

United Nations Security Council Arria-Formula Meeting
Protection of the Palestinian Civilian Population in the Occupied Palestinian Territory

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Your Excellencies, Ladies and Gentlemen.

1. I should like to begin by expressing my gratitude to the Permanent Missions of Egypt, Malaysia, Senegal, Venezuela, and Angola for co-chairing this important and timely meeting and to the Permanent Observer Mission for Palestine for inviting me to address you today.
2. I have been asked to discuss the legal framework relevant to the protection of the Palestinian civilian population in the occupied Palestinian territory (oPt), including with reference to the role and obligations of the Security Council.
3. In the limited time available, I wish to make three central points.
 - a. First, given the unprecedented and multiple humanitarian crises in the region, Palestine among them, **bold and principled leadership** of the Council is required now more than ever.
 - b. Second, the **international laws** and resolutions that would underpin any Council action in protecting the civilians of occupied Palestine are **known, well established, and binding** on members of the Council; and
 - c. Third, continued failure of the Council to act in accordance with its obligations under this law will materially **contribute to the climate of impunity** that continues to produce the very threats to international peace and security it is solemnly mandated to resolve under the Charter, both in Palestine and beyond.

Your Excellencies,

4. At a time when the level, scope and impact of global armed conflict is at its worst since the Second World War, **bold and principled leadership** of the UN in general, and of the Security Council in particular, has become a requirement of existential proportions. The rapid spread of armed conflict in the Middle East alone, fueled in many ways by the enduring lessons of the unresolved conflict in occupied Palestine, demonstrates that the notion of total war is alive and well, as millions of innocent civilians continue to suffer, without limit.

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5. In September 2015 the President of Palestine called upon the UN to “provide international protection for the Palestinian people in accordance with international humanitarian law” pending the conclusion of a just and durable peace that ends Israel’s almost 50-year occupation.¹ Since then, according to OCHA, almost 200 Palestinians and 23 Israelis have been killed and over 22,000 Palestinians and 250 Israelis have been injured.²
6. This is but the latest wave of violence in what is by now one of the longest running conflicts on the agenda at the United Nations. Decade after decade, Palestinian civilians have been compelled to endure the hardship that many of their fellow human beings elsewhere are now tragically facing for the first time. This includes a multitude of systematic and widespread violations of IHL, directed at both them and, often times, the humanitarian personnel mandated to ameliorate their suffering.
7. In today’s context, therefore, the Palestinian call for international protection is vitally important. It demonstrates that without bold and principled action aimed at upholding IHL and other relevant international law, the short-term suffering of civilians today threatens to feed and produce long-term cycles of violence tomorrow.
8. These grave circumstances compel the international community, including through this Council, to reaffirm the importance not only of the applicability *but also of need for the effective implementation* of public international law as a means of protecting Palestinian civilians in the oPt. Far from being a mystery, that law is **known, well established and binding** on members of the Council.
9. In the context of occupied territory, the relevant law includes IHL, human rights law, and criminal law. For lack of time, I shall focus on IHL, in particular the law of occupation.
10. The law of occupation governs the administration of enemy territory captured as a result of an international armed conflict. It is rooted in two core principles:
 - a. First, occupation is meant to be a *temporary condition* during which the occupying power is prohibited from altering the status of the territory, including through civilian settlement; and
 - b. Second, an *occupying power is not*, by virtue of its occupation, *sovereign* in the territory it occupies. As affirmed by the Council, acquisition of territory through the threat or use of force is absolutely prohibited in international law.³
11. Under the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) and the 1907 Hague Regulations,⁴ an

¹ Statement by H.E. Mahmoud Abbas, President of the State of Palestine, at the General Debate of the United Nations General Assembly at its 70th Session (New York), 30 September 2015, at: http://gadebate.un.org/sites/default/files/gastatements/70/70_PS_en.pdf.

² See, OCHA Monthly Briefs for October 2015-March/April 2016, available at: <http://www.ochaopt.org/reports.aspx?id=118&page=1>.

³ See UNSCR 242 (1967), 22 November 1967, preamble; See also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion (ICJ, 9 July 2004) at para. 87; and *Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, Annexed to UNGAR 2625 (XXV), 24 October 1970, first principal, para. 10.

occupying Power has the obligation to maintain public order in an occupied territory and administer it for the wellbeing of that territory's civilian or "protected" population, defined as persons who are in the hands of the occupying power and not its nationals (art. 4 GCIV). Among the grave breaches this population is to be protected from, are: willful killing,⁵ torture, willfully causing great suffering or serious injury to body or health, unlawful deportation or transfer, willful deprivation of the rights of a fair and regular trial, and the extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly (art. 147).⁶

