



Al-Haq Briefing Paper

Using the Presidency of the Security Council as an Opportunity to Promote and Advance Cooperation between the UN Security Council and the International Criminal Court

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1. Introduction

Since its creation, the International Criminal Court (“ICC” or “the Court”) has often been justifiably described as a “giant without arms or legs”.¹ As the Court does not have enforcement powers of its own, it has been entirely dependent on the cooperation of States to fulfil its mandate of investigating and prosecuting those most responsible for the commission of serious crimes that concern the international community as a whole.² Therefore, the cooperation of States has functioned as the “arms and legs” of the Court.³ State’s cooperation is essential for the ICC because it cannot prosecute *in absentia*.⁴ Therefore, it needs the cooperation of States to arrest or surrender accused persons.⁵ Moreover, the Court needs States cooperation to be able to conduct its field investigation and gathering of evidence.⁶ Furthermore, the Court relies on the cooperation of relevant States at the domestic level in order to enforce its sentences and to secure reparations for victims through, *inter alia*, freezing and forfeiture of assets of those convicted.⁷

Starting with the current presidency of Ireland, from September 2021 until January 2022, the United Nations Security Council (UNSC) presidency is going to be for ICC State parties uninterrupted.⁸ This poses a historic opportunity where a collective effort by Ireland, Kenya, Mexico, Niger and Norway could keep the discussions regarding the cooperation between the UNSC and the ICC on the UNSC agenda for that period. Preferably, such initiative would be conducted at both the UNSC and the ICC Assembly of States Parties (ASP) simultaneously, with prior agreement and full coordination among the respective States.

On Ireland’s first day of its presidency of the UNSC, a Civil Society Dialogue with UNSC President Ms Geraldine Byrne Nason was held, in which Al-Haq called on Ireland to work collectively with other ICC State Parties to ensure that the discussion regarding the cooperation between the ICC and the UNSC, especially in relation to the Situation in Palestine, remains on the UNSC agenda.⁹ Al-Haq is issuing this position paper to elaborate on the importance of such collective efforts at the UNSC, including in relation to the situation in the State of Palestine.

¹ G. Sluiter, ‘The surrender of war criminals to the International Criminal Court’, ILR [2003] 25, 605; P. Mochochoko, ‘The experience of the Office of the Prosecutor of the International Criminal Tribunal for Rwanda concerning arrest strategies and lessons learnt for the Office of the Prosecutor of the International Criminal Court’, in C. Jalloh, A. Marong and H. Jallow (eds), *Promoting accountability under international law for gross human rights violations in Africa: essays in honour of Prosecutor Hassan Bubacar Jallow*, Leiden/Boston: Brill Nijhoff, 2015, 72.

² See Preamble and Article 5 of the Rome Statute of the ICC, Rome (17/07/1998) [2187 UNTS 3](#) (entered into force 01/07/2000) (“the Statute”).

³ See (n 1).

⁴ Rome Statute (n 2), Article 63(1).

⁵ *Ibid.*, Articles 89–92.

⁶ *Ibid.*, Article 93(1).

⁷ *Ibid.*, Articles 77(2)(b), 93(1)(k) and 109.

⁸ UNSC, ‘[Security Council Presidency](#)’, last accessed 7 September 2021.

⁹ UN, ‘[Civil Society Dialogue with UN Security Council President Geraldine Byrne Nason \(Ireland\)](#)’, 1 September 2021, at min. 50:53.

2. A Historic Opportunity to Promote and Advance Cooperation

The level of cooperation between the UNSC and the ICC depends ultimately on the composition of the UNSC, especially how many of its members are parties to the Rome Statute. Moreover, the level of cooperation between the UNSC and the ICC also relies heavily on the commitment of these States to fight impunity and prosecute those who commit the core crimes. This is a critical factor in explaining the mutable attitude of the UNSC towards the ICC and international accountability in different years.

