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## **STRENGTHENING THE EUROPEAN UNION'S INVOLVEMENT AT THE UNITED NATIONS HUMAN RIGHTS COUNCIL: STANDING AGENDA ITEM 7**

### **I. INTRODUCTION**

The Human Rights Council (Council) has included Item 7, entitled “the Human Rights Situation in Palestine and other occupied Arab territories”, in its agenda since its creation in 2006. The agenda item was similarly included on the agenda of the United Nations (UN) Human Rights Commission - a predecessor to the Council.

The Council was established to “address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon. It should also promote the effective coordination and the mainstreaming of human rights within the United Nations system.”<sup>1</sup> The Council is the primary United Nations organ responsible for promoting human rights and international law on the international stage and has the potential of setting the groundwork for UN-wide action with a view of protecting victims. The Council, including standing Agenda Item 7, therefore provides a vital platform for discussing and addressing the proliferation of international law violations committed in the occupied Palestinian and Syrian territories. In addition to providing a forum to address violations arising from Israel’s unique and prolonged occupation of the Palestinian and Syrian territories, the Agenda Item provides an important precedent of how the Council could operationalise its mandate in other situations where prolonged, gross and systematic violations of human rights are not being addressed adequately.

On 18 March 2013, during the general debate under Item 7 in the 22<sup>nd</sup> Human Rights Council session, the European Union (EU) effectively voiced its discontent with the existence of Item 7 and commenced

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<sup>1</sup> General Assembly Resolution 60/251 (3 April 2006), available at: [http://www2.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251\\_En.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251_En.pdf)

its counterproductive practice of disengaging from the Agenda Item. The EU has not fully participated in the general debate of Item 7 since then. In addition to not participating itself, the EU has repeatedly undermined Item 7 by addressing Israel's occupation under agenda Item 4. Agenda Item 4 addresses "Human Rights situations that require the Council's attention" more generally.

This position paper presents the reasons warranting the EU's full and active participation in Item 7 of the Council. In particular, this position paper provides that in the context of persistent, systematic and gross violations of international law committed in an entrenched and prolonged occupation that threaten international peace and security, the need for a body that is continuously and consistently mandated to oversee the situation is crucial. As the organ responsible for promoting universal respect for the protection of human rights, the Council is one of the appropriate fora to ensure such attention and to pursue action that includes recommendations for concrete measures towards accountability. Al-Haq also puts forward that EU's on-going approach on Item 7 arguably bolsters other States' efforts to undermine the Council and fails to consider its effect of Israel's persistent non-cooperation with the UN human rights system.

Finally, the position paper argues that the EU strategy on Item 7 is in stark contradiction with its obligations and commitments on the international stage. This contradiction can only be remedied by a reversal of the position and conduct of the EU in relation to Item 7. As the situation in the occupied territories is dangerously escalating, the EU and its member States must actively and in good faith participate in all agenda items of the Council, including Item 7.

## II. EU DISENGAGEMENT FROM ITEM 7

During Item 7 of the 22<sup>nd</sup> Human Rights Council session, the Ambassador of Ireland delivered the EU view that the:

"Human rights situation in Palestine and other occupied Arab territories" [Item 7] could usefully be addressed by this Council under the general item on "Human rights situations that require the Council's attention" [Item 4]. We hope that there can be progress on the issue of the Agenda at the next review of the Human Rights Council.<sup>2</sup>

The EU explicitly refers to the above position as a reiteration. In other words, the EU provided that its position about Item 7 pre-dates the 22<sup>nd</sup> Council session. Nevertheless, it is the above EU statement that cements the position and sets the EU disengagement in motion. Up until the 22<sup>nd</sup> Council session, the EU fully participated in Item 7, including provided statements in the general debate.<sup>3</sup>

The EU's disengagement from Item 7 occurred against the backdrop of Israel's refusal to cooperate with the Universal Periodic Review (UPR) of the Human Rights Council,<sup>4</sup> and the Office of the High Commissioner for Human Rights.<sup>5</sup> The UN General Assembly mandated the Council to undertake a universal and objective review of the "fulfillment by each State of its human rights obligations and

<sup>2</sup> EU Statement, 22<sup>nd</sup> HRC Session, General Debate, Item 7 (18 March 2013), available at: [http://eeas.europa.eu/delegations/un\\_geneva/documents/eu\\_statements/human\\_right/20130318\\_hrc22\\_eu\\_stmt\\_item7.pdf](http://eeas.europa.eu/delegations/un_geneva/documents/eu_statements/human_right/20130318_hrc22_eu_stmt_item7.pdf)

