

**Check against delivery**



**Statement by Mr. Michael Lynk**

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Palestinian territories occupied since 1967**

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**Chair, Excellencies, Distinguished Delegates, Ladies and Gentlemen,**

Thank you for the opportunity to present my annual 2019 report to the General Assembly as Special Rapporteur for this mandate. I am honoured to serve the international community through this important human rights responsibility.

Alas, I must again begin my presentation to you with the observation that the Government of Israel has continued with its unwavering stance of non-cooperation with the mandate of the Special Rapporteur. As I have mentioned during my three previous presentations from this dais, the Government of Israel has refused to grant entry for me to visit the Occupied Palestinian Territory and Israel. May I remind this distinguished audience that the cooperation of all member states is a fundamental obligation of United Nations membership, anchored in Articles 104 and 105 of the *Charter of the United Nations*, as well as in Article VI (Section 22) of the *Convention of the Privileges and Immunities of the United Nations*. A failure by a member state to respect its essential membership obligations should rightfully be opposed by its fellow members until its behaviour changes.

I would like to express my gratitude to the Hashemite Kingdom of Jordan for hosting my mission to the region this past July, and to the many human rights defenders, officials of the Palestinian Authority and the UN officers who travelled from the OPT to Amman to meet with me during my mission, or who made submissions to me through video links or in writing.

But, as I have stated before, nothing can substitute for the ability to visit the Occupied Palestinian Territory, to meet with people and organizations on the ground, to be able to collect my own evidence, and to see with my own eyes, the

state of human rights there. Allowing me to visit would also provide me with the opportunity to have exchanges with officials from the Government of Israel and learn more about their perspective. This stance of non-cooperation serves no one's interests, least of all the noble cause of human rights.

## **Excellencies,**

You have before you my full report, which reviews in some detail the human rights situation in the Occupied Palestinian Territory thus far in 2019. In the very short time that I have today, allow me to highlight **two** particular themes for your attention.

## **The Plight of Gaza**

As with my prior report, I must first focus on the severe humanitarian crisis in Gaza. This would properly be labelled a tragedy if I was reporting to you about a natural catastrophe and the ensuing scale of human suffering. But I'm not. I am instead speaking to you about a human-made catastrophe – the 12-year-old Israeli air, sea and land blockade of Gaza – and this is not a tragedy but an injustice that should be near the top of the world's agenda to end. As the two most recent UN Secretary-Generals have noted, this blockade of Gaza is a form of collective punishment, which is expressly prohibited under Article 33 of the Fourth Geneva Convention.

The economic situation in Gaza continues to move from dire to acute to unimaginable. According to the July 2019 report on Palestine issued by the United Nations Conference on Trade and Development, four out of five employees in

Gaza work for less than the minimum wage, the share of Gaza's productive sectors has fallen from 28% to 13% of GDP between 1994 and 2018, the share of manufacturing has dropped by half, to 8%, and its per capita real GDP is now less than half of that in the West Bank. All of this follows three devastating wars on Gaza over the past decade and, more recently, serious cuts in the humanitarian aid destined for Gaza, including aid earmarked to UNRWA. Today, over half of Gaza's population is food insecure, and the unemployment rate is over 50%, with 70% of Gazans under 30 years old without work. The health care system is collapsing, the available water is largely undrinkable and access to electrical power is intermitted and unreliable.

One cannot talk about the plight of Gaza without drawing attention to the ongoing deaths and maiming of Palestinian demonstrators by live Israeli fire at the Gaza frontier. Since March 2018, over 200 Palestinians – largely unarmed – have been killed by sniper fire, and more than 33,000 wounded. The Commission of Inquiry, which reported to the Human Rights Council this past March, found that virtually all of the demonstrators killed by Israeli soldiers were shot in violation of their right to life, and in breach of the principle of distinction under international humanitarian law. Yet, Israel has demonstrated virtually no accountability to address these actions, despite calls by the international community, by the 2019 Commission of Inquiry and by civil society for independent and transparent investigations by Israel into these serious human rights violations.