The composition of the UNSC can therefore result in different attitudes of the UNSC in different years. For example, in 2011, when the UNSC referred the Situation in Libya to the Court, there were nine States parties to the Rome Statute at the UNSC. In other times, where the ICC States parties are in the minority at the UNSC, a more passive attitude towards the ICC and international accountability has prevailed. Moreover, it is important for States parties within the UNSC to enhance and maximize their presence at the Presidency of the Council. Such a position bestows a great opportunity to promote and advance international justice and accountability on the UNSC agenda. **For example, in January 2012, it was under the South African presidency, that the UN High Commissioner for Human Rights, Ms Navi Pillay, addressed the UNSC regarding the Situation in Syria.**¹⁰

From September 2021 until January 2022, the UNSC presidency is going to be for ICC State parties uninterrupted.¹¹ A collective effort by these ICC States parties presents a unique opportunity to promote and advance the cooperation between the UNSC and the ICC. Moreover, such efforts could keep this topic and the discussions thereof on the UNSC agenda for the period of the ICC State parties presidency, *i.e.*, at least 5 months. This could constitute the longest period in which the discussion regarding the issue of cooperation between the UNSC and the ICC would be present on the agenda of the UNSC. Such collective efforts should be considered and conducted at both the UNSC and the ASP simultaneously with full coordination among the respective States Parties (Ireland, Kenya, Mexico, Niger, Norway).¹²

The commitment of the UNSC, in general, and those members that are State parties to the Rome States, in particular, is of great importance for the success of such collective efforts. The commitment and activism of these ICC State parties members in favour of the Court and the accountability for its core crimes is a determinative factor to be considered for the success of such collective efforts. Notably, such initiatives are not unprecedented at the UNSC. **For example, in January 2012, under the Presidency of South Africa, there was a day-long debate within the Security Council on the “*promotion and strengthening of the rule of law*”**

¹⁰ OHCHR, ‘[Statement to the Security Council by Navi Pillay](#)’, High Commissioner for Human Rights, 25 January 2012, last accessed: 7 September 2021.

¹¹ September 2021, Ireland; October 2021, Kenya; November 2021, Mexico; December 2021, Niger; January 2020, Norway. See UNSC (n 8)

¹² *Ibid.*

*in the maintenance of international peace and security*¹³ and an ensuing Statement by the President of the Security Council.¹⁴ Such initiatives were rightly commended as platforms that have been used to emphasize the need for effective cooperation both by States and by UN organs with the work of the international Courts and Tribunals.¹⁵ However, the Security Council is yet to pass any operative resolutions with practical implications on the matter of ensuring and providing for cooperation between the Security Council and the International Criminal Court.¹⁶

3. Overview of the Cooperation Between the United Nations Security Council and the International Criminal Court

The 2004 Negotiated Relationship Agreement between the ICC and the United Nations (“Relationship Agreement”),¹⁷ recalled in its Preamble that the Rome Statute “reaffirm[ed] the Purposes and Principles of the Charter of the United Nations.”¹⁸ Moreover, it noted the Court’s significant role in dealing with “the most serious crimes of concern to the international community as a whole [...] which threaten the peace, security and well-being of the world.” The cooperation between the UNSC and the Court has been addressed in Article 17 of the Relationship Agreement, which envisaged three possible ways of interactions between the UNSC and the Court, and addressed the procedures to be followed thereafter:

3.1 Security Council Referral

When the Security Council, refers a situation to the Prosecutor pursuant to Article 13 (b) of the Statute, the Secretary-General transmits the written decision to the Prosecutor together with all related documents and other materials.¹⁹ Likewise the Court, also through the Secretary-General, undertakes to keep the UNSC “informed in this regard in accordance with the Statute and the Rules of Procedure and Evidence”.²⁰

3.2 Security Council Deferral

When the Security Council adopts a resolution requesting the Court “not to commence or proceed with an investigation or prosecution” pursuant to Article 16 of the Statute, the Secretary-General transmits the written decision to the President of the Court and the

¹³ UNSC, ‘The Promotion and Strengthening of the Rule of Law in the Maintenance of International Peace and Security’, 6705th Meeting of the Security Council, 19 January 2012, [S/PV.6705](#) and [S/PV.6705 \(Resumption 1\)](#).

¹⁴ UNSC, ‘Statement by the President of the Security Council’, 19 January 2012, [S/PRST/2012/1](#), reiterating UNSC, ‘Statement by the President of the Security Council’, 29 June 2010, [S/PRST/2010/11](#).

