?pid=37&menu=126&div=0&item_id=0).

<sup>81</sup> <http://www.interfaithpeaceinitiative.com/profitng.pdf>

<sup>82</sup> [http://wrightreports.ecnext.com/coms2/reportdesc\\_COMPANY\\_C37661410](http://wrightreports.ecnext.com/coms2/reportdesc_COMPANY_C37661410)

<sup>83</sup> <http://www.interfaithpeaceinitiative.com/profitng.pdf>

<sup>84</sup> <http://www.interfaithpeaceinitiative.com/profitng.pdf> and <http://www.magal-s3.com/news/?year=2004&nid=95>

maintenance of the Wall violates international law; and (ii) *all* other States have obligations under international law to bring Israel's violations to an end. The RToP also finds that corporations have an obligation not to provide any assistance in maintaining the situation created by the Wall, and to refrain from profiting from Israel's violations of international law.

5.4C.10 The Netherlands is an example of domestic enforcement of international law against corporations. Pursuant to the Dutch *Wet Internationale Misdrijven* (law on international crimes), Dutch corporations are required to adhere to specific provisions of international criminal and humanitarian law.<sup>85</sup> To this end, in October 2010, Dutch police raided the offices of Riwal Holding Group. The police confiscated computers relating to the leasing of cranes used in the construction of the Wall and the settlements.<sup>86</sup> As of November 2010, the police investigation has now been passed to the Dutch State Prosecutor to decide on whether to prosecute the corporate executives on charges of violating international law.

5.4C.11 As a result of assisting Israel in its violations of international law, the above corporations infringe on the rights enshrined in international human rights and humanitarian law. These corporations and their corporate actors may be subject to the following legal actions in countries where they are domiciled or have a significant presence: (i) civil claims under domestic law for violations of domestic civil law and/or international law; and (ii) criminal prosecution for breach of domestic law and/or the commission of international crimes. For further detail on this potential legal liability, see the concluding section (Section VI) below.


#### (d) The Rights of Palestinian Legal Entities

5.4C.12 The International Court of Justice, in its consideration of the legality of the Wall, held that Israel "has the obligation to make reparation for the damage caused to all

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<sup>85</sup> Evidence of Muller, *PFZW - The case of a Pension Fund Complicit in International Law Violations by the Government of Israel*.


<sup>86</sup> Evidence of Dorman, *The Actions of Cement Roadstone Holdings in Israel/Palestine* and Evidence of Muller, *PFZW - The case of a Pension Fund Complicit in International Law Violations by the Government of Israel*.



the natural and legal persons concerned.”<sup>87</sup> The State of Israel has an obligation to make reparations to Palestinian corporations adversely affected by the establishment of the Wall; this may be as a result of Israel’s conduct and any assistance it has received from corporations.

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<sup>87</sup> International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2004) 43 *International Legal Materials* 1009-56, para. [152].



## VI. REMEDIES

### International Law

- 6.1 The corporations mentioned above have all been complicit with Israeli breaches of international law. For example, in relation to the corporations mentioned in 5.4A above all provided or supplied military equipment and material to Israel that were used by it to violate certain Palestinian rights during the Gaza incursion and in the construction of the Wall.
- 6.2 The RToP has made observations about: (a) the nature of the violations of IHL committed by Israel during the Gaza incursion (para. 19.10 of the Barcelona findings), in particular, the destruction of civilian property “without military necessity”, which constitutes a war crime (Goldstone Report, 15 September 2009); (b) the illegal settlements in the OPT; and (c) the construction of the illegal Wall in the West Bank (para. 19.6 of the Barcelona findings).<sup>88</sup>
- 6.3 The violations of IHL committed by Israel during the assault in the Gaza incursion, in the establishment of maintenance of the illegal Israeli settlement, and in the construction of the illegal Wall constitute war crimes (*supra* para 5.3.2) and/or crimes against humanity. These crimes have been committed with weapons, materials, equipment and services supplied by corporations such as Elbit Systems, Caterpillar and Cement Roadstone Holdings. These corporations have therefore assisted Israel in the commission of war crimes and may be liable for complicity in these crimes and violations of international law.
- 6.4 Under international criminal law, those involved in the commission of a criminal offence can be held responsible as principal perpetrators or as accomplices.<sup>89</sup> For instance, Article 25 of the Rome Statute stipulates that a person shall be criminally responsible for a crime within the jurisdiction of the ICC, if that person “for the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists

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<sup>88</sup> There are other international law violations that may be engaged with regard to the security sector and provision of equipment to prisons but these are not considered here.

