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Israel/OPT: A Call to States to Stop Sustaining Illegal settlements

As the world marks the 50th anniversary of Israel's occupation of the West Bank and the Gaza Strip, as well as the Golan Heights, the Israeli authorities are reinvigorating their relentless expansion of settlements in the Occupied Palestinian Territories (OPT), with devastating consequences for the human rights of Palestinians. Despite an international consensus that these settlements are illegal, Israel is currently emboldened by the new US administration to pursue construction.

Mere condemnation of settlement construction by the UN, states and national and international human rights organizations has proven ineffective. It is time for states to take action and uphold their obligations under international law. Amnesty International is therefore calling on states to take measures to stop the financial support and expansion of settlements by prohibiting settlement goods from entering their markets and by regulating and preventing corporations domiciled in their territory from operating in settlements or trading in settlement products.

RENEWED SETTLEMENT EXPANSION

The illegality of Israeli settlements under international law has long been recognized by the vast majority of states and was recently reaffirmed by UN Security Council Resolution 2334, passed in December 2016, which reiterates the Security Council's call on Israel to cease all settlement activities in the OPT. The resolution also called on all states "to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967".¹ Israel's policy of settling civilians in occupied territory, its extensive appropriation and destruction of land and property, as well as its use of the OPT's natural resources for private gain constitute flagrant violations of international humanitarian law and, according to customary international law and the Rome Statute of the International Criminal Court, amount to crimes under international law.

However, with the inauguration of Donald Trump as US President in January 2017, an emboldened Israeli government has acted quickly to advance its settlement agenda. While the new US administration has indicated that it has yet to take an official position on settlements, statements by President Donald Trump that are inconsistent with past US policy and international law appear to have encouraged the Israeli government to openly pursue settlement expansion. In January 2017, Israeli authorities announced the construction of at least 6,219 new housing units in existing Israeli settlements in the occupied West Bank, including in East Jerusalem.² Since then, they have also approved the establishment of one new Israeli settlement north-east of Ramallah,³ and announced the

¹ UN Security Council Resolution 2334 (2016), adopted at its 7853rd meeting, on 23 December 2016, available at [/www.un.org/webcast/pdfs/SRES2334-2016.pdf](http://www.un.org/webcast/pdfs/SRES2334-2016.pdf)

² Amnesty International, "Israeli/OPT: Flurry of settlement activity shows flagrant disregard for international law", 1 February 2017, available at www.amnesty.org/en/latest/news/2017/02/israel-opt-flurry-of-settlement-activity-shows-flagrant-disregard-for-international-law

³ See Maayan Lubell, "Israeli cabinet approves first new West Bank settlement in 20 years", Reuters, 30 March 2017, available at

imminent approval of another new settlement with 10,000 housing units north of Jerusalem near Ramallah.⁴ The plans for the 10,000 units north of Jerusalem had been suspended due to past US pressure. In addition, the Israeli Knesset passed a law that retroactively legalizes settler land-grabs of privately owned Palestinian land affecting at least 4,000 settler homes scattered across 53 settlements and outposts.⁵ Furthermore, in recent months Israeli government officials and members of the Knesset have openly called for the official annexation of all or parts of the West Bank, including by taking legal steps towards extending Israeli laws to parts of the OPT.⁶ Israeli settlement activity in Area C, which is under full Israeli security and administrative control, already may be described as “creeping annexation”.⁷

Meanwhile, in a speech at the UN Security Council in March 2017, UN Special Coordinator for the Middle East Peace Process Nikolay Mladenov confirmed that no steps had yet been taken to cease settlement activities in the OPT in order to comply with UN Security Council Resolution 2334.⁸

SETTLEMENTS CAUSE MASS VIOLATIONS

Amnesty International has long opposed settlements as a violation of international humanitarian law and the cause of mass violations of human rights. It continues to call on Israel to dismantle all settlements and to remove its nationals from occupied territory into Israel proper. In addition to being serious violations of international humanitarian law constituting war crimes, settlements and the Israeli settlement policy are inherently discriminatory and result in grave human rights violations against Palestinians. For example, the forcible displacement and transfer of Palestinian civilians from their homes and lands, extensive appropriation and destruction of property, and restrictions on the movement of Palestinians are direct consequences of Israel's settlement policy.

