Plenary III
Efforts in the United Nations: the next steps

Paper presented by

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LEVERAGING UNITED NATIONS MECHANISMS
TO UPHOLD INTERNATIONAL LAW AND HUMAN RIGHTS

Mr. Chairman,
Mr. Special Coordinator,
Excellencies,
Ladies and Gentlemen,

I am delighted to be here and would like to take this opportunity to extend my thanks to the Committee on the Exercise of the Inalienable Rights of the Palestinian People for convening this important and timely conference.

I have been asked to speak on the topic of “Leveraging United Nations mechanisms to uphold international law and human rights” in the context of the Israeli-Palestinian conflict.

For the purpose of the discussion I will focus on human rights mechanisms, but before I address the question directly, I would like to start by laying out why human rights are so central to the two-State solution and to achieving peace. The simple message I would like to convey and which I also made to the Human Rights Council in March 2015 when I presented my report on the human rights situation in the Occupied Palestinian Territory, is that: “Peace starts with respect for human rights”.

Globally, the Universal Declaration of Human Rights tells us that the “inherent dignity and …the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world” and that “it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.”

That the absence of respect for human rights and international law has been a key factor in exacerbating the long-standing Israeli-Palestinian conflict and in hindering its resolution, is also a ‘truth’ which has been articulated by many distinguished authorities long before I took up my mandate.

In 1997, one of my predecessors, Special Rapporteur Halinen, noted that “Building up the trust and confidence necessary for sustainable peace in the area is difficult, if not impossible, without determined efforts to suppress…[human rights] violations”.

In 2011, former High Commissioner for Human Rights, Madame Pillay, said upon her visit to the Israel and the Occupied Palestinian Territory that the “…politics of conflict, peace and security are constantly leading to the downgrading, or setting aside, of the importance of binding international human rights and humanitarian law.”
And, earlier this year a report by the United Nations Secretary-General, noted that this is a situation which has since the beginning of the occupation in 1967 seemingly been locked in an endless succession of violations, violence and impunity, and went on to state that “Human rights violations are not just a symptom of the conflict; they drive it in an ever-worsening cycle of violence.”

We need only remind ourselves of the impact of this conflict, and the almost half a century old occupation, on the full range of human rights in the Occupied Palestinian Territory, to see that human rights violations are inextricably linked to the continuing absence of peace. Israel’s security concerns are important. At the same time, however, lack of respect for human rights leads to increased insecurity for Palestinians and for Israelis. During my mission to Amman last month several of those who briefed me, especially on the situation in Gaza, warned of the dangers of leaving people without hope of justice.

It is not uncommon to hear the expression “the latest escalation of hostilities in Gaza” and reference to the fact that a seven-year old child in Gaza will by now have been traumatised by three rounds of hostilities. Even in times of relative calm, the Israeli blockade suppresses the realisation of human rights in Gaza.

In the West Bank, illegal Israeli settlements on occupied Palestinian land are central to a host of infringements of Palestinian human rights, including the right to self-determination. It is possible to chart the increasing fragmentation of Occupied Palestinian Territory year by year, especially in Area C and in and around East Jerusalem, and rendering the discussions of two viable States increasingly difficult to realise.

By all accounts, and as the distinguished delegates present here today know all too well, the situation across the Occupied Palestinian Territory is untenable.

Generations of both Palestinians and Israelis have been caught up in this conflict and have suffered as a result. My own mandate focusses on allegations of Israeli violations, but I am not blind to allegations raised against Palestinian actors, in the context of this conflict and occupation. A concerted effort to address violations and protect human rights would allow confidence build and a serious peace process to take hold. Repeated violations only antagonise Israeli-Palestinian relations. I am frequently reminded of the wise observation that “You cannot shake hands with a clenched fist”.

Returning to the question of the role of United Nations mechanisms to uphold international law and human rights. Such mechanisms, as for example - the Universal Periodic Review which Israel underwent last year, and Human Rights Treaty Bodies, which, since Palestine’s accession to a number of treaties last year, now both Palestine and Israel will be periodically reviewed by, - can be very important in engaging with the concerned State on human rights concerns and prompting improvements in practice and policy.

Regarding mandates specifically on the Occupied Palestinian Territory, examples include the Committee on the Exercise of the Inalienable Rights of the Palestinian People, hosting this conference, the Special Committee to Investigate Israeli Practices, and indeed my own mandate. Each of these report and make concrete recommendations with respect to
improving compliance with international law, especially human rights law and international humanitarian law.