## **Excellencies**

I now wish to turn to the main focus of the current report: the lack of accountability and the endurance of impunity in the course of this 52-year-old occupation: the longest belligerent occupation in the modern world.

Above all, this occupation has been characterized by two defining features

First, the conduct of the Israeli occupation has been characterized by numerous, international and serious violations of international law, including human rights and humanitarian law. These violations have been criticized and condemned by a multitude of resolutions from the UN General Assembly, the Human Rights Council and the Security Council, and from other authoritative international bodies.

And, second, in the face of this persistent defiance and lack of accountability by the occupying power, the international community has displayed great unwillingness to impose any meaningful accountability on Israel for its permanent occupation and its serious violations of international law. In the face of the volumes of United Nations resolutions insisting that Israel unwind its occupation, end its settlement enterprise, undo its annexation of East Jerusalem, respect all of its human rights obligations, investigate purported war crimes, facilitate the return of Palestinian refugees and remove its obstruction to the full realization of Palestinian self-determination, Israel has remained profoundly resistant to international direction. Israel has rightly assessed that the international community – particularly the Western industrial nations – has lacked the political will to compel an end to its impunity. As a result, it has rarely faced meaningful consequences for its truculent behaviour. As the Israeli journalist Gideon Levy has

written: “No country is as dependent on the support of the international community as Israel, yet Israel allows itself to defy the world as few dare.”

For forty years, the international community has been insisting on full Israeli compliance with the direction of the United Nations. In 1979, the Security Council, in Resolution 446, demanded a complete end of the Israeli settlement enterprise. As the time, there were approximately 80,000 Israeli settlers. Today, 40 years later, and notwithstanding more Security Council resolutions with the same demand, there are 650,000 Israeli settlers, an increase of more than 800% over the four decades.

In Resolution 2334, adopted in December 2016, the Security Council called on Israel to “immediately and completely cease all settlement activities in the OPT, including East Jerusalem.” The resolution set up a quarterly reporting mechanism to the Council. In each of his three quarterly reports to the Security Council in March, June and September 2019, the UN Special Coordinator for the Middle East Peace Process has stated that, with respect to Israel’s compliance with the demand on the complete end on settlement building: “No steps were taken to that effect during the reporting period.”

## **Excellencies**

International law has stated that accountability – the duty to account for the exercise of power – is at the heart of our rules-based international order. There are three significant sources for the legal obligation that require the international community to marshal its political authority to compel Israel to completely end its illegal occupation and to remove its barriers to the fulfillment of Palestinian self-determination.

- Common Article 1 of the four Geneva Conventions, which proclaims that: The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances”
- The 2001 Articles on Responsibility of States for Internationally Wrongful Acts, which obligates states to cooperate to bring to an end through lawful means any serious breach of international law, and to not render any aid or assistance in maintaining that situation.
- And third there is Article 25 of the Charter of the United Nations, which states that the members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

All three of these legal obligations are binding on members of the international community to bring significant violations of human rights and humanitarian law to an end. This would include completely ending the illegal Israeli occupation and its associated breaches of international law to a complete end. This is not a policy choice. This does not involve a political preference. Rather, this is a solemn legal obligation, borne by the entire international community.

This issue of impunity and the lack of accountability has been recently addressed by four major human rights reports commissioned by the Human Rights Council over the last decade. The constant theme through these reports has been the serious violations of human rights and humanitarian laws by Israel, the necessity to ensure Israeli accountability and the prevailing culture of exceptionalism.

- The Report into the 2008-09 Gaza conflict stated that: “justice and respect for the rule of law are the indispensable basis for peace. The prolonged

situation of impunity has created a justice crisis in the Occupied Palestinian Territory that warrants action.”

