



Lawyers for Palestinian Human Rights' briefing on UN Special Rapporteur, Professor Michael Lynk, finding that Israel's occupation of Palestinian territory is illegal



About Lawyers for Palestinian Human Rights (LPHR)

LPHR is a lawyer-based charity in the UK that works on projects to protect and promote Palestinian human rights. We distinctly provide a legal and human rights perspective on issues affecting Palestinians. Our trustees include leading human rights lawyers, Sir Geoffrey Bindman QC and Tessa Gregory.

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1. Last week, the UN Special Rapporteur for the human rights situation in the occupied Palestinian territory, Professor Michael Lynk, presented his second annual report to the UN General Assembly, which includes a very significant legal determination that Israel's occupation of Palestinian territory is illegal under international law.
2. In a compelling and immaculately reasoned legal analysis, Special Rapporteur Lynk sets out a four-fold legal test for determining whether Israel's continuing role as an occupying power remains lawful. In so doing, Special Rapporteur Lynk presents an illuminating legal opinion which merits careful consideration by states and civil society.
3. This briefing will briefly summarise Special Rapporteur's legal analysis and findings with reference to key paragraphs of his report.

First legal test of lawful occupation: A lawful occupant cannot annex any of the occupied territory

4. Special Rapporteur Lynk outlines the well-established principle of international law that an occupying power cannot, under any circumstances, acquire the right to conquer, annex or gain any legal or sovereign title over any part of the territory under its occupation. This means that international law prohibits the occupying power from creating facts on the ground that are designed to advance a claim for sovereignty and infringe upon the right of the protected population to self-determination.
5. Applying this specific test to Israel's occupation of Palestinian territory, Special Rapporteur Lynk notes:

"Israel's formal annexation of East Jerusalem in 1967 and 1980, and its de facto (actual) annexation of significant parts of the West Bank, are intended to solidify its claim for sovereignty. This constitutes a flagrant breach of the absolute prohibition against annexation and violates Israel's obligations under international law." (paragraph 44)

6. In making this critical determination, the Special Rapporteur's incisive observation of the situation pertaining on the ground in the occupied West Bank does merit quoting in full:

"Beyond Jerusalem, Israel is actively establishing the de facto annexation of parts of the occupied West Bank. The International Court of Justice, in the 2004 Wall Advisory Opinion, warned that the reality of the Wall and the settlements regime was constituting a fait accompli and de facto annexation. The Association for Civil Rights in Israel has characterized Israel's regime in the West Bank as an "occu-annexation. Professor Omar Dajani has observed that, given the absolute prohibition today in international law against conquest, acquisitive states have an incentive to obfuscate the reality of annexation. In the West Bank, Israel exercises complete control over Area C (making up 60 per cent of the West Bank), where its 400,000 settlers live in approximately 225 settlements. The settlers live under Israeli law in Israeli-only



settlements, drive on an Israeli-only road system, and benefit greatly from the enormous sums of public money spent by Israel on entrenching, defending and expanding the settlements. Few of these benefits, except incidentally, flow to the Palestinians in Area C. Only one per cent of Area C is designated for Palestinian use, notwithstanding the approximately 300,000 Palestinians who live there. What country would invest so heavily over so many years to establish so many immutable facts on the ground in an occupied territory if it did not intend to remain permanently?" (paragraph 46)

Second legal test of lawful occupation: Occupations must be temporary, and not indefinite or permanent

7. Special Rapporteur Lynk elaborates the principle that a military occupation is an inherently temporary and exceptional situation in which the occupying power is required to return the territory to the sovereign power in as reasonable and expeditious a time period as possible.
8. Applying this specific test to the Israel's occupation of Palestinian territory, Special Rapporteur Lynk notes that its 50 year occupation "is without precedent or parallel in today's world", and finds that "Israel lacks any persuasive reason to remain as the occupant after 50 years".
9. Special Rapporteur Lynk strikingly presents the following observation in regard to the inordinate length of Israel's military occupation of Palestinian territory:
"The only credible explanation for Israel's continuation of the occupation and its thickening of the settlement regime is to enshrine its sovereign claim over part or all of the Palestinian territory, a colonial ambition par excellence. Every Israeli government since 1967 has pursued the continuous growth of the settlements, and the significant financial, military and political resources committed to the enterprise belies any intention on its part to make the occupation temporary." (paragraph 49)
10. Special Rapporteur Lynk concludes by finding that "*whether the occupation is said to be indefinite or permanent, the lack of a persuasive justification for its extraordinary duration places Israel, as the occupying power, in violation of international law.*"

