



38th Session of the UN Human Rights Council

Side-Event: Human Rights in the Occupied Palestinian Territory Systemic Violations with Impunity

United Nations - 3 July 2018

The International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD) with Geneva International Centre for Justice (GICJ), International-Lawyers.Org, and Euro-Med Monitor for Human Rights organized a side-event at the Thirty-Eighth Regular Session of the Human Rights Council. The event took place from 12h00 to 13h30 on 3 July 2018 in Room XXIII at the United Nations.

The 38th session of the UN Human Rights Council

Human Rights in the Occupied Palestinian Territory

Systemic Violations with Impunity

Palestinian Loss of Land 1947 to Present

- 1947: Jewish Governmental Land, Palestinian Land
- Partition Plan, 1947: Israeli Land, Palestinian Land
- 1949-1967: Israeli Land, Palestinian Land
- Present: Israeli & Occupied Land, Palestinian Land

ORGANISERS:
International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD), International-Lawyers.Org,
Geneva International Centre for Justice (GICJ), Euro-Med Monitor for Human Rights,

Concept note of the side-event:

Israel's prolonged occupation of the Palestinian territory involves systematic human rights abuses, including collective punishment, routine use of excessive lethal force, and prolonged administrative detention without charge or trial. It builds and supports illegal settlements in the occupied West Bank, expropriating Palestinian land and imposing burdens on Palestinians but not on settlers, restricting their access to basic services and making it nearly impossible for them to build in much of the West Bank without risking demolition. Israel's decade-long closure of Gaza made the lives of 1,9 million Palestinians living there unbearable. For that Gaza is described as the world's largest open-air prison.

This side-event aims to bring to light the atrocities of the occupation, characterized by horrendous and unending human rights violations resulting in the continuous and systematic suffering of the Palestinian people. Through its constant non-cooperation with the United Nations System in general and international human rights mechanisms in particular, Israel has not only robbed the Palestinian people of their right to self-determination, but also repeatedly implements new and improved measures to deepen the suffering of the Palestinians. Our organizations thus call upon the international community to take a stand against this blatant and long-standing human rights catastrophe.

Special Guest:

Mr. Michael Lynk: Special Rapporteur on the Situation of Human Rights in the Palestinian Territory Occupied since 1967. Via Skype.

Speakers:

Ms. Aroub Soubh: Activists and TV journalist/program presenter, she is the official Media Spokesperson for the Jordanian coalition, "My Nationality is the Right of My Family", and Consultant at the Euro-Mid Human Rights Monitor.

Ms. Daniela Donges: Civil peace worker for Palestine, a former member of GICJ. She follows on the ground information concerning the situation in Palestine.

Ms. Eman Zwitter: A Human Rights researcher who works with Geneva International Centre for Justice since 2016 as well as with the Euro-Med Monitor since 2015.

Moderator:

Mr. Mutua Kobia: Senior Human Rights Officer at Geneva International Centre for Justice, and additional representative of the International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD) at the United Nations.

Panel Discussion



Ms. Aroub Soubh: “The Blockade of Gaza as a form of Apartheid”



Ms. Soubh was the first speaker to start the discussion and began by enumerating that Apartheid is both territorial segregation as well as a ‘matrix of control’ imposed on a group of people for who they are.

She went on to explain that since the occupation began in 1967, the Palestinian people have lived in four so-called ‘domains’:

- Civil law with special restrictions, governing Palestinians who live as citizens of Israel;
- Permanent residency law governing Palestinians living in the city of Jerusalem;
- Military law governing Palestinians living under conditions of belligerent occupation in the West Bank and Gaza Strip since 1967, including those in refugee camps;
- Policy to preclude the return of Palestinians, whether refugees or exiles, living outside the territory under Israel’s control.



Following this, Ms. Soubh rightly termed the blockade of Gaza a humanitarian crisis, asserting that the State of Israel's restrictions on entry prevent the repairing of Gaza's sole power plant as well as of houses destroyed during Israeli offensives in the area. Israel continues to control entry to and exit from Gaza by land, sea and air, and has been subjecting Palestinians to a suffocating blockade, which constitutes an unprecedented form of collective punishment in stark violation of international humanitarian law.



Speaking about the economic collapse, she cited that Gaza's economy has effectively been in recession since the beginning of the blockade, with the private sector receiving the largest share of losses due to the restrictions

imposed by the Israeli authorities on the movement of businessmen and traders as well as many companies and private enterprises – which make up the only source of income for a large portion of Gaza population – being targeted.