I should also note the role of fact-finding missions and commissions of inquiry; the most current example of course being the 2014 Commission of Inquiry on Gaza which on Monday presented its report to the Human Rights Council. Such ad hoc mechanisms can play a very important role, especially in the absence of meaningful accountability at the domestic level, to objectively analyse and investigate allegations of violations of international humanitarian law and international human rights law by all sides.

On the point of the effectiveness of these mechanisms, I would argue that two interrelated factors are critical:

Firstly, the cooperation of concerned countries with the human rights mechanism in question and the international community’s insistence on such cooperation, and, secondly, whether the international community recognises human rights as being at heart of the prospects for a sustainable peace between Israel and Palestine, and consequently utilises and gives weight to conclusions and recommendations in the context of the peace process.

Regarding cooperation, I can speak to the negative impact that Israel’s lack of cooperation has had on the effectiveness of my mandate. Although, all but one of my predecessors were able to visit the Occupied Palestinian Territory in their capacity as Special Rapporteur, even during formal non-cooperation by Israel, I have, regrettably, been unable to do so despite assurances made to the Human Rights Council at the time of my appointment. Whatever the reservations by Israel regarding my mandate and the fact that it is focussed on alleged violations only by Israel, as the Occupying Power, I believe that engagement with an independent United Nations mandate, such as my own, is the duty of any Member State as well as an indicator of commitment to human rights.

Within the Israeli-Palestinian conflict, it is of course not only my mandate which has been affected by non-cooperation. Israel does not cooperate with the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories, established in 1968, and did not grant access to the Occupied Palestinian Territory to the 2014 Commission of Inquiry. On a positive note, however, Israel did extend cooperation with the 2014 Board of Inquiry established by the Secretary-General regarding incidents affecting United Nations personnel, premises and operations. However, if this is the exception, rather than the rule for these mechanisms, needless to say the leverage that they could represent in terms of working towards concrete improvements will be weakened. International pressure is important to urge cooperation with United Nations mechanisms and to ensure their optimal effectiveness.

Regarding the second mentioned factor of the need for political prioritisation of compliance with international law, and human rights standards, this is illustrated by the developments following 2014 International Court of Justice Advisory Opinion, which authoritatively stated the illegality under international law of Israel’s construction of the wall within the West Bank. Eleven years later, the Opinion and numerous references to it in
United Nations reports and recommendations have not succeeded in changing the fact that the wall is still standing and is still under construction to this day.

Similarly, human rights mechanisms have no power to compel the concerned State to address the recommendations they produce: Whether it be the Human Rights Committee recommending (2014) that Israel “… acknowledge that the applicability of international humanitarian law during an armed conflict, as well as in a situation of occupation, does not preclude the application of the Covenant [on civil and political rights]”; or the Special Committee to Investigate Israeli Practices recommending (2014) that Israel “End the current practice of administrative detention”.

Many recommendations of these mechanisms also repeatedly refer to the need to implement numerous Security Council and General Assembly resolutions. What is needed is to foster an environment which is politically less accepting of non-compliance with resolutions and non-cooperation with United Nations mechanisms.

I would like to emphasize that these mechanisms have a particular contribution to make precisely as they offer an objective ‘reality-check’ of the situation from a legal and a human rights perspective, rather than from a political one. This is significant to record violations and to give voice to the victims. This perspective ought also to inform the political negotiations, I would argue, to a much greater extent than it appears to have done to date. International law, including human rights law and international humanitarian law, provides a baseline of how States and peoples should behave towards one another. Justice and peace are intertwined, not mutually exclusive, and therefore the work of United Nations mechanisms can and should inform political efforts in order to advance a sustainable peace and a viable two-State solution.

There is a responsibility on Israelis and Palestinians and on the international community to move towards peace and an end to the violence and violations. This starts with a fundamental respect for human rights and international law and with real accountability. Human rights mechanisms can play an important role, but the international community must take the next step to ensure their full effectiveness, both by insisting on cooperation as well as recognising that realisation of human rights must be at the heart of the agenda in any discussion towards peace.

It is imperative that no exception ever be accepted to the universal application and protection of human rights. It is up to the international community as a whole to utilise human rights mechanisms effectively to create an environment where impunity is no longer tolerated and human rights are not treated as something which can be set aside for political exigencies, but rather is treated as key to achieving a sustainable peace.

Thank you