<sup>89</sup> This principle is codified in article 7(1) of the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY), Article 6(1) of the Statute of the International Criminal Tribunal for Rwanda (ICTR) and article 25 of the ICC Statute.

in its commission or its attempted commission, including providing the means for its commission.”

- 6.5 The principal elements of this crime include: an act by a principal; practical assistance, encouragement, or moral support by the accessory; a substantial effect on the perpetration of the crime; and knowledge that the accessory’s act assists the perpetrator (the “*mens rea*” or mental element).
- 6.6 Criminal responsibility under international law for accomplice liability includes various forms of support provided by individuals (including corporate actors), such as the provision of arms and associated material, communication equipment, and other supplies which all go towards facilitating the commission of international crimes.<sup>90</sup> A recent case, which illustrates this, is the case of Frans Van Anraat, who was prosecuted by a Dutch Court in 2005 and convicted of complicity in war crimes for supplying chemical components to Saddam Hussein.<sup>91</sup>
- 6.7 Therefore, providing the means to facilitate the crime (‘the *actus reus*’) is a material element of complicity. The *actus reus* of aiding and abetting in international criminal law “requires practical assistance, encouragement, or moral support which has a substantial effect on the perpetration of the crime.”<sup>92</sup>
- 6.8 The Tribunal has received evidence in the three areas discussed above, which indicates that this material element can be proved in respect of some corporations. Indeed, some of this evidence is derived from admissions made by corporations in their own promotional materials (*e.g.* Elbit Systems).
- 6.9 In addition to the *actus reus*, it is necessary to establish that corporations knew or intended that Israel would use their equipment and/or services to perpetrate violations of international law (“*mens rea*”).<sup>93</sup> From the evidence presented to the Tribunal, this

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<sup>90</sup> See, for example, the Nuremberg “industrialist trials” of Walther Funk, the Zyklon B case and the Krupp Trials. The Zyklon B case is discussed in Annex C. The Krupp Trials is discussed in Annex A.

<sup>91</sup> <http://www.haguejusticeportal.net/eCache/DEF/6/892.html>

<sup>92</sup> ICTY, *Prosecutor v. Anto Furundzija*, Trial Judgment, 10 December 1998, IT-95-17/1-T, available at: <http://www.icty.org/x/cases/furundzija/tjug/en/fur-tj981210e.pdf>

<sup>93</sup> Article 30 ICC Statute, which reflects customary international law. Under national criminal law the subjective element of intent and knowledge constitutes elements of accomplice liability.



should be relatively straight forward in connection with the assistance provided by corporations for the building and maintenance of the illegal Israeli settlements and the Wall. Therefore, the analysis set out below is directed primarily at the question of knowledge regarding the use of military case.

(a) Direct Knowledge of Corporations in Relation to the Use of Military Equipment

6.10 The evidence of Shir Hever and John Hilary revealed that some corporations have boasted in their own promotional materials that their equipment has been used during Operation Cast Lead. It was common knowledge throughout the incursion that the Israeli military operation was inflicting extensive and serious damage on Palestinian civilians and their property. Some examples of conduct that may amount to war crimes and crimes against humanity are set out below:

- a) On 27 December 2008, Israel attacked a Hamas police headquarters.<sup>94</sup> Pursuant to Article 43 of Additional Protocol 1, which reflects customary international law, law enforcement agencies are not part of the armed forces of a party to the conflict, unless incorporation has been officially notified. Thus, the attack on civilian police officers constituted a war crime (AP 1, Art. 85, s. 3(a); ICC Statute, Art. 8, s. 2(b)(i); ILC draft Code of Crimes against the Peace and Security of Mankind, Art. 20, s. 2(b)(i)).
- b) The number of Palestinian civilian victims killed or injured as compared to the deaths of combatants considerably increased as the incursion continued. According to the United Nations Relief and Works Agency (UNRWA) (which only counted women and children - not males - as civilian victims of the Israeli operations), the proportion of civilian deaths rose from 25% at the beginning of the incursion to 50% by the evening of 15 January. According to the Palestinian Center of Human Rights, 83% of the dead were civilians, which included 313 children under the age of 18.<sup>95</sup> There is evidence of direct