¹⁵ Chatham House, Meeting summary: ‘[The UNSC and the ICC](#)’, 16 March 2012, p. 12.

¹⁶ *Ibid.*

¹⁷ ICC, Negotiated relationship agreement between the ICC and the UN, [ICCASP/3/Res.1](#), 4 October 2004.

¹⁸ Rome Statute (n 2), Preamble.

¹⁹ *Ibid.*, Article 17 (1).

²⁰ *Ibid.*

Prosecutor.²¹ The Court, also through the Secretary-General, confirms its receipt of the UNSC request and informs of the actions taken in this regard.²²

3.3 Duty to Enforce Cooperation

In cases of a UNSC referral to the Court, if a State Party²³ or a Non-State Parties which had entered into an *ad-hoc* arrangement or an agreement with the Court,²⁴ fails to cooperate, the Court informs the UNSC or refers the matter to it. In this case, the ICC Registrar conveys the Court's decision to the UNSC through the Secretary-General with relevant information. Likewise, through the Secretary-General, the UNSC informs the ICC Registrar of the actions undertaken.²⁵

4. Promotion of States' Cooperation by the United Nations Security Council

The Negotiated Agreement did not address further ways of cooperation or more duties on the UNSC to enforce cooperation with the ICC, especially in relation to States non-Party to the Statute. **However, there is not –at least legally or procedurally– a reason that prevents the UNSC from imposing the obligation to cooperate with the Court on *all* members of the UN in accordance with Article 25 of the UN Charter which stipulates that: “[t]he Members of the United Nations agree to accept and carry out the decisions of the Security Council.”** In its two referrals in the Situation in Darfur, Sudan²⁶ and Libya,²⁷ the UNSC imposed obligations of cooperation only on those two States.²⁸ Notably, in the case of Darfur, the UNSC further imposed obligations of cooperation on non-State actors.²⁹ As regards other States non-Parties to the ICC, the UNSC only urged their cooperation, and explicitly acknowledged that States non-Parties to the Rome Statute have no obligation to cooperate with the Court.³⁰

The practice of the UNSC regarding the ICC differs from its previous practice regarding the *ad-hoc* International Criminal Tribunals for Former Yugoslavia (“ICTY”) and for Rwanda (“ICTR”), in which the UNSC imposed cooperation obligations on *all* UN member States. Although the ICC is a treaty-based body, the practice of the UNSC in relation to the *ad-hoc* tribunals is still relevant, especially in cases of UNSC referrals, because both the ICTY and ICTR were created by the UNSC while exercising its powers, to maintain international peace and security, under Chapter VII of the UN Charter. Therefore, as noted by Akande and de Souza Dias:

²¹ *Ibid.*, Article 17 (2).

²² *Ibid.*

²³ Rome States (n 2), Article 87(7).

²⁴ *Ibid.*, Article 87(5)(b).

²⁵ *Ibid.*, Article 17 (3).

²⁶ UNSC, Resolution 1593, [S/RES/1593 \(2005\)](#), 31 March 2005, para 1.

²⁷ UNSC, Resolution 1970, [S/RES/1970 \(2011\)](#), 26 February 2011, para 4.

²⁸ See UNSC (n 26) para. 2 and (n 27), para. 5.

²⁹ See UNSC (n 26) para. 2.

³⁰ See UNSC (n 27), para. 6.

“[C]ooperation by all States, rather than just the territorial State, is not purely symbolic but arises out of a practical necessity. This is especially because accused persons might be found on the territory of non-States parties, or may be nationals of such States.”³¹

Accordingly, to ensure the effective arrest and transfer of such individuals to the Court, it is essential to guarantee a universal scope of application in relation to the obligations to cooperate with the Court. Therefore, the UNSC should not seek to limit the Court’s jurisdiction.³² Notably, in its referrals to Sudan and Libya, and on two occasions following the entry into force of the Statute,³³ the UNSC has excluded nationals, current or former officials of a Non-State Parties to the Statute from the Court’s jurisdiction.³⁴ Some have argued that such practice of the UNSC is “inconsistent with the terms of the statute, particularly Articles 13(b) and 16, which do not authorise the UNSC to make such types of carve-out when referring or deferring a situation before the ICC”.³⁵

