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Human rights situation in Palestine and other occupied Arab territories

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.

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



Israeli Exploitation of Palestinian Resources Violates Their Rights to Self-Determination and Return

In a bid to end its reliance on Russian energy following the invasion of Ukraine, the European Union (EU) signed a memorandum of understanding (MOU) in June 2022 with Egypt and Israel to facilitate the import of natural gas from the Middle East to Europe. The MOU is a statement of the EU's hypocritical and contradictory stance with regards to Israel, amounting to active involvement in the Israeli theft of Palestinian natural resources.

Permanent sovereignty of peoples and nations over their natural resources is affirmed in many international legal instruments, and by the International Court of Justice (ICJ).¹ This principle reflects two central concerns of the United Nations (UN): economic development of developing countries and self-determination of colonized peoples.²

Resources extracted from lands appropriated and colonized since 1948 are the property of Palestinian refugees and internally displaced persons forcibly transferred from that land during the Nakba (1947-1949), as well as their descendants.³

Israel has long exploited Palestinian natural resources in the Occupied Palestinian Territory (oPt) in a manner amounting to pillage under International Humanitarian Law (IHL). The practice also violates the Palestinian people's right to self-determination. The MOU will see the EU directly benefit from Israel's violations. Despite outlining at section 7 that it shall not contradict any of the parties' international legal responsibilities, the MOU's implementation would necessitate major violations and would engage the EU's legal responsibility and that of its member states.⁴

The Palestinian people's sovereignty over their natural resources has been repeatedly affirmed;⁵ most recently in 2015, the UNGA called on all states and international organizations "to ensure respect for their obligations under international law with regard to all illegal Israeli practices (...), particularly (...) the exploitation of natural resources."⁶

The use of natural resources in occupied territory is governed by the rule of usufruct.⁷ It permits the occupier to derive benefit from the resources of the occupied territory but prevents usage that alters their substance, as the occupying power is merely a non-sovereign temporary custodian of the territory.⁹

Israel may make use of Palestinian natural resources only as required to meet the needs of its forces or those of the occupied population. It cannot use these resources to enrich itself.¹⁰ Usage surplus to these requirements is excessive and will qualify as pillage.

Under Article 147 of the Fourth Geneva Convention, pillage constitutes a grave breach of IHL, hence belonging to the most serious category of war crimes. Its commission triggers responsibilities on third party states if the offending state (Israel), fails to remedy the breach.¹¹ In line with the principle of complementarity, the fact that the Israeli High Court of Justice has sanctioned the pillage of Palestinian resources means that such acts can brought within the ongoing investigation of the International Criminal Court in the Occupied Palestinian Territory.

Freedom from foreign subjugation is central to the right to self-determination.¹² It serves as a backstop in situations of protracted occupation, forbidding practices that pre-empt the options concerning the territory's status¹³ available to the people at the occupation's conclusion.

Israel must refrain from pre-empting the exercise of self-determination.¹⁴ Presently, its actions ensure that when all Palestinians, including the refugees, are in a position to self-determine, their natural resources "will no longer be available in the same form for the people to determine how [they] should be used."¹⁵

Exploitation of Palestinian natural resources is also affects the exercise of the right of return. The UN General Assembly in 1981 called on Israel to desist from all measures that "obstruct the right of return of the inhabitants, including measures affecting the physical and demographic structure of the occupied territories".¹⁶

Israeli theft of natural resources should therefore be understood as a breach of the Palestinian people's right of return and their peremptory right to self-determination.¹⁷ Furthermore, the right to self-determination is binding erga omnes:¹⁸ its violation thus triggers third party responsibilities. In signing a gas deal with Israel, the EU and its member states stand to breach these third party responsibilities, and implicate themselves directly in Israeli international crimes.¹⁹

It is noteworthy that when the Autonomous Republic of Crimea, Ukraine was occupied by the Russian Federation in 2014, the EU quickly imposed sanctions, banned businesses from dealings with the Russian Federation,²⁰ and was keen to avoid complicity in the Russian Federation's material breaches of, among other legal regimes, IHL. The EU's failure to implement similar policies regarding Israeli violations, including illegal natural resource extraction from occupied territory, demonstrates an extremely biased approach to upholding international law.

It is ironic that the EU's desire to wean itself off the Russian Federation's gas on account of the Russian Federation's war against Ukraine has led it to forge new ties with Israel, given its deplorable human rights record, including the commission of international crimes. The MOU is an indication to Israel that its ongoing oppression of Palestinians and disregard for international human rights and humanitarian law will not prejudice EU-Israel relations.

Recommendations:

- We call on the Council to reassert the internationally recognized right of the Palestinian people to their own natural resources.
- We call on the Council to remind the EU of its international responsibilities and to cancel its MOU with Israel and Egypt. Failure to do so will see it incur direct and indirect international legal responsibility for complicity in IHL grave breaches, and for tacitly approving Israel's denial of Palestinian self-determination through theft of Palestinian natural resources.
- We call on European and international civil society groups to mobilize in opposition to this deal, to pressure the EU, directly or through the conduit of their member state's governments, to highlight the hypocrisy of economically rewarding Israel, a major violator of international humanitarian law, as an alternative to trading with the Russian Federation.

