

Annex I

Public



**Cour
Pénale
Internationale**
**International
Criminal
Court**

Le Bureau du Procureur
The Office of the Prosecutor

Internal memorandum
Memorandum interne

To À	Judge Chile Eboe-Osuji, President Judge Robert Fremr, First Vice-President Judge Marc Perrin de Brichambaut, Second Vice-President	From De	Mrs Fatou Bensouda, Prosecutor
Date	22 May 2018	Attachments	1 (copy of referral)
Ref.	OTP2018/012688	Copies	Mr Peter Lewis, Registrar
Subject Objet	Notification Referral from the State of Palestine pursuant to articles 13(a) and 14 of the Rome Statute		

In accordance with the provisions of regulation 45 of the Regulations of the Court, I hereby formally notify you that today, 22 May 2018, I received, from the Government of the State of Palestine ("Palestine"), a referral under articles 13(a) and 14 of the Rome Statute ("Statute"), regarding the Situation in Palestine.

As you will recall, the Government of Palestine lodged on 1 January 2015 a declaration under article 12(3) of the Statute accepting the jurisdiction of the International Criminal Court over alleged crimes committed "in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014". On that basis, the Situation in Palestine has been subject to a preliminary examination by my Office since 16 January 2015 in order to ascertain whether the criteria for opening an investigation are met.

In its referral, the Government of Palestine specifically "requests the Prosecutor to investigate, in accordance with the temporal jurisdiction of the Court, past, ongoing and future crimes within the court's jurisdiction, committed in all parts of the territory of the State of Palestine". The Minister of Foreign Affairs and Expatriates of Palestine, Dr Riad Malki, has further clarified during a meeting held earlier today that the referred situation encompasses crimes falling within the jurisdiction of the International Criminal Court committed since 13 June 2014, with no end date.

For your ease of reference, I attach the referral dated 15 May 2018, hand-delivered by Minister Malki earlier today.

A statement publicly acknowledging the referral will be issued in the course of the day as per the Office's existing practice. Should you require further information, my Office would be pleased to be of assistance. I



The State of Palestine

Referral by the State of Palestine Pursuant to Articles 13(a) and 14 of the Rome Statute.

15 May 2018

Ref: PAL-180515-Ref

I. General Considerations

1. On 16 January 2015, following the State of Palestine's article 12(3) declaration of 1 January 2015, the Prosecutor of the International Criminal Court announced the commencement of a preliminary examination of the Situation in Palestine to determine "whether there is a reasonable basis to proceed with an investigation".¹ This is the third preliminary examination that the Office of the Prosecutor ("OTP") has undertaken in relation to Palestine.² To date, none of these examinations has resulted in a decision to investigate.
2. Since the opening of the preliminary examination of the Situation in Palestine, Israel has continued unabated to commit crimes within the jurisdiction of the Court. It has done so brazenly in order to advance its settlement regime to an unprecedented level with the aim of pursuing its policy of displacement and replacement of the Palestinian people. This settlement policy has been carried out through the commission of multiple crimes within the Court's jurisdiction. It has been executed in the face of international condemnation of Israel's actions by the Secretary-General of the United Nations, the Security Council, and a wide range of other international fora.
3. The Israeli settlement regime represents much more than the physical structures that make up the actual housing units in a specific settlement. The physical structures are part of an entire settlement policy which is enacted, maintained, and expanded by top Israeli officials, governmental and military, and which encompasses a range of sub-policies and practices that allow for the

¹ Madam Fatou Bensouda, the Prosecutor of the International Criminal Court, Fatou Bensouda Opens a Preliminary Examination of the Situation in Palestine, ICC-OTP-20150116-PR1083, 16 January 2015.

² Preliminary Examination I, opened 22 January 2009 following the 2009 article 12(3) Declaration, closed 3 April 2012; Preliminary Examination II relating to the Gaza Flotilla Situation, opened 14 May 2013 and the decision to not investigate was issued 6 November; Preliminary Examination III opened 16 January 2015 following the 2015 article 12 (3) declaration and currently in phase two of a four phase process.

planning, construction, expansion, maintenance, security and development of settlements. The unlawful occupation of the territory of the State of Palestine and the establishment and maintenance of settlements by Israel in Occupied Palestinian Territory ("OPT"), including East Jerusalem, has involved the enactment and maintenance of a multi-layered system of violence and intimidation against the Palestinian population, the destruction and unlawful appropriation of their properties, the severe violation of their fundamental rights on discriminatory grounds and the institutionalization of a separate structure of life and dual system of law and other measures deliberately intended to change the demographic composition of the OPT, including in particular in East Jerusalem. It has also involved the widespread and systematic attack on the Palestinian civilian population, through the commission of crimes, to create and perpetuate such a regime. These acts qualify under the Rome Statute as both war crimes and crimes against humanity.

