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Human rights situation in Palestine and other occupied Arab territories

Joint written statement* submitted by Al-Haq, Law in the Service of Man, Human Rights & Democratic Participation Center "SHAMS", Women's Centre for Legal Aid and Counseling, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is
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* Issued as received, in the language of submission only.



Israel's Illegal Occupation: A Violation of Palestinians' Right to Self-Determination, An Act of Aggression, and Annexationist in its Aim

Background

Israel has been occupying the Palestinian territory since 1967, making it the longest occupation in modern history. Having now passed the 56-year mark, this statement examines the illegality of Israel's occupation of the Palestinian territory, i.e., the West Bank, including East Jerusalem and the Gaza Strip. Given that the occupation followed from an illegal use of force amounting to an act of aggression in 1967; its violation of the Palestinian people's right to external self-determination; and Israel's conduct in annexing de facto and de jure Palestinian territory, point to the illegal nature of the occupation. Even if one were to argue that Israel had a right of self-defence in 1967, the continuance of the occupation in breach of peremptory norms of international law indicate a breach of the principles of proportionality and necessity and underscore its illegality.

The Right to Self-Determination

Israel's occupation of the Palestinian territory breaches the right to external self-determination of the Palestinian people, which includes the exercise of the right of the Palestinian people to an independent State, the right to economic self-determination,¹ encompassing the right of Palestinians to sovereignty over their resources.² The special status of the right of the Palestinian people to external self-determination was recognized under Article 22 of the League of Nations Charter which classified Palestine as a Class A mandate, whose "existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone." As such, Israel's occupation, i.e., the effective control of the OPT allowing inter alia the expansion of settlements, the construction of the Annexation Wall, the exploitation of natural resources,³ and the 16-year-old closure and blockade of the Gaza Strip, is designed to prevent the existence of another fully autonomous Palestinian state on its borders.

The Inherent Illegality of the Occupation - Aggression

Israel's belligerent occupation has been illegal since the outset in 1967 as an occupation arising from an unlawful act of aggression, prohibited under Article 2(4) of the UN Charter. Israel's use of force against Egypt in 1967, in the absence of an armed attack, constituted a prohibited use of force amounting to an act of aggression. This was stated by several states at the UNGA, including Cyprus and the Soviet Union, concluding that there was "no evidence of Arab armed attack or invasion of the territory of Israel".⁴ Likewise, Israel's Ministry of Foreign Affairs confessed that Israel pre-emptively used force against Egypt, in the absence of an armed attack.⁵ Pre-emptive or preventive self-defense is not a valid basis under international law for the use of force in self-defense. The subsequent establishment of a military administration in the Palestinian territory is accordingly a continued unlawful use of force and an act of aggression. Under the international law governing the use of force, the occupation is illegal *jus ad bellum*.

Israel's Prolonged Occupation – An Ongoing Unlawful Use of Force

Even assuming for argument's sake, that Israel's use of force in 1967 amounted to a legitimate use of force in self-defense, the continuing belligerent occupation of the Occupied Palestinian Territory breaches the conditions of use of force under Article 51 of the UN Charter and international customary law.

Firstly, the right to self-defence as enshrined in Article 51 of the UN Charter can only be exercised in reaction to an “armed attack” launched by a State. Notably, the State of Palestine has not used armed force against Israel, which cannot justify the continuation of Israel’s occupation in the Occupied Palestinian Territory.⁶

While Israel argues that it established the occupation in response to an alleged armed attack by Egypt in 1967, the prolonged occupation breaches the principles of necessity and proportionality for the use of force in self-defence *jus ad bellum*. Whereas necessity requires that an armed attack is actual or imminent, Israel implements what is commonly referred to as pre-emptive or preventive use of force, i.e., the use of force to prevent the emergence of a threat, either entirely or largely. However, pre-emptive or preventive self-defence is not a valid basis under international law for the use of force in self-defence.

The ongoing military control that Israel exercises over the Occupied Palestinian Territory when understood as defensive, is not a response to actual or threatened attacks. Rather, it is an alleged preventive or pre-emptive self-defence, and constitutes an ongoing response to attacks to achieve long-term prevention and deterrence of possible threats. This violates the requirement of necessity. The belligerent occupation on this basis amounts to unlawful use of force *ad bellum* and an act of aggression.