5. Promotion of States’ Cooperation by the United Nations Security Council at the Investigation and/or Prosecution Stage

It is argued that sometimes there is an overlap between the situations within the jurisdiction of the ICC and the situations being considered by the UNSC while exercising its responsibilities for maintaining peace and security.³⁶ This is understandable, due to the inextricable relation between the commission of international crimes and the threat to international peace and security.³⁷ **Given the complementary rule of both institutions in the pursuance of peace and justice, the UNSC should also promote cooperation with the Court in situations that are being examined before the Court without a UNSC referral.** In such situations, the UNSC could directly or indirectly provide or promote support and cooperation to the Court.³⁸ In addition to the modest provision of political and diplomatic support, both publicly and privately, the UNSC could support and promote cooperation through adopting several important measures at the investigation and/or prosecution stage, such as:

5.1 Targeted Sanctions

In coordination with the Court, the UNSC could establish a process to consider whether to impose targeted sanctions on individuals who are subject to an arrest warrant or summons to

³¹ D. Akande and T. de Souza Dias, ‘[Cooperation with the ICC: What the Security Council and ASP must do](#)’, Institute for Security Studies (ISS), Africa Report 15, March 2019, p. 5.

³² D. Kaye and K. Raustiala, ‘[The council and the court: law and politics in the rise of the International Criminal Court](#)’, 94 TLR [2016], 736; D. Kaye *et al.*, ‘[The council and the court: improving Security Council support of the ICC](#)’, University of California, May 2013, p. 5–6.

³³ UNSC (n 26), para 6; UNSC (n 27), para 6.

³⁴ UNSC, Resolution 1422, [S/RES/1422 \(2002\)](#), 12 July 2002, para 1; UNSC, Resolution 1487, [S/RES/1487 \(2003\)](#), 12 June 2003, para 1.

³⁵ Akande and de Souza Dias (n 31)15.

³⁶ Chatham House (n 15)10, see also *ibid.*, p. 5.

³⁷ *Ibid.*; Akande and de Souza Dias (n 31)5.

³⁸ Chatham House (n 15)10.

appear issued by the Court.³⁹ Notably, the UNSC regularly uses its powers under Article 41 of the UN Charter to take actions, including imposing sanctions, against individuals or groups that are accused of serious violations of International Humanitarian Law (IHL) and human rights, including the commission of international crimes as contrary to international peace and security. Therefore, the UNSC has established a series of sanctions committees, such as the Counter-Terrorism Committee, the Committee on Non-Proliferation of Nuclear and Chemical Weapons, the Committee on the Taliban, ISIL and associated entities etc.

These committees addressed Sudan and Syria, as the abject of the UNSC referral, but also address situations in other states that are under the preliminary examination or investigations of the Court, including, Mali, Afghanistan, Côte d'Ivoire, the Central African Republic ("CAR") and the Democratic Republic of Congo ("DRC").⁴⁰ The sanctions that these committees may take include, *inter alia*, travel bans, assets freeze and arms embargoes. Such sanctions could be helpful in putting pressure on accused or summoned persons to voluntarily surrender or appear before the ICC. Moreover, such sanctions could help to deter those individuals and others from committing international crimes.⁴¹

In the words of Akande and de Souza Dias, "[s]anctions have both practical and symbolic importance. Not only do they seek to deny a person access to resources to carry out unlawful acts, but they also make a normative statement that such individuals, by not cooperating with the court, should lose the privileges they may otherwise enjoy as State leaders or officials or as non-State actors."⁴² Moreover, sanctions demonstrate to States that such actions entail consequences, which sequentially urge them to cooperate with the Court. If enforced, sanctions may result in limiting an individual's ability to elude the Court's procedures.