4. As reflected in communications and twenty-five successive monthly reports submitted by the State of Palestine to the OTP,³ war crimes and crimes against humanity have continued to be committed on an aggravated basis throughout the period of the preliminary examination. The impunity of Israeli officials and

³ See, Submissions by the State of Palestine: Submission to the OTP Pursuant to Article 15(2) of the Statute (filed confidentially 25 June 2015); Communication to the ICC Prosecutor in follow-up to the Submission by the State of Palestine, with particular focus on Settler's Terrorist Attacks (filed confidentially 3 August 2015); Second Communication to the Office of the ICC Prosecutor by the State of Palestine in follow-up to the Submission of 24th of June 2015 (filed confidentially 30 October 2015); Answers to OTP Questions (filed confidentially 3 June 2016 and 2 September 2016); Communication on Present and Ongoing Crimes Committed Against Palestinian Children (filed confidentially 16 November 2016); Observations by the State of Palestine on the Preliminary Examination after Two Years (filed confidentially 18 January 2017), Monthly reports (drawing on the findings of independent UN and other agencies) covering January, February and March 2016 (10 May 2016), April 2016 (10 May 2016), May 2016 (19 June 2016), June 2016 (21 July 2016, with corrigendum on 2 August 2016), July 2016 (27 August 2016), August 2016 (23 September 2016), September 2016 (24 October 2016), October 2016 (6 December 2016), November 2016 (28 December 2016), December 2016 (20 February 2017), January 2017 (170329-MR011), February 2017 (170409-MR012), March 2017 (170430-MR013), April 2017 (170528-MR014), May 2017 (170705-MR015), June 2017 (170905-MR016), July 2017 (171023-MR017), August 2017 (171109-MR018), September 2017 (180109-MR019), October 2017 (180111-MR020), November 2017 (180204-MR021), December 2017 (180211-MR022), January 2018 (180315-MR023), February (180402-MR024), and March (180503-MR025).

Israeli nationals responsible for the commission of these crimes has contributed to the continuation, intensification and recurrence of these crimes.

5. The gravity and ongoing nature of this criminality, as well as the fact that State officials are involved in the commission of these crimes, calls for the Prosecution to conduct and finalise its investigation without delay, and with a view to bringing those responsible to justice.
6. It is thus necessary, on behalf of the citizens of the State of Palestine who have suffered for generations the consequences of crimes committed with impunity by Israeli officials and citizens, and who continue to suffer from ongoing, widespread and systematic crimes, for the State of Palestine to hereby exercise its right as a State Party to the Rome Statute to refer the Situation of Palestine for immediate investigation so that those most responsible for these crimes may be held accountable for their actions without further delay.
7. The State of Palestine stresses the importance of achieving justice for the victims of crimes, reaffirms its commitment to cooperate fully with the Court and maintains that ensuring justice and accountability is crucial to achieving peace, to deterring the commission of crimes, and to the integrity and credibility of the ICC itself. A failure to punish, let alone investigate, crimes associated with the unlawful occupation of Palestine has only emboldened perpetrators to carry on with their criminal deeds.
8. The present referral is without prejudice to the Prosecutor's ongoing duty and responsibility to continue and finalise her preliminary examination without delay in accordance with Article 53 of the Rome Statute regarding crimes currently the subject of her preliminary examination in the Situation of Palestine. However, given the acceleration of settlement-related crimes and their irreversible impact on the lives of Palestinians and on the prospects for a

lasting peace, it is imperative that the OTP immediately commence an investigation into the crimes herein referred as its highest priority.

II. The Referral

9. The State of Palestine, pursuant to Articles 13(a) and 14 of the Rome Statute of the International Criminal Court, refers the Situation in Palestine for investigation by the Office of the Prosecutor and specifically requests the Prosecutor to investigate, in accordance with the temporal jurisdiction of the Court, past, ongoing and future crimes within the court's jurisdiction, committed in all parts of the territory of the State of Palestine.⁴
10. The State of Palestine respectfully requests, pursuant to Regulation 45 of the Regulations of the Court, that the Prosecutor immediately inform the Presidency of the ICC of this Referral so as to "facilitate the timely assignment of [the] situation to a Pre-Trial Chamber".⁵

Crimes within the jurisdiction of the court

11. Pursuant to Article 14(2) of the Rome Statute, the State of Palestine specifies that the circumstances relevant to the present referral include but are not limited to, all matters related to the Israeli settlement regime outlined in earlier communications, monthly reports and submissions by the Government of Palestine, confidentially filed with or conveyed to the Office of the Prosecutor.⁶ In particular, the present referral incorporates as matters to be subject to

⁴ The State of Palestine comprises the Palestinian Territory occupied in 1967 by Israel, as defined by the 1949 Armistice Line, and includes the West Bank, including East Jerusalem, and the Gaza Strip.

⁵ Regulation 45 of the Regulations of the Court provides:

The Prosecutor shall inform the Presidency in writing as soon as a situation has been referred to the Prosecutor by a State Party under article 14 or by the Security Council under article 13, sub-paragraph (b); and shall provide the Presidency with any other information that may facilitate the timely assignment of a situation to a Pre-Trial Chamber, including, in particular, the intention of the Prosecutor to submit a request under article 15, paragraph 3.