Before providing some final recommendations, Ms. Soubh touched upon the electricity crisis and its ramifications, in that water and sanitation, sewage, healthcare, and education are severely and adversely affected. For hospitals in Gaza, constant instability of power supply only deteriorated the quality of the healthcare services available, with the high cost of running a generator forcing small businesses, especially startups, to close within a short period of time.



To conclude her comprehensive assessment of the blockade of the Gaza strip, she proposed the following recommendations:

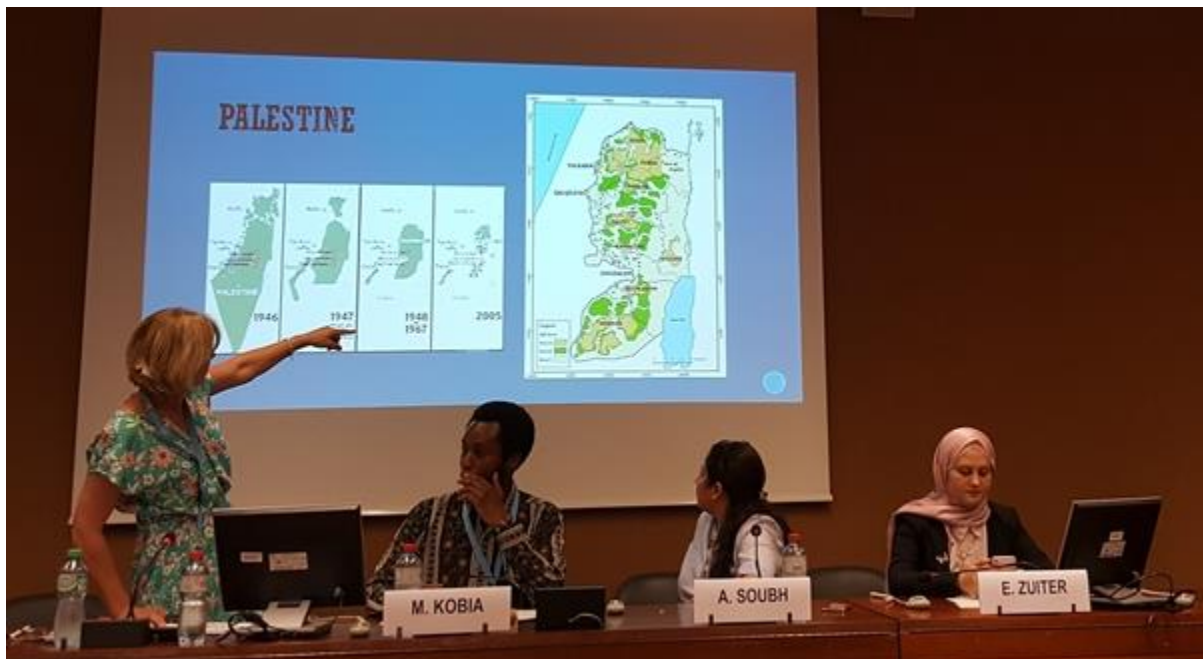
- First, to the State of Israel, to put an end to all forms of apartheid practices against the Palestinian civilian population and an unconditional end to the blockade on the Gaza Strip, as well as, compensation to all those who were affected.
- To the Israeli government, to work in earnest to end its long-term occupation of the Palestinian territories as stipulated in UN General Assembly Resolution 194.
- Finally, to the international community, urging it to exert effective pressure on Israel to immediately end its blockade of the Gaza Strip and its ongoing occupation of the Palestinian territory, as all it does is further fuel conflict and lead to unnecessary violence and escalation of tensions in the region.

Ms. Daniela Donges: “Observations of the Human Rights Situation on the Ground and Laws that Entrench the Occupation”



Ms. Daniela Donges was the second speaker to take the floor and she started her presentation by noting that since 1946 Palestine is losing slowly and illegally its territory. Palestine is becoming more and more invisible on the map because of the illegal, brutal, and violent Israeli occupation. Israel is creating settlements in Palestine to fully control it.

For example, Israel constructed a wall with a military checkpoint in Al Walaja to isolate the village. Many residents became refugees. The creation of that wall is a violation of international Law.



Khan Al Ahmar is a village in the Jerusalem Governorate of the West Bank where people live in tents and huts. There are many Bedouins and children. The village is located between the Kfar Adumimm and the Israeli settlements of Ma’ale Adumim. There is a huge difficulty to access the school. The Palestinian ministry of education constructed a school in that area, but the Israeli Civil Administration ordered to demolish the school.

