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## UN Roundtable: Palestine should trust the International Community

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# MIDDLE EAST M●NITOR

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Earlier this year, Amnesty International reported about the ‘Trigger-happy’ Israel’s excessive use of force on Palestinians in the West Bank. Deputy Director of the organisation in the MENA region, Said Bou Madouha sent a letter to the Palestinian Authority, saying that amongst other things, the “Illegal use of excessive and lethal force by Israel raises dangerous concerns.” Deputy PA Information Minister Mahmoud Khalifa was urging all Palestinian institutions to keep track and proofs of Israeli injustices against Palestinians.

“Settlement construction in 2013 more than doubled compared to 2012. These actions are a clear violation of Articles 49 and 53 of the Fourth Geneva Convention,” Mr. Abdou Salam Diallo, chairman of The Committee on the Exercise of the Inalienable Rights of the Palestinian People said Sunday in an opening remark for a United Nations Roundtable on Legal Aspects of the Question of Palestine. During the introducing speeches, the long-awaited roundtable raised several international concerns for the future of Palestinian rights. On March 29, Israel failed to meet its commitment to release the fourth group of 26 Palestinian prisoners, which was a crucial part of the agreement with the US and Palestinians that led to the resumption of talks. Mr. Diallo said that Israel’s attitude “complicated the continuation of the political dialogue.”

Another important point raised was the overarching Palestinian concern for social, economic, cultural, civil and political rights due to the lack of accountability on both sides (Israeli and Palestinian). This is particularly hampering to the judiciary system and treatment of prisoners. The situation in the Gaza Strip has been of equal concern to OHCHR. Israel’s blockade of Gaza which Anders Kompass, Director for field operations and technical cooperation of UNHCR, described as “a form of collective punishment,” is

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prohibited under international law, yet carried out, alongside the continuing destruction of most of the tunnel network with Egypt. This is resulting in “significant deterioration” of economic and social rights in Gaza, Mr Kompas stressed. He dismissed the renewed hostilities between Palestinian armed groups and Israeli armed forces in the Gaza Strip in recent months as a “troubling” development that intensifies negotiations and making this roundtable highly pressing.

Building on numerous cases with crucial provisions of international law in order to achieve a permanent, just and comprehensive solution to the question of Palestine; [this roundtable](#) set out to discuss the legal status of Palestinian political prisoners and detainees in international law on the 23. and 24. of April.

Throughout a 47-year period, the Israeli authorities have signally failed to carry out independent investigations that meet international standards into alleged crimes, including war crimes committed by soldiers against Palestinians and their properties. In addition, Palestinians affected by the arbitrary, abusive use of force and firearms or their legal representatives have been denied any significant access to an independent process, including judicial process, contrary to UN standards of law enforcement. According to [Amnesty International's report](#) this failure to conduct independent, effective investigations and take corrective action has “undermined the rule of law and denied justice to the victims” and is “extending impunity to the perpetrators has served to encourage further abuses.”

The meeting, attended by renowned experts on the issues and Committee members and observers, considered the issue of Palestine’s admission to the UN as a non-Member Observer State and the general legal implications stemming from this status. The last such meeting was held in April 2012 at the United Nations Office in Geneva on “The question of Palestinian political prisoners in Israeli prisons and detention facilities: legal and political implications”.

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The roundtable was divided into four sessions, “The legal status of Palestinian political prisoners and detainees in international law” in which an insight into the status of “prisoners of war” was made in international law as well as its application to Palestinian prisoners and detainees; United Nations procedures and mechanisms to address the issue of political prisoners: the General Assembly, Human Rights Council and treaty bodies; and the issue of political prisoners in international courts and other mechanisms.

At the session II entitled “Available legal mechanisms to ensure compliance with international law and Third Party responsibility,” experts and participants discussed the responsibilities of the occupying Power under international humanitarian and human rights law; the need to ensure compliance with international humanitarian and human rights laws - actions by States parties to the Third and Fourth Geneva Conventions; and the importance of engaging the International Court of Justice.

Session III on “General legal implications stemming from the status of non-Member Observer State” took a look at the rights and obligations of non-member observer States, International conventions and treaties, and membership in United Nations specialized agencies and other global organizations.