⁶ The Government of Palestine hereby makes each and all of these (referenced previously above in footnote 3) a formal part of the present referral.

investigation, any conduct, policies, laws, official decisions and practices that underlie, promote, encourage or otherwise make a contribution to the commission of these crimes in accordance with the terms of the Statute, including but not limited to those coming within the terms of the following Articles of the Statute: Articles 7(1)(a), (d), (e), (f), (h), (j) and (k), 8(2)(a)(i), (ii), (iii), (iv), (vi), (vii), (b)(i), (ii), (iii), (iv), (viii), (ix), (xiii), (xvi) and (xxi) of the Rome Statute.

12. The Referral highlights certain categories of war crimes and crimes against humanity of particular seriousness and concern to the Palestinian people and the international community (as expressed in repeated Security Council Resolutions, including most recently Resolution 2334), to ensure that they form an integral part of the OTP's investigation. However, the crimes set forth below are not the only crimes committed within the jurisdiction of the ICC and are not intended to limit the scope of the OTP's investigation. For current purposes, and given the urgent need for an investigation to be opened without further delay, the State of Palestine hereby specifically identifies the following categories of crimes as being core to the *present* referral:

- i. Crimes involving the unlawful appropriation and destruction of private and public properties, including land, houses and buildings, as well as natural resources;
- ii. Crimes involving the forcible transfer of Palestinians, including by means of violence, compulsion, duress and the creation of inhumane living conditions;
- iii. Crimes involving the unlawful transfer of the Israeli Occupying Power's population into Occupied Palestinian Territory;
- iv. Crimes involving murders and unlawful attacks on civilians, including through excessive use of force and unlawful killings of

Palestinians, including demonstrators exercising their right to protest;

- v. Crimes involving the torture, cruel and inhumane treatment of Palestinians;
- vi. Crimes involving persecution, including the grave, widespread and systematic denial or violation of basic human rights on discriminatory grounds against Palestinians, including those resulting in or intended to achieve the deportation or forcible transfer, directly or indirectly, of the Palestinian population, the re-populating of “cleansed” territories with Israeli settlers and the unlawful appropriation of Palestinian land and properties; and,
- vii. Crimes involving the establishment of a system of apartheid based in particular on the adoption of discriminatory laws, policies and practices as well as the commission of inhumane acts intended to establish an institutionalized regime of separation and advancement of Israeli settlements accompanied by the systematic oppression and domination by Israeli settlers over Palestinians.

13. The present referral pertains to all categories of criminal participation in the commission of the crimes described above, as provided for under the Statute of the Court, pursuant to Articles 25 – 28 of the Statute. This includes, but is not limited to, those who plan, prepare and implement policies linked to the settlements regime as well as those who enable it, whether through financial, military, or logistical support or otherwise aid and abet or encourage the commission of crimes connected to that regime. The referral includes, in particular, those civilian and military leaders who are in a position of command or authority towards those committing the underlying crimes and who,

through their acts or omission, contribute to the commission of these crimes or fail to prevent, stop or punish them.

III. The Rationale

14. This referral aims at securing justice for millions of Palestinian victims who look upon the ICC to provide justice and to help bring an end to, and prevent the recurrence of, such crimes against them. These crimes are among the most widely documented in contemporary history. In line with the *raison d'être* of the ICC, they must be investigated and their perpetrators held to account without further delay.
15. The crimes committed by Israeli officials, including officials at the highest levels of the State, are entrenched as a matter of State policy, planned and perpetrated pervasively, systematically and on a widespread basis, attract no accountability, and have continued with impunity despite the OTP's preliminary examination. This state of affairs imposes unimaginable and long-lasting harm to victims and risks undermining the legitimacy of international law and international judicial institutions, including the ICC.
16. During the current preliminary examination, there has been an alarming intensification of Israeli crimes with an attendant and compounding impact on the Palestinian population and, in particular, on children. Such intensification is further evidenced, *inter alia*, by the following:
 - a. There was a 70% surge in Israeli settlement construction starts on Occupied Palestinian Territory between April 2016 and March 2017, as compared to the same period in 2015-2016.⁷ In 2017 alone, the Israeli

⁷*Peace Now*, Central Bureau of Statistics: 70% Rise in Construction of Settlements during The Past Year, Compared to Previous Year, 19 June 2017, available at: <http://peacenow.org.il/en/central-bureau-statistics-70-rise-construction-settlements-past-year-compared-previous-year>, reported in State of Palestine Monthly Report for June (170905-MR016), para. 63.

government advanced plans for over 6,742 additional Israeli settler housing units.⁸ “Israel’s illegal settlement activities ... continued at a high rate, a consistent pattern” throughout the year.⁹

