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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, the Al Mezan Centre for Human Rights, the BADIL Resource Center for Palestinian Residency and Refugee Rights, Defence for Children International, the 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 circulated in accordance with Economic and Social Council resolution 1996/31.

[22 August 2013]

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

Ensuring international legal standards constitute the foundation of United Nations and Middle East peace negotiations*

The Palestinian Human Rights Organisations Council (PHROC) expresses its deep regret at the manifest disposition displayed by the international community, including Member States of the United Nations (UN) – both within the framework of the UN and bilaterally – to disregard the pursuit of justice and accountability in favour of political expediency in response to Israel's occupation of Palestine.

Palestinian civil society has consistently raised concerns in this forum about Israel's flagrant disregard for the authority and mechanisms of the UN, evidenced most recently by its disengagement from the Council and its non-participation in its second Universal Periodic Review (UPR), scheduled for 29 January 2013. Despite PHROC's repeated calls on Member States not to make concessions to secure Israel's renewed cooperation, it has become apparent that Israel's ongoing efforts to undermine the validity of Item 7 of the Council agenda have been acquiesced to by some States at a time when negotiations for Israel's return to the UPR are underway.

Despite 46 years of persistent violations of international law in the Occupied Palestinian Territory (OPT) – including the commission of war crimes and grave breaches of the Geneva Conventions – and increasing noncompliance with the functions of the UN, Israel has now been granted the privilege of negotiating its participation in the work of the highest international body for the protection and promotion of human rights.

Such indications of the willingness among members of the international community to supersede international legal standards in favour of diplomatic cooperation raise significant concerns when considered in light of the ongoing parallel peace negotiations. While PHROC affirms the importance of peaceful conflict resolution and believes that negotiations are a legitimate means to achieve this end, it is imperative that international legal standards constitute the foundation on which they, and all governance matters, are concluded.

Yet, thus far, international law has been given little or no relevance in peace processes, with nothing in the Oslo Accords, for example, committing Israel to dismantling its settlements in the OPT, despite their clear illegality under international humanitarian law (IHL). Genuine enforcement of international law – as a basis for negotiations as well as its customary application and regulation – can contribute to the overall peaceful resolution of the conflict. Clear solutions to nearly all of the final status issues, which have perennially stalled negotiations between the Occupying Power and the occupied population, are provided for by IHL – from the issue of territorial borders, to rights of displaced Palestinians, to claims over Jerusalem and the West Bank's water resources, to the question of Israeli settlements in the OPT and illegal regime of closure of the Gaza Strip. Moreover, Articles 7 and 47 of the Fourth Geneva Convention uphold the inviolability of the rights conferred upon the occupied population.

With the impending 20-year anniversary of the Oslo Accords, underscored by the current process of negotiations led by United States Secretary of State John Kerry, the international

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community must contemplate the impact of an initiative that has outlasted its intended timeframe; and an approach that has succeeded in providing Israel with the opportunity to create facts on the ground, thereby steadily and severely undermining the economic, social and political development of the Palestinian people. It has long since been clear to the occupied Palestinian population that the Oslo Accords would not allow them to exercise of their sovereign rights, but rather act as a means to deny their inalienable right to self-determination.

In fact, through the Oslo Accords, Israel sought to benefit from the rights of an Occupying Power under international law, by achieving the formalisation of its colonial regime, but simultaneously side-step its duties and responsibilities as administrator of the occupied territory.

Crucially, given the current negotiations within an enduring climate of impunity for Israel, PHROC re-asserts that the aggressive nature of the occupation of the West Bank, including East Jerusalem, and the Gaza Strip has been characterised by the colonial implantation of settlers, as well as the unlawful exercise of sovereign rights over territory and natural resources. Collective punishment and severe violations of human rights are continuously employed to deal with any Palestinian dissent.

Since the signing of the Oslo Accords in 1993, the settler population in the West Bank has increased from approximately 120,000 to over 500,000. As highlighted in the recent report of the UN Fact-Finding Mission on Israeli Settlements in the OPT, Israel's colonisation enterprise is leading to a 'creeping annexation' of the occupied territory that seriously undermines the right of the Palestinian people to self-determination. Since 1967, Israel has effectively appropriated hundreds of thousands of *dunums* (1,000 square meters) of land throughout the West Bank, including the annexation of East Jerusalem in violation of Article 2(4) of the UN Charter.

