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**STATEMENT BY MICHAEL LYNK
SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS IN
THE PALESTINIAN TERRITORIES OCCUPIED SINCE 1967**

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Mr/Madam Chair, Excellencies, Distinguished Delegates, Ladies and Gentlemen,

Please accept my grateful thanks for this opportunity to present my second report to the 3rd Committee of the General Assembly as Special Rapporteur for this mandate. It is an enormous privilege to serve the international community in this capacity.

Before addressing both the current human rights trends in the Occupied Palestinian Territory and the special theme of my report on the question of the lawful occupant, may I bring to your attention once again the fact that the Government of Israel, the occupying power, has maintained its refusal to co-operate with my mandate. As it has done with my two immediate predecessors, Israel has not responded to my requests to visit the Occupied Territory since the beginning of my mandate in May 2016, nor have Israel's diplomatic representatives agreed to meet with me in New York or Geneva. Indeed, Israel does not reply to the communications I have sent on matters of human rights and humanitarian concern. One of the fundamental obligations of membership in the United Nations – as laid out 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* – is for states to cooperate with the various organs of the UN, including Special Rapporteurs.

I do wish to note for the record the full cooperation that I have received from the Hashemite Kingdom of Jordan and the Palestinian Authority, for which I am grateful.

May I say that, notwithstanding the excellent reports produced by the vibrant human rights communities in Palestine and Israel and the regular cooperation that they have provided me, there is no substitute for a country visit. This refusal by the Government of Israel to cooperate and engage is contrary to its solemn obligations to uphold its human rights commitments and its duties as a member of the United Nations.

Excellencies,

I would like to use my short time at this podium to highlight several pressing issues involving humanitarian and human rights concerns in the OPT, before turning to the special theme of my report.

The situation in **Gaza** remains at the level of a serious humanitarian crisis, and this is entirely a human-made problem. Gazans have lived with between four and six hours of electricity a day since April, meaning that all basic and secondary services that depend upon power – the purchasing and storing of food, the running of factories and offices, the maintenance of primary health services, the education system – are all badly compromised. As well, access to piped-in drinking water occurs only for a few hours every several days and desalination water plants are functioning at only 15% of their capacity. Because of the lack of power, over 100 million litres of raw sewage spills untreated in the Mediterranean on a daily basis. An already crippled economy is on its knees. Over 60% of Gazans depended partly or wholly on humanitarian aid, and the economy has actually shrunk over the past decade since the imposition of Israel's comprehensive air, land and sea blockade in 2007.

In the West Bank and East Jerusalem, the announcements of new settlement construction since the beginning of 2017 has been significantly higher than the previous year. At the same time, Israel's demolition of Palestinian homes in 2016 was at the highest rate since collection of this data began in 2009. Among leading Israeli political leaders, including the Prime Minister, talk of annexation is in the air. Indeed, in early October, Prime Minister Netanyahu announced his support for legislation that would purport to extend the municipal boundaries of Jerusalem to include a number of surrounding settlements in the West Bank. Last week, the Prime Minister declared that the Jordan Valley – an integral part of the West Bank – will always remain a part of Israel. As the occupation entrenches, the rights, freedoms and protections of the Palestinians – guaranteed in international law – continue to shrink and wither, and the stated objective of the international community – a two-state solution – is now on life support, with a fading pulse. Excellencies,

This brings me to the central theme of my current report. In June of this year, we passed the 50-year mark of the Israeli occupation. This is the longest-running occupation in the modern world. The issue that my report examines, and the question that I pose to you today, is: can an occupying power that is engaged in a protracted occupation, and treats the occupied territory in an self-serving and acquisitive manner in violation of international law, cross a red line and become an illegal occupant? And, if so, what are the legal and diplomatic consequences?

Up until now, the international community has treated Israel as the lawful occupant of the OPT, albeit an occupying power that has committed a number of serious breaches of international law, including its settlement enterprise, the construction of the Wall in occupied territory, the annexation of East Jerusalem and the systemic violations of human rights. In the view of the Special Rapporteur, this is

now wholly inadequate both as an accurate legal characterization of what the occupation has become and as a viable legal and diplomatic catalyst to compel Israel to completely and finally terminate the occupation.

I am proposing a four-part test, well anchored in international law, to determine whether an occupying power in a protracted occupation remains the lawful occupant of the territory.

The **first part of the test** is that a belligerent occupier cannot annex or gain title to any part of the occupied territory. This is one of the most well-established principles in international law, and enjoys universal endorsement. The UN Security Council has endorsed this principle on at least eight occasions dealing with Israel's occupation of Arab, including Palestinian, territory, most recently in Resolution 2334. This absolute rule against the acquisition of territory by force makes no distinction as to whether the territory was occupied through a war of self-defence or a war of aggression; annexation is prohibited in both circumstances.

The **second part of the test** is that the occupation must be temporary, and it cannot be either indefinite or permanent. Accordingly, the occupying power is required to work diligently to establish the conditions that will end the occupation, such as public order and a functioning economy, and return the territory to the sovereign power, as soon as reasonably possible, subject to maintaining the security of the occupying military. Once these conditions have been met the occupying power would have no legitimate purpose in prolonging its stay. Indeed, the longer the occupation, the greater the justification that the occupying power must satisfy to defend its continuing presence.

