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## Human Rights Council

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

### **Written statement\* submitted by 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.

[27 May 2021]

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



## The Prohibition on Settlements and Corollary Violations of International Law

Since 1967, and as of January 2021, some 267 settlements were established by the Government of Israel in the occupied West Bank, including East Jerusalem. In doing so, it transferred an estimated number of 800,000 of its nationals onto occupied territory (325,000 in East Jerusalem, and 476,000 in the rest of the West Bank).<sup>1</sup>

The entrenched practice of transferring Israeli nationals onto occupied Palestinian territory, establishing settlements, and continuously expanding those has had adverse humanitarian and human rights impact on Palestinians across the West Bank, through the expropriation of land, the extensive and wanton destruction of property, the forcible transfer of Palestinians away from areas slated for settlement expansion, and the aberrant obstruction of humanitarian relief – provided by the Norwegian Refugee Council (NRC) and its partners – and destined to Palestinians in need.

NRC<sup>2</sup> data shows that as of December 2020, 131,000 Palestinians have been forcibly transferred through destruction of residence and evictions carried out by Israeli authorities, of which 12,000 people were forcibly displaced between 2008 and 2020.

An ongoing analysis carried out by UNOCHA and the NRC-led West Bank Protection Consortium shows that of the 7,591 structures – owned and inhabited by Palestinians – destroyed by Israel since 2009<sup>3</sup>, 70 percent were within 1.5 kilometers of settlements, with 84 percent of demolitions taking place within 2.5 kilometers of settlements. This should be seen as probative evidence of the causal link between the establishment of settlements and the plight of Palestinians.

881,000 Palestinians require protection due to recurrent violations of international law and the coercive environment generated by settlements in East Jerusalem and Area C of the West Bank. NRC and its partners target humanitarian relief to the most vulnerable Palestinian communities, combining community-based protection activities, the provision of basic and social infrastructure, and legal aid services.

Through extensive litigation, NRC observed that the Israeli judiciary is careful to avoid ruling on settlements legality, subsequent to a denied petition against the settlement enterprise<sup>4</sup>, claiming that it was unjudicial since it would amount to "intervention in questions of policy that are in the jurisdiction of another branch of Government, the absence of a concrete dispute and the predominantly political nature of the issue."

Nonetheless, this is a matter regulated by various branches of public international and in violation of its peremptory norms, which are obligations *erga omnes*.

The law of belligerent occupation – forming part of the *jus in bello* - prohibits a number of different practices which, taken together, affect the demographic structure of the occupied territory.<sup>5</sup>

Deportations of parts of the population and the transfer of parts of the population of the occupying power - forbidden under Article 49 of the Fourth Geneva Convention (GCIV) - are forbidden acts having this direct effect.

Article 49 of the GCIV prohibits the occupying power from transferring parts of its own civilian population into the territory that it occupies. This prohibition has attained the status of customary international law.<sup>6</sup> It has been established that such prohibitions apply simultaneously to the establishment, expansion, and promotion of settlements by the

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<sup>1</sup> <http://westbankjewishpopulationstats.com/>.

<sup>2</sup> <https://www.internal-displacement.org/countries/palestine>.

<sup>3</sup> <https://www.ochaopt.org/data/demolition>.

<sup>4</sup> HCJ 4481/94 Bargil v. The Government of Israel.

<sup>5</sup> ICJ, Construction of a Wall, Advisory Opinion, paras. 121 et seq., 133.

<sup>6</sup> Confirmed by the Customary International Law Study of the ICRC, see Rule 130.

occupying power,<sup>7</sup> as they are inherently incompatible with either the benefit of the local population or military exigency in the course of administering occupied territory.