12. While both Israel and Palestine are party to the Fourth Geneva Convention, they are not the only ones who are bound by it. Article 1 common to the four Geneva Conventions provides that the High Contracting Parties – which include every Member State of the UN⁷ – undertake "to respect and to ensure respect" for the terms of the Convention "in all circumstances". Among other things, this means that States other than the occupying power are under individual legal obligations to take effective measures to ensure that Israel abide by the terms of the Convention in its treatment of the Palestinian civilian population under its control.
13. Among the unilateral measures the High Contracting Parties are required to take is the enactment of penal legislation at the domestic level, and to search for and prosecute or extradite persons committing or ordering the commission of grave breaches of the Convention (art. 146). They may also impose diplomatic or economic sanctions, including restrictions on foreign trade, investment and aid. Among the multilateral actions the High Contracting Parties can take, including through the Security Council, are the appointment of a protecting power, the imposition of sanctions under the Charter or resort to the International Criminal Court and International Court of Justice.⁸
14. But possible action by Members of the Council does not stop there. As you are aware, since 1999 the protection of civilians in armed conflict has been a central theme in the work of the Council, beginning with the passage of resolution 1265 (1999).⁹ But there

⁴*Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, 12 Aug. 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 (entered into force 21 October 1950); *Convention Respecting the Laws and Customs of War on Land*, Oct. 18, 1907, 36 Stat. 2277, 1 Bevans 631 (entered into force Jan. 26, 1910). Among the 196 High Contracting Parties to the Geneva Conventions, including every member of this Council, only Israel is of the view that the Fourth Geneva Convention does not apply *de jure* to its occupation of Palestine. As this Council's own resolutions attest, leave aside equivalent pronouncements of the General Assembly, the International Court of Justice, the Secretariat and the ICRC, the application of the Convention to the occupied Palestinian territory is beyond doubt.

⁵ See, for instance, the killing of Abd Al-Fattah Yusri Al-Sharif, a shot and wounded Palestinian by Cpl. Elor Azaria, a medic in the Israel Defense Forces, who was video-taped standing over the subdued body of Al-Sharif and firing one live round into his head while other IDF medical personnel stood and watched. See "Israeli Soldier Filmed Shooting Palestinian On Ground", Al-Jazeera, 24 March 2016, at:

<http://www.aljazeera.com/news/2016/03/palestinians-killed-alleged-attacks-israelis-160324133329293.html>.

⁶ Of note, "when committed as part of a plan or policy or as part of a large-scale commission of such acts", these grave breaches are classified as war crimes under the Rome Statute of the International Criminal Court (art. 8).

⁷ There are 196 High Contracting Parties to the Geneva Conventions; all 193 UN Member States, plus the two Observer States (Holy See and Palestine) and the Cook Islands.

⁸ See generally, Imseis, A. "On the Fourth Geneva Convention and the Occupied Palestinian Territory" (2003) 44:1 Harv. Int'l. L. Rev. 65.

⁹ UNSCR 1265 (1999). See also *Security Council Report, Protection of Civilians in Armed Conflict* (15 May 2015), at: <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3->

exists Council legislation on the protection of Palestinian civilians that predates this and which can now be put to use as the Council considers what actions may be available to it.

15. Resolution 605 (1987) – issued in response to the outbreak of the first intifada in 1987–strongly deplored Israeli practices violating the human rights of the Palestinian people, called upon Israel to abide by the terms of the Fourth Geneva Convention, and requested the Secretary-General to study and make “recommendations on ways and means for ensuring the safety and protection of the Palestinian civilians under Israeli occupation”.¹⁰The resulting report – known as the Goulding Report¹¹ – identified four different concepts of protection:
 - a. Physical protection;
 - b. Legal protection;
 - c. General assistance; and
 - d. Protection by publicity.
16. On physical protection, the report curiously concluded that the introduction of UN military forces or observers would not be “practicable at present” because Israel, as “the occupying Power”, was itself “responsible for the maintenance of law and order” and it would not, at any rate, consent to the presence of such forces in the occupied territory.¹²Why this level of deference to the occupying power was warranted is curious precisely because it is the occupying power that was, and continues to be, the very source of the protection crisis faced by the Palestinian people. As the occupying power, Israel is not, by definition, sovereign in the territory, despite its responsibilities as a temporary occupant. As the Members of the Council are aware, the Council may decide to take binding enforcement action under Chapter VII of the Charter, which may include deployment of neutral forces with a mandate to observe and/or protect civilians. Although this was alluded to in the Goulding Report, there seems to have been a general failure at the time to take that option seriously. This is something that needs to be considered in greater depth now, particularly in light of Security Council practice which has since evolved.¹³
17. The other forms of protection identified in the Goulding Report either continue to be maintained or have ebbed and flowed with the mandates and dwindling resources of the actors on the ground. These include the ICRC (which continues to provide a modicum of legal protection, particularly for Palestinian detainees), UNRWA (which liaises, monitors and reports on human rights violations affecting Palestine refugees and other Palestinians of concern) and OCHA (which coordinates with relevant stakeholders and

[CF6E4FF96FF9%7D/cross_cutting_report_1_protection_of_civilians_2015.pdf](#) [hereinafter, “Security Council Report”].