- The 2013 Report into the implications of the Israeli settlements called upon Israel “to ensure full accountability for all violations...and to put an end to the policy of impunity.”
- The Report into the 2014 Gaza conflict expressed concern that: “impunity prevails across the board for violations of international humanitarian law and international human rights law allegedly committed by Israeli forces...Israel must break with its recent lamentable track record in holding wrongdoers accountable...”
- And the 2019 Report into the Gaza protests found that: “To date, the Government of Israel has consistently failed to meaningfully investigate and prosecute commanders and soldiers for crimes and violations...Scarce accountability measures arising out of Operations Cast Lead (2008-09) and Protective Edge (2014)...cast doubt over the State’s willingness to scrutinize the actions of military and civilian leadership....”

Are these important reports, emanating from the world’s leading human rights body, all of them rich in evidence with respect to the profound breaches of our common humanitarian and human rights values, and all of them pointing again and again to impunity and exceptionalism, simply to sit on the shelves of our collective memory? Are they destined to live only in the footnotes of the next report cataloguing the next human rights catastrophe that we didn’t prevent because we didn’t heed the demands for accountability so clearly laid out for us in the previous reports?

## **Excellencies**



Speaking recently in another context, Ambassador Jonathan Allen of the United Kingdom stated during a Security Council briefing on international humanitarian law: “We don’t lack law. We lack enforcement and accountability.” This observation applies equally to Israel’s conduct in the occupied Palestinian territory.

No occupation in the modern world has been conducted with the international community so alert to its many grave breaches of international law, so knowledgeable about the occupier’s obvious and well-signaled intent to annex and establish permanent sovereignty, so well-informed about the scale of suffering and dispossession endured by the protected population under occupation, and yet so unwilling to act upon the overwhelming evidence before it to employ the tangible and plentiful legal and political tools at its disposal to end the injustice.

An international community that took its legal responsibilities to challenge and end internationally wrongful acts seriously would have long ago concluded that Israel, the occupying power, was not sincere about seeking to end the occupation. It would have drawn the necessary lessons from the many unfulfilled Security Council and General Assembly resolutions, the inordinate length of the occupation, the innumerable ‘facts on the ground’ and the aimless rounds of negotiations. It would have determined that the status quo of this ‘occu’annexation’ is endlessly sustainable without decisive international intervention because of the grossly asymmetrical balance of power on the ground. It would accept that its duty is not to oversee the management of the occupation, but to end it. Such an international community would take the prudent and necessary steps to collectively construct a list of effective countermeasures which

would be appropriate and proportional to the circumstances. Should the occupying power remain unmoved, it would apply and escalate the range of its targeted countermeasures until compliance had been achieved. The international community would realize that bold measures and the determination to enforce accountability in these circumstances would greatly improve the chances that the next obstinate occupier would not likely want to test its resolve.

### **Excellencies**

May I conclude with this? If the best time to have planted an oak tree was twenty years, then the second best time is now. There are two accountability steps that the international community can start to apply in earnest, that have the potential of finally bringing hope and change to tis permanent occupation.

The first is to agree upon a complete ban on the export of all products made in the illegal Israeli settlements in the world market. To continue to import goods and services from these settlements is to aid and assistance in the flagrant violation of international law, as Security Council Resolution 2334 has put it. Accepting goods and services imported from the settlements into your home markets provides economic sustainability to the settlements and perpetuates what the Rome Statute labels as a war crime.

And the second accountability step is to issue a clarion call to the United Nations to complete the necessary work with respect to the Database on Businesses engaged in activities related to the illegal Israeli settlements, and to release the Database within a short and reasonable time in a fully transparent manner and as a dynamic tool to accurately capture any and all future business activities with respect to the settlements.

As I finish, I would like to quote former Secretary General Ban Ki-Moon, who said, in 2016, addressed the issue of the Israeli occupation. He stated:

*“The lack of any significant movement towards a political resolution and ongoing violations of international human rights and humanitarian law are exacerbated by the lack of accountability for previous violations... Tackling impunity must be the highest priority.”<sup>1</sup>*

### **Excellencies**

Accountability is the key to unlocking the titanium cage that is the endless occupation. Now is the time for the international community to turn that key.

Thank you very much.

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<sup>1</sup> A/71/364, at para. 6 (Emphasis added).