Article 49(6) states that any transfer of the Occupying Power's population to the occupied territory is prohibited, regardless of whether the transfer was voluntary or forced. As clearly stated by the ICJ Advisory Opinion determining that the Israeli settlements in the oPt are established in breach of international law: "That provision prohibits not only deportations or forced transfers of population such as those carried out during the Second World War, but also any measures taken by an occupying power in order to organize or encourage transfers of parts of its own population into the occupied territory. In this respect, the information provided to the Court shows that, since 1977, Israel has conducted a policy and developed practices involving the establishment of settlements in the Occupied Palestinian Territory, contrary to the terms of Article 49, paragraph 6, just cited."<sup>8</sup>

Because of their permanent impact on the demographic structure of occupied territory, they violate the principle of the transitional de facto nature of the control over the territory exercised by the Occupying Power. These measures are therefore equivalent to institutional changes affecting the rights of the population of the occupied territory, which are forbidden by Article 47 of GCIV.

Settlements and corollary violations of IHL are not only subject to the jus in bello, but also to rules pertaining to the prohibition of the use of force, the jus contra bellum, and the right of self-determination. There are connections between these two fields of international law, because and where the jus in bello protects the same interest as the jus contra bellum. Where the law of occupation prohibits measures changing the status of the occupied territory, in particular, its annexation during the armed conflict, the rule of the jus contra bellum, which prohibits territorial changes being affected by force, is also at stake.

The formulation of the principle of the prohibition of the use of force in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States.<sup>9</sup> In the same vein, Article 5 of the Definition of aggression (UNGA Resolution 3314) provided that "No territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful."<sup>10</sup>

Settlements thus meet the definition of an act of aggression as related, inter alia, to the invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof. It was likewise codified as a crime of aggression under ICC Resolution RC/Res.6 (2010).

A formal declaration of annexation is not the only way in which the prohibition is violated. What matters is the factual acquisition of the territory, which is well reflected in the Friendly Relations Declaration. This may be attempted by such a declaration, but also by other legal instruments purporting to exercise sovereign rights over an annexed territory or by factual activities having an equivalent effect, such as the establishment of civilian settlements.

The ICJ holds such activities to be a prohibited "de facto annexation."<sup>11</sup> Its Advisory Opinion formulates this verdict in respect of the construction of a wall that prevented the freedom of movement as well as the beneficial use of land by the Palestinian population, caused it to move away, and thus changed the demographic structure of the oPt in favor of Israel. The same applies to the settlements policy and to other measures causing members

<sup>7</sup> David Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories*, State University of New York, 2002; Eyal Benvenisti, *The International Law of Occupation*, Oxford, 2012.

<sup>8</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, International Court of Justice, 9 July 2004.

<sup>9</sup> <https://www.un.org/ruleoflaw/files/3dda1f104.pdf>.

<sup>10</sup> [https://undocs.org/en/A/RES/3314\(XXIX\)](https://undocs.org/en/A/RES/3314(XXIX)).

<sup>11</sup> [https://undocs.org/en/A/RES/3314\(XXIX\)](https://undocs.org/en/A/RES/3314(XXIX)).

of the Palestinian population to move away from places where they live and wish to continue to live.<sup>12</sup>

Changing the status of the occupied territory, or of parts thereof, in a way meant to be permanent, or any de facto or de jure annexation are prohibited. This is the effect of the systematic establishment of Israeli settlements, which constitutes a transfer of the Occupying Power's population into the occupied territory prohibited by Art. 49 GCIV<sup>13</sup>, noting that the arguments put forward by Israel to the contrary have unanimously been rejected by the international community, including the ICJ.<sup>14</sup>

Established as a grave breach under Article 147 of GCIV, the crime of transfer of population is contained within the Rome Statute Article 7 (d)<sup>15</sup>, which does not require the transferees to be coerced, and therefore applies to the voluntary transfer of nationals of the occupying power – as far as it is attributable in some way to the occupying power. This conclusion is apparent from the Rome Statute and is further supported by the underlying prohibition found in the jus in bello and jus contra bellum.

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<sup>12</sup> ICJ, Construction of a wall, Advisory Opinion, para. 121.

<sup>13</sup> ICJ, Construction of a Wall, paras. 122, 134.

<sup>14</sup> ICJ, Construction of a Wall, Advisory Opinion, para. 120.

<sup>15</sup> See, inter alia, Security Council Resolution 446 (1979) and 465 (1980).