

CONCEPT NOTE

United Nations Security Council Arria-Formula Meeting: Illegal Israeli Settlements: Obstacles to Peace and the Two-State Solution

14 October 2016

Background

The viability of the two-State solution to the Israeli-Palestinian conflict and the prospects for realizing it are being seriously jeopardized by the presence and continuing growth of illegal Israeli settlements on Palestinian land occupied by Israel since June 1967. That land, comprising the West Bank, including East Jerusalem, has, along with the Gaza Strip, long been recognized by the United Nations as occupied territory, to which the Fourth Geneva Convention is fully applicable and on which the Palestinian people are to exercise their inalienable rights, including to self-determination, in accordance with international law and the relevant United Nations resolutions.

2. In recent years, the international community has witnessed the continuing, systematic and deliberate expansion of Israeli settlements in the Occupied West Bank, particularly in and around East Jerusalem, the transfer of thousands more Israeli settlers to those settlements, and attempts by Israel to “legalize” so-called settlement outposts, all in grave breach of international humanitarian law. Israeli settlement activities were identified in the recent report of the Middle East Quartet as one of the major threats to advancing the two-State solution on the basis of the 1967 borders.

3. The Israeli settlement campaign is also the source of numerous other illegal Israeli policies and human rights violations, including, *inter alia*, the confiscation of Palestinian land; the forced eviction and displacement of Palestinian families; the demolition of Palestinian homes and other civilian structures; the exploitation of natural resources, including discriminatory allocation of water and provision of access to land; restrictions on movement; restrictions on building and community growth; and a discriminatory legal system privileging Israeli settlers over the Palestinian civilian population under Israel’s occupation.

4. The number of Israeli settlers in the Occupied Palestinian Territory, including East Jerusalem, continues to rise and has surpassed a half million people. The phenomenon of violence and extremism by Israeli settlers against Palestinian civilians has also escalated in recent years, with acts of harassment, intimidation and terror routinely perpetrated against Palestinian civilians, including in particular children, farmers and shepherds, along with acts of vandalism and destruction perpetrated against Palestinian homes, properties and agricultural orchards. The presence and actions of the settlers are a constant source of tension. Israeli occupying forces, deployed to protect the settlements and the settlers, routinely oversee acts of settler violence against Palestinian civilians, denying protection to the occupied population, to which they are entitled under international humanitarian law. It is

rare for Israeli settlers to be held accountable for crimes committed against Palestinians and such impunity continues to fuel violations.

5. As articulated in the 1907 Hague Convention and the 1949 Fourth Geneva Convention, the establishment of such settlements by an occupying Power in occupied territory violates international humanitarian law. Article 49 of the Fourth Geneva Convention explicitly prohibits an Occupying Power from transferring any part of its own civilian population into the territory it occupies. The Hague Convention specifically prohibits occupying powers from making any permanent changes in the territories they occupy that are not undertaken in accordance with a narrow definition of military necessity or for the purpose of benefiting the local population. Additional Protocol 1 to the Geneva Conventions, Article 85, defines such acts, when committed willfully, as grave breaches. Article 8 of the Rome Statute of the International Criminal Court defines such acts as war crimes.

6. Various UN Security Council resolutions, including resolutions 446 (1979), 452 (1979), and 465 (1980), deplored the Israeli settlements, describing them as having no legal validity and as constituting a “serious obstruction” to peace. The resolutions called on Israel, the occupying Power, to cease building settlements in occupied territories and to dismantle the existing settlements. The Council explicitly called on Israel to “*desist from taking any action which would result in changing the legal status and geographical nature and materially affecting the demographic composition of the Arab territories occupied since 1967, including Jerusalem, and in particular, not to transfer parts of its own civilian population into the occupied Arab territories*”. The Security Council also called upon all States not to provide Israel with any assistance to be used specifically in connection with the settlements.

7. Furthermore, in its 9 July 2004 advisory opinion, the International Court of Justice declared that “*Israeli settlements.., including East Jerusalem, are illegal and an obstacle to peace*”. The Court also declared that the wall, which is part and parcel of the settlement enterprise and which is being constructed by Israel in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime are contrary international law. The Court ruled that Israel is under obligation, *inter alia*, to terminate its breaches of international law, to cease its construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem, to dismantle forthwith the structure therein situated, and to make reparations for all damage caused by the construction of the wall.