Although the UNSC is yet to apply targeted sanctions to ensure cooperation with the ICC, there are two examples of positive interactions between the UNSC and the ICC in this regard. Firstly, in the situation in Libya, the UNSC made its referral to the ICC while simultaneously adopting travel ban and assets freeze sanctions that targeted Saif al-Islam Qadhafi and Abdullah al-Senussi, who were later indicted by the Court.⁴³ Secondly, in the situation in Côte d'Ivoire, the UNSC lifted the travel ban that was imposed earlier on Laurent Gbagbo to allow his transfer to The Hague to stand trial before the Court.⁴⁴

³⁹ See ICC, ASP, [Resolution ICC-ASP/16/Res.6](#), 14 December 2017, paras 35(c) and 44; ICC, ASP, Report of the bureau on cooperation, Report on the draft action plan on arrest strategies, submitted by the rapporteur, [ICC-ASP/14/26/Add.1](#), 16 November 2015, paras 11, 35, 47, 54, 55(a), 60, 71(b), 84, 85(a) (ix); UN General Assembly, Report of the ICC on its activities in 2014/15, [A/70/350](#), 28 August 2015, paras 95–98; UNSC, Records of the 6849th meeting, [S/PV.6849](#), 17 October 2012, paras 23, 28–29; Chatham House (n 15)9–10; Kaye *et al.* (n 32)5–6.

⁴⁰ See UNSC, [Repertoire of the practice of the Security Council, Sanctions and other committees](#).

⁴¹ ICC, ASP, Report of the bureau on cooperation (n 39), para 55(a), p. 53, para 31(a); UN General Assembly, Report of the ICC on its activities in 2014/15 (n 39), para 95.

⁴² Akande and de Souza Dias (n 31)6.

⁴³ See UNSC (n 27), Annex I, paras 14 and 16.

⁴⁴ See UNSC, Records of the 6849th meeting (n 39)23; UNSC, "[Secretary-General hails ICC as Centrepiece of 'new age of accountability'](#)", [Urges Enhanced Cooperation with Security Council](#)", Press Release, 17 October 2012.

5.2 Mandating United Nations Peacekeeping Missions to Cooperate with the International Criminal Court

The UNSC could include an obligation to cooperate directly with the ICC, within the mandate of the UN Peacekeeping, Peace enforcement or Peacebuilding Missions. Further, an obligation to provide support to other relevant bodies acting in cooperation with the Court, including States and other UN or regional organs.⁴⁵ Successful cooperation between UN Peacekeeping and the ICC is evident and, in some cases, has led to the arrest of individuals and the exchange of crucial information of the Office of the Prosecutor (“OTP”). For example, in the situation in the DRC, the UNSC explicitly authorised its peacekeeping mission there and the UN Organisation Mission in the DRC (“MONUSCO”) to cooperate fully with the ICC and the DRC to bring those responsible for the commission of international crimes to justice.⁴⁶ Moreover, when concluding a memorandum of understanding (“MOU”) with the ICC, the MONUSCO specifically undertook to consider requests from the DRC to arrest individuals sought by the ICC.⁴⁷ The said arrangements have resulted in the successful arrest, transfer and prosecution of Thomas Lubanga, Germain Katanga and Bosco Ntaganda.⁴⁸

Another example can be found in the UNSC authorisation to the African-led International Support Mission in Mali (“AFISMA”) in 2012, in which it called upon the AFISMA to cooperate with the ICC “to bring to justice perpetrators of serious human rights abuses and violations of international humanitarian law in Mali”.⁴⁹ Further, MOUs have also been concluded between the ICC and three other peacekeeping missions: the United Nations Operation in Côte d’Ivoire (“UNOCI”), the United Nations Multidimensional Integrated Stabilization Mission in Mali (“MINUSMA”) and the Multidimensional Integrated Stabilization Mission in the Central African Republic (“MINUSCA”).⁵⁰

Previous international tribunals experiences demonstrate the significant number of arrests secured by peacekeeping forces operating in the State involved. For example, the NATO-led Stabilisation Force in Bosnia and Herzegovina (“SFOR”), in the context of the ICTY.⁵¹ Such arrests’ positive impact extended to promoting many fugitives to surrender to the ICTY voluntarily.⁵² A similar example would be in the context of the Special Court for Sierra Leone

⁴⁵ ICC, ASP, [Resolution ICC-ASP/16/Res.6](#) (n 39), para. 35(c)-(d); ICC, ASP, Report of the bureau on cooperation (n 39), paras 21–24; ICC, ASP, Report of the Bureau on cooperation, Annex VII - Report on arrest strategies by the Rapporteur, ICC-ASP/13/29/Add.1, 21 November 2014, Recommendation 5, paras 76, 84, 85(a)(ix)(b), 102, 111(b)(iii); UN General Assembly, Report of the ICC on its activities in 2014/15 (n 39), paras 67–68, 78–90; UNSC, Records of the 6849th meeting, (n 39) 3, 7, 22; Chatham House (n 15)10–11; Kaye *et al.* (n 32) 5, 7–8.