- b. Israeli occupation forces and settlers killed or injured, with impunity, over 1,100 Palestinian children in 2017, worsening a child protection crisis in the territory of the Occupied Palestinian State. In total, members of Israeli forces murdered, unlawfully killed or injured over 7,300 Palestinian civilians throughout the course of the year.¹⁰
- c. On 14 May 2018 alone, during peaceful demonstrations in the Gaza Strip, the Israeli Occupation Forces killed over 60 Palestinians, and injured thousands more, including with live ammunition and artillery fire.¹¹ The casualties included 6 children, a double amputee, and a paramedic. Hundreds were also injured, including 11 journalists. Since 30 March 2018, Israeli Occupation Forces killed over 110 peaceful demonstrators and other protected persons, including 2 journalists, 14 children, and 1 paramedic. During this period, the Israeli Occupation Forces repeatedly stated their knowledge of where every bullet fired on protestors landed¹², while top Israeli officials congratulated the snipers on a job well done, including the Prime Minister¹³ and Defense Minister, who declared that “there are no innocent people in the Gaza Strip”¹⁴.

⁸*Peace Now*, *Peace Now’s Annual Settlement Construction Report for 2017*, 28 March 2017.

⁹ Briefing to the Security Council on the Situation in the Middle East – Report on UNSCR 2334 (2016), 25 September 2017, available at: <https://unsco.unmissions.org/security-council-briefing-25-september-2017-2334>.

¹⁰*OCHA*, Monthly Figures, available at: <http://www.ochaopt.org/content/monthly-figures>.

¹¹ See, *Wafa*, Victim number 60 of Israeli massacre succumbs to wounds, 15 May 2018, available at: <http://english.wafa.ps/page.aspx?id=DBMwz5a97707914733aDBMwz5>.

¹² See, *The Telegraph*, Israeli military defends tactics as video appears to show unarmed Gaza protestors shot by snipers, 31 March 2018, available at: <https://www.telegraph.co.uk/news/2018/03/31/israeli-military-defends-tactics-video-appears-show-unarmed/>

¹³ See, *Aljazeera*, ‘Netanyahu praises Israeli army after killings of Palestinians’, 31 March 2018, available at: <https://www.aljazeera.com/news/2018/03/netanyahu-praises-israeli-army-killing-palestinians-180331183611045.html>

¹⁴ See, *The Middle East Eye*, ‘No innocent people in Gaza’ says Israeli defense minister, 8 April 2018, available at: <http://www.middleeasteye.net/news/no-innocent-people-gaza-says-israeli-defence-minister-1155018849>

- d. In 2017, Israeli occupation forces demolished or unlawfully appropriated 424 Palestinian homes and structures necessary to Palestinian livelihood.¹⁵ In 2016, at least 1,054 Palestinian structures were demolished, marking the highest number of unlawful demolitions and appropriations of Palestinian homes and livelihood structures in the Occupied Palestinian Territory, including East Jerusalem, since 2009.¹⁶
- e. Within the context of this deliberate pattern of destruction and appropriation of civilian property, Israeli occupation forces forcibly displaced 3,861 Palestinians, including 1,960 children, since 13 June 2014, the date from which the ICC's temporal jurisdiction over the matter began.¹⁷ They also impacted the livelihood and access to services of a further 19,555 Palestinians.¹⁸
- f. There was a record level of ratifications of "state land" declarations on Occupied Palestinian Territory by the Israeli government in 2016, which qualifies, *inter alia*, as pillage, unlawful appropriation of property and persecution;¹⁹
- g. By the end of 2016, 7,000 Palestinians were being arbitrarily detained in Israeli jails, including 700 held under "administrative detention" (indefinitely renewable, without charge or trial or basic legal protections and on the basis of 'secret evidence' kept from both detainee and

¹⁵OCHA, West Bank - Online Demolitions Database, 1 January – 31 December 2017, available at: <http://data.ochaopt.org/dbs/demolition/demolition/index.aspx>.

¹⁶United Nations News Centre, UN study reveals record number of demolitions in occupied Palestinian territory in 2016, 29 December 2016.

¹⁷OCHA, Demolition System, period of 13 June 2014 to 14 May 2018, accessed 14 May 2018, available at: <http://data.ochaopt.org/demolition-sys.aspx#close>.

¹⁸OCHA, Demolition System, period of 13 June 2014 to 14 May 2018, accessed 14 May 2018, available at: <http://data.ochaopt.org/demolition-sys.aspx#close>.

¹⁹According to the Colonization and Wall Resistance Commission, during 2016 the Israeli occupation authorities declared 3882 dunums as state land; Colonization and Wall Resistance Commission, 2016 Annual Report, 23 March 2017.

attorney), the highest level since 2008.²⁰ With a bi-weekly average of 79 raids into the West Bank per week and 67 in total into the Gaza Strip in 2017,²¹ the policy of mass arbitrary arrest and unlawful imprisonment by Israeli occupation forces continued.

17. In parallel, the Israeli government has guaranteed almost complete impunity to its leadership, occupying forces, settlers and other citizens responsible for crimes committed against the Palestinian population in the Occupied Palestinian Territory, demonstrating the discriminatory nature of the dual justice system applied there and the fact that it forms part of a State-sponsored policy of promoting, encouraging and authorizing the commission of such crimes.