Acquisition of Territory by Force – The Prohibition of Annexation and Settlements

Israel’s conduct since the beginning of the occupation and until today confirms that it intends to make its occupation permanent, i.e. the objective is the illegal annexation of the territory it occupies. The *de facto* annexation of parts of Occupied Palestinian Territory finds expression in Israeli laws, policies and practices to maintain a permanent presence and unlawfully claim sovereignty over the Occupied Palestinian Territory, including by the large-scale expansion of Israeli settlements, and creating territorial continuity between them and Israel. Most recently, the guiding principles and coalition agreements of the 37th Israeli government, explicitly declared that “the Jewish people have an exclusive and unquestionable right to all areas of the Land of Israel” and pledge to “promote and develop settlements in all parts of the Land of Israel – in the Galilee, the Negev, the Golan [unlawfully annexed], Judea and Samaria [occupied West Bank]”. The transfer of the administrative powers of the occupation to the Israeli government and the extension of direct civil legal authority over settlements, amounts to annexation.⁷

Discriminatory Legislations and Measures – Apartheid

Israel’s policies and practices on both sides of the Green Line since 1948 are not random or isolated, but are part of an institutionalized system of apartheid imposed on the Palestinian people as a whole through a set of discriminatory laws, policies and practices, to dominate and oppress the Palestinian people and deny them their right to self-determination and return. One policy to impose and maintain apartheid has been to strategically fragment the Palestinian people into separate domains. This racial segregation and discrimination have been deemed tantamount to apartheid by UN special procedures and leading human rights organizations.⁸ Apartheid is most evident in the Occupied Palestinian Territory, including Jerusalem, where a dual and discriminatory legal system applies, whereby illegally present settlers benefit from extensive privileges to the detriment of the fundamental rights of the Palestinian people. Israel’s imposition of an apartheid system in the Occupied Palestinian Territory, exceeds the limits of an Occupying Power’s administration of the territory for the benefit of the occupied population and subject to the security interests of the Occupying Power, and is indicative of a disproportionate use of force.

Recommendations

Mindful of third states' obligations towards internationally wrongful acts, we therefore call on the Council and its member states to:

1. Recognize the illegality of the Israeli occupation of the Occupied Palestinian Territory based on the law governing the use of force (*jus ad bellum*), which serves as the first step to dismantling the civil administration and which requires full withdrawal of Israeli Occupying Forces;
2. Call on Israel to immediately and unconditionally end its illegal occupation of the Occupied Palestinian Territory and apartheid, without delay; and to this end
3. Take meaningful and effective action, including through imposing arms embargoes, economic sanctions and countermeasures against Israel, and not to aid or assist the continuation of this illegal situation.

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1. U.N. Human Rights Committee, CCPR General Comment No. 12 The Right to Self-determination of Peoples, para. 5.
 2. UNGA, Res 18 (29 November 1947) A/RES/181(II); UNGA, Res 194 (11 December 1948) A/RES/194(III); UNSC, Res 242 (22 November 1967) S/RES/242; UNSC, Res 1402 (30 March 2002) S/RES/1402.
 3. Al-Haq, "Joint Parallel Report on Israel's Violations of the International Covenant on Economic, Social and Cultural Rights", 6 September 2019, para.19, at: https://www.alhaq.org/cached_uploads/download/2019/09/11/am-ah-joint-parallel-report-to-the-cescr-israel-2019-1568201857.pdf. See also, European Parliament, "EU memorandum of understanding with Egypt and Israel on natural gas, and the absence of a territorial clause", 23 June 2022, at: https://www.europarl.europa.eu/doceo/document/E-9-2022-002264_EN.html.
 4. UNGA Official Records (29 June 1967) UN Doc. A/PV.1541, p. 7-8.
 5. Israel Ministry of Foreign Affairs, 1967: The Six-Day War and the historic reunification of Jerusalem (2013).
 6. Al-Haq, "Al-Haq Strongly Condemns the Latest Agreement Between the US and Israel to Circumvent the Investigation in the Situation in Palestine at the ICC", 18 July 2022, at: <https://www.alhaq.org/advocacy/20294.html>.
 7. 37th Israeli Government Guiding Principles (Hebrew), https://www.adalah.org/uploads/uploads/Guiding_principles_government.pdf; Adalah, "Adalah's Analysis of the New Israeli Government's Guiding Principles and Coalition Agreements and their Implications on Palestinians' Rights", 10 January 2023, at: https://www.adalah.org/uploads/uploads/37_govt_position_paper_Eng_100123.pdf.
 8. See for example, Al-Haq, "Israeli Apartheid: Tool of Zionist Settler Colonialism", 29 November 2022, at: <https://www.alhaq.org/advocacy/20931.html>