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### **The Facilitation of Israel's Steady Retreat from International Accountability**

Al-Haq, on behalf of the Palestinian Human Rights Organizations Council, would like to express its alarm at the accelerated retreat in recent months by the State of Israel from international human rights mechanisms and the failure of the international community to respond appropriately.

In the past year alone, the international community, and the United Nations (UN) in particular, have been provided with strikingly illustrative examples of the repercussions of decades of unerring impunity for the State of Israel in the face of persistent, well-documented and widely-condemned violations of international law. This impunity, facilitated by the international community's dependence on condemnation without meaningful action, has led to devastating results within the Occupied Palestinian Territory (OPT) and alarming developments on the international stage.

Israel's announcement in May 2012 to "suspend its contact with the Office of the High Commissioner for Human Rights (OHCHR), the Human Rights Council (the Council) and its subsequent mechanisms," along with the UN's inability to date to compel the State to reengage, testify to Israel's growing disregard for the UN's authority.

On 29 January 2013, the State of Israel failed to appear before its UN State counterparts to participate in its Universal Periodic Review (UPR). In so doing, it set a dangerous precedent; Israel is the first Member State to refuse to participate in its periodic review. This decision not only resulted in Israel avoiding rigorous criticism of its violations of international law, but risked undermining the entire UPR system through the loss of its two fundamental principles: equality and universality.

Despite no clear indication of Israel's willingness to reengage with the Council and its mechanisms, and with no precedence by which a UN response could be anticipated, the Council failed to provide any information concerning how it would proceed in the event that Israel did not participate in its UPR until just 15 days prior to the scheduled review date. The decision at this time was to remain seized of the matter until the day of the review.<sup>1</sup>

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<sup>1</sup> Draft decision submitted by the President of the Human Rights Council, HRC decision A/HRC/OM/7/L.1

This lack of clarity and transparency resulted in State diplomatic efforts focusing on Israel's participation above Israel's persistent violations of international law. Furthermore, some civil society organisations, which must use their limited resources carefully and strategically, were forced to revise or limit engagement with the review due to the risk of investing necessarily significant resources into a process that may not take place.

Therefore, a key component of the UPR process, essential for a truly meaningful and rigorous review – civil society engagement – was severely hampered. To ensure the most effective contribution of observers, including non-governmental organisations, the methods of work of the Council must be, as stipulated under UN General Assembly Resolution 60/251, 'transparent, fair and impartial and [...] enable genuine dialogue.' The predictable conclusion of the review process and engagement of the State under review are essential if transparency and genuine dialogue are to be achieved.<sup>2</sup>

Israel's decision to suspend relations with the Council and the OHCHR must be viewed, however, within the broader context of its continued refusal to fully recognise its obligations to the occupied Palestinian population under international law as well as its refusal to cooperate with various UN processes prior to its formal announcement in May 2012, including UN Special Rapporteurs and Fact-Finding Missions.

In 2009, Israel also declined to cooperate with the UN Fact-finding Mission on the Gaza Conflict, which, despite this obstacle, provided extensive practical recommendations to address the environment of impunity in which Israel operates. Significantly, however, on 8 November 2012, when Israeli soldiers shot and killed a 13-year-old boy in the Gaza Strip, triggering an escalation of violence that culminated in the Israeli military offensive code-named 'Operation Pillar of Defence,' the report had been sidelined at the UN and the international community had yet to take any meaningful steps to progress the recommendations made almost four years earlier.

Over the following two weeks, until 21 November 2012 when a ceasefire was agreed, Al-Haq's figures reveal that at least 173 Palestinians had been killed, including 113 civilians, of whom 13 were women and 38 were children. At least 1,221 Palestinians were injured, including 207 women and 445 children. The attacks have caused severe destruction to the already inadequate infrastructure, and left some 950 civilian buildings totally or partially damaged.

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<sup>2</sup> UN General Assembly Resolution (3 April 2006) UN Doc. A/RES/60/251

The UN and the European Union (EU) proved unwilling to take a strong position in condemning the disproportionate attacks by Israel on the Gaza Strip, despite their stated commitment to international humanitarian law. The UN Security Council, as primary UN body responsible for the maintenance of international peace and security, failed to come to any conclusion before the ceasefire was agreed, a further failure to address the violations. Within this prolonged climate of impunity, perpetrators of the most serious international crimes, including grave breaches of the Geneva Conventions, go unpunished while their victims are denied their fundamental right to an effective remedy.

