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High Commissioner and the Secretary-General**

Written statement* submitted by BADIL Resource Center for Palestinian Residency and Refugee Rights, 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.

[6 February 2023]

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



Excessive Use Of Force and The Responsibility Of Israel and The International Community

On January 26, 2023, nine Palestinians were murdered by the Israeli occupation forces during a raid on the Jenin refugee camp. A tenth victim succumbed to his wounds in the subsequent days. Furthermore, Israeli forces deliberately damaged or completely destroyed multiple structures, including family homes, while carrying out the raid. This raid comes on the heels of one of the deadliest years for Palestinians in the past two decades and follows a summer of increased closures of and violent military incursions into refugee camps in the occupied Palestinian territories, particularly in the cities of Nablus, Jenin, and Bethlehem, where popular anti-colonial resistance groups continue to fight for liberation. In the month of January alone, more than 30 Palestinians were killed by Israeli forces.¹

The excessive, disproportionate and indiscriminate use of force by Israel during raids on numerous Palestinian villages, cities, and refugee camps, violates the right to life and other fundamental freedoms protected by international humanitarian law (IHL) and human rights law (IHRL). It is also part of a wider Israeli policy aimed at forcibly transferring and ethnically cleansing the Palestinian people in order to sustain its colonial-apartheid system, in violation of the Palestinian right to self-determination. Moreover, the human rights abuses that have taken place in refugee camps, including targeted and widespread killings and detentions, the destruction of homes, and the widespread denial of access to basic services, are further violations of international law.

I. Israel's International Responsibility

The policies and practices associated with Israeli raids on Palestinian communities contravene multiple bodies and sources of international law. Targeted and widespread killings of Palestinians by Israeli forces during these raids flout the most fundamental and basic right afforded to all human beings, that of the right to life, which is explicitly enshrined in and protected by the International Covenant on Civil and Political Rights (ICCPR).² Moreover, the right to security of the person that is enshrined in the ICCPR is interrelated with the right to life. Excessive use of force is a strategy used by Israel to silence, punish and weaken legitimate resistance against its oppression of the Palestinian people.³ Furthermore, in the context of Israel's domination over Palestinians, willful killings, such as those discussed above, are considered crimes of apartheid under article 2 of the Convention on the Suppression and Punishment of the Crime of Apartheid.⁴

Given the status of Israel as the occupying power and the absence of an active organized armed resistance in the occupied Palestinian territories, it is generally agreed upon that the IHL's conduct of hostilities paradigm is inapplicable in the occupied Palestinian territories.⁵ Instead, the law enforcement paradigm is applicable in all circumstances, including raids, clashes and arrest operations.⁶ In the law enforcement paradigm, both IHL and IHRL govern the policing of the occupied Palestinian territories by the Israeli police, army, and security forces.⁷ As the International Court of Justice (ICJ) reaffirmed in the Wall Advisory Opinion in 2004, IHRL is applicable in situations of occupation because it protects the rights of individuals, in tandem with the protections guaranteed by IHL,⁸ which seeks to limit the effects of armed conflict.⁹ Furthermore, Palestinians, as an occupied people, are protected persons under Article 4 of the Fourth Geneva Convention, and as such, must be protected against all acts of violence and threats and "shall at all times be humanely treated,"¹⁰ as enshrined in Article 27 of the same convention.

Israel, as the occupying power in the West Bank including East Jerusalem and the Gaza Strip, is bound by the Hague Regulations of 1907 and the Fourth Geneva Convention of 1949, both of which expressly prohibit the destruction of civilian property.¹¹ Israel's rampant destruction of Palestinian homes during these raids is an indisputable breach of its obligations and responsibilities per these treaties. In fact, the demolition of Palestinian homes does not only occur during these raids but forms an integral pillar of Israel's policy of collective punishment and is regularly deployed as a means to suppress Palestinian resistance. These

actions therefore contribute to the creation of a coercive environment forcing Palestinians to flee their lands and property.

