

LAWYERS FOR PALESTINIAN  
HUMAN RIGHTS

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**Lawyers for Palestinian Human Rights' briefing on the legal value of UN Security Council resolution 2334**

**January 2017**



### **About Lawyers for Palestinian Human Rights (LPHR)**

LPHR is a lawyer-based charity in the UK that works on projects to protect and promote Palestinian human rights. We distinctly provide a legal and human rights perspective on issues affecting Palestinians. Our trustees include leading human rights lawyers, Sir Geoffrey Bindman QC and Tessa Gregory.

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1. On 23 December 2016, the UN Security Council reaffirmed the illegality of Israeli settlements in resolution 2334. The passing of this resolution does not break new legal ground, but nonetheless has legal value for a variety of important reasons.
2. The reaffirmation of the illegality of Israel's settlements in itself has legal value at a time when the settlements issue is reaching a critical juncture. It further appears to have legal relevance in regard to practical actions that have already been taken, and additional actions that may in the future be taken, by the international community to differentiate between the territory of the state of Israel proper and the Palestinian territory that it occupies. Finally, it can have distinct legal significance for the current preliminary examination on Palestine being undertaken by the Office of the Prosecutor for the International Criminal Court.
3. These factors can best be examined after observing the constitutive elements of the resolution.

#### **The preamble and operative parts of the resolution**

4. An overriding observation of resolution 2334 is that its substance and language on settlements is firmly grounded in basic principles of international humanitarian law.
5. In its preamble, the resolution reaffirms "the inadmissibility of the acquisition of territory by force", and "the obligation of Israel, the occupying Power, to abide scrupulously by its legal obligations and responsibilities under the Fourth Geneva Convention." It recalls the International Court of Justice's 2004 advisory opinion on the legal consequences of the construction of a Wall in the occupied Palestinian territory (which found, inter alia, that the combination of Israeli settlements and the barrier's construction alters the demographic composition of the occupied Palestinian territory and impedes the Palestinians' right to self-determination).
6. The preamble then, "condemns 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." It further expresses "grave concern" that Israeli settlement activities undermine the viability of a two state solution based on the 1967 lines, and recalls "the obligation under the Quartet Roadmap, endorsed by its resolution 1515 (2003), for a freeze by Israel of all settlement activity, including "natural growth", and the dismantlement of all settlement outposts erected since March 2001."
7. In the operative part of the resolution, it (with excerpts placed in bolded italics by me for particular emphasis):



- “1. 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;
2. Reiterates 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;
3. Underlines that it will not recognize any changes to the 4 June 1967 lines, including with regard to Jerusalem, other than those agreed by the parties through negotiations;
4. Stresses that the cessation of all Israeli settlement activities is essential for salvaging the two-State solution, and calls for affirmative steps to be taken immediately to reverse the negative trends on the ground that are imperilling the two-State solution;
5. Calls upon **all States, bearing in mind paragraph 1 of this resolution, to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967**;
6. Calls for immediate steps to prevent all acts of violence against civilians, including acts of terror, as well as all acts of provocation and destruction, **calls for accountability in this regard**[...];
7. Calls upon both parties to act on the basis of international law, including international humanitarian law [...];  
[...]
9. Urges [...] the intensification and acceleration of international and regional diplomatic efforts and support aimed at achieving, without delay a comprehensive, just and lasting peace in the Middle East on the basis of the relevant United Nations resolutions [...];  
[...]
12. Requests the Secretary-General to report to the Council every three months on the implementation of the provisions of the present resolution.”

### Unpacking the legal value of resolution 2334

8. There was already no question that Israel’s settlements were illegal, and in this regard it may be questioned whether resolution 2334 has any real legal significance. A number of important factors however might illuminate that the resolution can be assessed as possessing a legal value that is not negligible. As noted above, these are: i) the



resolution reinforces the legal impermissibility of settlements and does so at a critical time; ii) the resolution's call on all states to differentiate between the territory of the state of Israel and the territories it has occupied since 1967; and iii) the influence the resolution may have on the Office of the Prosecutor of the International Criminal Court. It should also be noted that the overarching theme that runs through these factors is the paramount need to protect and promote Palestinian human rights, including the fundamental right to self-determination, which are heavily compromised by Israel's vast settlement enterprise.

9. The resolution's reaffirmation that "settlements have no legal validity and constitutes a flagrant violation of international law" coupled with its "demand that Israel immediately and completely cease all settlements activities", is compelling additional legal authority that Israeli settlements in the occupied Palestinian territory are indeed illegal. The language of "have no legal validity" is taken verbatim from the last resolution (resolution 465 in 1980) that focused on settlements. The international community's explicit reliance on legal reasoning to buttress its position on Israeli settlements speaks to the value of international humanitarian law when addressing urgent issues of justice, peace and security.
10. The timing of this legal reaffirmation is also significant. The strong message sent by resolution 2334 that there can be no recognition that settlements have any legal validity, comes at a critical time when there is the disturbing confluence of the following:
  - o continuous expansion of illegal Israeli settlements in the occupied West Bank and East Jerusalem;
  - o escalating statements from the Israeli political leadership expressing its resolute commitment to the settlement enterprise;
  - o the proposed settlement regularisation law currently being considered by the Israeli Knesset; and
  - o troubling signals being transmitted by the imminent Trump administration vis-a-vis Israel's settlements policy.
11. The resolution also has potential legal value in reinforcing the implementation of the legal principle that third states have legal duties not to recognise, nor aid or assist Israeli settlements because they impede Palestinians from being able to exercise their fundamental right to self-determination. This principle appears to be implicit in operative paragraph 5 of the resolution, which calls on all states in its relevant dealings to distinguish between the territory of Israel proper and the occupied Palestinian territory.
12. The resolution's provision of this clear delineation is valuable authority to counter any current and possible future attempts to unacceptably conflate the state of Israel proper with the Palestinian territory that it occupies. This conflation has relevance in the



evolving area of business and human rights, where involvement by business enterprises in settlements activities in the occupied Palestinian territory which adversely impact Palestinian human rights is an ongoing concern. In this specific regard, it provides further legitimacy to the pending business and human rights database on companies involved in settlements activities, which is currently being developed by the Office of the High Commissioner for Human Rights.

13. It is also relevant to further legitimising steps that have been taken by some states, including the UK, to distinguish between trade that emanates from Israeli settlements as opposed to Israel proper. And, potentially in the future, it can assist to legitimise significant possible moves from states to withhold incoming and outgoing trade with Israeli settlements in accordance with its legal duties not to recognise, nor aid or assist them.
14. Finally, the resolution is additional material evidence for the ICC prosecutor to consider in her ongoing preliminary examination into Israel's actions in the occupied Palestinian territory. A significant aspect of her examination is on the issue of settlements. The Security Council's clear reaffirmation of the illegality of settlements, plus the reference in operative paragraph 6 to a "call for accountability", may factor into her decision-making when determining whether or not to open a full criminal investigation.

### **Summary**

15. The potential legal value of resolution 2334 should not be understated. The safeguarding and promotion of Palestinian human rights, including the fundamental right to self-determination, is heavily dependent on the legal substance of resolution 2334 being observed and acted upon by all relevant international actors.

**Tareq Shrourou**