<sup>94</sup> [http://fr.wikipedia.org/wiki/Chronologie\\_de\\_la\\_Guerre\\_de\\_Gaza\\_2008-2009](http://fr.wikipedia.org/wiki/Chronologie_de_la_Guerre_de_Gaza_2008-2009)


<sup>95</sup> The 83% civilian death figure includes 255 police officer, 240 of whom were killed on the first day of the offensive. See: [http://www.pchrgaza.org/files/Reports/English/pdf\\_spec/War%20Crimes%20Against%20Children%20Book.pdf](http://www.pchrgaza.org/files/Reports/English/pdf_spec/War%20Crimes%20Against%20Children%20Book.pdf) at p. 13.

attacks on civilian objects.<sup>96</sup> Such a high percentage of civilian victims indicate “excessive damage in relation to the concrete and direct military advantage anticipated” (AP 1, Art. 85, s. 3(b)). These unlawful civilian deaths and injuries resulted from indiscriminate attacks, which constitute war crimes and possible crimes against humanity.

- 6.11 A corporate risk assessment following these reports ought to have identified the potential risk that Israel could use their military products to commit violations of international law. Those risks applied to the continuation of the supply of goods and/or services. A prudent corporation, having conducted a risk assessment, would clearly know that its equipment was either being used or there was a high risk that it was being used to assist in violations of international law.
- 6.12 Even if the corporations did not intend to assist Israel in committing war crimes, they could not fail to note that Israel was committing such crimes and should therefore have refrained from contributing to their commission by supplying Israel with military equipment. For the purposes of Art. 25, s.2(b) of the ICC Statute, intent only requires that the accomplice was “aware” a consequence of his/her behaviour “will occur in the ordinary course of events”.
- 6.13 Reports of Israeli violations of international law during Operation Cast Lead were widely reported in the media. It therefore follows that all corporations that delivered military equipment to Israel during the Gaza incursion were aware that their equipment would or could assist Israel in committing war crimes and/or crimes against humanity. There is therefore evidence that would establish the relevant “mental element” in the complicity of corporate actors in such crimes.
- 6.14 If these corporations had undertaken a proper risk assessment prior to the Gaza offensive, they would have been aware of Israel’s prior systematic violations of international law, and therefore the equipment they were supplying to Israel would or could be used to commit war crimes and/or crimes against humanity. Some examples of Israel’s military history include:

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<sup>96</sup> *Ibid.*, pp. 21 - 51. See in particular case studies 2 (the al-Dayah family), 5 (the Salha family), 6 (Shahd Hijji), 7 (Izziddin al-Farra) and 8 (Farah al-Helu).



- UNICEF reports that Israel's bombardment of Beirut during its 1982 attack on Lebanon resulted in 29,506 deaths and injuries, of which 1,100 were combatants:<sup>97</sup> *i.e.* a ratio of 1 combatant for every 28 civilian victims;
- the bombardment of the village of Qana in Lebanon by an Israeli drone on 18 April 1996, which resulted in the death of more 100 civilian refugees in a UNIFIL compound.<sup>98</sup> According to the Military Adviser to the UNSG, "it is unlikely that the shelling of the United Nations compound was the result of gross technical and/or procedural errors";<sup>99</sup>
- according to the Israeli Human Rights Organisation B'Tselem, of the 4908 Palestinians killed by Israeli Security Forces and civilians since the beginning of the second *intifada*, at least 2187 were civilians;<sup>100</sup>
- an Israeli missile launched in Gaza on 22 July 2002 against an apartment building, targeting the leader of the Hamas movement, resulted in the death not only of the latter but also of 14 civilians, including 8 children, the youngest of whom was only 2-month-old; in addition, some 150 people were seriously injured;<sup>101</sup>
- during the 2006 Israeli attack on Lebanon, an Israeli warplane bombed the village of Qana on 30 July 2006, destroying a residential building and causing the death of 28 civilians, including women, and, according to the ICRC, 19 children.<sup>102</sup> After the attack the Security Council "strongly deplore[d] this loss of innocent lives and the killing of civilians in the present

<sup>97</sup> *Le Monde*, 8 September 1982; see also *ibid.*, 9 September 1982, p. 3.