18. Based on information already made available to the OTP, the State of Palestine submits that, in accordance with articles 14(1) and 53(1) of the Statute, there is clearly a “reasonable basis to proceed with an investigation” in relation to each and all of the above-mentioned crimes. The existence of a reasonable basis to conduct an investigation is also established by the following:

²⁰ The United Nations Human Rights Council (“UNHRC”), Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, A/71/554, 19 October 2016, para. 18.

²¹ *OCHA*, Protection of Civilians – Reporting Period: 19 December 2017 – 1 January 2018, available at: <https://www.ochaopt.org/content/protection-civilians-report-19-december-2017-1-january-2018>.

- a. Over the last 50 years, the United Nations Security Council,²² the United Nations General Assembly²³ and the Human Rights Council²⁴ have

²²See for example, UN Security Council (“UNSC”) Resolutions finding Israel in violation of international law: 242 (1967) (“Affirms that the fulfilment of [UN] Charter principles requires the establishment of a just and lasting peace in the Middle East which should include...[w]ithdrawal of Israel armed forces from territories occupied in the recent conflict...”); 446 (1979); 452(1979) (“[P]olicy of Israel in establishing settlements...constitutes a violation of Geneva Convention”); 465 (1980) (“[M]easures taken by Israel to change the ...demographic composition ...of the Palestinian territories...constitutes a flagrant violation of the Fourth Geneva Convention”); 476 (1980); 478 (1980) (“Affirms that the enactment of the “basic law” [on Jerusalem] constitutes a violation of international law”).

²³See for example, UN General Assembly (“UNGA”) resolutions finding Israel in violation of international law: **1967: 2253**; **1971:2851**; **1972: 3005** (“[T]he establishment of Israeli settlements in the occupied territories and the moving into the occupied territories of an alien population, contrary to the provisions of the Geneva Convention”); **1973: 3092**; **1974: 3240** (“Expresses the gravest concern, at the continued and persistent disregard by Israel of the Geneva Convention...”); **1975: 3525** (“Deplores the continued and persistent violation by Israel of the Geneva Conventions...”); **1976: 31/106**; **1977: 32/91**; **1978: 33/113**; **1979: 34/90** (“Deplores the continued and persistent violation by Israel of the Geneva Conventions relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and other applicable international instruments, and condemns in particular those violations which that Convention designates as ‘grave breaches’”); **1980: 35/122, 35/207** (1980) (“Deeply concerned that the Arab and Palestinian territories occupied since June 1967, including Jerusalem, still remain under illegal Israeli occupation”); **1981: 36/147**; **1982: 37/88** (“Determines that all such measures and actions taken by Israel in the Palestinian ... including Jerusalem, are in violation of the relevant provisions of the Geneva Convention”); **37/222**; **1983: 38/79**; **38/166**; **1984: 39/95**; **1985: 40/201**; **1986: 41/63**; **1987: 42/160,42/190**; **1988: 43/58**; **1989: 44/48**(Israel’s actions constitute grave breaches of Geneva Convention). **1990: 45/74; 45/130**; **1991: 46/47;46/82; 46/162; 46/199**; **1992: 47/70**; **1993: 48/41**; **1994: 49/36**; **1995: 50/29**; **1996: 51/135; 51/132; 51/133**; **1997: 51/223; 52/67; 52/65**; **1998: ES-10/5** [Emergency Session]; **53/37** (“Determinesthat the decision of Israel to impose its laws, jurisdiction and administration on the Holy City of Jerusalem is illegal and therefore null and void and has no validity whatsoever”); **53/56; 53/57**; **1999: ES-10/6** [Emergency Session]; **54/37; 54/76; 54/78; 54/79**. **2000: ES-10/7; 55/130; 55/132; 55/134**; **2001:55/61; 55/62**; **ES-10/9** [Emergency Session] (“Recalling relevant provisions of the Rome Statute of the International Criminal Court, Reaffirming the position of the international community on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, as illegal and as an obstacle to peace, Expressing its concern at Israeli actions taken recently against the Orient House and other Palestinian institutions in Occupied East Jerusalem as well as other illegal Israeli actions aimed at altering the status of the city and its demographic composition”); **2002:ES-10/L.9/Rev.1** (“Gravely concerned in particular at the reports of grave breaches of international humanitarian law committed in the Jenin refugee camp and other Palestinian cities by the Israeli occupying forces”); **57/127**; **2003: 58/96**; **2004: 59/123; 59/121**; **2005: 60/108; 60/106**; **2006: ES-10/16; 61/118**; **2007: 62/84; 62/109**; **2008: 63/98**; **2009: 64/91; 64/94**. **2010:65/17** (“Expressing its grave concern also, in particular, about the continuation by Israel, the occupying Power, of illegal settlement activities”); **65/102** (“Expresses grave concern about the critical situation in the Occupied Palestinian Territory, including East Jerusalem, particularly in the Gaza Strip, as a result of unlawful Israeli practices and measures...”); **65/103; 65/104** (“Affirming that the transfer by the occupying Power of parts of its own civilian population into the territory it occupies constitutes a breach of the Fourth Geneva Convention and relevant provisions of customary law, including those codified in Additional Protocol I to the four Geneva Conventions”); and **65/179**. **2011:66/18, 66/76** (“Convinced that occupation itself represents a gross and grave violation of human rights”); **66/225; 66/77; 66/78** (“Affirming transfer of Israeli citizens into occupied territory is a breach of the Fourth Geneva Convention and customary international law”); **66/79** (“Gravely concerned by reports regarding serious human rights violations and grave breaches of international humanitarian law committed during the military operations in the Gaza Strip between December 2008 and January 2009”). **2012:67/24; 67/118** (“Convinced that occupation itself represents a gross and grave violation of human rights”); **67/119; 67/121** (“Expressing graveconcern about the continuing systematic violation of the human rights of the Palestinian people by Israel”); **67/229** (“Expressing its grave concern about the extensive destruction by Israel, the occupying Power, of agricultural land and orchards in the Occupied Palestinian Territory, including the uprooting of a vast number of fruit-bearing trees and the destruction of farms and greenhouses, and the grave environmental and economic impact in this regard). **2013:68/16; 68/80** (“Gravely concerned in particular by