⁴⁶ UNSC, Resolution 2098, [S/RES/2098 \(2013\)](#), 28 March 2013, para. 12.

⁴⁷ [Memorandum of understanding between the UN and the ICC concerning cooperation between the MONUSCO and the ICC](#) (with annexes and exchange of letters), 8 November 2005.

⁴⁸ UNSC (n 46)3; M. Melillo, ‘[Cooperation between the UN Peacekeeping Operation and the ICC in the DRC](#)’, JICJ [2013] 11, 772–773.

⁴⁹ UNSC, Resolution 2085, [S/RES/2085 \(2012\)](#), 20 December 2012, para. 19

⁵⁰ UN, ‘[Best practices manual for UN – ICC Cooperation](#)’, 26 September 2016, p. 12.

⁵¹ H-R Zhou, ‘[The enforcement of arrest warrants by international forces: from the ICTY to the ICC](#)’, 4 [2006] JICJ, 202.

⁵² See ICTY, [The fugitives](#).

“SCSL”), in which the UN mission in Liberia (“UNMIL”) was crucial in the transfer of Charles Taylor, former President of Liberia, to stand trial in Sierra Leone.⁵³

Notably, cooperating with the ICC is consistent with the basic principles of neutrality and impartiality of peacekeeping forces. As Akande and de Souza Dias noted “[t]his is because impartiality has been understood as not precluding enforcement of the relevant rules, in particular, accountability for the commission of serious international crimes.”⁵⁴ Moreover, a general obligation to cooperate with the ICC addresses concerns that peacekeeping missions may be taking sides in the conflict.⁵⁵ Furthermore, such cooperation in the arrest and transfer of individuals to the ICC is perfectly in accordance with these missions’ mandate to protect civilians.

Therefore, the UNSC should include a mandate to cooperate with the ICC in its resolutions establishing or renewing peacekeeping, peace enforcement and peacebuilding missions that operate in States that are subject to ICC investigations. In addition to the duty to surrender accused persons to the Court, peacekeeping missions’ mandates to cooperate must include their duty to assist in evidence gathering and information sharing, since there is a great overlap between UN peacekeeping mission and situation being investigated at the ICC.⁵⁶

5.3 Other General Measures

More generally at this stage, the UNSC could entertain a more structured and better-informed discussion of matters relating to the Court. Consequently, the UNSC should extend the mandate of its existing Informed Working Group on International Tribunals to consider matters relating to the relationship between the UNSC and the ICC.⁵⁷ Another general measure would be to include in its referral resolutions or to adopt a separate Chapter VII resolution requesting all UN members to implement the necessary domestic legislations enabling arrest and surrender to the ICC, in addition to further assist and facilitate the investigations activities of the Court.⁵⁸

6. Conclusion and Recommendations

The current UN Security Council formation presents a much-needed opportunity to keep the discussion of the promotion and advancement of the UNSC cooperation with the ICC on the UNSC agenda for at least five months uninterrupted. Moreover, for such collective efforts to be successful, it has to be performed simultaneously and in full cooperation and coordination

⁵³ A. Ciampi, ‘Legal rules, policy choices and political realities in the functioning of the cooperation regime of the International Criminal Court’, in O. Bekou and D. Birett (eds), [‘Cooperation and the International Criminal Court: perspectives from theory and practice’](#), Leiden: Brill (2016)42.

⁵⁴ See Akande and de Souza Dias (n 31)9.

⁵⁵ ICC, ASP, [Report of the bureau on cooperation](#) (n 39), para. 21.