<sup>98</sup> UN doc. S/1996/337, May 1996, available at: <http://domino.un.org/UNISPAL.NSF/0/62d5aa740c14293b85256324005179be?OpenDocument>.

<sup>99</sup> *Ibid.*, Annex, s. 13.

<sup>100</sup> B-Tselem, *Fatalities since the outbreak of the second intifada and until operation 'Cast Lead'*, available at:

[http://www.btselem.org/English/Statistics/Casualties.asp?sD=29&sM=09&sY=2000&eD=26&eM=12&eY=2008&filterby=event&oferet\\_stat=before](http://www.btselem.org/English/Statistics/Casualties.asp?sD=29&sM=09&sY=2000&eD=26&eM=12&eY=2008&filterby=event&oferet_stat=before).

<sup>101</sup> PCHR, *Report on Extra-Judicial killings Committed by the Israeli Occupation Forces*, available at: <http://www.pchrgaza.org/files/Reports/English/killing4.htm>.

<sup>102</sup> UN Doc. S/2006/626, *Letter of 7 August 2006 addressed to the President of the Security Council*, available at: <http://unifil.unmissions.org/Portals/UNIFIL/Repository/626.40d7de06-6317-4bd5-ade4-10505d7035b1.pdf>.

conflict”.<sup>103</sup> According to the UNSG, “the attack on Qana should be seen in the broader context of what could, on the basis of preliminary information available to the United Nations, including eyewitness accounts, be a pattern of violations of international law, including international humanitarian law and international human rights law, committed during the course of the current hostilities.”<sup>104</sup>

- 6.15 These examples were widely reported in the international media. Indeed, there is considerable international concern over Israel’s systematic, widespread and continuous violations of international law. Corporations should therefore have known well before 27 December 2008 the high risk of their equipment being used to assist in violations of international law. On the basis of this knowledge, they should have refrained from selling such equipment to Israel. There can be no basis for continuing to lawfully arm Israel.
- 6.16 For the reasons set out above, the RToP concludes that the corporations that delivered weapons to Israel during or before the Gaza incursion can be seen to be accomplices to the war crimes committed by Israel during that incursion and may be held accountable in civil and criminal law courts.

### **Possible Legal Remedies in Domestic Legal Systems**

- 6.17 In the sections below, French law, English law and the law of the United States will be considered with reference to the three areas of corporate complicity set out in sections 5.4A, 5.4B and 5.4C above. However, it should be noted that remedies are being pursued and others may be possible in other jurisdictions. For example, the current legal investigation of the Riwal Holding Group (section 5.4C above) and criminal or civil liability in respect of corporate actors employed by Cement Roadstone Holdings (section 5.4C), in addition to civil liability of the corporation.

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<sup>103</sup> UN doc. S/PRST/2006/35.

<sup>104</sup> UN doc. S/2006/626, letter of 7 August 2006 addressed to the President of the Security Council, p. 5.

## French Law

### (a) French Criminal Law<sup>105</sup>

6.18 The court of first instance of the CJEC, now known as the General Court (GC), used similar reasoning in the case concerning the Dutch charity Al-Aqsa, which sent money to Hamas for what it described as humanitarian purposes. As Hamas has been placed by the Council of the EU on the list of terrorist organisations, the Netherlands considered that the funds sent by Al-Aqsa to Hamas could be used for terrorist purposes; it therefore placed the foundation on the list of terrorist organisations and froze its bank assets.<sup>106</sup> Al-Aqsa challenged the decision and argued that steps should first have been taken to establish “the existence of a current or future risk” that the funds sent to Hamas would be used for terrorist purposes; but there was nothing to indicate that Al-Aqsa might be considered to be facilitating terrorist activities.<sup>107</sup> The GC rejected the plea, stating, in particular, that nothing precluded the imposition of restrictive measures on persons or entities that had committed acts of terrorism in the past; the fight against terrorism was of such fundamental importance for international peace and security that one could not wait for the persons or entities concerned to actually commit acts of terrorism before taking measures against them; they were measures intended to prevent the “present or future threat” represented by “an organisation having in the past committed acts of terrorism”. The GC reasoned as follows:

