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Agenda item 7

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

### **Joint written statement\* submitted by Al-Haq, Law in the Service of Man, BADIL Resource Center for Palestinian Residency and Refugee Rights, Cairo Institute for Human Rights Studies, non-governmental organizations 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.

[04 June 2020]

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\* Issued as received, in the language(s) of submission only.

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## Third States Must Act to Prevent Further Israeli Annexation of Occupied Palestinian Territory

The Israeli government seeks to annex large parts of the occupied West Bank starting 1 July 2020, in violation of the prohibition on the acquisition of territory by force. This follows years of *de facto* annexation of occupied Palestinian territory, in addition to the *de jure* annexation of occupied East Jerusalem and the occupied Syrian Golan since 1967. While the international community has repeatedly reiterated the illegality of Israeli annexation, it has failed to adopt effective measures to reverse illegal facts on the ground. This written statement to the United Nations (UN) Human Rights Council calls on third States to abide by their responsibility to cooperate to bring the illegal situation to an end and to uphold the inalienable rights of the Palestinian people.

### The prohibition of annexation

The prohibition on the acquisition of territory by force is enshrined as a cardinal principle in Article 2(4) of the UN Charter. Moreover, annexation is absolutely prohibited as an act of aggression under international humanitarian law. Under Article 47 of the Fourth Geneva Convention (1949), “Protected persons who are in occupied territory shall not be deprived... of the benefits of the present Convention by any change introduced, as the result of the occupation... nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.” The 1958 Commentary to the Fourth Geneva Convention provides that “occupation as a result of war... cannot imply any right whatsoever to dispose of territory”<sup>1</sup> and that “the Occupying Power cannot therefore annex the occupied territory.”<sup>2</sup> The Commentary further stresses: “an Occupying Power continues to be bound to apply the Convention as a whole even when, in disregard of the rules of international law, it claims during a conflict to have annexed all or part of an occupied territory.”<sup>3</sup>

### Responsibility of non-recognition

The prohibition on annexation, as *jus cogens*, gives rise to *erga omnes* obligations on all States not to recognise the illegal situation, not to render aid or assistance in its maintenance, and to cooperate to bring the illegal situation to an end.<sup>4</sup> In 1980, when Israel entrenched its illegal annexation of East Jerusalem, the Security Council determined in resolution 478 (1980) “that all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem... are null and void and must be rescinded forthwith.”<sup>5</sup> Deciding not to recognise Israel’s ‘basic law,’ the Security Council called on “Those States that have established diplomatic missions at Jerusalem to withdraw such missions from the Holy City.”<sup>6</sup> Yet, the Security Council did not adopt any effective measures towards that end. In 1981, the Security Council again failed to adopt sanctions against Israel for imposing its laws, jurisdiction, and administration on the occupied Syrian Golan. Instead, it reaffirmed “that the acquisition of territory by force is inadmissible,”<sup>7</sup> and decided “that the Israeli decision ... is null and void and without international legal effect.”<sup>8</sup> At the time, the General Assembly adopted resolution ES-9/1 of 5 February 1982, under the ‘uniting for peace’ resolution, and

<sup>1</sup> Jean Pictet (edn), *The Geneva Conventions of 12 August 1949: Geneva convention relative to the protection of civilian persons in time of war*, Volume 4, ICRC, 1958, at 275.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*, at 276.

<sup>4</sup> Articles 40-41, *Draft Articles on State Responsibility of States for Internationally Wrongful Acts*, 2001.

<sup>5</sup> S/RES/478 (1980), para. 3.

<sup>6</sup> *Ibid.*, para. 5(b).

<sup>7</sup> S/RES/497 (1981), Preamble.

<sup>8</sup> *Ibid.*, para. 1.

called on “all Member States to cease forthwith, individually and collectively, all dealings with Israel in order to totally isolate it in all fields.”<sup>9</sup>

