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Joint Written statement submitted by Habitat International Coalition, BADIL Resource Center for Palestinian Residency and Refugee Rights, Al Haq Law in the Service of Man and Al Mezan Centre for Human Rights (nongovernmental organizations with special consultative status)¹

Follow-up to the report of the International Fact-Finding Mission on Israeli Settlements

In its report presented to the 22nd session of the United Nations (UN) Human Rights Council (the Council) on 18 March 2013², the International Fact-Finding Mission on Israeli Settlements in the Occupied Palestinian Territory (OPT) outlined Israel's ongoing and persistent violations of international human rights and humanitarian law along with the relevant international legal norms and remedial measures available to secure justice for the occupied Palestinian population.

The report echoed previous UN findings, including those of a 1979 commission on settlements established by the UN Security Council (SC), which concluded that "the Israeli Government is actively pursuing its wilful, systematic large-scale process of establishing settlements in the occupied territories."³

Common Article 1 of the Geneva Conventions obliges the High Contracting Parties to ensure respect for the provisions of the Conventions. According to prominent scholars, this obligation should not be seen as merely reinforcing States' general obligation to respect, but entails a duty on States to take all possible steps to ensure that the rules enshrined in the Conventions are respected by all, and in particular by the parties to a conflict.⁴ The High Contracting Parties have not fulfilled their corresponding duties,⁵ eroding faith in the measures envisioned under the Convention by failing to apply corrective provisions available to them. This inaction effectively facilitates the maintenance of settler colonies, and erodes global confidence in international law.

Importantly, the Mission's report also reaffirms that Israeli settlements amount to serious breaches of peremptory norms of international law, including the right to self-determination, the prohibition against extensive destruction and appropriation of property and the prohibition against colonialism. Article 41 of the International Law Commission (ILC) Draft Articles on State Responsibility, which reflects customary international law, states that in case of breaches of peremptory norms of international law all States are under an obligation not to recognise the situation resulting from the illegal conduct as lawful, not to render aid or assistance in maintaining the illegal situation and to actively cooperate in order to bring it to an end.

The obligation to actively cooperate to bring any serious breach of peremptory norms of international law to an end through lawful means could be organised either in the framework of a competent international organization, or through means of noninstitutionalised cooperation. Article 41 of the ILC Draft Articles does not indicate what measures States should take in order to bring serious breaches to an end. Such measures should be lawful and shall result in joint and coordinated efforts by all States in order to appropriately respond to the challenge that serious breaches of peremptory norms represents for the international community as a whole.

We are gravely concerned that Member States of the UN have neglected their international cooperation obligations to adequately address the extensively reported war crimes and grave breaches of the Fourth Geneva Convention committed by Israel in the OPT, composed of the West Bank, including East Jerusalem, and the Gaza Strip.

It may be noteworthy that the Fact-Finding Mission, in its report, makes recommendations primarily to the State of Israel and to Third States. Rather than calling on existing institutions or organisations to act, the report emphasised the responsibility of individual States to take necessary steps to initiate unilateral and coordinated measures aimed at reversing Israel's settlement enterprise. In its recommendation to Third States, the Fact-Finding Mission 'calls upon all Member States to comply with their obligations under international law and to assume their responsibilities

in their relations with a State breaching peremptory norms of international law, and specifically not to recognise an unlawful situation resulting from Israel's violations.'⁶

This recommendation is not new. UNSC resolution 465 (1980) called upon "all States not to provide Israel with any assistance to be used specifically in connexion [sic] with settlements in the occupied territories."⁷ The same set of obligations was recalled by the Court with regard to Israel's construction of the Annexation Wall in the OPT. In its Advisory Opinion on the Wall, the ICJ stated that "[g]iven the character and the importance of the rights and obligations involved [...], [i]t is also for all States, while respecting the United Nations Charter and international law, to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end."⁸ The Court further reiterated that "[a]ll States are under an obligation not to recognise the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction."⁹

Yet, despite the report's detailed account of the pivotal role of Israel's parastatal institutions, including the World Zionist Organization,¹⁰ in these activities, at least 50 States—18 of which are Council members¹¹—continue to host these institutions, affording them tax-exempt charity status," while they mobilise financial and human capital within their sovereign territories for the benefit of the illegal settlement enterprise.

In addition, bilateral trade between individual Third States and settlements further bolsters their economy and contributes to their permanence and growth, while, at the same time, having an increasingly negative effect on Palestinian living conditions. By allowing settlement produce to enter their internal markets, Third Party States and in particular EU Member States, given their status as Israel's largest trading partner, implicitly recognise as legal a situation arising from a breach of peremptory norms of international law and thus violate their duty of nonrecognition.

