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## Human Rights Council

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**Human rights situation in Palestine and other  
occupied Arab territories**

### **Written statement\* submitted by the Norwegian Refugee Council, a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[12 May 2017]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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## **The Conduct of Prolonged Occupation in the occupied Palestinian territory and the Obligation to Ensure Respect for International Law**

The distinctive characteristics and context of the humanitarian crisis in the occupied Palestinian territory (oPt) is unique in present day, and remains directly related to the impact of prolonged belligerent occupation, now in its 50th year, with unceasing escalation and no end in sight.

The 10-year long Israeli-imposed siege on Gaza - established following the takeover of Gaza by Hamas – severs the Gaza Strip from the West Bank and elsewhere and critically worsens the already-devastating humanitarian impact of repeated escalations of hostilities, resulting in the destruction of public and private infrastructure, disruption of access to basic services, including primary health care and education, available water and power. The crisis is characterized by the absence of prospects for political and physical reintegration, improved public services and a revival of Gaza's economy;

In the West Bank, including East Jerusalem, the causal linkages between policies and practices of de-development and crippling limitations on spatial planning for the Palestinian population, property destruction and obstruction of humanitarian aid, forcible transfer of the Palestinian population and settlement expansion, resulting in de facto annexation, are evident; and are the driver of vulnerabilities and increasing humanitarian needs.

In recent years, and even more so during the last few months, a manifest trend of legislative and administrative initiatives, buttressed by senior Israeli politicians, indicate clear intentions to annex decisively parts of the West Bank. This progresses in line with a marked policy shift on the part of the Government of Israel, from an implicit recognition of the Palestinian territory as coming under belligerent occupation towards the territory as falling under quasi-sovereign Israeli authority.

The law of belligerent occupation, applicable to the oPt, is designed to safeguard the provisional character of the *de facto* situation of occupation, and while it imposes no specific time limit, its long duration is at odds with its provisional character.

The occupying power's duty of good governance requires it to ensure the welfare of the population. This may imply measures changing the *status quo* or requiring a certain permanence in order to be effective. Both requirements are difficult to reconcile with the provisional character of the regime of occupation.

Nonetheless, changing the status of the occupied territory, or of parts thereof, in a way meant to be permanent or any de facto or de jure annexation are prohibited. For instance, the systematic establishment of Israeli settlements is a violation of IHL. Furthermore, through changes in the existing planning and zoning laws, Israel systematically hinders Palestinians to exercise their housing, land and property rights. Prevalent destruction of structures, including schools and medical clinics, destroyed for various reasons, for instance lack of building permits, which is due to the said flaws of the building and planning laws, or as a sanction of unlawful behavior of members of the family of the owner, constitutes a violation of the guaranty of private property enshrined in the Hague Regulations and of the prohibition of collective punishments.

In addition, these restrictions on the exercise of rights are systematic and, thus, have de facto a permanent character. Therefore, they contradict a fundamental principle of the law of occupation, namely the provisional character of the occupation regime.

Even if individual measures imposed by Israel, taken in isolation, might not be unlawful, the permanent effect of the measures taken make negotiations ending the occupation and facilitating the exercise of the right to self-determination

difficult if not impossible, and thus constitute an abuse of rights. Israel might otherwise have pursuant to the law of occupation.

Thus, certain violations of the law of belligerent occupation (*jus in bello*) described above constitute grave breaches of the Geneva Conventions, triggering State responsibility to ensure respect for the Conventions.

The positive obligation to ensure respect, including by third States, presupposes that some measures must be taken, and that the complete passivity of a State in the face of IHL violations would unquestionably amount to a breach of that duty.

As an obligation of conduct or means, the obligation to ensure respect, both in its internal and external dimensions, is to be applied on the basis of a standard of due diligence. Even if this standard, by nature, leaves a margin of appreciation to the States as to which measures are required to fulfil this obligation, and that such measures also depend on a range of factors, this does not negate the character of a proper obligation to the undertaking to ensure respect.

The continuous character of violations in the oPt context, and the appropriateness of the measures taken in order to end such violations are therefore relevant to assess whether third States comply with their obligation to ensure respect. This interpretation is in line with the standard of due diligence as applied in other areas of international law. Therefore, even if the measures to be considered by third States under their obligation to ensure respect must remain within the limits of what is proportionate to the violation it is aimed to stop, and reasonable given the specific circumstances and available resources, more measures can be expected of certain States if the measures they took remained ineffective in stopping IHL violations and ensuring accountability for the wrongful act.

Taking into account the position and political weight of certain States, those factors require more than mere diplomatic protests, especially in the face of continuing violations. The obligation to ensure respect being an obligation of means, States having stronger ties with a transgressor State must be deemed to have more means than other States.

Measures range from confidential intervention of a State, based on a proper legal assessment and determination of the violations, or a public denunciation of the relevant IHL violations by classifying them as such rather than relying on political or diplomatic language, especially if the third State concerned had already made a determination as to the unlawful nature of the conduct in the past. These include the specific measures provided for under IHL and designed to ensure its implementation as well as other remedies available for the States concerned either under IHL or under international law;

If measures taken do not prove to be effective in suppression the violations, other, more effective, though proportionate, measures must be taken until the violations end. This would mean that in the gradual scale of measures, ranging from diplomatic ones to lawful countermeasures, an influential State has a duty to consider other types of measures when the least disruptive ones in terms of cooperation and friendly relations failed.

The fact that the fulfilment of an international obligation can prove to be politically difficult cannot serve as a ground to refuse to take any measure in the implementation of that obligation. This would run against the very nature of a legal obligation as opposed to a mere political preference. This is even more so when considering the purpose of the obligation to ensure respect for IHL.

The situation regarding the oPt is of great concern for the UN, from the point of view of the maintenance of peace and security as well as from that of self-determination and of human rights. To take measures for promoting self-determination for and ensuring respect and fulfillment of human rights in Palestine constitutes all the more a duty of the UN as it follows from the duty to fulfill the “sacred trust” which was the loadstar of the mandates system and which remained a valid postulate as the original purpose of the Palestine mandate has remained unfulfilled.

The parallel application of human rights law, international humanitarian law and the rules of the *jus contra bellum* as well as self-determination, makes the procedures established for the implementation of human rights a useful instrument for remedying certain negative effects of prolonged occupation. These procedures are on the one hand the treaty bodies

established under human rights conventions, on the other hand the general human rights institutions established by the United Nations.

The treaty bodies of the Human Rights Conventions have indeed repeatedly dealt with questions relating to the oPt. The Committees established under the conventions all receive periodic reports from Israel. Israel, however, denies the applicability of these treaties extraterritorially, while the said Committees insist on it.

The Human Rights Council is competent to deal with violations of human rights law and in practice includes in its scope of competence also international humanitarian law. The Council uses a number of tools for promoting respect for human rights and international humanitarian law. One of them is the appointment of special rapporteurs. Since a Special Rapporteur has been appointed for the situation in in oPt, the mandate holder has regularly delivered reports critical for Israeli policies.

Another possibility would be a fact-finding mission mandated by the Council to address the questions arising from prolonged occupation. It must be noted that while Israel usually resists the activities of the Council in relation to the oPt and does not consider them to be relevant; action by the Human Rights Council may nevertheless be pertinent in safeguarding the norms of international law.

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