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Written statement* submitted by Norwegian Refugee Council, 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.

[10 February 2019]

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



International Development Assistance in Situations of Prolonged Belligerent Occupation

The protracted nature of Israeli belligerent occupation of Palestinian territory illustrates that the provision of international development assistance to enhance the social, economic and political indices could not be indefinitely postponed, and must be considered in order to maintain and enhance public life in the occupied territory, short of bringing a state of occupation to an end.

Prolonged occupation could not but oblige the occupant to intervene for the benefit of the occupied population when the passage of time, and changed circumstances, so demand. A corollary right to provide development assistance rises when the Occupying Powers fails to discharge its duties accordingly.

Israeli policies and conduct not only entrench the dependency of the Occupied Palestinian Territory (OPT) and its people on all forms of international aid, but also constitute violations of International Humanitarian Law (IHL) and International Human Rights Law (IHRL). These include, *inter alia*, the transfer of Israel's civilian population into the OPT, the adverse consequences of establishing large scale settlements, the denial of sovereignty over natural resources (which are exploited and appropriated by the Occupying Power), forcible transfer of protected persons, destruction and seizure of private property, and *de facto and de jure* annexation of occupied territory, in violation of the prohibition on acquisition of territory by force.¹

These policies effectively deny Palestinians their social and economic rights; their right to development, as well as their *jus cogens* right to self-determination.

In the Gaza Strip, these violations are manifested in Israel's siege (comprised of an air and sea blockade and closure on land), leading to its stifled economy, an increase in humanitarian needs, and chronic and deepening dependence on humanitarian aid. Israel has maintained restrictions in relation to the passage of persons and goods between parts of occupied territory, including on the flow of essential relief consignments, despite the desperate needs of the population in the health, water and energy, shelter, and education sectors.

In the West Bank including East Jerusalem, Israel's policies have contributed to a coercive environment that puts Palestinians at heightened risk of forcible transfer. In Area C and East Jerusalem, the spatial planning regime imposed by the Israeli Military Commander continues to make it virtually impossible for Palestinians to erect the most basic infrastructure, livelihood, and residential structures, undermining access to essential services, including housing, water, energy, health and education. The imposition of a planning system in the West Bank, beyond the patent illegality of unnecessary changes to local legislation and institutions,² has failed to provide adequate development opportunities for Palestinians. Their needs for housing, infrastructure, and public services, such as primary education, go unmet and cannot be fulfilled without territorial contiguity and space for development.

IHL protects the right of children and young people to education in situations of armed conflict.³ The Occupying Power is obligated to facilitate the proper working of institutions for children⁴ and is bound not only to avoid interfering with their activities, but also to

¹ <http://www.un-documents.net/a25r2625.htm>

² <https://www.nrc.no/resources/legal-opinions/expert-opinion-on-the-occupiers-legislative-power-over-an-occupied-territory-under-ihl-in-light-of-israels-on-going-occupation/>

³ pursuant to Article 50 of the Fourth Geneva Convention "The Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children [...] Should the local institutions be inadequate for the purpose, the Occupying Power shall make arrangements for the maintenance and education, if possible by persons of their own nationality, language and religion."

⁴ <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=>

support them actively if the responsible authorities of the country fail in their duty. When their resources are inadequate, the Occupying Power must ensure that education service providers receive appropriate resources to carry out their functions, including through the timely facilitation of development aid.

Article 43 of the Hague Regulations,⁵ which defines the principal norms of the law of occupation, states that an Occupying Power must restore and maintain public order and civil life, including public welfare, in an occupied territory.⁶ The duty to ensure the well-being of the population amounts to a duty of good governance, whose elements include a duty of the Occupying Power to conduct its administration of the occupied territory according to what is expected of the modern State, with a broad range of regulatory responsibilities.⁷

The most significant contribution an Occupying Power can make towards good governance in an occupied territory is to maintain the orderly government of the territory, its institutions, and public facilities. In a situation of prolonged occupation, the need to adopt legislative measures in order to enable the occupied country to evolve becomes more evident. Accordingly, it has been suggested that the duties enumerated in Article 43 must be interpreted more broadly the longer an occupation lasts.⁸

