



# General Assembly

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## Human Rights Council

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Agenda item 7

**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.

[06 February 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 Prohibition on the Acquisition of Territory

1. 2017 marks the 50th Anniversary of the belligerent occupation of Palestinian territory. This warrants a sincere reflection on what 50 years of a prolonged occupation, administered for the most part in disregard of duties of good governance prescribed by international law, has meant for Palestinians. 4.8 million Palestinians in the occupied Palestinian territory (oPt) endure a protracted humanitarian protection crisis which stems from the misadministration and prolongation of occupation and is characterised by recurrent violations of International Humanitarian Law (IHL) and International Human Rights Law (IHRL).

2. Thus, a coercive environment prevails which is characterised, *inter alia*, by a disenfranchising and manifestly unlawful spatial planning regime, forcible transfer and planned relocations on mass, wanton and extensive destruction of civilian property, obstruction of humanitarian assistance through destruction or seizure of relief items, land expropriation, settlement establishment and expansion, construction of the Wall, movement and access restrictions, declarations of closed military zones, settler violence and military operations characterized by excessive use of force and aberrant departure from principles of distinction and proportionality in attack. Much of these practices are themselves grave breaches and serious violations of norms of IHL and IHRL.

3. 39,500 Palestinians across the West Bank are at risk of forcible transfer, while 48,000 in Gaza remain displaced since the 2014 conflict.<sup>1</sup> Furthermore, 1 million Palestinians face restricted access to basic healthcare, while 504,000 schoolchildren require humanitarian assistance to access education<sup>2</sup>; as the right to primary education and health is flagrantly violated.

4. Such policies and practices which give rise to forcible transfer and are inextricably linked with settlement expansion, create ‘facts on the ground’ giving rise to the long-standing and on-going *de facto* – but also increasingly, *de jure* – annexation of Area C of the West Bank and ultimately a denial of the Palestinian right to self-determination.<sup>3</sup> These processes are evolving at an alarming rate.

### Processes of Annexation

5. As per customary international law, a State cannot acquire territory, or sovereignty in a foreign territory, by the threat or use of force.<sup>4</sup> Accordingly, annexation of a territory occupied through military force is unlawful under international law. Furthermore, it represents a violation of a peremptory, or *jus cogens*, norm of international law<sup>5</sup> which generally invoke *erga omnes* obligations for all States to bring the illegality to an end.<sup>6</sup>

6. A basic tenet of IHL is to protect the interests of the ousted sovereign following the military occupation of a foreign territory. The occupant only administers an occupied territory temporarily and, consistent with the absolute prohibition on annexation, an occupation does not transfer title or sovereignty over territory.<sup>7</sup>

7. Indeed, it has been posited that should an occupant hold out in bad faith and use its control of the occupied territory as leverage, this would amount to outright annexation and such acts must be deemed illegal while the continued rule of the occupant be deemed an aggression.<sup>8</sup>

8. In determining the legality of the Separation Wall, the International Court of Justice (ICJ) held that “the construction of the wall and its associated régime created a “fait accompli” on the ground that could well become permanent, in which case... it would be tantamount to *de facto* annexation.” Such reasoning would then also apply to the expansion of settlements, which also create a “fait accompli” on the ground and which, for all intents and purposes, already display evidence of intended permanence. Indeed, the Human Rights Council. Further, the UN Human Rights Council (HRC) in a resolution adopted in March 2016, reaffirmed that “the construction of settlements, settler roads, the wall and other measures” are “tantamount to *de facto* annexation of Palestinian land” and to that extent expressed concern over the fragmentation of the oPt in light of the inadmissibility of the acquisition of territory by force.<sup>9</sup>

9. Recently, however, Israel has been coupling its processes of *de facto* annexation with legislative initiatives which would effectively culminate in measures of *de jure* annexation, meaning annexation that is established by a formal act whereby a state proclaims its sovereignty over territory hitherto outside its domain.<sup>10</sup>

10. In February 2016, the Israeli Knesset legislated the ‘Regulation Bill’ which would retroactively legalise Israeli settlement built on private Palestinian land. The bill allows for the “confiscation of usage rights” on privately owned land and thus authorises the development of settlements and outposts thereon while dismissing outright Palestinian housing, land and property rights.