The Council's follow-up resolution to the Fact-Finding Mission's report (A/HRC/22/L.45) failed to "endorse" the fact-finding report, though did recognise the Fact-Finding Mission's assessment of "State responsibility for internationally wrongful acts, including Third State responsibility"¹² by requesting 'that all parties concerned [...] implement and ensure the implementation of the recommendations contained therein in accordance with their respective mandates.'¹³

In 2013, with greater clarity about Israel's systematic breaches of international law in the OPT and significant advancements in the development of international accountability mechanisms and remedial options, the Council has an important role to play in specifying States' own duties to act. Given the broad scope of the recommendations made by the Fact-Finding Mission with regard to State responsibilities stemming from peremptory norms, the complexity of diplomatic, political and economic relationships between States and the Occupying Power, and the urgency presented by the creeping annexation entailed in Israel's settlement enterprise, we refer Member States of the UN to the following remedial actions that could and should be undertaken to comply with their obligations under international law by:

1. Adopting a ban on the import of Israeli produce coming from settlements into their markets;
2. Excluding settlement produce and companies involved in their trade from public procurement tenders;
3. Freezing the assets of legal and natural persons responsible for violation in international law;
4. Downgrading diplomatic relations with States committing and abetting these offenses;
5. Ending cooperation with Israel's parastatal institutions involved in funding or maintaining Israel's illegal settlement enterprises (including the World Zionist Organisation, the Jewish Agency, the Jewish National Fund, the United Israel Appeal, Mekorot and its affiliates) and revoking their privileged charitable status;
6. Imposing international and domestic sanctions on institutions supporting, or benefitting from settler colonies and/or natural-resource extraction in Palestine;

7. Withholding weapons, building materials, equipment and services that maintain the settler colony regime;
8. Prohibiting products and services originating from sources that support, benefit from, or are located in settler colonies;
9. Reviewing any assistance to, or cooperation with, the State Israeli, which may directly or indirectly aid the settler colony regime;
10. Ensuring that UN specialised organisations and programmes conform to these remedial terms.¹⁴

Endnotes

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² “Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem,” A/HRC/22/63, 7 February 2013 .

³ Report of the Security Council Commission established under resolution 446 (1979), document S/14268, p. 47.

⁴ L. Boisson and L. Condorelli, “Common Article 1 of the Geneva Conventions Revisited: Protesting Collective Interests” International Review of the Red Cross, 837 (2000). According to the authors, while there were views that Article 1 was not drafted with the intention of imposing obligations on States that were not also derived from the other provisions of the Geneva Conventions, a more careful examination of the travaux préparatoires reveals that the negotiators clearly had in mind the need for the parties to the Conventions to do everything they could to ensure universal compliance with the humanitarian principles underlying the Conventions.

⁵ Besides the obligations under Common Article 1 to the Geneva Conventions, the High Contracting Parties have additional obligations under Article 146 of the Fourth Geneva Convention, which is the cornerstone of the system utilised for the repression of serious violations of the Convention (grave breaches). Given the seriousness of these violations, which are affecting the international community as a whole, the High Contracting Parties to the Conventions are under an obligation to enact any legislation necessary to provide effective penal sanctions, to search for and prosecute individuals alleged to have committed, or to have ordered to be committed, these crimes, in accordance with the principle of universal jurisdiction. Grave breaches of the Fourth Geneva Convention are listed in Article 147, which includes in this category also the unlawful deportation or transfer of protected persons.

⁶ A/HRC/22/63, (n. 1), para. 116.

⁷ Security Council Resolution S/RES/465, 2203rd meeting, 1 March 1980, para. 7.

⁸ Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory (Advisory Opinion) ICJ Rep 2004, para. 159

⁹ Ibid.

¹⁰ A/HRC/22/63, (n 1), pp. 6, 28, 21, 32

¹¹ Argentina, Austria, Brazil, Chile, Costa Rica, Czech Republic, Ecuador, Germany, Guatemala, India, Italy, Peru, Poland, Romania, Spain, Switzerland, United States of America and Venezuela (Bolivarian Republic of), cited in <http://www.jnf.org/map.html>, www.jnf.org and www.kklamericalatina.org, www.wzo.org, <http://www.jnf.org/about-jnf/in-your-area/>, <http://www.wzo.org.il/Zionist-Federations>, <http://www.jafi.org/JewishAgency/English/Aliyah/Contact+Addresses/Representatives/Europe.htm>, and <http://www.jafi.org.il/JewishAgency/English/Contact+Us/International+Offices/>.

¹² Ibid., para. 17.

¹³ “Follow-up to the report of the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem”, A/HRC/22/L.45, 19 March 2013, operational paragraph 1.

¹⁴ General Assembly resolution “The situation in the Middle East,” A/37/123, 16 December 1982, para. 16.