<sup>3</sup> See e.g. EU Statement, 21<sup>st</sup> HRC Session, General Debate, Item 7 (24 September 2012), available at: [http://eeas.europa.eu/delegations/un\\_geneva/documents/eu\\_statements/human\\_right/20120924-hrc21\\_item7.pdf](http://eeas.europa.eu/delegations/un_geneva/documents/eu_statements/human_right/20120924-hrc21_item7.pdf); EU Statement, 20<sup>th</sup> HRC Session, General Debate, Item 7 (2 July 2012), available at: [http://eeas.europa.eu/delegations/un\\_geneva/documents/eu\\_statements/human\\_right/20120702\\_item7\\_en.pdf](http://eeas.europa.eu/delegations/un_geneva/documents/eu_statements/human_right/20120702_item7_en.pdf)

<sup>4</sup> *In face of non-cooperation, UN calls on Israel to take part in human rights review*, UN News Centre (29 January 2013), available at: <http://www.un.org/apps/news/story.asp?NewsID=44026#.Vq-RYMc6Twy>

<sup>5</sup> Israel Ministry of Foreign Affairs, *Israel's Universal Periodic Review at the UN Human Rights Council* (29 October 2013), available at: <http://mfa.gov.il/MFA/InternatOrgs/Speeches/Pages/Israel-UPR-UN-Human-Rights-Council-29-Oct-2013.aspx>

commitments".<sup>6</sup> It is reported that the EU position on Item 7 is a result of negotiations with Israel that resulted in its participating in the UPR after a 1.5 year delay.<sup>7</sup>

### III. REASONS WARRANTING ITEM 7

#### A. The Need For Focused and Consistent Attention to Prolonged Occupation and Systematic Violations

Contrary to claims that Item 7 is the Council's only country-specific agenda item and is therefore providing for unparalleled attention to violations committed by Israel, Item 7 was established to address the human rights situation in territories, Palestinian and Syrian, occupied by Israel in 1967. It is the unique nature of the occupation itself – including the accompanied systematic and gross violations of international law, the specific role of the UN and individual States in the devolution of the current situation, and the inability of Palestinians to resort to domestic remedies to enjoy their inalienable rights - that demand international scrutiny.

Whereas occupation of a foreign territory was envisioned to be of a temporary nature, thus vesting sovereignty over the territory with the occupied population instead of with the Occupying Power, Israel has repeatedly demonstrated its intention to exercise sovereignty over the territories it has occupied.

The prolonged nature of Israel's occupation of the Occupied Palestinian Territory (OPT) has allowed for the institutionalization of its discriminatory treatment of the Palestinian people as a matter of policy while access to effective legal remedy is systematically denied to the occupied population. The UN Fact-Finding Mission on Israeli Settlements in the OPT reaffirmed that the Israeli High Court of Justice has rendered the issue of settlements – recognised as illegal and an obstacle to international peace and security – non-justiciable. Similarly, Israel has deliberately failed to hold its own nationals to criminal account for crimes committed against Palestinians during the last three offensives on the Gaza Strip. On this note, the UN Commission of Inquiry on Gaza concluded in 2015 that:

[I]mpunity prevails across the board for violations of international humanitarian law and international human rights law allegedly committed by Israeli forces, whether it be in the context of active hostilities in Gaza or killings, torture and ill-treatment in the West Bank. Israel must break with its recent lamentable track record in holding wrongdoers accountable, not only as a means to secure justice for victims but also to ensure the necessary guarantees for non-repetition.<sup>8</sup>

In the context of persistent, systematic and gross violations of international law committed in an entrenched and prolonged occupation without recourse to justice, the need for a body that is continuously and consistently mandated to oversee the situation is crucial. The Council is one of the appropriate fora to ensure the required attention and to pursue action that includes recommendations for concrete measures towards accountability, including sanctions.

<sup>6</sup> General Assembly Resolution 60/251 (3 April 2006), available at: [http://www2.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251\\_En.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251_En.pdf)

<sup>7</sup> Cook, *Israel's 'exceptionalism' and the UN*, Aljazeera (18 November 2013), available at: <http://www.aljazeera.com/indepth/features/2013/11/israel-exceptionalism-un-2013111710465371468.html>; and David, *Ending a 1.5-year Boycott, Israel Resuming Cooperation with the UN Human Rights Council*, Haaretz (27 October 2013), available at: <http://www.haaretz.com/israel-news/1.554711>

<sup>8</sup> UN Independent Commission of Inquiry on the 2014 Gaza conflict, *Report of the Detailed Findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1, A/HRC/29/CRP.4* (24 June 2015), para. 670 .

