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

Written statement* submitted by the American Association of Jurists, 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.

[13 February 2017]

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

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OPT / East Jerusalem – The crimes committed by Israel must be prosecuted

Background

In January 2009, following the Israeli military Operation Cast Lead, the Human Rights Council (HRC) held its 9th Special session and dispatched an independent international fact-finding mission to investigate violations of international human rights law and international humanitarian law by the occupying Power.

The Report¹ submitted by the Fact Finding Mission offers all the necessary elements for a sound legal approach. In their concluding observations, the members of the Mission pointed out that the international community, as well as Israel and, to the extent determined by their authority and means, Palestinian authorities, have the responsibility to protect victims of violations and ensure that they do not continue to suffer the scourge of war or the oppression and humiliations of occupation (par. 1875). They asserted that whatever violations of international humanitarian and human rights law may have been committed, the systematic and deliberate nature of the activities described in this report leave the Mission in no doubt that responsibility lies in the first place with those who designed, planned, ordered and oversaw the operations (par. 1895).

The Mission noted that the responsibility to investigate violations of international human rights and humanitarian law, prosecute, if appropriate, and try perpetrators belongs in the first place to domestic authorities and institutions (par. 1963). But it found major structural flaws in the Israel's system of investigation and prosecution of serious violations of human rights and humanitarian law, in particular of suspected war crimes and crimes against humanity, that make the system inconsistent with international standards (par. 1959).

The Mission concluded that there are serious doubts about the willingness of Israel to carry out genuine investigations in an impartial, independent, prompt and effective manner (par. 1961) and stressed that where domestic authorities are unable or unwilling to comply with this obligation, international justice mechanisms must be activated to prevent impunity (par. 1963).

Following the presentation of the report in September 2009, the Council held its 12th Special session in October 2009 to discuss the content of that report, as well as the one presented by the UN High-Commissioner for Human Rights. The HRC endorsed the recommendations contained in the report of the Independent International Fact-Finding Mission, and called upon all concerned parties including United Nations bodies, to ensure their implementation in accordance with their respective mandates.

In July 2014, following the Israeli military Operation Protective Edge, the HRC held its 21st Special session and dispatched an independent, international commission of inquiry (ICI), to investigate all violations of international humanitarian law and international human rights law in the Occupied Palestinian Territory, including East Jerusalem, particularly in the occupied Gaza Strip, in the context of the military operations conducted since 13 June 2014, whether before, during or after, to establish the facts and circumstances of such violations and of the crimes perpetrated and to identify those responsible, to make recommendations, in particular on accountability measures, all with a view to avoiding and ending impunity and ensuring that those responsible are held accountable.

The ICI presented its report² to the 29th session of the HRC. In their conclusions, the ICI's members stressed their concern that impunity prevails across the board for violations of international humanitarian law and international human rights law allegedly committed by Israeli forces, whether it be in the context of active hostilities in Gaza, or killings, torture and ill-treatment in the West Bank.

In their recommendations, the ICI's members highlighted that The persistent lack of implementation of recommendations – made by previous commissions of inquiry, fact-finding missions, United Nations treaty bodies,

¹ A/HRC/12/48

² A/HRC/29/52, see also the detailed report A/HRC/29/CRP.4

special procedures and other United Nations bodies, in particular the Secretary-General and OHCHR – lies at the heart of the systematic recurrence of violations in Israel and the Occupied Palestinian Territory.

Persisting impunity

Throughout the years, the State of Israel has pursued a policy of illegal occupation of the Palestinian territories, extending the number of colonies, targeting and destroying Palestinian economic and social infrastructures, restricting access to medical care, harassing and systematically arresting Palestinian minors and condemning them to prison terms, adopting and implementing discriminatory laws that, in 2012, the Committee for the Elimination of all forms of Racial Discrimination³ qualified as practice of apartheid. The structural consequence of this policy is the increased poverty of the Palestinian people; about 70% of the population of the Gaza Strip is dependent on external aid; about 65,000 Palestinians who were displaced after the Israeli's 2014 Operation Protective Edge, are still waiting for their homes to be repaired or rebuilt.

In 2016, about 90 Palestinians were shot by Israeli security forces or settlers; more than 3,000 were injured.

In November 2016, the World Health Organization released a 2-year report⁴ which highlights how the Israeli permit system and physical barriers obstruct health access for Palestinian patients, health workers and ambulances. The data indicates substantial restrictions for thousands of patients and their companions trying to travel to their places of referral; it also presents information on the impact of attacks on health facilities, patients and health personnel, and the health access situation in “Area C” in the West Bank, where Israel retains full security and civil authority.

The January 2017 “Monthly Overview”⁵ of the UN Office for the Coordination of Humanitarian Affairs highlights that access to healthcare is also a concern in the Gaza Strip. In 2016, the Israeli authorities approved 64 per cent of the applications for exit permits by patients referred for medical treatment outside Gaza, down from over 77 percent in 2015. It also stresses that 2016 ended with a record number of demolitions and seizures of Palestinian property (nearly 1,100 structures targeted) by the Israeli authorities across the West Bank and that this practice accelerated in the first month of 2017 with 140 structures destroyed or seized.

Settlements

Article 49 of the IVth Geneva Convention prohibits the transfer of the Occupying Power's civilian population into the territory it occupies.

Nevertheless, more than 500,000 people reside in illegal settlements in the Occupied Palestinian territories.

In many instances, different organs of the United Nations have condemned the demolition of Palestinian properties and the creation of Israeli settlements in the OPT, including in East Jerusalem. On 23rd December 2016, the UN Security Council adopted resolution 2334 which reaffirmed the illegality of Israeli settlements and demanded that Israel cease all settlement activities.

On 6 February 2017, the Israeli Parliament, by approving the “Regularization Bill”, decided to legalize retroactively Israeli settlements erected on private Palestinian land. Furthermore, Israeli authorities have subsequently announced the construction of thousands of new housing units in existing settlements and reportedly pledged to construct an entire new settlement in the Ramallah area.

Conclusion and recommendation

The State of Israel continues to enjoy diplomatic and legal impunity allowed by some Western countries and the United States of America, who have signed, in September 2016, a 10-year military aid package to Israel worth 38 billion US dollars.

Without respect for the counterpart, without respect for the law, there can never be peace. The international human rights and humanitarian standards must be implemented: the appropriate national and international jurisdictions have to be seized.

³ CERD/C/ISR/CO/14-16

⁴ http://www.emro.who.int/images/stories/palestine/documents/WHO_-_Access_Report_2014-15_-Final.pdf

⁵ <http://www.ochaopt.org/content/monthly-overview-january-2017>

The American Association of Jurists calls upon the UN Human Rights Council, the UN General Assembly and the UN Security Council to take the appropriate actions to end the impunity for the crimes committed by the State of Israel as Occupying power of the Palestinian Territories.