The last session “The State of Palestine and International Courts” discussed the issue of placing complaints before the relevant international courts, including conditions, procedures, practices as well as drawbacks and challenges.

## **Palestine’s new Position before Israel**

Israel was already bound to uphold international law in terms of its treatment of Palestinian prisoners before Palestine agreed to the Geneva Conventions and human rights treaties earlier this month. Memo spoke to Bill van Esveld, Human Rights Watch (HRW)’s senior researcher in the Middle East and North Africa Division about the hopes and expectations of this event. He explained how, by signing those treaties and conventions, Palestine is mainly

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imposing greater obligations upon itself. “Israel’s legal obligations – which it has often violated – were not affected,” he said.

The main transformation vis-à-vis Israel, likely to result from Palestine’s standing as a state party to these treaties and conventions, is that Palestine will have greater access to a range of forums to present reporting on Israeli violations to other states parties and call on them to pressure Israel to end them.

Human rights organisations are urging Palestine to seek access to the International Criminal Court by either signing the Rome Statute or by submitting a new declaration to the Court. In 2012, the Office of the ICC Prosecutor rejected Palestine’s declaration from January 2009, stating that he couldn’t decide whether Palestine was a “state”- a necessary condition for jurisdiction.

For almost a year, since obtaining upgraded status at the UN, the Palestinian leadership in Ramallah has had a chance to open the door to justice for serious international crimes committed on Palestinian territory.

In November 2012, the UN General Assembly resolved the matter by voting to admit Palestine as a “non-member observer state.” Soon after the UN upgrade, the current prosecutor, Fatou Bensouda, said that the “ball is now in the court of Palestine” to seek the court’s jurisdiction. “They could seize this chance to deter future abuses tomorrow by giving the International Criminal Court (ICC) jurisdiction”, Mr. Esveld stated.

Palestinian rights groups urged the prosecutor, Fatou Bensouda, to act on the 2009 declaration, but in November last year her office [published a report](#) that “closed that door.”

She placed the obligation on Palestinian leaders to actively pursue the court’s jurisdiction anew, by either formally becoming a member of the ICC, or filing a new declaration recognizing the court’s jurisdiction. Palestine could seek jurisdiction starting from any date since 2002, when the court opened its doors.

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“Why isn’t Palestine playing ball in The Hague? Those responsible for rocket launches from Gaza targeting Israeli population centres could be held criminally responsible at the ICC,” Mr. Esveld argued. This should not discourage the Palestinian leadership in Ramallah in their quest for the court’s jurisdiction, as it has stated that it is against such attacks, he explained.

The main reason, current and former Palestinian officials say, is that Israel has threatened unspecified retaliation if it seeks the court’s jurisdiction, and the US has reinforced that threat. Mr. Esveld was told by a former Palestinian legal adviser that “the US said to us clearly, conveying Israel’s position, ‘Don’t touch it.’” US Secretary of State John Kerry said during his Senate confirmation hearings that the US was “very, very strongly against” any “effort to take Israel for instance ... to the ICC.”

Other ICC member countries should be pushing for universal ratification of the court’s statute – including the UK, France, and most recently, Canada – have instead also pressured Palestine not to seek justice through the ICC, Mr. Esveld explained to MEMO.

He continued and urged that the Israeli and US threats “cannot be taken lightly, given Israel’s control over Palestinians’ lives,” faced at checkpoints, border crossings, and during arrest raids. Furthermore, the Palestinian economy’s heavy reliance on foreign donations, including from the US deepens the need for Israeli accountability in front of the International community.

But the consequences should be weighed against the alternative, he explained: “impunity for crimes fuelling further abuses.” The ICC’s jurisdiction would cover serious crimes under international law on Palestinian territory by all parties, such as widespread torture, or indiscriminate attacks on civilians whether committed by Palestinian armed groups or the Israeli military.

## **The ICC**

ICC’s statute categorizes the “direct or indirect” transfer of civilians by an occupying power into occupied territory – as we see with the Israeli government’s transfer of Jewish citizens into

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the settlements – as a war crime. Another war crime under this statute, Mr. Esveld explained, is the “forcible transfer” of protected people in an occupied territory off their lands, such as by demolishing their homes and preventing them from returning.