passed numerous resolutions recognizing that Israeli settlements in the Occupied Palestinian Territory are in violation of international law,²⁵ including the right of the Palestinian people to self-determination,²⁶ and calling on Israel, the occupying power, to abide by its obligations under international law;

- b. On 8 December 2003, the General Assembly requested an advisory opinion from the International Court of Justice ("ICJ") on the legality of Israel's construction of a wall on and through the Occupied Palestinian Territory.²⁷ On 9 July 2004, after full deliberations, the ICJ ruled that Israel's building of a wall on occupied Palestinian territory is "contrary to international law".²⁸ In its Opinion the ICJ unanimously held that

reports regarding serious human rights violations and grave breaches of international humanitarian law committed during the military operations in the Gaza Strip between December 2008 and January 2009"); 68/81; 68/82 ("Affirming that the transfer by the occupying Power of parts of its own civilian population into the territory it occupies constitutes a breach of the Fourth Geneva Convention and relevant provisions of customary law, including those codified in Additional Protocol I to the four Geneva Conventions"); 68/83 ("Expressing grave concern about the continuing systematic violation of the human rights of the Palestinian people by Israel, the occupying Power"). 2014:69/90; 69/91; 69/92 ("Aware that Israeli settlement activities involve, inter alia, the transfer of nationals of the occupying Power into the occupied territories, the confiscation of land, the forced transfer of Palestinian civilians... that are contrary to international law"); 69/93. 2015: 70/87 ("Expressing grave concern about tensions, instability and violence in the Occupied Palestinian Territory, including East Jerusalem, due to the illegal policies and practices of Israel..."); 70/88; 70/90. 2016:71/95; 71/96; 71/97; 71/98.

²⁴See, UNISPAL website for resolutions from the Human Rights Council (and Commission on Human Rights).

²⁵ While the State of Palestine recognizes that the Prosecutor must make her own independent assessment of the facts and law, it also notes that never before has the ICC been seized of a situation that has been the subject of such intense scrutiny by the UN for such an extensive period. It is the firm belief of Palestine that such a corpus of material should facilitate the Prosecutor's work.

²⁶ International Court of Justice ("ICJ"), Advisory Opinion, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory ("Advisory Opinion on the Wall"), 9 July 2004, 2004 ICJ Reports, para. 122:

[...] In other terms, the route chosen for the wall gives expression *in loco* to the illegal measures taken by Israel with regard to Jerusalem and the settlements, as deplored by the Security Council (see paragraphs 75 and 120 above). There is also a risk of further alterations to the demographic composition of the Occupied Palestinian Territory resulting from the construction of the wall inasmuch as it is contributing, as will be further explained in paragraph 133 below, to the departure of Palestinian populations from certain areas. That construction, along with measures taken previously, thus severely impedes the exercise by the Palestinian people of its right to self-determination, and is therefore a breach of Israel's obligation to respect that right.

²⁷ UNGA, ES-10/14, 8 December 2003.

²⁸ Paragraph 163 of the Advisory Opinion on the Wall states in relevant part:

The construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated régime, are contrary to international law;

...

“Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law”.²⁹ In this opinion, the Court, after noting the illegality of settlements and fears that Israel may integrate these settlements and their means of access, stated “that the construction of the wall and its associated regime create a *fait accompli* on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to *de facto* annexation”.³⁰ The Court also concluded that the establishment of Israeli settlements in the Occupied Palestinian Territory breached the prohibition under international law, whereby “the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.”³¹

- c. On 23 December 2016, the United Nations Security Council adopted Resolution 2334 (2016) which, in line with the longstanding positions of

All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction; all States parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 have in addition the obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention;

ICJ, Advisory Opinion on the Wall, 9 July 2004, 2004 ICJ Reports.

