



General Assembly

Distr.: General
19 February 2021

English only

Human Rights Council

Forty-sixth session

22 February–19 March 2021

Agenda items 2 and 7

Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Human rights situation in Palestine and other occupied Arab territories

Joint written statement* submitted by Al-Haq, Law in the Service of Man, Al Mezan Centre for Human Rights, Palestinian Centre for Human Rights, 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.

[01 February 2021]

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



Ensuring Accountability and an End to Impunity in Palestinian territories

One year on from the closing of the preliminary examination by the Prosecutor of the International Criminal Court (ICC) into the suspected commission of international crimes in the Occupied Palestinian Territory (OPT)¹, it is imperative that meaningful and effective steps are taken by all States to ensure that accountability and an end to impunity are achieved in the situation in the State of Palestine without any further delay. Israel's continued maintenance of institutionalised racial domination and oppression over Palestinians,² amounting to the crime of apartheid within the meaning of the Rome Statute³ and the Apartheid Convention,⁴ has, in the context of the ongoing COVID-19 pandemic,⁵ accentuated the pressing need for immediate action by the international community, including through the Human Rights Council.

State Responsibility

All States have a legal obligation to refrain from recognising as legitimate the unlawful situation and apartheid system imposed on Palestinians on both sides of the Green Line, as well as refugees and exiles denied their right of return, and have the obligation to cooperate to bring the unlawful situation to an end, including through international organisations and bodies, including the Council.⁶

States must implement the recommendations of all previous United Nations (UN) investigatory mechanisms on the OPT, including ten fact-finding missions and commissions of inquiry since 2000. In particular, the Council must ensure the implementation of the recommendations of the UN Commission of Inquiry on the 2018 protests in the OPT, which urged that Israel, the Occupying Power, lift the unlawful closure and blockade of the Gaza Strip, amounting to collective punishment, with immediate effect.⁷ In light of decades of Israeli systematic impunity, the commitment made by States towards the implementation of these recommendations for international justice and accountability for Palestinians remains unfulfilled. Notably, since the adoption of Human Rights Council resolution 40/13 on 22 March 2019,⁸ in which States committed to implementing the recommendations of the UN Commission of Inquiry on Protests in the OPT, no meaningful steps have been taken to hold perpetrators to account and to ensure the non-repetition of international crimes committed against Palestinians.

¹ Al-Haq, Law in the Service of Man (Al-Haq), "Palestinian Organisations Call on the Prosecutor of the ICC to Open an Investigation into International Crimes in the OPT," 7 January 2021, at: <https://www.alhaq.org/advocacy/17749.html>.

² Al-Haq, "Palestinian, regional, and international groups submit report on Israeli apartheid to UN Committee on the Elimination of Racial Discrimination," 12 November 2019, at: <https://www.alhaq.org/advocacy/16183.html>.

³ Rome Statute of the International Criminal Court (adopted 17 July 1998, entry into force 1 July 2002).

⁴ International Convention on the Suppression and Punishment of the Crime of Apartheid (adopted 30 November 1973, entry into force 18 July 1976), UN Document A/RES/3068(XXVIII).

⁵ Al-Haq, COVID-19 and the Right to Health of Palestinians under Israeli Occupation, Colonisation, and Apartheid (December 2019), at: https://www.alhaq.org/cached_uploads/download/2020/12/08/covid-19-and-the-right-to-health-interactive-1-page-view-1-1607410547.pdf.

⁶ Article 41, Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001).

⁷ UN Human Rights Council, Report of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory (6 March 2019), UN Document A/HRC/40/74, para. 122(a).

⁸ UN Human Rights Council Resolution 40/13 (22 March 2019), UN Document A/HRC/RES/40/13.

Similarly, States must commit to ensuring full corporate accountability by tackling the central role played by corporate entities in the maintenance and proliferation of the legal regime of apartheid and illegal settlement enterprise maintained by Israel. All States must prohibit the sale and import of goods originating from illegal Israeli settlements in the occupied West Bank, including East Jerusalem, and to ensure that enhanced human rights due diligence is made mandatory for all corporate entities domiciled in their territories and doing business in conflict situations. In particular, Member States must commit to supporting the regular update of the crucial UN database on businesses engaged in Israel's illegal settlement enterprise and ensure that its contents are accurate and exhaustive.⁹

The unlawful situation, inclusive of apartheid and the ongoing-prolonged occupation of the OPT, cannot be brought to an end without the adoption of such effective measures. It is necessary for the international community, including Member States and the Council, to uphold their international obligations and bring an end to institutionalised impunity for widespread and systematic human rights violations against the Palestinian people. As noted in 2019 by the UN Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967: "An international community that took seriously its legal responsibilities to challenge and end internationally wrongful acts would have concluded long ago that Israel, the occupying Power, was not sincere about seeking to end the occupation."¹⁰