Buildings were demolished in 2010 by Israel claiming that these buildings were illegal. In September 2012, the Israeli government had a plan to relocate residents to the Jordanian valley, but they strongly refused that plan.



Furthermore, there are laws that entrench the occupation:

1. Demolition orders against unauthorized structures 1539-2003
2. Law for the Regulation of Settlements 5777-2017
3. Order concerning the Removal of New Structures 1797-2018
4. Administrative Affairs Courts Law 5768-2018



During a discussion at the Knesset on 27 June 2017, the director of the Civil Administration Supervision Unit said that there are 500 movable structures in the administration's warehouses confiscated from Palestinians. He stated that all it requires to dismantle and confiscate a movable structure is a formal statement by one of the supervision unit's employees. There is no other administrative or legal procedure needed.

The Law for the regulation of settlements in Judea and Samaria, 5777-2017: The Knesset passed a law on 6 February 2017 legalizing those unauthorized settlements and giving settlers the right to remain in them.

Order concerning the removal of new structures (9 May 2018): The Israeli military published military order 1797. This new order allows the Israeli army's "civil administration" to target and demolish Palestinian structures in area C within 96 hours, whatever may be the status of the land or the issuing of building permits. The new order aims at preventing international aid from supporting any legal action against future Israeli orders, which has proven quite successful in preventing or delaying illegal demolitions in the past.

Administrative Affairs Courts Law 5768 – 2018 prevents human rights organizations from flooding the Israeli court system with petitions against the demolition of buildings.



There is also a new law requiring NGOs to reveal any foreign funding. Palestinians in the West Bank are banned from attending and organizing a procession, assembly or vigil of 10 or more people for a political purpose. Anyone breaching the order faces imprisonment for up to 10 years and/or a hefty fine. Such threats and intimidation tactics against Palestinian activists eliminates the space for resistance in the political sphere even for those taking to the streets, loudly objecting to, for instance, the creation of the illegal Wall of Separation.

Ms. Eman Züter: “Excessive Use of Force against Peaceful Protestors”



Ms. Eman Züter was the third speaker to take the floor and began her presentation by speaking about the Great March of Return. The peaceful civilian protests, which started on 30 March 2018, continue every Friday. It is formed to demand the end of 12 years of blockade and to enforce resolution 194 (the right of return). Israel used live and explosive bullets as well as toxic gas against those protesters.



EXCESSIVE USE OF FORCE

- Live bullets.
- Explosive bullets.
- Toxic Gas.

- Israel targeted the medical personnel on Gaza border fence. For example, they targeted Razan Al-Najjar who was a Paramedic. She was killed at the age of 21 with a bullet in the Chest while she was helping people who were injured.
- Israeli soldiers were targeting the Press, which is totally illegal, and we saw a video on journalists who were killed by Israel. Among them Yassir Murtaja who was 30 years old and killed with a bullet in the abdomen.
- Targeting of Children is the most terrifying and shameful crime. The story of the child Mohammad Ayoub who was merely in seventh grade was a real shock. While he was in the eastern border wall of Jabalia town in northern Gaza, he was killed with a bullet in the head. Mohammad did not have any weapon, not even a knife.



The speaker mentioned several other reported killings and injuries of unarmed protesters who never posed a threat to the life of Israeli soldiers that were well fortified and at a distance. She also pointed out to the numerous grave breaches of essential Articles of the Fourth Geneva Convention concerning the prohibition of acts willfully causing great suffering or serious injury, as well as, other measures of brutality. Among the articles she highlighted are Article 32 relative to the prohibition of corporal punishment, torture, murder, etc, Article 33 relative to the prohibition of collective penalties, and Article 147 relative to the protection of civilian persons in time of war.

However, week after week of the “Great Return March”, Israeli occupation forces continued to open fire at hundreds of Palestinians joining the demonstrations along the border of the Gaza Strip, and continued the practice

of employing excessive and lethal force against unarmed protesters, journalists and paramedics, in violation of international human rights law.



The international community must denounce violations of international law and ensure accountability. It must urge Israel to respect the protesters' legitimate exercise of their rights to freedom of assembly and association, and take concrete steps for the protection of civilians in the occupied Palestinian territory, including by calling for an end to the illegal occupation.