In accordance with this principle, IHL establishes a duty to accept and facilitate relief operations for the benefit of the population and an occupant is consequently obliged to care for the well-being of the population of the occupied territory.⁹ Notably, the primary responsibility for providing such relief falls on the Occupying Power (pursuant to Article 55 of the Fourth Geneva Convention¹⁰), but if basic needs are not met, the Occupying Power must allow and facilitate aid by impartial humanitarian organizations (in accordance with Article 59¹¹). While this constitutive duty is interpreted primarily as being of humanitarian character, relief actions could include early recovery support, medium and long-term development assistance.¹²

The scope of actions to which this definition applies is dictated by the context and surrounding circumstances, and the obligation on the Occupying Power to restore and enhance public life, and to guarantee the well-being of the protected population.

It is the position held by the ICRC that in circumstances of protracted crisis, activities that would, in peacetime, be understood in international policy terms as development activities, will, in fact, serve to meet basic needs and fall under the definition of humanitarian action within the meaning of IHL.¹³ Examples cited include long-term socio-economic programming and long-term livelihood opportunities.

The ICRC further states that it is unconvinced by distinctions between relief and development programming and financing, as those serve as bureaucratic funding distinctions rather than a genuine reflection of the reality of a needs-based approach, including medium and long-term activities to support infrastructure and services as the most appropriate response to meet the needs of individuals.

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⁵ <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/ART/195-200053?OpenDocument>

⁶ <http://ejil.org/pdfs/16/4/313.pdf>

⁷ Michael Bothe, *The Administration of Occupied Territory*, in <https://global.oup.com/academic/product/the-1949-geneva-conventions-9780199675449?cc=il&lang=en&#>

⁸ *Revisiting the Law of Occupation*, Hanne Cuyckens, University of Utrecht, 2018.

⁹ Specific duties are enumerated in Article 50 (education), Article 56 (health services) and Article 55 (provision of food and medical supplies) of the Fourth Geneva Convention.

¹⁰ <https://ihl-databases.icrc.org/ihl/WebART/380-600062?OpenDocument>

¹¹ <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/ART/380-600066?OpenDocument>

¹² <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=57F4A5DA22649BA3C12563CD0042C9EB>

¹³ https://www.icrc.org/sites/default/files/document/file_list/protracted_conflict_and_humanitarian_action_icrc_report_lr_29.08.16.pdf

This position becomes even more important in the context of prolonged occupation, in which the Occupying Power's duties extend beyond the immediate humanitarian needs of a population to the maintenance and enhancement of public life and good governance.

An apparent challenge to development of a territory under belligerent occupation is that the process of delivering against the right to development requires conducive national and international environments, and mutual responsibility of both the international community of States, the deposed sovereign, and the Occupying Power. That spirit of cooperation has been absent, in part or full, from the administration of OPT.

If the Occupying Power is unable, or unwilling, to discharge those duties in good faith, it falls upon impartial humanitarian organizations to provide for the development needs of the occupied population. While the question of development is necessarily complex in the context of occupation, it is essential that IHL is interpreted and applied in a way that is consistent with the right to development. In this regard, a majority of IHL experts agree¹⁴ on the need to interpret occupation law flexibly when an occupation persists. It is given that there would be a need for changes on a far greater scale during protracted occupation, since public policies would have to be adjusted in order to keep up with the passage of time. Some experts argue that a freeze on the development of an occupied territory would inevitably result in stagnation, which would ultimately be detrimental to the population of that territory. In such exceptional circumstances, the changing needs of the civilian population would become even more pressing.

Thus, decisions related to the social, economic and sometimes political realms should not be indefinitely postponed and must be considered in order to maintain as normal a life as possible in the occupied territory. Moreover, the services and systems sustained through humanitarian and development aid – systems of protection, shelter, water and sanitation, health, and primary education – may also be valuable resources for conflict resolution. Maintaining infrastructure and social systems with engaged national authorities prioritizes respect for the rule of law, and responsibilities of the ostracized sovereign. Sustaining governance may also make State building and the realization of self-determination easier when political conditions allow for the revitalization of this effort.

¹⁴ Occupation and Other Forms of Administration of Foreign Territory, Report prepared and edited by Tristan Ferraro, Legal adviser, ICRC, 2012 at <https://www.icrc.org/en/publication/4094-occupation-and-other-forms-administration-foreign-territory-expert-meeting>