www.reuters.com/article/us-israel-palestinians-settlement-idUSKBN1711K6

⁴ Nir Hasson, “Israel Revives Plan for 10,000 New Homes in East Jerusalem”, *Haaretz*, 25 April 2017, available at www.haaretz.com/israel-news/1.785679

⁵ See Amnesty International, “Israel/OPT: Trump must oppose all Israeli settlements in meeting with Netanyahu”, 14 February 2017, available at www.amnesty.org/en/documents/mde15/5693/2017/en/, and “Israel/OPT: Open letter to President Trump urging him to oppose all Israeli settlements in meeting with Netanyahu”, 14 February 2017, available at www.amnesty.org/en/documents/mde15/5696/2017/en/

⁶ See, for example, Samuel Osborne, “Donald Trump administration warns Israel annexation of occupied West Bank would cause ‘immediate crisis’”, *The Independent*, 7 March 2017, available at www.independent.co.uk/news/world/middle-east/donald-trump-israel-warn-annexation-occupied-west-bank-crisis-palestinian-territory-gaza-strip-a7615811.html; see also statements by Israeli Minister of Agriculture Uri Ariel, reported by William Booth, “Israeli minister wants to annex half of West Bank - but what about the Palestinians who live there?”, *The Washington Post*, 8 June 2016, available at www.washingtonpost.com/news/worldviews/wp/2016/06/08/israeli-minister-wants-to-annex-half-of-west-bank-and-kick-out-the-palestinians/?utm_term=.75d32fdf0cfc; see also calls for annexation of parts of Area C such as the Ma’ale Adumim and Gush Etzion settlement blocs made by Knesset Speaker Yuli Edelstein, reported by Moran Azulay, Atilla Somfalvi and Kobi Nachshoni, “Knesset speaker: Israel will benefit from partial annexation”, *Ynet*, 14 February 2017, available at www.ynetnews.com/articles/0.7340.L-4922317.00.html; and Adam Berkowitz, “Bill to Annex Jerusalem Suburb Picks Up Support in Knesset”, *Breaking News Israel*, 19 July 2016, available at www.breakingisraelnews.com/72187/knesset-introduces-bill-annex-judean-city-maale-adumim/#OwC4Pz7PtW6ufzal.97; see also Lazaroff, Tovah, “Ma’aleh Adumim annexation bill to advance after Trump inauguration”, *Jerusalem Post*, 18 January 2017, available at www.jpost.com/Israel-News/Knesset-to-advance-Maaleh-Adumim-annexation-bill-after-Trump-inauguration-478804; Peter Beaumont, “Far-right Israeli minister plans bill to annex one of biggest settlements”, *The Guardian*, 3 January 2017, available at www.theguardian.com/world/2017/jan/03/far-right-israel-minister-naftali-bennett-bill-annex-maale-adumim-settlement-palestinian-territories; and see Sharon Pulver, “Ministers Advance bid to Apply Israeli Laws in the West Bank”, *Haaretz*, 7 May 2017, available at www.haaretz.com/israel-news/.premium-1.787549

⁷ See, for example, Alan Elsner “Israel's Creeping Annexation Of The West Bank”, *Huffington Post*, available at www.huffingtonpost.com/alan-elsner/sraels-creeping-annexatio_b_11588016.html

⁸ See UN Security Council, “Middle East (including the Palestinian question) – UN Security Council, 7908th meeting”, 24 March 2017, available at webtv.un.org/meetings-events/security-council/middle-east/watch/middle-east-including-the-palestinian-question-security-council-7908th-meeting/5371718573001

Settlements and their related infrastructure are a means by which Israel dominates access to, and use of Palestinian natural resources – such as water, fertile land, stone quarries and the mineral rich Dead Sea – while denying or arbitrarily restricting Palestinians’ access to, use and enjoyment of these resources. For example, Israel’s control of and restrictions on Palestinian access to water is at a level that neither meets the Palestinian population’s needs nor constitutes a fair distribution of shared water resources.⁹ The appropriation of land for the construction of illegal settlements and related infrastructure, including for economic activities used to support and sustain them, has had a devastating impact on Palestinians’ rights to an adequate standard of living, to work, to housing, to health, to freedom of movement and to education and has effectively crippled the Palestinian economy.