“(a) nothing in the provisions in question of Regulation No 2580/2001 and of Common Position 2001/931 precludes the imposition of restrictive measures on persons or entities that have in the past committed acts of terrorism, despite the lack of evidence to show that they are at present committing or participating in such acts, if the circumstances warrant it (paragraph 107); (b) attainment of the objective of those acts, namely to combat the threats to international peace and security posed by acts of terrorism, which is of fundamental importance to the international community, would be at risk of being jeopardised if the measures to freeze funds provided for by those acts could be applied only to persons, groups or entities at present committing acts of terrorism or having done so in the very recent past (paragraph 109); (c) those measures, being intended essentially to prevent the perpetration of such acts or their repetition, are based more on the appraisal of a present or future threat than on the evaluation of past conduct (paragraph 110); and (d) the

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<sup>105</sup> The matters set out in this section relate particularly strongly to remedies available under French law, but some of the principles are general and could be applied in other jurisdictions.

<sup>106</sup> CJEC, GC, case T-348/07, *Al-Aqsa*, 9 Sept. 2010, s. 1 *et seq.*

<sup>107</sup> *Ibid.*, ss. 135-136.


broad discretion enjoyed by the Council with regard to the matters to be taken into consideration for the purpose of adopting or of maintaining in force a measure freezing funds extends to the evaluation of the threat that may be represented by an organisation having in the past committed acts of terrorism, notwithstanding the suspension of its terrorist activities for a more or less long period, or even their apparent cessation [...]”<sup>108</sup>.

- 6.19 This reasoning may be equally applicable to the establishment of complicity in respect of conduct prior to a crime: if a group’s terrorist past may be invoked in support of the existence of a serious risk of repetition in the future, so also the violations of IHL committed by Israel in the past should induce corporations to refrain from supplying it with military equipment that could be used by Israel to violate IHL – a hypothesis that was confirmed by the Gaza incursion. It follows that there is a real risk that corporations that proceeded with the delivery of equipment became accomplices to the war crimes that were subsequently committed by means of the equipment by the Israeli state. The same reasoning applies to corporations that repeatedly assist Israel with the building and maintenance of illegal Israeli settlements and the illegal Wall.
- 6.20 In terms of French criminal law, Israel’s repetition of war crimes may be viewed as a habitual offence, which traditionally constitutes an aggravating circumstance in the case of criminal offences. A habitual offence is frequently deemed to exist as soon as a first act constituting an offence is repeated.<sup>109</sup>
- 6.21 The habitual nature of the war crimes committed by Israel entailed an increased obligation of caution and vigilance on the part of suppliers of weaponry, and of materials and services to illegal Israeli settlements and the construction of the illegal Wall. The obligation was particularly stringent in the context of armed conflict. In this situation, the most fundamental human rights (right to life, right to respect for physical integrity) are subject to extremely serious violations, IHL imposes a specific obligation on the parties to the conflict to take precautions in the conduct of hostilities (AP 1, Art. 57; customary IHL, rules 15 *et seq.*; UNSG Circular on respect for IHL by UN forces, Art. 5, s. 3; etc.).

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<sup>108</sup> *Ibid.*, s. 142.

<sup>109</sup> Court of Cassation, Criminal Chamber, 24 March 1944, *Gaz.Pal.* 1944, I, 254 ; *id.*, 24 July 1967, *Bull.crim.* No. 23 p.548 ; *id.*, 3 March 1971, *Gaz.Pal.* 1971, I, 362;



- 6.22 While this special obligation of precaution is primarily binding on the belligerents as direct parties to the conflict, it is such a core principle of IHL that its scope extends to indirect parties to an armed conflict, namely to suppliers of military materials and equipment, on account of the absolute need to respect the principle of drawing a distinction between combatants and non-combatants, which is an overriding IHL obligation (St. Petersburg Declaration of 1868, preamble, para. 2; AP 1, Art. 48; customary IHL rule 1).
- 6.23 Under French Criminal Law it is possible to prosecute corporations for all offences that apply to natural legal persons. The details of French law in this regard are set out in Annex C, paragraphs 71 to 80.