1 Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Declaration of Judge Koroma, para. 11, ICJ, Judgement, 19 December 2005

2 Nico Schrijver, "Self-determination of peoples and sovereignty over natural wealth and resources" in United Nations (ed.), *Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development* (United Nations, 2013) available at: <https://www.un-ilibrary.org/content/books/9789210559720> [accessed 19 August 2022]
2022.<https://www.ohchr.org/sites/default/files/Documents/Issues/Development/RTDBook/PartIIChapter5.pdf>

3 BADIL, 'Nakba Statement: 74 Years of the Ongoing Nakba, 74 Years of Ongoing Resistance' (BADIL, 14 May 2022), available at: <https://www.badil.org/press-releases/13095.html> [accessed 4 August 2022].

4 Hagar Hosny, 'Egypt Looks for Boost from Gas Deal with Israel,' (Al-Monitor, June 2022) available at: <https://www.al-monitor.com/originals/2022/06/egypt-looks-boost-gas-deal-israel-eu> [accessed 14 July 2022]; Directorate-General for Energy, 'EU Egypt Israel Memorandum of Understanding,' (17 June 2022) available at: https://energy.ec.europa.eu/eu-egypt-israel-memorandum-understanding_en [accessed 21 July 2022].

5 UNGA Res. 3336, 'Permanent Sovereignty over National Resources in the Occupied Arab Territories.' (17 December 1974) UN Doc. A/RES/3336, available at: <https://digitallibrary.un.org/record/190163> [accessed 9 August 2022] See also: Natural Resources

Declaration 1962, available at

<https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/resources.pdf>

6 UNGA Res. 70/225, 'Permanent Sovereignty of the Palestinian People in the Occupied Palestinian Territory, Including East Jerusalem, and of the Arab Population in the Occupied Syrian Golan over Their Natural Resources' (22 December 2015) UN Doc. A/RES/70/225, available at:

<https://digitallibrary.un.org/record/821599> [accessed 14 July 2022].

7 Hague Regulations, 1907, Article 55

8 Aeyal Gross, *The Writing on the Wall: Rethinking the International Law of Occupation* (Cambridge University Press, 2017), 199; Iain Scobbie, *Natural Resources and Belligerent Occupation: Mutation Through Permanent Sovereignty* (Brill Nijhoff, 1997) 238.

9 Hague Regulations, 1907, Article 43

10 Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), (Request for the Indication of Provisional Measures) General List no. 116 [2000] ICJ.

11 ICRC, 'Grave Breaches,' (ICRC Glossary, 2022) available at:

<https://casebook.icrc.org/glossary/grave-breaches> [accessed 10 August 2022].

12 UNGA Res 1514 (XV), 'Declaration on the Granting of Independence to Colonial Countries and Peoples' (14 December 1960), UN Doc. A/RES/1514 (XV), available at: <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/152/88/PDF/NR015288.pdf?OpenElement> [accessed 1 November 2021]; UNGA Res. 545 (VI) Inclusion in the International Covenant or Covenants on Human Rights of an Article Relating to the Right of Peoples to Self- Determination (5 February 1952) UNGA 80; A/RES/545 (VI),

13 Matthew Saul, 'The Right to Self-Determination and Prolonged Occupation' in G Zyberi (ed), *Protecting Community Interests Through International Law* (Intersentia Uitgevers NV 2021), 230 (hereinafter: Saul)

14 Legal Consequences of the Construction of a Wall in the OPT, ICJ, Advisory Opinion (2004) Para 120 Available at <https://www.un.org/unispal/document/auto-insert-178825/>

15 Saul, *supra* note 15, 240

16 UNGA Res. 36/146C (16 December 1981), UN Doc. A/RES/36/146C, available at:

[https://documents-dds-](https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/407/72/IMG/NR040772.pdf?OpenElement)

[ny.un.org/doc/RESOLUTION/GEN/NR0/407/72/IMG/NR040772.pdf?OpenElement](https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/407/72/IMG/NR040772.pdf?OpenElement) [accessed 9 August 2022]

17 East Timor (Portugal v Australia), General List no. 84 [30 June 1995], ICJ, available at:

<https://www.refworld.org/cases,ICJ,40239bff4.html> [accessed 8 August 2022] (hereinafter ICJ East Timor)

18 ICJ East Timor, *supra* note 19, Para 29

19 International Law Commission, Draft articles on the Responsibility of International Organizations (2011), art. 41, available at:

https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_11_2011.pdf [accessed 9 August 2022] + Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) [2007] ICJ Rep 43, 217, para. 420: Non-

assistance in violations of international law was recognized as a rule of customary international law

20 Council of the European Union, Council Decision 2014/145/CFSP of 17 March 2014 [2014] OJ L 78/16, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0269> [accessed 10 August 2022].