Third legal test of a lawful occupation: During occupation, the occupying power must act in the best interests of the people under occupation

11. Special Rapporteur Lynk sets out a central principle of international humanitarian law that the occupying power, throughout the duration of the occupation, is to govern in the best interests of the people under occupation, subject only to its legitimate security requirements.
12. Applying this specific test to the Israel's occupation of Palestinian territory, Special Rapporteur Lynk finds:



“On the probative evidence, Israel, the occupying power, has ruled the Palestinian Territory as an internal colony, deeply committed to exploiting its land and resources for Israel’s own benefit, and profoundly indifferent, at very best, to the rights and best interests of the protected people. As such, Israel is in breach of its obligations to administer the occupation as a trustee for the well-being of the protected people under occupation.” (paragraph 57)

Fourth legal test of a lawful occupation: The occupying power must administer the occupied territory in good faith, including acting in full compliance with its duties and obligations under international law and as a member of the United Nations

13. Special Rapporteur Lynk notes that *“the principle of good faith is a cornerstone principle of the international legal system”* and that the duty to act in good faith accordingly extends to an occupying power governing occupied territory. He then sets out five ways to measure whether or not an occupying power is complying with its duty to act in good faith:

- I) it does not annex any of the occupied territory;
- II) it rules on a temporary basis only;
- III) it governs in the best interests of the protected people;
- IV) it complies with any specific directions issued by the United Nations or other authoritative bodies pertaining to the occupation; and
- V) it complies with the specific precepts of international humanitarian law and international human rights law applicable to an occupation.

14. Applying this specific test to the Israel’s occupation of Palestinian territory, Special Rapporteur Lynk finds that in addition to failing to comply with the first three core principles, Israel *“persistently refuses to accept and apply UN resolutions”* and *“has been deemed to be in breach of many of the leading precepts of international humanitarian and human rights law”*.

15. Special Rapporteur Lynk accordingly concludes:

“Whether measured by the criteria of substantive compliance with United Nations resolutions or by the satisfaction of its obligations as occupier under the framework of international law, Israel has not governed the Occupied Palestinian Territory in good faith. As a UN member state with obligations, it has repeatedly defied the international community’s supervisory authority over the occupation. As the occupant, it has consciously breached many of the leading precepts of international humanitarian law and international human rights law that govern an occupation.” (paragraph 62)

Special Rapporteur Lynk’s call for full compliance with international law obligations

16. Special Rapporteur Lynk concludes his thorough and well-reasoned legal analysis with the significant finding that Israel’s role as an occupying power has *“crossed the red line*



into illegality by breaching fundamental obligations as alien rulers". He then presents a key challenge to the international community in respect of his profound finding:

"The challenge now facing the international community is to assess this analysis and, if accepted, to devise and employ the appropriate diplomatic and legal steps that, measure by measure, would completely and finally end the occupation." (Paragraph 64)

17. He suggests the following recommendations to the international community which are reproduced in full here:

"The Special Rapporteur recommends that the Government of Israel bring a complete end to the 50 years of occupation of the Palestinian territories in as expeditious a time period as possible, under international supervision.

The Special Rapporteur also recommends that the United Nations General Assembly:

- (a) Commission a United Nations study on the legality of Israel's continued occupation of the Palestinian territory;*
- (b) Consider the advantages of seeking an advisory opinion from the International Court of Justice on the question of the legality of the occupation;*
- (c) Consider commissioning a legal study on the ways and means that UN Member States can and must fulfil their obligations and duties to ensure respect for international law, including the duty of non-recognition, the duty to cooperate to bring to an end a wrongful situation and the duty to investigate and prosecute grave breaches of the Geneva Conventions.*
- (d) Consider the adoption of a Uniting for Peace resolution with respect to the Question of Palestine, in the event that there is a determination that Israel's role as occupier is no longer lawful."*

18. It is hoped that all states do indeed carefully consider and suitably act on Special Rapporteur Lynk's landmark report by, principally, undertaking their own determination of the legality of Israel's continuing role as an occupying power. In so doing, states should consider afresh its assessment on how it can and must fulfil its own obligations to ensure respect for international law in the context of the occupied Palestinian territory, including through fully complying with its own legal duties of non-recognition, non-aiding and non-assistance of an illegal situation.

19. Taking such appropriate action would, in the resonating words of Special Rapporteur Lynk, *"confirm the moral imperative of upholding the international rule of law when aiding the besieged and the vulnerable"*.