#### (b) French Civil Law

- 6.24 Articles 6, 1131 and 1133 of the French Civil Code provide that a contract may be terminated if its aim contradicts public morals or public policy. In 2007 the PLO and the Association France Palestine Solidarité (AFPS) took Veolia and Alstom to court in France, seeking the cancellation (and preventing the execution) of the contracts between Alstom, Veolia, and the City Pass Consortium for the construction and running of the Jerusalem Light Railway, which will link West Jerusalem with illegal Israeli settlements. Depending on this case, similar actions may be possible in France in the future.

### **English Law**

#### (a) English Civil and Criminal Law

- 6.25 There may be possible criminal and civil redress before the British courts in respect of the following corporations:

##### **A. G4S**

1. It may be possible to bring a civil claim under tort law in respect of G4S UK and G4S Israel for their roles in the provision and supply to the Israeli state of certain equipment used in the checkpoints, which are part of the Separation Wall, whose route was declared illegal by the ICJ Advisory Opinion.



However, in determining liability and causation, a number of issues would have to be determined. Some of the key issues are set out in Annex C.

2. Public law action – possible judicial review of the British Government’s decision to grant contracts to G4S to provide security services to UK prisons and immigration deportation services in light of G4S’s alleged complicity in Israeli violations of international law both in respect of the maintenance of the illegal Israeli settlements and in the construction of the illegal Wall.

#### **B. Brimar**

1. Possible civil claim under tort law in respect of display components manufactured by Brimar used in the Israeli air force’s AH-64 apache helicopters, which, the British Government acknowledges was most likely used in the Gaza Incursion. Again this is subject to a number of issues to be determined (see Annex C).
2. Possible criminal action for breach of ICCA. However see Annex C, which set out difficulties in establishing jurisdiction, identifying the person who was the “controlling mind” of the company at the material time, and the difficulties in extra-territorial application of UK laws.

#### **C. Elbit**

1. Possible public law challenge (judicial review) of the Government’s decision to jointly award Elbit Systems a contract worth over US\$1 billion for the development of the Watchkeeper programme, due to Elbit’s involvement in a range of war crimes connected to the attack on Gaza and the sections of the illegal Wall for which it is responsible.

### **OECD National Contact Points**

- 6.26 The various corporations mentioned above may be referred to the relevant National Contact Point (NCP) (see Annex C, which sets out the procedure for the UK NCP).



## The Law of the United States

### (a) Alien Tort Claims Act (ATCA)

- 6.27 In 2005, the Center for Constitutional Rights brought a claim against Caterpillar Inc, on behalf of the family of Rachel Corrie, a 23-year-old American citizen.<sup>110</sup> On 16 March 2003, the IDF, using bulldozers supplied by Caterpillar, were demolishing Palestinian homes to make way for a separation wall near the Egyptian-Gaza border. Rachel was protecting the house of a Palestinian home by standing in front of it and attempting to plead with the IDF soldier driving towards the house. Although Rachel was clearly visible, the IDF soldier drove his bulldozer towards her, pushed a pile of debris onto her legs and then continued forward, crushing her beneath the blade of the bulldozer and intentionally killing her. Caterpillar was alleged to have been complicit in her death in a claim under the Alien Tort Claims Act (ATCA). It was alleged that, in supplying modified D9 Bulldozers, Caterpillar aided and abetted Israel's war crimes, which included: collective punishment, the destruction of property not justified by military necessity and attacks against civilians (including Articles 27, 32, 33, 53 and 147 of the Fourth Geneva Convention). In addition, the demolition of Palestinian homes constitutes a war crime (*supra* para 5.4B.17).
- 6.28 Both the US District Court and the Ninth Circuit Appeals Court dismissed the case. The Appellate Court did not consider the merits of the case, but rather, ruled that it did not have jurisdiction to decide the case because it would intrude on the US Executive's foreign policy decisions. Rachel's family sought a rehearing, which the Appellate Court denied in 2009.
- 6.29 The recent decision in *Kiobel*<sup>111</sup> suggests that a suit may not be brought against corporations. However: (i) this is not the final word on the issue – cases may be brought outside the Second Circuit and the issue has yet to be determined by the US Supreme Court; and (ii) suits may be brought against corporate executives (see below): the possibility of bringing suits against individuals was explicitly confirmed by both the majority and the concurrence in *Kiobel*.

