

UNSC Arria Formula Meeting on the Protection of the Palestinian Civilian Population in the OPT – Presentation by Ms. Sarah Leah Whitson

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Thank you to the co-chairs of the Meeting for organizing this panel on the protection of the Palestinian civilian population in the OPT.

As has been noted, over close to five decades, there has been a complete failure to protect the Palestinian population, not only by Israel, the occupying power responsible for its protection, but also by the international community and in particular the member states of the UNSC, who have failed in their own duties to uphold and enforce international law protections for the occupied population; such duties are magnified in light of the fact that the partition of Palestine into Israel and what are today the Occupied Palestinian Territories was a product of this body. Despite numerous – 27 by last count -- UNSC resolutions urging Israel to abide by its obligations under international law with respect to the Palestinian population, there has never been any meaningful action or measure taken by the UNSC to enforce its own resolutions.

The record with respect to the harms suffered by the Palestinian population under Israeli occupation is long and varied; it stems not only from the rampant violations of the laws of war in periods of conflict, most recently in Gaza over three major episodes of war and fighting in the past eight years, but in the daily unlawful assaults on the Palestinian civilian population in the West Bank and East Jerusalem, where not only do people face abusive security forces and severe restrictions on their freedom of movement, but the impact of the administration of Israel's endlessly expanding settlement infrastructure, which has usurped Palestinian land, water, and natural resources; deliberately demolished thousands of Palestinian homes; forcibly displaced Palestinian civilians from their land; and subjected them to the cruelty, humiliation, and suffering of a blatant system of discrimination, segregation, repression, and exclusion, merely because of their status as Palestinian Muslims and Christians.

Human Rights Watch has extensively documented Israeli violations of the laws of war during the major conflicts in Gaza, in 2008, 2011/12, and 2014. During the most recent 2014 hostilities in Gaza, Israeli forces launched attacks that killed at least 1500 civilians and wounded 11,000 people.

In each of these conflicts, we have documented indiscriminate and deliberate attacks on civilians, many of which amount to war crimes, including the use of heavy artillery, missiles, drone attacks, 2,000 pound bombs, and white phosphorous munitions in civilian areas; attacks on civilians carrying white flags or otherwise fleeing from homes they were "warned" to leave; attacks on civilians (including their homes) because of their association with Hamas, though they carried no military function; the deliberate targeting of ambulances and journalists; and repeated attacks on schools and hospitals where civilians were sheltering. In each of these conflicts, Israel destroyed thousands of homes: of the more than 22,000 homes destroyed in 2014, virtually none has been rebuilt, displacing

108,000 people and leaving hundreds of thousands without adequate water or electricity; and in each of these conflicts, Israel has destroyed Palestinian greenhouses, agricultural fields; and factories, without military necessity.

Palestinian armed groups also have carried out unlawful attacks of their own in each of these conflicts, firing hundreds of indiscriminate rockets and mortars towards civilian population centers in Israel; in the most recent conflict, they summarily executed at least 25 alleged collaborators in Gaza, and killed five civilians and wounded 36 with unlawful rocket attacks in Israel. They also have repeatedly endangered civilians by unlawfully storing weapons in and firing from civilian areas, including in three vacant UNWRA schools. It must be restated and repeated that under international humanitarian law, the unlawful attacks of one party do not justify unlawful attacks by the other party.

Israel and co-sponsor Egypt have continued their eight-year blockade of Gaza, which has had a devastating impact on Gaza's economy, infrastructure, and the free flow of people and goods, particularly exports, and is an unlawful – and extremely cruel and degrading – act of collective punishment against Gaza's civilian population. While Israel has agreed to allow more imports to Gaza of goods needed for reconstruction, severe restrictions on exports and travel remain. While Egypt's expressed concern for Palestinian civilians by hosting this session is welcome, it would be far more meaningful if it would end its unlawful blockade of Gaza.

Through the most recent conflicts, Israel has banned journalists and human rights monitors from accessing Gaza, making it even more difficult to document and report on the impact of these conflicts on civilians. We urge Egypt and Israel to allow us and other international human rights monitors access to Gaza so that we can best investigate human rights and IHL abuses by all parties to the conflict.