Crucially exacerbating the stark denial of justice for the Palestinian population is Israel's own refusal to recognise the *de jure* applicability of the Fourth Geneva Convention, incumbent upon it as the Occupying Power. This position is in defiance of numerous UN resolutions, the 2004 International Court of Justice (ICJ) Advisory Opinion on the Legal Consequences of the Construction of a Wall in the OPT, and countless statements issued by governments worldwide.

Consecutive Israeli governments have also refused to recognise the State's obligations under international human rights law with regard to the Palestinian population of the OPT, despite repeated statements made by UN treaty bodies reaffirming these obligations. Notably, however, Israel does adhere to its obligations under international human rights law with regard to Israeli settlers living in the OPT.

The UN Fact-finding Mission on the Gaza Conflict joined a long list of UN Special Rapporteurs and, more recently, the Deputy High Commissioner for Human Rights, whose entry into the OPT Israel has refused. Since his appointment as Special Rapporteur on the situation of human rights on Palestinian territories occupied since 1967, Mr. Richard Falk has not been allowed to enter the OPT to carry out his work.

Two days after Israel's stalled UPR, the UN Fact-finding Mission on Israeli Settlements in the OPT – denied entry into the territory to collect testimonies as part of its investigations – released its report on the impact of Israel's illegal settlements in the OPT. Amongst other conclusions, the report found that the illegal settlement enterprise, which has been a core pillar of successive Israeli governments, is resulting in a 'creeping annexation that [...] undermines the right of the Palestinian people to self-determination.'<sup>3</sup>

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<sup>3</sup> Report of the independent international fact-finding mission on Israeli settlements in the Occupied Palestinian Territory, para. 101. (Advanced Unedited Version) UN Human Rights Council. ( January 2013)

The international community has recognised the illegality of Israel's settlements for several decades without ever moving beyond condemnation. In 1979 a UN commission on settlements issued a report containing similar findings and recommendations to those of this recent Fact-finding Mission<sup>4</sup>. In the intervening period, Israeli settlements have expanded dramatically across the West Bank, including East Jerusalem, continuing to grow unchecked.

Through the establishment of this Mission, the Council has demonstrated its willingness to address the international crimes inherent in Israel's settlement enterprise. However, it is notable that the recommendations made by this Fact-finding Mission, other than those to Israel, are addressed primarily to individual Member States and to private companies.

It is becoming increasingly apparent that individual Member States must illustrate their commitment to the UN system and to the rights of the Palestinian people by implementing practical measures to bring an end to Israel's violations of international law and ensure its compliance with its international law obligations.

Furthermore, States must make clear that Israel's growing disregard for the UN system and ongoing defiance of its international law obligations are not acceptable. The Council and its members, then, must ensure Israel's participation in its UPR, as a key mechanism in which Israel can be held to account, in accordance with the principles and standards set in the UPR mechanism, thereby reasserting the condition that human rights are paramount to political and diplomatic considerations.

PHROC, therefore, calls upon the Human Rights Council:

i. To ensure full transparency in scheduling Israel's UPR in the event of its reengagement with the process, providing a timeframe that allows for effective and meaningful engagement by Member States and civil society, as well as the State under review.

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<sup>4</sup> UNSC, 'Report of the Security Council Commission Established under Resolution 446' (1979) (4 December 1979) UN Doc. S/13679.

ii. To take appropriate measures consistent with the seriousness and long-term implications of Israel's actions, if Israel's persists in its refusal to cooperate in the process.

iii. To ensure that Israel does not receive concessions in return for its renewed cooperation that could result in the further undermining of international human rights mechanisms.

iv. To clearly define the criteria that must be met in order to fulfil the requirement under Article 38 of Human Rights Council Resolution 5/1 to 'exhaust all efforts to encourage a State to cooperate with the universal periodic review mechanism.' The Human Rights Council further must define the criteria for 'persistent non-cooperation with the mechanism,' as referred to in Article 38 of Human Rights Council Resolution 5/1.<sup>5</sup>

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<sup>5</sup> UN Human Rights Council Resolution 5/1 (18 June 2007) UN Doc. *A/HRC/RES/5/1*