HOW SETTLEMENTS ARE SUSTAINED

Settlements are sustained in a number of ways. The Israeli government provides heavy subsidies, financial and tax incentives and low-cost utilities and resources to encourage Jewish Israelis to live in settlements and to buttress the settlement economy. The settlement economy, which sustains the presence and the expansion of settlements, straddles the construction, agriculture, manufacturing, services and tourism sectors. This economy uses unlawfully appropriated Palestinian resources, including land, water, and minerals, which are then transformed, primarily by companies, to produce goods and products for private profit and to sustain the settlement project.¹⁰ Many of these goods, including manufactured products and produce, are then exported to external markets for sale. While there are no exact public figures for the total value of the settlement goods that are exported each year for profit, there is some information that can be pieced together. For example in 2012, apparently the last year for which industrial export reports from the West Bank, including East Jerusalem, and the Golan Heights exist, the total industrial exports from settlements amounted to US\$250 million, with approximately US\$100 million in industrial exports to the European Union (EU).¹¹ In 2015, the Israeli

⁹ See Amnesty International, *Troubled waters: Palestinians denied fair access to water* (Index: MDE 15/027/2009), October 2009, available at www.amnesty.org/en/documents/MDE15/027/2009/en/

¹⁰ See Al Haq, *Facts on the Ground*, 2016, available at alhaq.org/publications/publications-index/item/facts-on-the-ground?category_id=10&sm_au=iVVvHKNVwVKMLFND; Benjamin Pontin, Vito De Lucia, Jesus Gamero Rus, *Environmental Injustice*, Al Haq, 2015, available at alhaq.org/publications/publications-index/item/environmental-injustice-in-occupied-palestinian-territory?category_id=10; Elisabeth Koek, *Water for One People Only*, Al Haq, 2013, available at alhaq.org/publications/publications-index/item/water-for-one-people-only-discriminatory-access-and-water-apartheid-in-the-opt?category_id=10; Alessandro Tonutti, *Feasting on the Occupation*, Al Haq, 2013, available at alhaq.org/publications/publications-index/item/feasting-on-the-occupation-illegality-of-settlement-produce-and-the-responsibility-of-eu-members-states-under-international-law?category_id=10; Claudia Nicoletti and Anne Marie Hearne, *Pillage of the Dead Sea*, Al Haq, July 2012, available at alhaq.org/publications/publications-index/item/pillage-of-the-dead-sea-israel-s-unlawful-exploitation-of-natural-resources-in-the-occupied-palestinian-territory?category_id=10; Diakonia IHL Resource Centre, *Everyone’s Business: Third Party Responsibility*, October 2016, available at www.diakonia.se/globalassets/blocks-ihl-site/ihl-file-list/ihl---briefs/everyones-business-third-party-responsibility-and-the-enforcement-of-international-law-in-the-opt.pdf; Diakonia IHL Resource Centre, *The Unsettling Business of Settlement Business*, May 2015, available at www.diakonia.se/globalassets/documents/ihl/ihl-in-opt/briefs/the-unsettling-business-of-settlement-business.pdf; Diakonia IHL Resource Centre, *Occupation Remains- A Legal Analysis of the Israeli Archeology (sic) Policies in the West Bank: An International Law Perspective*, December 2015, available at www.diakonia.se/globalassets/documents/ihl/ihl-resources-center/archeology-report-report.pdf; see also, Human Rights Watch, *Occupation, Inc.: How Settlement Businesses Contribute to Israel’s Violations of Palestinian Human Rights*, January 2016, available at www.hrw.org/report/2016/01/19/occupation-inc/how-settlement-businesses-contribute-israels-violations-palestinian; B’Tselem, *Expel and Exploit: The Israeli Practice of Taking over Rural Palestinian Land*, December 2016, available at www.btselem.org/publications/summaries/201612_expel_and_exploit; Eyal Hareuveni, *Dispossession and Exploitation: Israel’s Policy in the Jordan Valley and Northern Dead Sea*, B’Tselem, May 2011, available at www.btselem.org/download/201105_dispossession_and_exploitation_eng.pdf; Eyal Hareuveni, *By Hook and By Crook: Israeli Settlement Policy in the West Bank*, B’Tselem, July 2010, available at www.btselem.org/download/201007_by_hook_and_by_crook_eng.pdf; Yehezkel Lein and Eyal Weizman, *Land Grab: Israel’s Settlement Policy in the West Bank*, B’Tselem, May 2002, available at www.btselem.org/download/200205_land_grab_eng.pdf; see also Dror Etkes, *Blue and White Make Black: The Blue Line Team in the West Bank*, Kerem Navot, December 2016, available at media.wix.com/ugd/cdb1a7_04c9fe5f2c954d17953d9c5114041962.pdf; Dror Etkes, *A Locked Garden: Declaration of closed areas in the West Bank*, Kerem Navot, March 2015, available at media.wix.com/ugd/cdb1a7_5d1ee4627ac84dca83419aebf4fad17d.pdf; Dror Etkes, *Naboth’s Vineyard: Israeli Settlers’ Agriculture as a Means of Land Takeover in the West Bank*, Kerem Navot, October 2013, available at media.wix.com/ugd/cdb1a7_370bb4f21ceb47adb3ac7556c02b8972.pdf