The Israeli authorities continue to pursue their policy of *de facto* annexation of the fertile Jordan Valley, some of the most geopolitically strategic areas of the West Bank, by creating facts on the ground with the intent of forcibly transferring the Palestinian population from the region in contravention of Article 49(1) of the Fourth Geneva Convention.

Significantly, during the Oslo process, the Jordan Valley was excluded from the Israeli 'commitment' to halt the establishment of new Israeli settlements and the expansion of existing ones in the OPT.¹ More than 90 per cent of the Jordan Valley was classified as Area C and continued to be under full Israeli administrative and military control, including for planning and designation of land use. Consequently, the Oslo Accords have facilitated Israel's unlawful exercise of sovereign rights over this area and have repeatedly been used by the Israeli authorities to appropriate Palestinian natural resources; the transfer of control in the Jordan Valley to the Palestinian Authority (PA), despite being foreseen by the Oslo Accords, has *de facto* never been implemented.

Israel's jurisdiction over Area C also cements its 46-year-long exploitation of Palestine's water resources and makes integrated planning and management of these vital resources virtually impossible for the PA. While 95 per cent of Palestinians reside in Areas A and B, the infrastructure upon which they depend lies inside or crosses into Area C. The 1995 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo II) promised Palestinians an additional 28.6 mcm of water per year "during the interim period" in order "to meet the immediate needs of the Palestinians in fresh water for domestic use,"

¹ The Knesset, 'Prime Minister Rabin in Knesset: Ratification of Interim Agreement' (5 October 1995) <<http://www.mfa.gov.il/mfa/mfa-archive/1995/pages/pm%20rabin%20in%20knesset-%20ratification%20of%20interim%20agree.aspx>> accessed 27 June 2013.

and another 70 – 80 mcm per year for “future needs.” This estimation of “future needs” still governs the water sector today, 18 years after Oslo II and 13 years after its expected end. Since 1995, the Palestinian population has doubled.

The Oslo Accords did not result in greater access to the natural resources of the OPT. In reality, the Oslo II continues to facilitate Israel’s illegal exercise of sovereign rights over Palestinian natural resources.

As immovable property, land and water are part of the occupied territory’s capital and are consequently protected by Article 55 of the Hague Regulations. According to this provision, Israel is regarded as the administrator and usufructary of the OPT’s natural resources and is therefore prohibited from damaging or destroying these resources or undermining their capital. Furthermore, Israel is obliged to utilise Palestinian natural resources exclusively to meet the needs of the local population and for the purpose of maintaining public order and safety in the OPT. Accordingly, the Israeli authorities are absolutely prohibited from exploiting the resources in a way that results in economic benefits for its national economy and citizens, including settlers.

While Israeli settlers and the State of Israel profit from the appropriation and extraction of Palestinian natural resources, the Palestinian economy is severely curtailed. In its 2013 Economic Monitoring Report, the World Bank warned that the Palestinian economy has deteriorated since the late 90s, with agricultural productivity levels roughly halved and the manufacturing sector all but stagnant.

The continued construction of settlements after the signing of the Oslo Accords and during the interim period was a key factor in the breakdown of the Oslo process. Yet, despite the findings of the most recent UN fact-finding mission to Palestine declaring that Israel’s illegal settlement enterprise entails serious breaches of peremptory norms of international law, even its *temporary* discontinuation as a measure of goodwill by Israel has been taken off the negotiating table on this occasion. Conversely, Palestine has been required to desist from pursuing the realisation of its right to self-determination and its human rights agenda at the UN.

Given the distinct absence of recourse to effective legal remedy for Palestinians within the discriminatory Israeli legal system, the willingness displayed by some members of the international community to sideline international legal standards and mechanisms in an effort to secure Israel’s cooperation, and the detrimental impact of such an approach on the lives of Palestinian people over the past 46 years, it is essential that Member States reassert their commitment to the rigour of international law. Regardless of parallel political negotiations, PHROC particularly calls for a rigorous examination of Israel’s human rights record in its upcoming UPR.