## B. The Need for Focused and Consistent Attention on Threats to Peace and Security

UN General Assembly Resolution ES-10/2 expressed its conviction that “the repeated violation by Israel, the Occupying Power, of international law and its failure to comply with relevant Security Council and General Assembly resolutions and the agreements reached between the parties undermine the Middle East peace process and constitute a threat to international peace and security.”<sup>9</sup>

Similarly, on 26 January 2016 – in the context of an ongoing rise in violence in Palestine and Israel and the lack of progress in Israeli policies towards the Gaza Strip such as the closure –the UN Secretary General remarked that:

Palestinian frustration is growing under the weight of a half-century of occupation and the paralysis of the peace process. Some have taken me to task for pointing out this indisputable truth. Yet, as oppressed peoples have demonstrated throughout the ages, it is human nature to react to occupation, which often serves as a potent incubator of hate and extremism [...] I continue to strongly believe that conditions in Gaza pose a severe threat to long-term peace and security in the region.<sup>10</sup>

The threat posed by Israel’s occupation clearly demands consistent and dedicated monitoring and response by the international community until the situation is brought to a conclusion that guarantees the enjoyment of the rights of all people in the territories. Such attention is particularly necessary when Israel continues to disregard decisions by the UN organs.

## C. The Need for a Catalyst of Responses to Systematic and Gross Violations

A standard claim on the need to abolish Item 7 relates to a perceived proliferation of reports and mechanisms related to Palestine. Such a claim is incorrect at best; Israel’s occupation has been marked by, and indeed continues, due to inaction. Notwithstanding the Council’s contribution to the documentation of violations committed in the occupied territories and their impact on the occupied people, the UN and the international community have failed to take action to put them to an end. By failing to participate fully under Item 7, the EU has contributed to undermining the Council by fostering a dangerous culture of impunity in which Israel’s prolonged occupation and systematic abuses of human rights are perceived as acceptable precedents for State action. And certainly, rather than restrict the Council’s activities on the situation in the territories occupied by Israel, the EU should promote similar activities in response to other like and grave situations.

In addition, the Council has in an unprecedented manner included civil society organisations (CSOs) in its work. In many ways, the Council has welcomed CSOs to bring a human rights issue of grave concern to the attention of the United Nations and its organs, including the General Assembly. The removal of Item 7 would diminish the supportive role played by CSOs in ensuring that all states abide by their legal obligations as well as mustering political responses and will when there is a state of non-compliance.

## D. The Need to Refute Israel’s Non-cooperation with UN bodies

The current EU strategy on Item 7 is particularly alarming considering Israeli non-cooperation with UN mechanisms. Throughout the occupation, Israel has shown little to no regard to the UN human rights system. Israel has defied UN resolutions, failed to implement recommendations by treaty bodies and

9 General Assembly Resolution, A/RES/ES-10/2 (25 April 1997), available at: <http://www.un.org/documents/ga/res/10emsp/a10emr02.htm>; See also UN Security Council Resolution S/RES/54 (15 July 1948), available at: [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/54\(1948\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/54(1948))

10 Secretary-General’s Remarks to the Security Council on the Situation in the Middle East (26 January 2016), available at: <http://www.un.org/sg/statements/index.asp?nid=9417>



denied access and assistance to UN missions and special procedures, including the 2014 Commission of Inquiry on Gaza.

Israel's latest display of disregard for the UN human rights system culminated in the resignation of the United Nations Special Rapporteur on the occupied Palestinian territories, Mr. Wibisono, in January 2016. The Special Rapporteur referring to Israel's non-response to his request for access as the reason for his resignation, stated:

Unfortunately, my efforts to help improve the lives of Palestinian victims of violations under the Israeli occupation have been frustrated every step of the way [and] [w]ith no reply from Israel to my latest request, in October 2015, to have access by the end of 2015, it is with deep regret that I accept the premise upon which I took up the mandate, which is to have direct access to the victims in the Occupied Palestinian Territory, will not be fulfilled.<sup>11</sup>

Considering the above, the EU's position on and disengagement from Item 7 emboldens Israel's efforts to cripple Palestinians' peaceful resort to justice through the UN human rights system.