The Israeli colonial-apartheid system has shown time and again that it is unwilling and unable to investigate and hold accountable the institutions and individuals responsible for these crimes, resulting in total impunity and creating an environment in which these crimes can and will continue to be committed.

II. The International Community's Responsibility

Israel's impunity is enabled by the international community's lack of political will to sanction Israel, due to increasing fear of international alienation and scrutiny. Notwithstanding this political reality, third-party stakeholders have both positive and negative obligations, triggered in response to breaches of peremptory norms, which include the right to self-determination and the prohibition of apartheid and racial discrimination. As delineated in the Draft Articles on Responsibility of States for Internationally Wrongful Acts, these include the positive duty to "cooperate to bring an end through lawful means any breach" and the negative duty not to "recognize as lawful a situation created by a serious breach [...] nor render aid or assistance in maintaining the situation."¹²

In this case, third party states have the negative duty not to encourage, aid or assist Israeli colonial-apartheid policies and practices, including the widespread detention and killing of Palestinians, which are aimed at fostering ongoing forcible displacement of Palestinians from and within the occupied Palestinian territories as well as a positive duty to prevent and put an end to Israel's ongoing forcible displacement and collective punishment of Palestinians.

The responsibility of the international community to provide comprehensive protection to those who are entitled to it, is triggered when a state is unable or unwilling to ensure the protection of its citizens and individuals under its jurisdiction, as is the case of Israel and its colonial-apartheid system imposed on the Palestinian people. International protection encompasses three essential elements: physical safety and security, material assistance (relief and basic needs), and legal protection, including facilitation of durable solutions. Therefore, and in light of the many recent killings and the ongoing forcible displacement of Palestinians, it is incumbent upon the international community to assume this duty immediately.

Despite the extensive evidence that Israel is carrying out systematic violations against the Palestinian people and is subjecting them to a system of apartheid, no international accountability measure has been implemented to date. In fact, the international community continues to undermine the legal rights Palestinians are entitled to, as well as the international forums and judicial bodies that they resort to. This is especially evident in the EU's boycott of Item 7 in the UN Human Rights Council (HRC).

Ultimately, this lack of international intervention makes third party states complicit in Israel's crimes against the Palestinian people.

Therefore, BADIL calls on the HRC and third party states to:

- Take concrete steps to address Israel's policies and practices that create a coercive environment for Palestinians and take immediate action to prevent the widespread killings and impeding forcible displacement;
- Take effective measures to bring Israel into compliance with international law; including pursuing responsibility and accountability for injuries, loss of life and property through independent investigatory processes, in turn ensuring reparations for victims and prosecution of perpetrators of serious IHRL and IHL violations;
- Take practical measures, including ceasing any aid and assistance, imposing a military embargo, and exerting economic diplomatic sanctions, to bring Israel into compliance with its international obligations and its responsibilities towards Palestinians;
- Deploy international protective presence administered by the UN and ensure that this body has the mandate, authority, and necessary support to effectively provide protection to Palestinians and prevent violations of international law.

1. UN News, ‘UN rights chief appeals for Israelis and Palestinians to end ‘illogic of escalation’ (United Nations, 3 February 2023)
2. International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 6 [hereinafter ICCPR].
3. ICCPR, art 9(1).
4. International Convention on the Suppression and Punishment of the Crime of Apartheid (adopted 30 November 1973, entered into force 18 July 1976) A/RES/3068(XXVIII), art 2.
5. BADIL: Resource Center for Palestinian Residency and Refugee Rights (BADIL), *Excessive Use of Force by the Israeli Army: Case Study (2017)*, 7
6. *Ibid.*
7. *Ibid.*
8. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (ICJ Advisory Opinion) 2004*
9. BADIL, *Excessive Use of Force by the Israeli Army: Case Study (2017)*, 7.
10. Geneva Convention Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287, art 27 [hereinafter Fourth Geneva Convention].
11. Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land (1907), art. 53; Fourth Geneva Convention (n7), art 53.
12. International Law Commission, ‘Draft Articles on Responsibility of States for Internationally Wrongful Acts’ (2001) A/56/10, arts. 40 and 41.