8. Regrettably, Israeli settlement and wall construction continue unabated in violation of international law and in contempt of the international community’s calls for an end to all such illegal policies and measures. Israel’s systematic pursuit of illegal settlement activities cast serious doubts on Israel’s claimed commitment to the two-State solution as such activities are creating new realities on the ground, undermining the contiguity and viability of the Palestinian State and precluding the possibility of achieving the two-State solution based on the pre-1967 borders. As documented by the United Nations and numerous humanitarian and other organizations, the illegal settlements, along with the Israeli settler population, have

grown exponentially since after the 1993 Oslo Accords. In fact, settlement activities continued even during the so-called “settlement freeze” in 2010 and have never ceased, not even during the various past rounds of peace negotiations between the parties, reflecting bad faith on the part of Israel throughout all such negotiations.

9. The relentless expansion of settlements and prolonged impunity granted to Israel by the international community have generated much anger and frustration among the Palestinians and beyond, contributing to increased radicalism claiming the absence of legal and legitimate channels to halt such illegal activities and justly and peacefully resolve this conflict.

10. Despite a general consensus in the international community that the Israeli settlements built on Palestinian lands are illegal under international law, violate the Palestinian people’s most basic and inalienable human rights, and constitute one of the main obstacles to actualizing the two-State solution on the basis of the pre-1967 borders, no concrete action has been taken to bring a halt to settlement activities and hold Israel accountable for its ongoing violations.

11. The international community needs to move beyond verbal condemnation of the settlements and expressions of concern about the diminishing viability of the two-State solution. If they wish to salvage the two-State solution and resolve the long-standing conflict in a just, lasting and comprehensive manner, in line with the purposes and principles of the UN Charter, international law, international standards of human rights, including the right to self-determination, serious collective efforts and measures are required. In particular, the UN Security Council must shoulder its responsibility under the UN Charter to maintain international peace and security and enforce its own resolutions relating to the illegal settlements.

Speakers’ focus areas

12. An Arria-formula meeting on this matter will provide an opportunity to engage in open and serious discussions on the issue of Israeli settlements and the impact on the Palestinian people, their quest for self-determination and independence, and the prospects for achieving a just, lasting and peaceful solution to the Israeli-Palestinian conflict. Council Members will have to opportunity to receive briefings from relevant representatives of the civil society from both Israel and Palestine, including individuals that can provide a field perspective from the ground. In addition, there will be presentations by representatives from the legal arena/academia, who can share their expertise with the Council.

13. Among other issues, the meeting could focus on the following aspects of settlement activities:

- Historical perspective on Israeli settlements;

- Latest developments and issues surrounding settlement activities, outposts, “Area C”, “E-1” area, Occupied East Jerusalem, settler violence and terrorism, land confiscations, home demolitions, and forced evictions;
- Maps of settlements and the route of the wall and the evolution of this colonization network over the past two decades, especially during the peace process;
- The illegality of the settlements, impunity, and legal recourse available to Palestinians;
- Effects of the settlements and associated regime, including the wall, on movement restrictions, on the daily lives and human rights of the Palestinians, as well as on the territorial contiguity of the Occupied West Bank, including East Jerusalem;
- Policies, pretexts, justifications and methods used by Israel to seize Palestinian lands and properties;
- Motivations for settlers and incentives by the Israeli government;
- Israeli domestic perspective/debate on settlements;
- Impacts of Israeli settlements on Palestinian natural resources;
- Impacts of settlements on the two-State solution and the Middle East Peace Process (MEPP);
- The role of the international community, particularly the Security Council, in halting settlement activities;
- The way forward to halt the settlements and salvage the two-State solution.

Format & Modalities

14. The meeting will be organised pursuant to paragraph 65 of Security Council Presidential Note S/2010/507 and all Council members are invited to participate and make interventions. Council members are encouraged to engage in active interaction with the speakers and pose questions.

15. This discussion is open to attendance by other UN Member States and Observers, accredited NGOs, and media, without the right to speak.