### **Responsibility not to render aid or assistance**

In 2016, the Security Council, considering in resolution 2334 (2016) that the establishment of Israeli settlements “has no legal validity,”<sup>10</sup> reiterated its demand “that Israel immediately and completely cease all settlement activities,”<sup>11</sup> and called “upon all States ... to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967.”<sup>12</sup> On 12 February 2020, the Office of the United Nations High Commissioner for Human Rights released an incomprehensive<sup>13</sup> database of businesses involved with illegal Israeli settlements, listing 112 companies, including 18 multinationals. The database, mandated by Human Rights Council resolution 31/36 (2016), is to be annually updated, and would serve as a tool for transparency and accountability to be used by States, businesses, and civil society on relevant corporate activities in the occupied Palestinian territory in violation of international law. As primary duty bearers, States have a responsibility to protect against human rights abuses by third parties, including businesses that “have, directly and indirectly, enabled, facilitated and profited from the construction and growth of the settlements.”<sup>14</sup> Home States of companies operating in or with Israeli settlements, including those listed in the database, must take measures in accordance with their responsibility to ensure respect for international human rights and humanitarian law by businesses in their jurisdiction. States should impose mandatory enhanced human rights due diligence for such businesses to assess and prevent their complicity in international law violations. Businesses operating in contexts of prolonged occupation and creeping or *de jure* annexation should take all necessary steps, including divestment and disengagement, to meet their responsibilities and avoid complicity in grave breaches. Moreover, States should ban products and services originating from illegal settlements as part of their responsibility not to recognise nor render aid or assistance in the maintenance of the illegal situation.

### **Responsibility to bring the illegal situation to an end**

Third States have systematically failed in their responsibility not to render aid or assistance in the maintenance of Israeli breaches of international law, including through corporate complicity in illegal settlements, while no effective measures have ever been taken to bring the illegal situation to an end. Instead, third States have even proven complicit in maintaining the illegal situation, particularly the United States of America (US), which legitimises and even rewards<sup>15</sup> Israel for its serious breaches: in December 2017, the US recognised Jerusalem as Israel’s capital, in violation of the city’s status under international law; in May 2018, the US unlawfully relocated its embassy from Tel Aviv to Jerusalem, followed by a number of other States; in September 2018, the US decided to defund the UN Relief and Works Agency for Palestine Refugees in an effort to undermine the rights of Palestinian refugees, in particular to return; in March 2019, the US unlawfully recognised Israeli sovereignty over the occupied Syrian Golan; and in January 2020, the US issued its so-called “Peace to Prosperity” plan, entrenching the regime imposed by Israel over the Palestinian people, which amounts to apartheid.<sup>16</sup>

<sup>9</sup> A/RES/ES-9/1, para. 13.

<sup>10</sup> S/RES/2334 (2016), para. 1.

<sup>11</sup> Ibid, para. 2.

<sup>12</sup> Ibid, para. 5.

<sup>13</sup> Al-Haq, “Over 75 Organisations Commend UN High Commissioner for Human Rights, Michelle Bachelet, on the Release of the Database of Businesses Involved in Illegal Israeli Settlements,” 25 March 2020, <http://www.alhaq.org/advocacy/16737.html>.

<sup>14</sup> A/HRC/22/63, p. 20.

<sup>15</sup> Al-Haq, “Al-Haq’s Open Letter to the UN Security Council on Israel’s Plans to Annex the West Bank,” 23 April 2020, <http://www.alhaq.org/advocacy/16769.html>.

<sup>16</sup> Al-Haq, “Palestine: United States Plan to Entrench Israel’s Apartheid Regime Must be Rejected,” 5 February 2020, <http://www.alhaq.org/advocacy/16429.html>.

## Conclusion and recommendations

The persistent failure of third States to hold Israel to account, including to adopt sanctions to bring the illegal situation to an end, entails severe and far-reaching consequences for the efficacy of the international system. Accordingly, we emphasize the need for justice and accountability to put an end to Israeli impunity. In light of the above, we call on the Human Rights Council and on all UN Member States to:

- Abide by their responsibility of non-recognition and non-assistance with regards to Israeli policies of annexation, colonisation, and apartheid, and cooperate to bring an end to the illegal situation;
- Denounce Israeli changes to the legal status, character, and demographic composition of occupied Palestinian and Arab territories and withdraw their embassies from Jerusalem;
- Adopt a resolution during the 44<sup>th</sup> Regular Session of the Human Rights Council to prevent Israel's annexation of parts of the occupied West Bank;
- Reject the US "Peace to Prosperity" plan, and any other proposal seeking to undermine the inalienable rights of the Palestinian people, including the right of the Palestinian people to self-determination and the right of return of Palestinian refugees and displaced persons to their homes, lands, and property, as mandated by international law;
- Welcome the release of the UN database and commit to supporting its annual update, including by providing continuous financial resources to deliver the mandate of Human Rights Council resolution 31/36 (2016), as an important accountability tool for States, investors, companies, and civil society on direct and indirect business involvement in illegal Israeli settlements;
- Pursue international justice and accountability for suspected crimes committed against the Palestinian people by trying suspected perpetrators in their own jurisdictions and publicly supporting and cooperating with a full, thorough, and comprehensive investigation by the International Criminal Court into the Situation in Palestinian territories.

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