The **third part of the test** is that the occupying power must act in the best interests of the protected people under occupation, subject only to legitimate security

requirements of the military (occupying?) power. This principle has been likened to a trust or fiduciary relationship, where the dominant authority must put the interests of the protected person or entity above all else. Conversely, the authority in power is prohibited from administering this trust relationship in a self-serving or avaricious way. The occupying power acquires an extensive range of obligations to protect the people under occupation, particularly their social well-being, their property rights, their natural resources, and their economic development, and the occupying power is strictly prohibited from inflicting collective punishment, pillage and mass transfers and deportations.

And the **fourth and final part of the test** requires that the occupying power administer the territory in good faith. Indeed, good faith is a cornerstone principle of the entire international legal system, and requires parties to carry out their duties and obligations in an honest, loyal, reasonable and diligent manner. In the context of an occupation, this would mean that an occupying power would have to be in substantial compliance with the supervisory directions of the international community (including the Security Council, the General Assembly and the High Contracting Parties of the 4th Geneva Convention), and the specific precepts of international humanitarian law and international human rights law applicable to an occupation.

Excellencies and Delegates

All these elements of the lawful occupant test that I have mentioned have a vibrant precedent in the work of the United Nations towards de-colonialization. In 1970, the UN Security Council declared that South Africa's continued refusal to surrender its mandatory authority over Namibia – then a trust territory of the UN – was illegal. It stated that South Africa's defiant attitude in refusing to comply with

the decisions of the United Nations undermined the authority of the UN, and it sought an advisory opinion from the International Court of Justice.

Applying the four part test, and considering the germane precedent set by the Namibia Advisory Opinion by the ICJ, I submit to the General Assembly that Israel, the occupying power, is in substantial breach of each of the four parts of this test.

With respect to the absolute prohibition against annexation, Israel annexed East Jerusalem and parts of the West Bank in 1967 and 1980. Further, it has engaged in a steady process of the *de facto* annexation of the West Bank, primarily with the intensification of its settlement enterprise, a process that one Israeli human rights group has called “occu-annexation.” The Security Council has denounced the annexation of Jerusalem “in the strongest terms”, and stated that Israel’s actions are “null and void” under international law.

With respect to the temporariness principle, Israel’s occupation is now 50 years and counting. Keep in mind that the classic modern occupations which have broadly adhered to the strict principles of temporariness have not exceeded 10 years, including the American post-war occupation of Japan, the Allied occupation of western Germany and the American-led coalition’s occupation of Iraq after 2003. The only credible explanation for Israel’s continuation of its occupation and the thickening of its settlement regime is to enshrine its sovereign claim over some or all of the Palestinian territory, a colonial ambition par excellence.

With respect to the ruling-in-the-best-interest-of-the-protected-people principle, the evidence from the United Nations, the World Bank and the human rights

community is that Israel has ruled the occupied Palestinian territory in an acquisitive and self-interested manner, deeply committed to exploiting the occupied land and its resources for its 600,000 settlers and uninterested and unencumbered by the responsibilities of an occupying power towards the 4.7 million Palestinians under occupation. As for Gaza, its economy has been driven steadily backwards through the 10-year old economic blockade, while East Jerusalem suffers from its growing detachment from the West Bank and its vastly inferior services from the Jerusalem municipality.

Finally, the good faith principle demands that Israel comply with the direction of the international community and the leading precepts of international law pertaining to an occupation. Israel has failed this test on both aspects. Since 1967, the Security Council has adopted over 40 resolutions pertaining to Israel's occupation of the OPT. On the settlements, it has stated that the settlements are a flagrant violation of international law, and they must be dismantled. On Jerusalem, the Council has censured Israel "in the strongest terms" for the annexation and demanded that its demographic changes must be rescinded. It has repeatedly called upon Israel to accept and apply the Fourth Geneva Convention. Israel has remained non-compliant and defiant in the face of all of these resolutions.

Excellencies and Delegates,

International law is the promise that states make to one another, and to their peoples, that rights will be respected, protections will be honoured, and peace with justice will be pursued. It is a tribute to the international community that it has sustained this vision of international law throughout its supervision of Israel's occupation of the Palestinian territory. But it is, regrettably, no tribute that – as the occupation has deepened and as the intentions of the occupying power became crystal clear – the international community recoiled from answering Israel's

splintering of the Palestinian territory and disfiguring of the laws of occupation with the robust tools that international law and diplomacy provide.

I submit that Israel is in violation of all four parts of the test on the question of the lawful occupant, and I submit that Israel's role as occupant has crossed the red line into illegality. As the human rights situation in the Occupied Palestinian Territory continues to deteriorate, and Palestinians bear the brunt of Israel's violations of international law, the international community is confronted with the urgency of employing the appropriate legal and diplomatic tools to ensure that the occupation finally and completely comes to an end. As Amos Schocken, the publisher of the influential Israeli newspaper *Ha'aretz* has written about his own country's leadership: "...international pressure is precisely the force that will drive them to do the right thing."

Thank you for your attention.