11. Moreover, a separate bill to explicitly annex the Israeli settlement of Ma’ale Adumim, which also includes a clause to annex the “E1” area of the West Bank, is also progressing before the Knesset and was again discussed by the Ministerial Committee for Legislative Affairs in Jan 2017.

12. Another concerning legislative initiative being pursued, which would also progress the *de facto* and *de jure* annexation of West Bank lands, is the “Norms Bill” which seeks to extend new legislation approved by the Knesset extraterritorially to “Judea and Samaria” despite the fact that, under international law, the Knesset is not authorised to legislate for the occupied territory over which it enjoys no sovereignty. Under IHL, the occupying power must protect, unless absolutely prevented, the laws in force in the occupied territory.<sup>11</sup>

13. The legislative capstone announced by members of the legislature in February 2017 includes adopting the Levy Commission Report<sup>12</sup>. Through its endorsement the legislature will adhere to the ‘Missing Reversioner’ doctrine, thus establishing as a matter of domestic law that the territory occupied in 1967 (excluding the Syrian Golan) is not occupied, and that the law of belligerent occupation does not apply to the territory and persons inhabiting those parts.

14. The increasing likelihood of additional legislative endeavours will likely spark a debate as to the appropriateness of the measures taken by Third States in order to end such violations and ensure respect for international law.

15. Measures which may and must be taken 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.

16. The persistence of the IHL violations and whether measures taken in the past to stop such violations were effective must be assessed. If they were not, 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 countermeasures, an influential State has a duty under international law to consider other types of measures when the least disruptive ones in terms of cooperation and friendly relations failed.

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<sup>1</sup> Humanitarian Country Team, 2017 Humanitarian Needs Overview OPT, November 2016; Shelter Cluster Palestine, January Briefing Note, January 2017.

<sup>2</sup> Humanitarian Country Team, 2017 Humanitarian Needs Overview OPT, December 2016.

<sup>3</sup> European Council, Council Conclusions on the Middle East Peace Process, 18 January 2016, para 7, available at: <http://www.consilium.europa.eu/en/press/press-releases/2016/01/18-fac-conclusions-mepp/>

<sup>4</sup> UN, Charter of the United Nations, 24 October 1945, Article 2(4); Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, UNGA Res 2625, 24 October 1970; International Court of Justice (ICJ), *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, on the Wall*, 9 July 2004, para 87.

<sup>5</sup> ICJ, *Case Concerning Military and Paramilitary Activities in and Against Nicaragua*, 27 June 1986, para 190; ICL, *Yearbook of the International Law Commission 1966, Volume II, 1967*, p. 247; Brownlie, *Principles of Public International Law*, 2008, pp. 510-511

<sup>6</sup> See: ICJ, *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*; Second Phase, 5 February 1970, paras 33-34.

<sup>7</sup> HCJ 393/82 Gam’iyat Al-Iskan v Military Commander in the West Bank, 28 December 1983, para 20.

<sup>8</sup> See: Benvenisti, *The International Law of Occupation*, 2013, p. 349, where it is stated: "...the law of Occupation ought not to condone an occupant which holds out in bad faith, using its control of the occupied territory as leverage. Indeed, such a position is no different from outright annexation. Instead, a more appropriate system of incentives would denounce such acts as illegal, would view the continued rule of the recalcitrant occupant as an aggression. And would treat measures aimed at the occupant's own interests as illegal and void".

<sup>9</sup> UNHRC, Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, A/HRC/31/L.37, 22 March 2016. This resolution was adopted by 42 votes in favour, 5 abstaining, and 0 against.

<sup>10</sup> Encyclopedia Britannica, Law: Annexation, July 1998, available at: <https://www.britannica.com/topic/annexation>

<sup>11</sup> Hague Regulations, 18 October 1907, Article 43. Israel is not a party to the Hague Regulations, however, its Supreme Court has long recognised that its provisions form part of customary international law and that, as a result, Israel is legally bound by them, HCJ 606/78 *Ayyubv Minister of Defence* [1978] PD 33 (2) 113 (*Beth El* case); David Kretzmer, *The Occupation of Justice*, SUNY, 2002, p. 36.

<sup>12</sup> <http://israelipalestinian.procon.org/sourcefiles/The-Levy-Commission-Report-on-the-Legal-Status-of-Building-in-Judea-and-Samaria.pdf>