### E. The Need to Uphold EU obligations and commitments

The EU is intrinsically and historically invested in the Israeli-Palestinian conflict. In particular, the EU is devoted to Palestinian state building whilst engaging in a special relationship with Israel. The EU's commitment to Palestine and Israel is translated into *inter alia* political, research and development cooperation, a free trade regime, and aid and development assistance. EU primary legislation demands however that this close relationship is guided by the principle of the universality and indivisibility of human rights and fundamental freedoms, respect for the principles of the United Nations Charter and international law.<sup>12</sup> In extension, the EU Strategic Framework on Human Rights and Democracy emphasises that the Union shall "resist strenuously any attempts to call into question the universal application of human rights and will continue to speak out in the [...] Human Rights Council."<sup>13</sup> The EU also acknowledges therein the "leading role of the UN Human Rights Council in addressing urgent cases of human rights violations"<sup>14</sup> and takes upon itself to "contribute vigorously to the effective functioning of the Council".<sup>15</sup> Such dedication to the Human Rights Council is also expressed in the EU Guidelines on International Humanitarian Law that calls on the EU to "cooperate with the UN and relevant regional organisations for the promotion of compliance with IHL."<sup>16</sup>

In addition to the above, EU member states are under a legal obligation to individually comply with international customary law. Article 41 of the International Law Commission (ILC) Articles on Responsibility of States for Internationally Wrongful Acts, which reflects customary international law, affirms that all States are under a positive obligation to actively cooperate to bring any serious breach of peremptory norms of international law, such as the violation of the right to self-determination, to an end through

11 Faced with Israeli denial of Access to Occupied Palestinian Territory, UN expert resigns, UN News Centre (4 January 2016), available at: <http://www.un.org/apps/news/story.asp?NewsID=52935#.Vq-gKsc6Twx>

12 Treaty on European Union, Articles 21 and 23.

13 Council of the European Union, *EU strategic Framework and Action Plan on Human Rights and Democracy 2012* (25 June 2012), available at: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/131181.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf)

14 Council of the European Union, *EU strategic Framework and Action Plan on Human Rights and Democracy 2012* (25 June 2012), available at: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/131181.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf)

15 Council of the European Union, *EU strategic Framework and Action Plan on Human Rights and Democracy 2012* (25 June 2012), available at: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/131181.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf)

16 European Union Guidelines on the Promotion of Compliance with International Humanitarian Law (15 December 2009), available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:ah0004>

lawful means. In the commentary to Article 41, the ILC envisions such cooperation to be “organized in the framework of a competent international organization, in particular the United Nations.”<sup>17</sup> Although Article 41 does not indicate what measures States should take in order to bring serious breaches to an end, Item 7 provides a lawful forum of cooperation.

The EU's on-going disengagement from Item 7 and its attempts to render it obsolete by diverting attention to Item 4, directly contravenes the above commitments and obligations. In line with the above mentioned, and for the sake of ensuring that the EU adopts a consistent and streamlined approach to its human rights advances on the international stage, the EU should actively engage in Item 7 in good faith. Israel's unabated systematic violations of international are the cause of the level of activities of the Council against Israel. As such, the EU ought to focus its attention on bringing the violations to an end, including by ensuring rigorous and efficient implementation of the findings and recommendations of the Council as opposed to disengage from it. In fact, the EU indirectly acknowledged in a 2014 confidential non-paper that a change in its strategy on Item 7 could bring Israel in line with its obligations.<sup>18</sup>

#### IV. CONCLUSION

The UN has decided that the situation in the territories occupied by Israel warrant a separate agenda item. As explained in this position paper, Item 7 provides an important platform for States to address the systematic and gross violations of international law committed in the context of a prolonged occupation that threatens peace and security.

The current EU approach to Item 7 is in contradiction with its commitment to promote human rights and rule of law through international fora such as the Human Rights Council. Following the EU position on Item 7 in 2012, the situation of human rights in the occupied territories has worsened, and with it, efforts towards strengthening the rule of law in the region. EU decisions to minimize prolonged Israeli occupation and the responsibilities that Israel bears towards the occupied population through the Council and other international accountability bodies, creates distrust in human rights mechanisms and has served as a dangerous precedent for States.

Rewarding Israel and encouraging policies of non-cooperation with UN mechanisms, such as the Council, only serves to undermine the EU's agenda towards human rights and stronger international human rights mechanisms.

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<sup>17</sup> International Law Commission, *Report of the International Law Commission on the Work of Its fifty-third Session* (2008), page 114, available at: [http://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001.pdf](http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf)

<sup>18</sup> On file. See also Ravid, *EU Seeks Talks with Israel over Red Lines*, Haaretz (22 October 2014), available at: <http://www.haaretz.com/israel-news/1.622099>