Individual Criminal Responsibility

Despite the Prosecutor of the ICC's assessment that "There is a reasonable basis to believe that war crimes have been or are being committed in the West Bank, including East Jerusalem, and the Gaza Strip,"¹¹ Israel's pervasive impunity for such crimes, and for systematic human rights violations, has continued largely unchallenged. All States have a responsibility, enshrined in the Geneva Conventions, to ensure that the provisions of the Convention are respected,¹² and to take positive measures to ensure that persons responsible for grave breaches are brought to justice.¹³

Despite the urgent need for justice and accountability, a number of States placed on the record before the ICC their opposition to a full, thorough, and comprehensive investigation into suspected international crimes committed in the OPT. This is despite the fact that the serious crime of population transfer, inherent in Israel's illegal settlement enterprise, the use of lethal and other excessive force against Palestinian civilians amounting to wilful killing, persecution, pillage, and the wilful and widespread destruction of private and personal property all amount to crimes of the utmost concern to the international community as a whole, and as such must be the subject of immediate criminal investigation by the ICC.

Similarly, States have a legal obligation under the Geneva Conventions to pursue accountability for international crimes and widespread and systematic violations of human rights through the activation of universal jurisdiction mechanisms to try suspected perpetrators in their own courts. Such mechanisms remain an important avenue by which impunity for international crimes and human rights violations should be challenged. Accordingly, States must ensure the activation of all appropriate universal jurisdiction mechanisms.

⁹ Al-Haq, "Palestine: Al-Haq and CIHRS Welcome Publication of UN Database on Settlement Business Activities," 13 February 2020, at: <https://www.alhaq.org/advocacy/16449.html>.

¹⁰ UN General Assembly, Situation of human rights in the Palestinian territories occupied since 1967 (21 October 2019), UN Document A/74/507, para 78.

¹¹ ICC, Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine (22 January 2020), ICC-01/18-12, para 2.

¹² See Article 1, Geneva Convention Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entry into force 21 October 1950), 75 UNTS 287 (the "Fourth Geneva Convention").

¹³ Article 146, Fourth Geneva Convention.

Continued delay in opening an investigation into the situation in the State of Palestine at the ICC and the failure by third States to activate universal jurisdiction mechanisms represents a return, if not continuation, of an era wherein Palestinians were told that the attainment of justice was complicated by “complex legal issues”.¹⁴ Moreover, it is exceptionally clear that Israel is entirely unwilling to hold its own state agents and military hierarchies accountable for manifest breaches of international law, while simultaneously shackling the Palestinian authorities from being able to do so.¹⁵

Recommendations

Accordingly, we call on Member States of the Human Rights Council to:

1. Ensure the implementation of the Council’s existing mandates, in particular those regarding accountability for international crimes and human rights violations committed in the OPT, including all previous UN investigatory mechanism and the UN database, in order to ensure that their recommendations are followed;
2. Demand a full, immediate, and unconditional end to the unlawful closure of the Gaza Strip, in line with the international obligations of all States and the recommendations of the latest UN Commission of Inquiry;
3. Take meaningful and effective measures to ensure that all necessary steps are taken at the national and international levels to combat corporate complicity in the apartheid system imposed over the Palestinian people as a whole, and in the occupation of the OPT;
4. Honour their obligations under the Fourth Geneva Convention and international law to pursue justice and accountability of all grave breaches of the Convention in the OPT, including through the universal jurisdiction mechanisms; and
5. Recognise the state of impunity existing in Israel, which decisively renders the State unable and unwilling to hold itself accountable, and support the opening of a full, thorough, and comprehensive investigation into the situation in the State of Palestine before the ICC, and encourage the Office of the Prosecutor to proceed without any further delay.

Addameer Prisoner Support and Human Rights Association, Aldameer Association for Human Rights, Community Action Center, the Civic Coalition for Palestinian Rights in Jerusalem, and the Palestinian NGOs Network (PNGO), NGO(s) without consultative status, also share the views expressed in this statement.

¹⁴ Al-Haq, “After Five Years the Prosecutor of the International Criminal Court Finally Advances the Situation of Palestine from Preliminary Examination to the Pre-Trial Chamber for questions on Territorial Jurisdiction,” 20 December 2019, at: <http://www.alhaq.org/advocacy/16323.html>.

¹⁵ Al-Haq, “Arguments Raised in Amici Curiae Submissions in the Situation in the State of Palestine Before the International Criminal Court,” 29 April 2020, para 11, at: https://www.alhaq.org/cached_uploads/download/2020/04/29/print-response-to-amici-curiae-submissions-interactive-1588152722.pdf.