¹¹ Judy Maltz, “EU Drive to Label West Bank Settlement Exports Unlikely to Harm Israel, Experts Say”, *Haaretz*, 18 June 2015,

Ministry of Economy estimated the worth of settlement exports to the EU each year to be between US\$200-300 million.¹²

The link between settlement business activities, exports and the sustainability of the settlements was reinforced in the 2013 report of the Independent Fact-Finding Mission on Israeli Settlements, created by the UN Human Rights Council in 2012. The report specifically addresses the role of settlement businesses in Israel's settlement enterprise, noting that "business enterprises have, directly and indirectly, enabled, facilitated and profited from the construction and growth of the settlements." It further noted that "[it] is with the full knowledge of the current situation and the related liability risks that business enterprises unfold their activities in the settlements and contribute to their maintenance, development and consolidation."¹³ The report also raised questions about the role of the businesses that operate in settlements in sustaining the settlements and violations against Palestinians. Based on this report, the UN Human Rights Council passed a resolution in March 2016 requesting that the UN High Commissioner for Human Rights create a database of business enterprises that have, "directly and indirectly, enabled, facilitated and profited from the construction and growth of the settlements" to provide more guidance and create accountability for their activities that promote violations of international law.¹⁴

In March 2017, the UN Human Rights Council adopted a resolution calling on states, among other things, to "distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967, including not to provide Israel with any assistance to be used specifically in connection with settlements in these territories by, inter alia, regulating trade with settlements, consistent with their due diligence obligations under international law".¹⁵

THIRD STATE RESPONSIBILITY

As Amnesty International has noted in the past, all parties to the Fourth Geneva Convention, are under an obligation to "ensure respect" for the Convention.¹⁶ And under customary international humanitarian law, all states must not encourage violations of international humanitarian law; in fact they must exert their influence to stop such violations.¹⁷ In addition, Israel's actions in the creation and maintenance of settlements violate a special category of obligations entitled peremptory norms of international law (*jus cogens*), from which no derogation is permitted. These give rise to obligations on

available at www.haaretz.com/israel-news/premium-1.661679

¹² Robin Emmott and Luke Baker, "EU moves ahead with labelling goods made in Israeli settlements", Reuters, 11 November 2015 available at www.reuters.com/article/us-israel-eu-labelling-idUSKCN0T013B20151111

¹³ UN Human Rights Council, *Report of the independent 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, available at www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-63_en.pdf (HRC, *Report of the independent fact-finding mission to investigate the implications of the Israeli settlements*), p. 20, paras 96, 97.