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<sup>110</sup> *Corrie et al., v. Caterpillar*, 403 F.Supp.2d 1019 (2005)

<sup>111</sup> *Kiobel v Royal Dutch Petroleum*, No. 06-4876-cv, 2010 WL 3611392 (2d Cir. Sept. 17, 2010).

6.30 Notwithstanding the decisions in *Caterpillar* and *Kiobel*,<sup>112</sup> the law and practice in ACTA cases continues to develop and each potential claim against a corporation or corporate actor will need to be considered on its merits. On this basis, the RToP encourages parties to continue bringing such claims in the future.

(b) Shareholder Breach of Fiduciary Duty Claim

6.31 Under US corporate law, shareholders of any nationality can sue the directors of Caterpillar or any corporations complicit in Israel's violations of international law, on the grounds that: by approving or condoning the aiding and abetting of war crimes or gross human rights abuses, they breached their duties of care, loyalty and good faith to the company and its shareholders and caused them to suffer a loss.

(c) Public Law: Lawsuit to Force State to Revoke Corporate Charter or License

6.32 In the US, states have the legal right to revoke licenses granted to corporations to do business with particular state authority where for example, the company is deemed to have abused or misused its power or is deemed to have engaged in crimes considered to be a serious breach of the public trust. Consistently approving or condoning illegal action that results in widespread human rights abuses including war crimes is outside the power granted by a charter or license and should be grounds for revocation. However, see the potential difficulties involved in these sorts of actions set out in Annex C.


(d) The Criminal Law of the United States

6.33 Caterpillar and Shamrock Holdings may be liable under US criminal law for alleged aiding and abetting war crimes committed overseas. U.S. war crimes statutes approve the exercise of extraterritorial jurisdiction to prosecute grave breaches of international criminal law by and against U.S. nationals (see Annex C, which also considers some of the difficulties in prosecuting US corporations for complicity in acts which constitute war crimes or gross human rights violations when it involves victims of foreign nationality).

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<sup>112</sup> See the conclusion.


## VII. TRIBUNAL CONCLUSIONS


- 7.1 The Tribunal heard compelling evidence of corporate complicity in Israeli violations of international law, relating to: the supply of arms; the construction and maintenance of the illegal separation Wall; and in establishing, maintaining and providing services, especially financial, to illegal settlements, all of which have occurred in the context of an illegal occupation of Palestinian territory. On the basis of this evidence, the Tribunal draws the following conclusions.
- 7.2 The RToP reiterates that Israel committed serious breaches of IHL during the Gaza incursion (December 2008-January 2009), especially by launching attacks that, in terms of the damage inflicted on the civilian population, are sufficient in themselves to demonstrate their indiscriminate and disproportionate nature. These breaches constitute war crimes entailing the criminal responsibility of their perpetrators. Corporations provided Israel with weapons and military equipment that assisted it in committing these crimes. The supply of such equipment involves acts of assistance that constitute complicity in Israel's violation of international law.
- 7.3 The RToP reiterates that the establishment and maintenance of settlements in the occupied Palestinian territories are violations of international humanitarian law and regulatory entail the commission of war crimes by Israel. Corporations assist in the establishment of such settlements by supplying equipment that can be used to demolish dwellings, to destroy Palestinian land and to build property. They also contribute to the maintenance of the settlements through the economic relations that they forge with the settlements; for example, by financing the construction of property, by investing in business firms established in the settlements, by importing goods produced by the settlements and by providing them with commercial services. These corporations are complicit in Israel's violations of international law, including war crimes.
- 7.4 The RToP reiterates that the construction by Israel, inside the occupied territories, of a separation Wall between Israel and the rest of the territories violates a number of international legal rules by seriously restricting, without legal justification, the exercise of certain civil, economic, social and cultural rights by the affected Palestinian population. Corporations assist Israel in its violations of international law
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by providing Israel with cement, equipment and vehicles that are used in the construction and maintenance of the Wall.

7.5 With regards to the legal liability of corporations assisting Israel in the violation of international law, the Tribunal concludes as follows.