¹⁰ UNSCR 605 (1987) (Vote: 14-0-1 (US abst.)).

¹¹ *Report Submitted to the Security Council by the Secretary-General in accordance with Resolution 605 (1987)*, UN Doc. S/19443 [hereinafter “Goulding Report”].

¹² *Id.* at paras.29-33, 42.

¹³ For example, see UNSCR 2098 (extending mission of MONUSCO, with mandate to protect in DRC); UNSCR 2100 (establishing MINUSA in Mali with mandate to protect); and UNSCR 2149 (establishing MINUSCA, with mandate to protect in CAR).

provides timely information on the humanitarian impact of the occupation on the Palestinian civilian population).

18. But despite the valiant efforts of these vitally important humanitarian actors, history has proved their engagement insufficient to meet the multiplicity of protection challenges that have overtaken them. The Goulding Report is of present use, therefore, precisely because it provides a glimpse into measures previously considered, where those measures have fallen short, and how they can be augmented and expanded going into the future.
19. Security Council resolution 904 (1994) – issued in response to the massacre of over 50 Palestinian civilians at prayer by an armed Israeli settler in Hebron – called upon Israel to implement measures, including the “confiscation of arms, with the aim of preventing illegal acts of violence by Israeli settlers” and called “for measures to be taken to guarantee the safety and protection of the Palestinian civilians throughout the occupied territory, including, inter alia, a temporary international or foreign presence”.¹⁴ This resulted in the creation of the Temporary International Presence in Hebron (TIPH), a small, unarmed civilian observer group that continues to provide a form of protection by presence but which is incapable of addressing the litany of protection challenges faced by the Palestinian civilian population owing to its limited functional and geographical mandate.
20. In considering what actions the Council may take as it looks ahead, therefore, resolutions 605 (1987) and 904 (1994) are useful. They evidence a long-standing acknowledgment of the Council of the need for protection of the Palestinian civilians under Israeli occupation, and the intention that concrete measures must be taken to this end. Thus, in resolution 605 the Council clearly decided to keep the situation “under review”.¹⁵ Similarly, in resolution 904 the Council’s “call for measures to be taken to guarantee the safety and protection of the Palestinian civilians throughout the occupied territory” remains in force.¹⁶ The only question is how and what Council Members are prepared to do to discharge their ongoing obligations under these resolutions, in conformity with their individual and collective obligations under relevant international law, including the Fourth Geneva Convention.

Your Excellencies,

21. It is heartening that the Council has increasingly incorporated the concept of protection of civilians into its work. Despite its stated commitments, however, its continued failure to take concrete action in accordance with its solemn legal obligations will materially **contribute to the climate of impunity** that prevails in Palestine and elsewhere, thereby leading to further and continued threats to international peace and security.
22. As the current catastrophe in Syria attests, Council dynamics have often impeded concrete action to protect civilians in armed conflict, with some Members reluctant to take

¹⁴ UNSCR 904 (1994) (adopted without vote).

¹⁵ UNSCR 605 (1987), para. 7.

¹⁶ This is because the Council’s reference to the temporary international presence as one measure of protection was non-exhaustive. *See* UNSCR 904 (1994), para. 3.

measures that may violate the territorial integrity of states, and others seemingly more willing to do so.¹⁷

23. Thankfully, in the case of Palestine these dynamics do not exist. Rather, the State concerned has legitimately requested the support of the international community in protecting its largely defenceless civilian population from the ravages of a foreign occupying force of nearly a half century. Far from being a temporary presence, this force has openly committed itself to continue colonizing that State, annexing its territory, usurping its natural resources and otherwise impeding the right of its people – the only legitimate sovereign – to self-determination. All of this, in direct contravention of the very Charter principles that underpin the international state system; principles this Council is meant to safeguard, uphold and protect.
24. And so, the Council once again finds itself in the position of having to take action before greater catastrophe descends upon the people of Palestine, and inevitably Israel. In the absence of a meaningful and rapid peace process aimed at an agreed, just and durable settlement between the parties, the stakes are high and the hour is late. For the civilian population of occupied Palestine, no less the countless millions of other civilians increasingly subject to the brutality of armed conflict the world over, the credibility of the Council and of the UN as a whole stands in the balance.

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¹⁷See *Security Council Report*, *supra* note 8 at 28.