²⁹ ICJ, Advisory Opinion on the Wall, para 120 Judge Buergenthal (United States), who dissented on the finding of the illegality of the wall, agreed that settlements are unlawful: See Declaration by Judge Buergenthal on the Advisory opinion on the Wall, para. 9.

³⁰ ICJ, Advisory Opinion on the Wall, 9 July 2004, 2004 ICJ Reports, para. 121.

³¹ ICJ, Advisory Opinion on the Wall, 9 July 2004, 2004 ICJ Reports, para. 120:

As regards these settlements, the Court notes that Article 49, paragraph 6, of the Fourth Geneva Convention provides: “The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.” That provision prohibits not only deportations or forced transfers of population such as those carried out during the Second World War, but also any measures taken by an occupying Power in order to organize or encourage transfers of parts of its own population into the occupied territory.

In this respect, the information provided to the Court shows that, since 1977, Israel has conducted a policy and developed practices involving the establishment of settlements in the Occupied Palestinian Territory, contrary to the terms of Article 49, paragraph 6, just cited. [...]

The Court concludes that the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law.

the United Nations Security Council, condemned “all measures aimed at altering the demographic composition, character and status of the Palestinian Territory occupied since 1967, including East Jerusalem, including *inter alia*, the construction and expansion of settlements, transfer of Israeli settlers, confiscation of land, demolition of homes and displacement of Palestinian civilians, in violation of international humanitarian law and relevant resolutions”, and reaffirmed that the “establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace”. It also reiterated “its demand that Israel immediately and completely, cease all settlement activities in the occupied Palestinian territory, including East Jerusalem, and that it fully respect all of its legal obligations in this regard”.³² This and previous

³² UNSC, Resolution 2334 (2016). The resolution states in part:

Condemning all measures aimed at altering the demographic composition, character and status of the Palestinian Territory occupied since 1967, including East Jerusalem, including, *inter alia*, the construction and expansion of settlements, transfer of Israeli settlers, confiscation of land, demolition of homes and displacement of Palestinian civilians, in violation of international humanitarian law and relevant resolutions,

...

Reaffirms that the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace;

The United States abstained. On 28 December 2016, the US Secretary of State stated that:

[T]he more outposts that are built, the more the settlements expand, the less possible it is to create a contiguous state. So in the end, a settlement is not just the land that it's on, it's also what the location does to the movement of people, what it does to the ability of a road to connect people, one community to another, what it does to the sense of statehood that is chipped away with each new construction. No one thinking seriously about peace can ignore the reality of what the settlements pose to that peace.

[T]here have been over 30,000 settlement units advanced through some stage of the planning process. That's right – over 30,000 settlement units advanced notwithstanding the positions of the United States and other countries. And if we had vetoed this resolution just the other day, the United States would have been giving license to further unfettered settlement construction that we fundamentally oppose.

resolutions, by addressing Israel, acknowledge the Israeli State and officials' role in the planning, implementation, expansion and maintenance of the settlement regime and their responsibility in the ongoing criminality linked to this regime.³³

- d. Several United Nations fact-finding and inquiry commissions have found credible and reliable evidence establishing reasonable grounds to believe international crimes have been committed by Israeli forces and officials on the territory of the State of Palestine.³⁴
- e. On 14 September 1967, shortly after the Six-Day War, Judge Theodor Meron,³⁵ then Legal Adviser of the Israel Ministry of Foreign Affairs,

³³See for example, UNGA Resolutions finding Israel in violation of international law: **1967:** 2253; **1971:**2851; **1972:** 3005; **1973:** 3092; **1974:** 3240; **1975:** 3525; **1976:** 31/106; **1977:** 32/91; **1978:** 33/113; **1979:** 34/90; **1980:** 35/122, 35/207 (1980); **1981:** 36/147; **1982:** 37/88; 37/222; **1983:** 38/79; 38/166; **1984:** 39/95; **1985:** 40/201; **1986:** 41/63; **1987:** 42/160; 42/190; **1988:** 43/58; **1989:** 44/48; **1990:** 45/74; 45/130; **1991:** 46/47; 46/82; 46/162; 46/199; **1992:** 47/70; **1993:** 48/41; **1994:** 49/36; **1995:** 50/29; **1996:** 51/135; 51/132; 51/133; **1997:** 51/223; 52/67; 52/65; **1998:** ES-10/5 [Emergency Session]; 53/37; 53/56; 53/57; **1999:** ES-10/6 [Emergency Session]; 54/37; 54/76; 54/78; 54/79. **2000:** ES-10/7; 55/130; 55/132; 55/134; **2001:**55/61; 55/62; ES-10/9 [Emergency Session]; **2002:**ES-10/L.9/Rev.1; 57/127; **2003:** 58/96; **2004:** 59/123; 59/121; **2005:** 60/108; 60/106; **2006:** ES-10/16; 61/118; **2007:** 62/84; 62/109; **2008:** 63/98; **2009:** 64/91; 64/94. **2010:**65/17; 65/102; 65/103; 65/104; and 65/179. **2011:**66/18, 66/76; 66/225; 66/77; 66/78; 66/79; **2012:**67/24; 67/118; 67/119; 67/121; 67/229; **2013:**68/16; 68/80; 68/81; 68/82; 68/83; **2014:**69/90; 69/91; 69/92; 69/93; **2015:** 70/87; 70/88; 70/90. **2016:**71/95; 71/96; 71/97; 71/98.