The record for accountability in these conflicts has been dismal. Time and again, Human Rights Watch, and other human rights organizations as well as official investigations by the United Nations, have concluded that Israel has provided no meaningful accountability for abuses by its forces. Following the 2014 conflict, for example, the Israeli military opened about 100 probes into attacks by its forces, but, to date, has charged only two soldiers with looting about US\$600 from a Palestinian home and a third with covering it up. Similarly, there was a nearly complete absence of criminal prosecutions resulting from self-investigations of alleged war crimes committed in Gaza during the fighting in 2008-2009 – where one soldier was sentenced to seven months in prison, for stealing a credit card from a Palestinian, while two soldiers were sentenced to three months of a suspended sentence for using a 9 year old Palestinian boy as a human shield. A sniper, Sergeant S., was sentenced to 45 days and a six-month suspended sentence for shooting and killing a mother and daughter who were carrying white flags. Hamas also took no steps to prosecute Palestinian combatants for indiscriminate and unlawful rocket and mortar attacks at Israeli population centers in 2014 or for prior similar attacks.

We also remain concerned about the numerous complaints of torture against Palestinian Authority security forces; last year, the Independent Commission for Human Rights

reported at least 108 complaints. PA security forces also have violently dispersed and arbitrarily detained peaceful protesters in Ramallah. The PA has banned the distribution of two pro-Hamas weekly newspapers in the West Bank. Despite these cases, Palestinian courts did not find any West Bank security officers responsible for torture, arbitrary detention, or prior cases of unlawful deaths in custody.

Meanwhile, Israeli settlements continue to grow, now exceeding half a million Jewish Israeli settlers in 237 settlements, designed, planned, funded, and militarily protected by the government. These settlements are not a problem just because they violate the Geneva Convention as war crimes; and it's not just because they make the "two-state" "solution," on which this Council has rested its exclusive focus, "impossible". As significantly, they are part of a system of unlawful land theft that daily denies Palestinians their rights, discriminating against them on the basis of their nationality, race, and ethnicity, depriving them of their dignity and freedom, and forcibly displacing them from their lands.

We have documented how Israel has established its two-tier, harshly discriminatory policies against Palestinians living under its control in Area C and East Jerusalem, deliberately depriving them of basic necessities, while providing lavish, state-funded benefits, infrastructure, and amenities for Jewish settlers, with no legitimate security or other justifications. Israel punishes Palestinian growth, refuses to allow Palestinians to build homes or businesses, and imposes harsh conditions on communities.

While Israeli settlements flourish, Palestinians under Israeli control live in a time warp -- not just separate, not just unequal, but even pushed off their lands and out of their homes. By making their communities virtually uninhabitable, Israel's discriminatory policies have frequently had the effect of forcing residents to leave their communities. According to a June 2009 survey of households in "Area C," the area covering 60 percent of the West Bank that is under exclusive Israeli control, and East Jerusalem, which Israel unilaterally annexed, some 31 percent of Palestinian residents had been displaced since 2000.

Israeli policies control many aspects of the day-to-day life of Palestinians under their control. Among the discriminatory burdens imposed on Palestinians are Israeli practices of expropriating land from Palestinians for settlements and their supporting infrastructure; blocking Palestinians from using roads and reaching agricultural lands; denying access to electricity and water; denying building permits for houses, schools, clinics, and infrastructure; and demolishing homes and even entire communities. Such measures have limited the expansion of Palestinian villages and imposed severe hardships on residents, including leaving them with limited access to medical care.

They have resulted in cruel and unjust outcomes, subjecting the Palestinian population to military rule, without any meaningful due process protections as civilians tried by military courts, while nearby Jewish settlers enjoy the protections of Israeli civil law. A Palestinian 13 year old child in Hebron arrested for throwing stones may face prolonged detention without charge, interrogation without a lawyer or parent present, and up to 20 years in jail

under military law; while his next door Jewish settler 13 year old neighbor can't even be sentenced to prison under Israeli law.

By contrast, Israeli policies promote and encourage Jewish settlements to expand, often using land and other resources that are effectively unavailable to Palestinians. The Israeli government grants numerous incentives to settlers, including funding for housing, education, and infrastructure, such as special roads. Those benefits have led to the consistent and rapid expansion of settlements, the population of which grew from approximately 241,500 inhabitants in 1992 to over half a million settlers today.