¹⁴ See UN Office of the High Commissioner for Human Rights, "Human Rights Council adopts six resolutions and closes its thirty-first regular session", 24 March 2016, available at documents-dds-ny.un.org/doc/UNDOC/LTD/G16/057/71/PDF/G1605 www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=18535&LangID=E; see also UN Human Rights Council, *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan*, A/HRC/31/L.39, 22 March 2016, available at www.un.org/ga/search/view_doc.asp?symbol=A/HRC/31/L.39

¹⁵ See UN Human Rights Council, *Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan*, A/HRC/34/L.41/Rev.1, 22 March 2017, available at: ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/L.41/Rev.1

¹⁶ Geneva Conventions, common Article 1

¹⁷ International Committee of the Red Cross, *Customary International Humanitarian Law*, Vol I: The Rules, Rule 144.

third states (*erga omnes*).¹⁸

Israel's establishment and continued expansion of the settlement enterprise in the OPT and the de jure annexation of East Jerusalem (and of the occupied Syrian Golan Heights) are themselves violations of peremptory norms of international law.¹⁹ Israel is also violating the peremptory norm of the prohibition against grave breaches of the Geneva Conventions.²⁰ Israel's breaches of peremptory norms give rise to third state responsibilities,²¹ including the obligation not to recognize an illegal situation created by these breaches, nor to assist or render aid in maintaining the illegal situation, and to actively co-operate to bring to an end the illegal situation that results from violations of peremptory norms. In its recommendations, the International Fact-Finding Mission on Israeli Settlements called on all member states to comply with their obligations arising from Israel's breach of peremptory norms.²²

The obligation not to recognize as lawful the illegal situation prohibits not only explicit recognition, but extends also to actions that would imply recognition. By allowing settlement goods, which sustain settlements, into their markets, third states may be conferring implicit recognition on the illegal creation of the settlements from which these goods originate. These states are also providing assistance to the illegal settlement project and are contributing to the maintenance of the settlement economy, which helps finance the continued existence and expansion of illegal settlements. States must ensure respect for the Geneva Conventions and ensure that they do not recognize as lawful the illegal situation of settlements, nor render them assistance including the means to sustain themselves.

It is for this reason that Amnesty International calls on third states, through laws and regulations, to prevent the import of settlement goods to their markets and prevent companies domiciled in their territory from operating in settlements or trading in settlement products. Such a prohibition would be consistent with fulfilling their obligation to not recognise and not to aid or assist an illegal situation and to co-operate through lawful means to bring to an end Israel's serious breaches of international law.

¹⁸ International Law Commission (ILC), *Draft articles on Responsibility of States for Internationally Wrongful Acts*, 2001, which are reflective of customary international law, available at legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf (ILC, *Draft articles on Responsibility of States*), Article 41.

¹⁹ The International Court of Justice, in its Advisory Opinion on the Legal Consequences of the Wall, concluded that settlements, coupled with the construction of the wall inside the occupied West Bank, were a breach of the right to self-determination (a peremptory norm). The peremptory norms enumerated by the International Law Commission include the basic rules of international humanitarian law, the prohibition against racial discrimination, and the right to self-determination (ILC, *Draft articles on Responsibility of States*, commentary on Article 40).

²⁰ This includes the wanton and extensive destruction and appropriation of land not for military necessity.

²¹ Enumerated in ILC, *Draft articles on Responsibility of States*, Article 41. Confirmed by the International Court of Justice as applying to third states in the Palestinian territory in the context of the wall/fence: see International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion (9 July 2004), available at www.icj-cj.org/docket/index.php?p1=3&p2=4&case=131&p3=4

²² HRC, *Report of the independent fact-finding mission to investigate the implications of the Israeli settlements*, p. 22, para. 116.