³⁴See for example, Human Rights In Palestine And Other Occupied Arab Territories: Report of the United Nations Fact-Finding Mission on the Gaza Conflict, [A/HRC/12/48](#), 25 September 2009; Report of the Secretary-General on the Progress Made in the Implementation of the Recommendations of the Fact-Finding Mission on the Gaza Conflict, [A/HRC/21/33](#), 21 September 2012; Report of the Secretary-General on the Human Rights Situation in the Occupied Palestinian Territory, including East Jerusalem, [A/HRC/24/30](#), 22 August 2013; Implementation of the Recommendations Contained in the Report of the Independent Fact-finding Mission - Report of the United Nations High Commissioner for Human Rights, [A/HRC/28/43](#), 12 January 2014; Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan - Report of the Secretary-General, [A/HRC/25/38](#), 12 February 2014; Report of the United Nations High Commissioner for Human Rights, Addendum on the Human Rights Situation in the Occupied Palestinian Territory between 12 June and 26 August 2014, including the Escalation in Hostilities Between the State of Israel and Palestinian Armed Groups in Gaza, [A/HRC/28/80/Add.1](#), 26 December 2014; Human Rights Situation in the Occupied Palestinian Territory, including East Jerusalem, [A/HRC/28/45](#), 5 March 2015; Israeli Settlements in the Occupied Palestinian Territory - Report of the Secretary-General, [A/HRC/28/44](#) 9 March 2015); Report of the Independent Commission of Inquiry Established Pursuant to Human Rights Council Resolution S-21/1, [A/HRC/29/52](#), 24 June 2015; Report of the detailed findings of the Commission of Inquiry on the 2014 Gaza Conflict, [A/HRC/29/CRP.4](#), 24 June 2015; Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, [A/HRC/31/44](#) 20 January 2016; Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem – Report of the Secretary-General, [A/71/364](#), 30 August 2016.

³⁵Theodor Meron is a Judge in and President of the United Nations Mechanism for International Criminal Tribunals; Judge and Past President of the United Nations International Criminal Tribunal for the former Yugoslavia; former Judge of the United Nations International Criminal Tribunal for Rwanda ; Charles L. Denison

issued a legal opinion “that the establishment of civilian settlements in the occupied West Bank and other conquered territories violates the Fourth Geneva Convention related to the protection of victims of war and, specifically, its prohibition on settlements (Article 49(6))”.³⁶ Judge Meron reaffirmed this opinion on the fiftieth anniversary of the occupation:³⁷

But if the continuation of the settlement project on the West Bank has met with practically universal rejection by the international community, it is not just because of its illegality under the Fourth Geneva Convention or under international humanitarian law more generally. Nor is it only because, by preventing the establishment of a contiguous and viable Palestinian territory, the settlement project frustrates any prospect of serious negotiations aimed at a two state solution, and thus of reconciliation between the Israelis and the Palestinians. It is also because of the growing perception that individual Palestinians’ human rights, as well as their rights under the Fourth Geneva Convention, are being violated and that the colonization of territories populated by other peoples can no longer be accepted in our time.

IV. Cooperation

19. Throughout the period that the Prosecutor has been conducting her preliminary examination, the State of Palestine has fully cooperated with her Office.

20. Palestine pledges its continued support for, and cooperation with, the Prosecutor and the Court and maintains the hope that other States, including

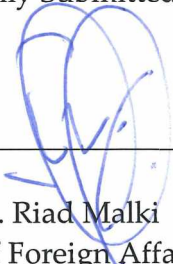
Professor Emeritus and Judicial Fellow, New York University School of Law; Visiting Professor, University of Oxford, since 2014; past Co-Editor-in-Chief of the American Journal of International Law; and the past Honorary President of the American Society of International Law.

³⁶ Theodor Meron, The West Bank And International Humanitarian Law On The Eve Of The Fiftieth Anniversary Of The Six-Day War, AJIL (2017), p. 2.

³⁷ Theodor Meron, The West Bank And International Humanitarian Law On The Eve Of The Fiftieth Anniversary Of The Six-Day War, AJIL (2017), p. 19.

States Parties to the Rome Statute, will provide the cooperation and resources necessary for the Prosecutor to complete her investigation as expeditiously as possible, with a view to ensuring prompt accountability for the crimes committed in Palestine.

Respectfully Submitted,



Dr. Riad Malki
Minister of Foreign Affairs and
Expatriates
The State of Palestine
Dated this 15 May 2018
At: Ramallah, Palestine