Mr. Michael Lynk: The Test as to Whether a Belligerent Occupation Remains Lawful



Mr. Michael Lynk, Special Rapporteur on the Situation of Human Rights in the Palestinian Territory Occupied since 1967, was the final speaker to take the floor and began by announcing that his presentation would be addressing the question “Can an occupying power become illegal if it abuses the fundamental principles that underlie the modern laws on occupation?” His conclusion is that it can become illegal and his presentation would demonstrate this case under international law.

To begin with, he underlined the concept of prolonged occupation, which in numerous instances has been used to describe an illegal occupation. He noted that this concept could become a legal guise masking a de facto colonial exercise, annexation, conquest or other form of permanent rule. In light of this, he went on to describe the state of Israel as an occupying power under international law and the role and obligations it is obliged to follow under leading principles and the Geneva Conventions. Referring to his October 2017 report as Special Rapporteur to the United Nations at its General Assembly he argued that a four-part test could be administered to determine whether the status of an occupying power is illegal. A country that seeks to transform occupation into a claim of sovereignty is in violation of its obligations under international humanitarian law and hence acquires the status of illegal occupant. The four elements of the test he proposes are as follows:

- i. An Occupying Power cannot annex any of the Occupied Territory

International law scholars have noted the ‘no-annexation’ principle as a legally binding doctrine and under United Nations Security Council (UNSC) Resolution 242 (November 1967) the Security Council endorsed the principle of “the inadmissibility of the acquisition of territory” on several occasions neither by war nor by force. Thus, Israel’s de jure annexation of East Jerusalem in 1967 (by Cabinet decision) and 1980 (by a Knesset vote) is ipso facto, a grave breach of the laws of occupation, which the Security Council in August of 1980 censured in the strongest of terms and affirmed that these actions were in breach of international law and the annexation of Jerusalem was “null and void” and “must be rescinded forthwith”. However, Israel has remained non-compliant with all United Nations’ resolutions on the annexation of Jerusalem.



Furthermore, the International Court of Justice (ICJ) in its 2004 *Advisory Opinion* cautioned that the Wall and settlement regime constitutes *a fait accompli* and *de facto* annexation. The West Bank Area C is under Israel's complete control and settlers live under Israeli law in Jewish-only settlements that are expanding. This continued occupation over part or all of the Palestinian territory can only be explained as colonial ambition par excellence.

ii. *An Occupation is inherently temporary, and the Occupying Power must seek to end the occupation as soon as reasonably possible.*

By definition, occupation is a temporary and exceptional situation where the Occupying Power assumes the role of *de facto* administrator of the territory until conditions allow for the return of territory to the sovereign. Due to prohibition against acquisition of territory by force the occupying power is prohibited from permanent rule or rule on an indefinite basis.

The 51-year-old Israeli occupation is without precedent or parallel in today's world as instances of modern occupation that have adhered to strict principles of temporariness, non-annexation, trusteeship, and good faith have not exceeded 10 years. Israel itself cannot offer a compelling reason for this extraordinary length of occupation consistent with its obligation to end its rule as soon as reasonably possible and this intentionally forestalls any meaningful exercise of self-determination by the Palestinians.

iii. *During the Occupation, the Occupying Power is to act in the best interests of the people under Occupation.*

Mr. Lynk noted the principle under international law that the occupying power is required, through its duration of occupation, to govern and act in the best interests of the people under occupation. This principle is observed in the 1907 *Hague Regulations*, the 1949 *Fourth Geneva Convention* and international human rights instruments that provide further provisions that protect the lives, property, natural resources, institutions, civil life, fundamental human rights, and latent sovereignty of the people under occupation.

However, barriers and restrictions have resulted in mounting impoverishment and according to the World Bank and the United Nations, Palestinians in the West Bank endure inferior civil, legal and social conditions compared to Israeli settlers and suffer significant restrictions to their freedom of movement, denial of access to water and natural resources among other violations of their fundamental freedoms. In addition, these restrictions adversely

affect the daily life of Palestinians in Gaza as well where over 60 percent of the population is reliant on humanitarian aid and more than 40 percent are unable to secure electrical power. As for East Jerusalem, the occupation has increasingly detached it from its traditional national, economic, cultural and family connections with the West Bank because of the Wall, the growing ring of settlements and related checkpoints, and the discriminatory permit regime. It is neglected by the Municipality in terms of services and infrastructure, the occupation has depleted its economy, and the Palestinians have only a small land area to build housing.