Similarly, we have documented how settlement businesses facilitate the growth and operations of settlements. These businesses depend on and contribute to the Israeli authorities' unlawful confiscation of Palestinian land and other resources. They also benefit from these violations, as well as Israel's discriminatory policies that provide privileges to settlements at the expense of Palestinians, such as access to land and water, government subsidies, and permits for developing land.

The quarry industry is but one example of how Israeli businesses contribute to, and benefit from, Israeli abuses against Palestinians. There are today 11 settlement quarries extracting natural resources from the occupied territory for the financial benefit of the occupier, in violation of IHL. Since 1994, Israel has not given a single new license to a Palestinian quarry. So the industry is forced to work clandestinely, trying to escape detection and confiscation.

In our report, Occupation Inc, we profiled the quarry owners in a village near Bethlehem, Beit Fajar. They were operating their quarries only a few days a week in an attempt to avoid confiscation. On March 21, following a stabbing attack by a resident of Beit Fajar, the army shut down the Palestinian quarries. And they remain closed. 3,500 jobs are at risk. In the meantime, settlement quarries are getting subsidies and other financial support from the Israeli government.

We have called on Israel to abide by its international legal obligation and withdraw all of its settlements and to end these violations of Palestinians' rights. Israel's Supreme Court, which has jurisdiction over the Israeli military's activities in the West Bank, has declined to rule on the legality of transferring Israeli civilians into the West Bank, saying it is primarily a political issue, ensuring there is no accountability for these ongoing grave breaches of international law.

In recognition of the human rights responsibilities of businesses, we have also called on businesses operating, administering, trading with, or financing settlements to stop and end such operations: there is no way to do business in the settlements without contributing to, or benefiting from, the inherent abuses of the settlement regime against the Palestinian population. The only way for businesses to comply with their own human rights responsibilities is to stop working with and in Israeli settlements. We welcome the decision of Heidelberg Cement today to seek alternatives to its quarry in Area C.

Member states should ensure that any import of settlement goods into their territory is consistent with their duty under international humanitarian law not to recognize Israeli sovereignty over the occupied Palestinian territories, Human Rights Watch said. This includes prohibiting such goods from being labeled as made in Israel, excluding them from preferential tariff treatment for Israeli products, and refraining from recognizing any certification – such as organic – of settlement goods by Israeli government authorities.

The best hope for accountability today comes as a result of Palestine's ratification of the Rome Statute and its accession to the International Criminal Court. Given strong evidence that serious crimes have been committed in and from Palestine since 2014, including Palestinian armed group rocket attacks and new population transfers into occupied territories, and a pervasive climate of impunity, the ICC prosecutor should formally investigate the matter consistent with the ICC's Rome.

It must be noted that the American, British and Canadian response to this positive development has been shameful: while they championed the court's promise of justice in Libya, Sudan and Syria, they have opposed Palestine joining the court, including US Ambassador Power, who has otherwise promoted the court as an important vehicle for justice. Most recently, she asked, "*Why is it that the people of Uganda, Darfur, Libya, the Central African Republic, the Democratic Republic of Congo, Cote d'Ivoire, Mali, and Kenya deserve international, impartial justice, but the Syrian people do not?*" And so I also ask, Ambassador Power, why don't victims of war crimes in Palestine and Israel also "deserve international, impartial justice"? The US and others have tried to pressure Palestine to end its pursuit of accountability in the ICC for a resumption of an elusive "peace process" and a settlement freeze, as if justice were a chip to be bargained on a political gambling table.

This kind of selective approach to accountability does no favor to Israelis or Palestinians who continue to be victimized by war crimes. It also undermines the power and legitimacy of international justice around the world, emboldening critics who argue that such justice is reserved only for weak nations without powerful Western allies.

We are now into almost 50 years of military occupation, straining the legitimacy and credibility of the application of the Geneva Conventions' "occupation laws", much less the enforcement of civilians that the convention mandates. As many have noted, these laws were meant for temporary occupations, and we can not forever, until some elusive peace process, deny not just civilian protections for, but the civil and political rights of, Palestinians, including voting rights in the government that controls their lives- Israel. We will increasingly see the legal and political struggle push in that direction. In the meanwhile, the urgent and desperate need – which is readily deliverable - for civilian protection lies in the hands of the international community.