7.6 By assisting Israel, corporations have infringed the rights recognized by state obligations. Corporations may be liable under civil or criminal law (for example, money laundering and/or handling or receiving stolen goods) for infringing these rights in domestic law courts (many countries domestic law incorporates international law, including international humanitarian and human rights law). For example:

- (a) A claim for damages against a corporation that provided goods and services that they knew (or should have known) would be used in a manner that would cause the claimant (or a class to which the claimant belonged) damage/loss, particularly personal injury, may succeed under domestic tort law (*e.g.* in England and Wales or the United States) where it can be shown that damage was caused. The fact that the acts were those of the defendant's subsidiary need not be a bar to recovery.
  - (b) Palestinians may bring a suit under the ATCA for aiding and abetting war crimes and/or crimes against humanity.
  - (c) A prosecution may be brought against a corporation in the French, English or American jurisdictions, although the prosecution is likely to be for a crime within each jurisdiction rather than simply for 'violations of international law'.
  - (d) The Special Representative's Guidelines, the Global Compact, the Norms and the OECD Guidelines all specify that corporations should refrain from violating and should actively promote human rights norms and principles.
  - (e) Pursuant to Article 121-7 of the French Criminal Code, it may be possible to bring a claim against corporations operating on French territory that provide material support to the construction of the Wall.
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- (f) Because war crimes are criminal offences under US domestic law and aiding and abetting is criminalised under US law, a corporation could be prosecuted in the US for aiding and abetting war crimes committed overseas. U.S. war crimes statutes approve the exercise of extraterritorial jurisdiction to prosecute grave breaches of international criminal law by and against U.S. nationals.
- 7.7 The Tribunal concludes that corporate actors may be liable under international criminal law and/or under domestic criminal law if they have taken decisions as a result of which corporations have become involved in assisting Israel's violations of international law. They may also be liable under civil law, in particular, under the Alien Tort Statute in the United States, which provides a tort remedy for serious violations of international law.
- 7.8 With regards to the non-legal liability of corporations, the Tribunal concludes that claims may be submitted to OECD National Contact Points for mediation and/or investigation and a final statement. The Tribunal recommends that a claim be brought before a domestic NCP where one is available for the state in which the corporation is domiciled. If no such NCP exists, corporations should be brought before an NCP in other states in which they have a permanent presence.
- 7.9 Representations to public bodies should make it clear that continued economic relations with these corporations would be contrary to their voluntary codes of conduct/guidance and to their government's obligations to promote and protect human rights. Continued economic relations may give rise to state responsibility.
- 7.10 States are advised to follow the example set by the Dutch public bodies that have investigated a Dutch corporation alleged to be complicit in violation of international human rights and humanitarian law by supplying materials to Israel for the construction and maintenance of the illegal Wall.
- 7.11 The Tribunal concludes that states have an obligation to enforce existing law against corporations where they are acting in violation of international human rights and humanitarian law standards.
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- 7.12 States should ensure that there are sufficient remedies available, and that these remedies are accessible to victims of corporate violations of international and domestic law.
- 7.13 Finally, the Tribunal calls upon individuals, groups and organizations to take all necessary measures to secure compliance of corporations with international human rights and humanitarian law standards, in particular: boycotting corporations that assist in violations of international law, shareholders holding corporations to account, divestments by pension funds of investments tainted by illegality, and actions that continue to put corporations in the spotlight with the purpose of bringing about change in corporate culture. The Tribunal finds legal support for these initiatives in the Opinion of the International Court of Justice on the Wall, in which the Court stated that there exists an *erga omnes* obligation to refrain from recognizing or in any way supporting the illegality that arises from the conduct of Israel by building the Wall and violating international humanitarian law.





## VIII. CONTINUATION OF THE PROCEEDINGS

- 8.1 These conclusions close the second session of the Russell Tribunal on Palestine in London. As announced by the Tribunal, these are provisional conclusions: they are the result of a *prima facie* assessment of the facts brought to its knowledge and are without prejudice to the final verdict that the Tribunal will deliver at its closing session.
  
- 8.2 The Tribunal hopes that the European Union, its member states and corporations will participate more actively in future sessions of the proceedings by making known their views, thereby preventing the Tribunal from drawing erroneous conclusions due to their silence and their absence.