⁵⁶ See Akande and de Souza Dias (n 31), Table 1, Information collected from: UNSC, [Repertoire of the practice of the Security Council: Peacekeeping missions](#); UNSC, [Repertoire of the practice of the Security Council: Political missions and offices](#); UN Peacekeeping, [UNTSO fact sheet](#); UN Department of Political Affairs, [DPPA around the world](#), last accessed: 7 September 2021.

⁵⁷ UNSC, Records of the 6849th meeting (n 39)28; Kaye and Raustiala (n 32)734.

⁵⁸ See Akande and de Souza Dias (n 31) 9.

among State Parties representatives in both the UNSC and the ASP. Al-Haq suggests that the desired results can be achieved best if such diplomatic and advocacy effort is conducted in full cooperation and coordination between the ICC States Parties representatives and Palestine's representatives at both the UN and the ASP.

It has been over 17 years since the International Court of Justice advisory opinion concluded on the illegality of the Israeli apartheid wall and the Israeli settlements in the occupied Palestinian territory (oPt). It has been nearly five years since the UNSC itself decided in its resolution 2334 (2016) that the Israeli settlements “have no legal validity and constitute 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.” Since then, more settlements have been built and Israel's illegal settlement enterprise has fragmented the Occupied Palestinian Territory, making a contiguous State unviable. It is urgent that the UNSC addresses this pressing issue again. It is time that ICC States Parties with a renowned track record of resolute commitment international justice and the rule of international law, put this issue on the UNSC agenda.

In August 2012, the United Nations Country Team (UNCT) in the OPT predicted that Gaza will not be liveable by 2020. We are now in September 2021, and after four Israeli military offensives, over two million people in the Gaza Strip are still living under unliveable conditions, ensnared by a military blockade imposed by Israel's belligerent occupation since 2007. Al-Haq urges the aforementioned States to ensure that the situation in Gaza remains on the agenda of the UNSC during its presidency, and can only reiterate the words of the UNCT that “*the Palestinian people of Gaza must be enabled to live dignified, healthy and productive lives in peace and security, both now and in the future.*” This is, indeed, the responsibility of the UNSC to ensure that the Palestinian People live in peace and security.

Al-Haq extends warmest and most sincere congratulations to Ireland, Kenya, Mexico, Niger and Norway on their current and approaching presidency of the UNSC from September 2021 to January 2022. Pursuant to the respective States' firm commitment to human rights, international justice and the rule of international law, their UNSC presidency indeed represents a momentous opportunity to make a significant contribution to the furtherance of the United Nations principles. Al-Haq regards this as an outstanding opportunity for States to pursue collective efforts, as ICC State Parties, to promote and advance cooperation between the UNSC and the ICC throughout their presidency. Al-Haq strongly encourages that Ireland, Kenya, Mexico, Niger and Norway to include such discussion, especially in relation to the Situation in Palestine, as an agenda item at the UNSC throughout their presidency.

Al-Haq therefore recommends that States with Presidency of the UN Security Council including Ireland, Kenya, Mexico, Niger and Norway:

1. Cooperate to promote and advance an Agenda Item on cooperation between the UNSC and the ICC throughout their presidency;
2. The Agenda Item should include UNSC cooperation with the Court in situations examined before the Court without a UNSC referral;

3. Ensure that the UNSC includes mandates to cooperate with the ICC in its resolutions establishing or renewing peacekeeping, peace enforcement and peacebuilding missions that operate in States that are subject to ICC investigations;
4. Specifically, the UNSC should include in the United Nations Disengagement Observer Force (UNDOF) mandate a requirement to cooperate with the arrest warrants of the International Criminal Court;
5. In light of Israel's 54-year occupation and 73-year apartheid of the Palestinian territory, continued acts of aggression in Gaza, its *de jure* annexation of Jerusalem and *de facto* annexation of the West Bank, the UNSC should pursue economic sanctions on Israel, including the prohibition of arms trade to and from Israel, to bring the illegal situation to an end.
6. Take concrete measures to end Israel's siege of Gaza, occupation and apartheid of the Palestinian territory;
7. In doing so, in the transitional time from occupation to resumption of full Palestinian governing authority, mandate a temporary peacekeeping mission in the occupied Palestinian territory;
8. Recommend the admission of the State of Palestine as a full member of the UN.

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