These instances lead to the conclusion that Israel is ruling the Palestinian territory as an internal colony and is committed to exploiting its land and resources, and is profoundly indifferent to the rights and best interests of the protected people under occupation, which is contrary to its obligations.

iv. *The Occupying Power must act in good faith*

This principle is the “cardinal rule of treaty interpretation” in the international legal system and is an integral part of all legal relationships in modern international law. It requires states to carry out their duties and obligations in an honest, loyal, reasonable, diligent and fair manner with the aim of fulfilling the purposes of the legal responsibility, including an agreement or treaty. Conversely, the principle of good faith prohibits states from engaging in acts that would defeat the objective and purpose of the obligation.

An occupying power is required to govern the territory in good faith and this can be measured by its compliance with two obligations:

- i) Its conformity with the specific precepts of international humanitarian law and international human rights law applicable to an occupation;
- ii) Its conformity with any specific directions issued by the United Nations or other authoritative bodies pertaining to the occupation.

It has been deemed that Israel has breached many of the leading precepts of international humanitarian and human rights law throughout the occupation. Additionally, the prohibited use of collective punishment has been regularly employed by Israel through the demolition of Palestinian homes of families related to those suspected of terrorism or security breaches and extended closures of Palestinian communities. Freedom of movement is impaired and above all the entrenched and unaccountable occupation violates if not undermines the right of the Palestinians to self-determination.



Mr. Lynk pointed out that since 1967 the Security Council has adopted more than 40 resolutions critical of Israel's occupation of the Palestinian territory and which deal with the settlements, annexation of Jerusalem, denial of Palestinian human rights and Israel's refusal to abide by the *Fourth Geneva Convention*. The UN General Assembly and the Human Rights Council have also adopted several hundred similar resolutions.

He then brought to attention an important legal precedent in international law; namely, the influential *Advisory Opinion on Namibia* by the International Court of Justice in 1971, pointing out striking similarities. The one difference he noted was that South Africa's rule of Namibia arose from a League of Nations Mandate whereas Israel's occupation is governed by the laws of occupation found in the *Fourth Geneva Convention*.

In this consideration, Mr. Lynk pointed out five significant features in the 1971 International Court of Justice (ICJ) ruling concerning the colonial rule in Namibia to bear with in relation to the situation in the Occupied Palestinian Territory.

- 1) The ICJ stated three core principles that all Mandatory holders must comply with:
 - a. The Mandatory Power has no right of annexation of any of the mandate territory,
 - b. It must act as a trustee for the well-being and development of the people in the mandate territory, and
 - c. The Mandatory Power cannot introduce discriminatory laws and practices that disadvantage the peoples of the mandate.
- 2) The principle of self-determination is the ultimate purpose of the Mandate.
- 3) Deliberate and persistent violation of these core principles of the Mandate would amount to a fundamental breach of an international undertaking.
- 4) Strict compliance with the protections of the Mandate for the benefit of the peoples of Namibia as long as it is governed by South Africa.
- 5) The use of the "good faith" test to judge whether South Africa was in compliance with the governing principles of the Mandate.

International experts and scholars consider this a touchstone precedent for assessing and understanding the legal status of Israel's continued occupation.



In conclusion, Mr. Lynk said that international law is the promise states make to one another and to their people that rights will be respected, protections will be enforced, agreements and obligations will be upheld, and peace with justice will be pursued. While noting earlier that the international community at large has completely failed in ending the occupation it nonetheless still has a crucial role to play in realizing the rights and self-determination of the Palestinian people, which can only be achieved with an end to the occupation. He noted that international law, along with the peoples of Palestine and Israel, have all suffered in the process.

To answer the fundamental question asked at the beginning of his presentation concerning **the test as to whether a belligerent occupation remains lawful**, he said that an occupier or mandatory power would cross the red line into illegality if they breach fundamental obligations as alien rulers and he then submitted as Special Rapporteur that Israel has crossed this red line. The international community now faces the challenge of assessing this analysis and if accepted will have to devise and employ appropriate diplomatic and legal steps that would completely and finally end the occupation.

In addition, as recommended in his October 2017 report the United Nations General Assembly should commission a comprehensive study on the legality of Israel's continued occupation of the Palestinian territory and should then consider the advantages of seeking an advisory opinion from the International Court of Justice on this very question.

At the end of the side-event there were two rounds of questions to the panelists after which they each gave their concluding remarks.



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[Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 - A/72/556](#) In the present report, the Special Rapporteur considers whether Israel's role as an entrenched and defiant occupant of the Palestinian territory has now reached the point of illegality under international law.