Since Prime Minister Benjamin Netanyahu of Israel came to power in 2009, construction has begun on 8,575 settlement homes. Israeli demolitions during the same period left more than 4,000 Palestinians homeless. “Both trends are accelerating,” he warned: with 1,708 settlement housing starts in the first half of 2013, up by 70 percent over the same period in 2012. Demolitions have left 933 Palestinians homeless so far this year, up from 886 in all of 2012.

“Palestinian leaders have said they would seek ICC jurisdiction at the present time if – and apparently only if – Israel builds settlements in the so-called E1 area just east of Jerusalem,” Mr. Esveld pointed out. Many analysts warn that this would effectively cut the West Bank in half.

Settlement-building is not merely pressing in the pursuit of a future two-state solution- it also takes a dreadful daily toll on Palestinians’ lives. Israel has granted settlements jurisdiction over 39 percent of the entire West Bank, making those areas off-limits to Palestinians who own land there or traditionally had access for farming and raising livestock. An Israeli rights group recently reported that the area used for settlement agriculture has increased by 35 percent since 1997, to 9,300 hectares. Some Palestinian farmers have no alternative but to lease land from settlers, who got it from Israel for free.

Israel, the US, and other countries have justified their calls for Palestine not to use its new UN status to pursue ICC jurisdiction by claiming it would undermine peace negotiations. 20 years of intermittent negotiations, impunity for rights abuses and laws-of-war violations has fuelled hostility and made negotiators’ jobs increasingly thorny. “The absence of credible accountability mechanisms has hardly proven an advantage in bringing the

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conflict to an end,” Mr. Esveld explained and continued that a potential ICC involvement could “change the political calculus of those responsible for such violations” as it sends a direct message of commission of grave crimes will lead to serious consequences.

On the Palestinian side, leaders are under pressure, but they have not officially resisted and pointed up the fact that ICC’s jurisdiction would serve justice and perhaps assist peace talks. They have failed to describe why they feel incapable to actively seek the ICC’s jurisdiction.

If the ICC has jurisdiction, the prosecutor can open an investigation of her own accord, “but that seems highly unlikely,” Mr. Esveld told MEMO - “If Palestine became a member of the court, it’s far more probable that it would need to take a second step and ask the prosecutor to investigate.” However, taking the first step of seeking jurisdiction could still build up an international pressure against impunity for Israeli crimes.

“It’s time for the Palestinian leadership to inform its public about how it is keeping the accountability ball in play,” Mr. Esveld concluded.

## **Relying on the International Community**

Recognising the need for Palestinians for international shouldering and involvement, the Committee Chairman Abdou Salam Diallo affirmed Palestine as a state increasingly “falling within the jurisdiction of international humanitarian law and that acceding to international treaties has promoted the position of Palestine as a legitimate state.” Consequently, this involves the international community and states parties to these treaties must “take action to bring the Israeli violations of such treaties to an end,” he stressed.

During the sessions, the attendees agreed that Israel has become an apartheid state through its racist legislation, discriminating against Palestinians, the Palestinian news agency Wafa reported yesterday.

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Collectively, the attendees called for the withdrawal of the persistent Israeli occupation from the occupied Palestinian territories and for bringing it under international community's will and law. In order instigate an avenue for Palestinian jurisdiction on Israeli crimes, the participants of the roundtable suggested that Palestine start suing Israel over settlement construction, prisoners' torture, arrest of children and apartheid practices.

Issa Qaraqe, Minister of Prisoners' Affairs explained the question of Palestinian political prisoners in Israeli prisons and detention facilities and the legal and political implications, with several recommendations, including the possible accession of Palestine to the Rome Statute, as mentioned by Mr. Esveld and also, the legal obligations of Israel under the Geneva Conventions.

Mr Qaraqe pointed out to Wafa that the attendees called on Palestine to rely on and resort to the criminal justice mechanisms and relevant international courts, and grant other international treaties to promote its legal status.



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